



## Guidelines for Civil Society Organizations on compliance with their obligations in terms of prevention of money laundering

Practical recommendations in light of the new Federal Law for Preventing and Identifying Operations with Resources of Illicit Origin (LFPIORPI , for its acronym in Spanish)

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# Guidelines for Civil Society Organizations on compliance with their obligations in terms of prevention of money laundering

## I. Introduction

This analysis document on compliance with the Law for Preventing and Identifying Operations with Resources of Illicit Origin (from here on referred to as “Anti-Money Laundering Act”) was generated thanks to the support of a group of donors interested in providing their grantees with information in terms of awareness and compliance of the regulations that currently rule over civil society in Mexico.

These donors are: The Ford Foundation, The John D. And Catherine T. MacArthur Foundation, The Open Society Foundations, The Fund for Global Human Rights, The William and Flora Hewlett Foundation and the Sociedad Mexicana Pro Derechos de la Mujer (Semillas).

The development of this protocol includes:

- The results from a diagnosis survey that was sent to 116 organizations, all of them grantees of the Foundations that sponsored the development of this manual. 98 organizations answered the online survey, and their inputs have been paramount, not only for the development of this protocol, but also for developing material made for the donors.
- Individual interviews with a reduced group of representatives from civil society organizations on concrete and practical procedures for compliance with this law.
- Interviews with Public Accountants and Lawyers specializing in the compliance with financial regulations, and specifically this law. The collaboration from the lawyers Luis Miguel Pérez de Acha and Antonio Ibarra de Rueda from the law firm PDEA was particularly valuable.
- One interview with the head of the Financial Intelligence Unit and members of his team.
- Consultations with the [International Center for Not-for-Profit Law](#) and the Centro Mexicano para la Filantropía.

It is worthwhile stressing that the main objective of these guidelines is to explain the requirements of this law in a simple language, with the least possible amount of legal terminology. This is why throughout the text we mention the different sections of the Law, Regulations and General Rules (RCG) where the referred to information can be found by means of hyperlinks in the text itself.

### **Important note**

Even though this paper’s objective is to guide civil society organizations as to the appropriate way to comply with the Anti-Money Laundering Act in Mexico, this document cannot be considered as financial, legal or accountable orientation, strictly speaking. Our advice is for each one of the organizations to fulfill the compliance requirements of this law through its upper management and its administrative, financial, legal and/or accounting staff, or the external vendors they have to this effect, and for them to try to be aware of the updates that this law may have in the future.

Likewise, it is worthwhile pointing out that when developing this material both donors as well as the consultant acknowledge that the scope of this document is limited to informing the organizations of a law in force that must be upheld, providing an analysis that allows the organizations to understand the implications of this law and to make decisions as to the most appropriate way to comply with it.

## II. Background on the Anti-Money Laundering Act in Mexico.

Mexico approved in October 2012 its Anti-Money Laundering Act (Federal Law for Preventing and Identifying Operations with Resources of Illicit Origin) in order to implement the recommendations from the [Financial Action Task Force \(FATF\)](#). GAFI (acronym in Spanish for FATF) is an inter-governmental body established in 1989 by the Group of Seven (G7), whose objective is to establish regulatory standards and foster the effective implementation of legal, regulatory and operative provisions in order to fight money laundering, financing terrorism and other threats to the integrity of the international financial system and to global safety. Thus, the GAFI is considered a body that generates public policy, and that also works to produce sufficient political will to allow enforcing legislative and regulatory reforms in member countries in order to address these recommendations. Even though the GAFI has been operational for more than 20 years now, its regulatory and political activities in terms of financial systems has intensified and become stricter since the 9/11 attacks in New York in 2001.

Mexico became a full member of the GAFI in 2000. It is one of the [36 members of the Task Force](#), which includes 34 countries and two regional organizations that represent the world's most important financial centers.

This way, since 2000 public policy to prevent money laundering in Mexico has undergone a meticulous annual evaluation by the GAFI in order to assess the quality of internal laws in terms of the parameters of global regulations, as well as the effectiveness in their implementation. It wasn't until February 2014 that the results of this [evaluation](#) allowed Mexico to abandon the group of countries that need "regular annual follow-up", given that, from the technical standpoint, the country achieved important improvements in its laws to prevent money laundering, as well as in the enforcement of this law based on the GAFI's standards.

This change of status is, undoubtedly, a major achievement for the Mexican government, and it is also the result of multiple public policy amendments that ultimately led to the proclamation of the [Federal Law for Preventing and Identifying Operations with Resources of Illicit Origin, \(LFPIORPI\)](#) as we currently know it. For this reason, it might well be that this acknowledgement to Mexico's financial management could hinder advocacy efforts to promote regulatory improvements, especially to enable compliance with this law from civil society organizations (CSOs).

### III. How are civil society organizations complying with this law? Diagnosis on generalized practices and compliance challenges.

Thanks to the 98 answers gathered in the online survey that was carried out by the end of November 2014, it was possible to assess the level of awareness of civil society organizations as to this law and the way to carry out its compliance. The diversity in terms of size and perspective of the organizations that answered the survey is useful in order to confirm the fact that comprehensive compliance with this law presents various challenges for civil society organizations (CSOs) given that they are not a homogenous sector.

The most outstanding findings of the survey are:

- 90% of the organizations surveyed state knowing the Anti-Money Laundering Act and their obligations in order to comply with it.
- 73% report comprehensive knowledge of this law's implications for their organizations.
- Almost 70% of the organizations are aware of their obligation to comply with this law, even if their organizations are not authorized grantees. In contrast, nearly 30% of the organizations consider that only authorized grantees or organizations with CLUNI (Unique Enrollment Code) are compelled to comply with the law. This information allows us to understand that not all the organizations are complying, given that they are unaware of the scope of the law, and it also allows proactively informing the organizations that receive grants that they are indeed compelled subjects of this law.
- 49% of the organizations state that they comply with this law, while 17% state that they do not comply. 34% of the organizations refrain from answering this question. The percentage of those who choose not to answer is very close to the percentage of those that believe that only certain organizations are forced to comply.
- For 79% of the organizations surveyed, the main obstacle towards comprehensive compliance with this law is the fact that they receive limited information and paperwork from their donors.
- 55% of the organizations admit that their limitations in terms of the awareness of this law might represent an obstacle for its compliance.
- 93% of the interviewees state that the compliance with this law represents an administrative overload, especially because in many cases they do not manage to convince their donors to provide all the information and paperwork needed for compliance.
- Nearly 40% of the organizations require the assistance of external vendors to comply with this law.
- 21% of the organizations declare not having the ability to hire external vendors despite the fact that they need them.
- Only 71% state being aware of the economic sanctions due to noncompliance. Striking is the fact that only 13% state feeling at risk of being sanctioned.

#### IV. Six aspects of the Anti-Money Laundering Act that cannot be ignored

1. ***Compliance with this law is mandatory for all CSOs that receive grants. In order to comply with the law, as of September 1 2014 the General Rules that were reformed in August 2014 must be respected. There are no extensions in order to comply with these obligations.***

This law was initially issued on October 17 2012 and the first version of its General Rules was published in August 2013. There was an extension for the compliance of these obligations that concluded at the beginning of 2014. It is worthwhile stressing that the reform to the [General Rules from August 2014](#) **DOES** substantially simplify the compliance of these provisions, given that it reduces the amount of information that must be collected from the donors –especially personal data - even though in practical terms there still are difficulties to collect all this information. Since the GAFI continues to permanently review their regulations and the governments that are members of the task force must reflect these changes in their own regulations, it is important to be watchful of any possible reforms in the future.

2. ***Receiving grants is a vulnerable activity in the terms stipulated by the Anti-Money Laundering Act for all organizations that receive them, regardless of their tax status, or their enrollment in registries such as those for authorized grantees or the CLUNI. The organizations are compelled to report income from grants starting with amounts pre-established by the law (more details below).***

The Anti-Money Laundering Act regulates activities, not types of institutions. Until now the law includes 15 vulnerable activities<sup>1</sup>, one of which is receiving grants. This is why it applies for all organizations that receive them, regardless of their legal form or tax status.

3. ***The law is very clear in terms of its mandate: CSOs MUST NOT accept grants if their donors do not simultaneously provide them with all the information and the paperwork stipulated in the General Rules of the LFPIORPI.***

This provision is of the outmost importance, given that initially it establishes the explicit prohibition for organizations to receive grants if the donors do not provide information and all the paperwork when issuing the grant. It is a fact that in practical terms some donors provide incomplete information due to the diversity of interpretations of this legal framework. This situation puts their grantees at risk of being sanctioned.

The law is based on the assumption that when collecting this information the organizations are providing documentary evidence of the legality of their sources of financing, while at the same time obtaining data to fill out the reports on receiving grants before the Financial Intelligence Unit (UIF for its acronym in Spanish).

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<sup>1</sup> Vulnerable activities include: gaming and lotteries, purchase or payment of corporate or credit cards, purchase of prepaid cards or coupons, of refund or reward cards, issuing and distributing traveler checks, consumer loans, collateral transactions, credit or loans, redundancy payments, transactions with real estate, precious metals and jewels, works of art, purchase-sale of luxury vehicles, transfer of securities, professional services associated with the financial system and other sectors involving important financial transactions, notarization, grants, foreign trade operations and leasing of properties.

It is worthwhile reiterating that even though the organizations may have *partial* information on their donors, in the event of an inspection, the absence of data and/or paperwork is considered by the UIF as *total* noncompliance and there is a real risk of being sanctioned.

**4. *Although it is true that not all grants have to be reported to the financial authority, the minimum amounts in order to “identify” a grant and “inform” the authority of receiving it are in fact very low.***

The law foresees two levels of compliance for those who receive grants:

- At the first level, the receiver of the grant must “identify it” as a vulnerable operation when it reaches the threshold of 1,065 minimum wages in force in Mexico City (SMVDF<sup>2</sup>). “Identifying” a grant does not imply informing about receiving it, but it does mean a file has to be opened with information from the donor, should this information not be at hand. The details to generate this file are found in section V of this document.
- The second level of compliance takes place when a grant reaches the threshold of 3,210 SMVDF. In these cases, in addition to the obligation of opening a file with information from the donor, the organizations are compelled to inform the financial authority by means of the [Money Laundering Prevention Website](#).

It is very important to take into account that the grants from one single donor that reach the threshold of 1,605 SMVDF are accumulative for six-month periods. If during these six months the grants accumulated coming from one single donor reach the threshold of 3,210 SMVDF, it is required to inform receiving these funds. If they do not reach the warning threshold in six months, the countdown is reset. This is particularly relevant for organizations that receive recurrent grants from some of their donors.

**5. *This law stipulates substantial economic sanctions for those organizations that do not thoroughly comply with it.***

The economic sanctions foreseen by this law are so high that many CSOs would have to invest a substantial portion of their annual budget –if not all of it- into paying a fine in case of being sanctioned. Since this law is recent, there still is no case law as to the criterion to estimate the amount of the sanctions within the parameters stipulated by the law, which are very broad. Furthermore, the causes for being sanctioned can be accumulative, as shown in the table below. If the organizations have not managed to have their donors provide them with all the information and paperwork needed to comply with the law, they run the risk of being sanctioned and the impact of the sanction may be devastating for the financial sustainability of the organization.

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<sup>2</sup> When completing these guidelines, in March 2015, the SMVDF was \$70.10 pesos.

Sanctionable activity <sup>3</sup>	Economic sanction
Noncompliance with the requirements from the LFPIORPI	Between 200 and 2,000 minimum wages in Mexico City (SMVDF) = \$ 14,020 – \$ 140,200 <sup>4</sup> pesos in 2015
Noncompliance with the obligation of identifying its donors (defined as Clients or Users); correct generation of files, verification of Beneficial Owner <sup>5</sup> and safeguard of information.	
Noncompliance with the obligation of presenting in a timely manner the Notices. (30 days after the date of the operation)	
If the notices sent do not include the requirements pointed out in the LFPIORPI	Between 10,000 and 65,000 SMVDF, or Between 10% and 100% of the value of the action or operation. The highest figure will be used = \$ 701,000 – \$ 4'556,500 or the equivalent of the percentages of the transactions.
Omitting sending the Notices	
Not respecting the restrictions for the use of cash and Precious Metals <sup>6</sup> .	

Source: own creation with information from the SHCP's (Finance Ministry) Money Laundering Prevention Website.

**6. *The organizations run the risk of being sanctioned even when only one of its donors does not provide the information required; this is regardless of the type of donor, whether domestic, international or governmental (for example the EU or USAID, or even the Mexican government).***

<sup>3</sup>This information was obtained from the Money Laundering Prevention Website of the Finance Ministry (SHCP) [https://sppld.sat.gob.mx/pld/interiores/sanciones\\_administrativas.html](https://sppld.sat.gob.mx/pld/interiores/sanciones_administrativas.html) consulted on February 10 2015.

<sup>4</sup> Minimum wage in force as of March 31 2015.

<sup>5</sup> The concept of Beneficial Owner refers to a person or a group of persons that, through others, obtains benefits from the entity that works as Client or User (i.e. the donor); it holds control over the legal person (donor) that carries out operations considered vulnerable (providing grants). A Beneficial Owner imposes directly or indirectly its decisions on general shareholders meetings and other similar bodies; it maintains voting rights over more than 50% of an entity's capital stock, and heads directly or indirectly the entity's management, strategy and main policies with the purpose of achieving benefits for itself.

<sup>6</sup> The Federal Law for Preventing and Identifying Operations with Resources of Illicit Origin establishes for certain actions or operations the restriction to liquidate or pay, as well as accepting the liquidation or payment of actions or operations by using coins and bills in local currency, or any other currency and Precious Metals. For more information, go to: [https://sppld.sat.gob.mx/pld/interiores/restriccion\\_metales.html](https://sppld.sat.gob.mx/pld/interiores/restriccion_metales.html)

## V. How to comply with the LFPIORPI?

In this section we describe the requirements to comply with the Anti-Money Laundering Act. Even though this information is updated as of March 2015, there might be discrepancies in the website for future updates of the law or of the system to present reports. This is why we recommend you to carefully review, along with the team in charge of complying with these provisions, the [Federal Law for Preventing and Identifying Operations with Resources of Illicit Origin](#), the [Regulations of the LFIPORPI from August 16 2013](#), the [General Rules from August 2013](#), and [the reform to these from August 2014](#).

1. The Law makes a clear distinction between “identifying” vulnerable operations and “informing” about them. In the case of receiving grants, the threshold for “identifying” a grant as a vulnerable operation is when its amount is equal to or above 1,605 minimum wages in force in Mexico City (SMVDF). The threshold for informing on receiving a grant is when this one is equal to or above 3,201 SMVDF. In the third point below you will find the details as to the differences between “identifying” and “informing”.
2. To present notices on vulnerable operations, it is indispensable to be registered in the [Money Laundering Prevention Website](#). This entry and registration is carried out before the Tax Authorities (SAT for its acronym in Spanish) through this website. In order to carry out this registration, one has to choose the option “[SPPLD Website System](#)” and it is indispensable to:
  - Be registered in the Federal Taxpayers Registry
  - Have a valid Advanced Electronic Signature
  - Comply with the requirements foreseen in Article 4, Annex 2 of the General Rules referred to by the Law; in other words, provide ID and contact information of the person presenting the notices for vulnerable operations in the terms established by the law.
3. These are the thresholds to identify and inform on receiving grants and the obligations in each case:
  - a. **When the grants received amount to or exceed 1,065 minimum wages in Mexico City** (\$112,510 pesos<sup>7</sup>) the organizations are compelled to **create a file** with the information and the paperwork of the donor in the terms of Annex 6 of the General Rules reformed in 2014. These files must be complete and available if there were to be an inspection by the UIF, and must be preserved for five years. The organization has to provide its donor guarantee over the safety and confidentiality in handling this paperwork.
  - b. **When the grants received amount to or exceed 3,210 minimum wages in Mexico City** (\$225,021 pesos<sup>8</sup>), the organizations are compelled to notify their reception through the online website installed on the webpage of the Tax Authorities (SAT). On

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<sup>7</sup>The minimum wage in Mexico City when producing this document was established at the beginning of 2015 at \$70.10 pesos every day. This amount was still in force as of March 31 2015.

<sup>8</sup> Same estimation as the one mentioned above.

the website the organizations must provide information on the grant received, the donor institution and its legal representative. The receivers of grants are also compelled to gather the paperwork specified in the Law and create a file with the information and paperwork for each donor in the terms established by the Law. These files must be complete and available if there were to be an inspection by the UIF, and need to be preserved for five years. The organization has to provide its donor a guarantee over the safety and confidentiality in handling this paperwork.

VERY IMPORTANT: These amounts also apply for in-kind grants.

4. There are two options to present the notices:
  - One option is to fill out the notice online directly on the Money Laundering Prevention Website. For this, you will have to identify yourself with the current advanced electronic signature. You may find user-friendly information on this [video](#).
  - Another option is to download a form in Excel that is known as “bulk mail”. This form can be found on the Money Laundering Prevention Website and in order to find it, you have to click on the corresponding vulnerable activity. The form for organizations that receive grants can be downloaded [here](#). This form can be filled out offline, which is a good option for organizations that have limited connectivity. After having filled out the form, you have to click the button “confirm data” appearing on the form and an “.xml” file will be created: for this file you can choose the most convenient name for the organization. Then the “.xml” file will have to be uploaded on the website in the option “presentation of massive notices”.

NOTE: We recommend creating a standard template so that it is filled out by all donors with the purpose of enabling on the one hand the compilation of the data from the donor, including the requirement of verifying the existence and identification of the Beneficial Owner and of the grant, and on the other hand their registration when presenting the notices. In the Annexes linked to this document we offer a *suggestion* of a template to this effect.

5. When presenting the notice, an acknowledgement of receipt will be generated, which we recommend printing even though it is stored in a digital file containing all the notices presented by the organization and that in theory should always be available.
6. If an organization does not receive grants or receives grants below the amount required to present notices in a one-month period, it has to present notices in zeros. The notices in zero can only be presented online through the website. You may find user-friendly information in the first minutes of this [video](#).
7. The deadline for presenting the notices is the 17<sup>th</sup> day of the following month after the grants have been received. For instance, if a grant is received during the month of February, the deadline to present the notice is on March 17. It is very important to point out that for 2015 there is a timetable for presenting notices that offers between one and five business days as grace period for presenting the notices, depending on the sixth digit

of the RFC of the person presenting it. You may go to the timetable in the Annexes of this document or by clicking [here](#).

8. In the following section we inform of all the data needed on the donors that will be used to fill out the notices. It is important to stress that, when these guidelines were prepared, the forms for notices do not accept tax ID numbers or codes for foreign donors in a format different to the one of the Federal Taxpayers Registry in Mexico due to a limitation in its programming<sup>9</sup>. This limitation can be dealt with in two different ways:
  - The first one is by writing down the date the legal person was constituted, and the date of birth of the legal representative in the form. It is worthwhile mentioning that, if in the requirements to create the donor files paperwork on the tax registration is required, then this information will have to be included in the file, even if the tax ID number is not included in the notice.
  - The second way to solve this limitation is, if you do not have the date the entity was constituted and the date of birth of the legal representative, by using a generic code for the RFC of foreign entities and persons in accordance with the miscellaneous rule number 2.7.1.25., which stipulates that “For the effects of article 29-A, section IV, second paragraph of the CFF, when the code in the RFC is not available, the generic code in the RFC will be assigned: XAXX010101000 and when handling with operations carried out with foreign residents that are not enrolled in the RFC, the generic code in the RFC will be specified: XEXX010101000.
9. Until May 15 2015, the Money Laundering Prevention Website offers the possibility for registered users to have access to an [“Inquiry for Quality Feedback Report”](#). Through this report users can see whether any of the reports they had previously presented has any mistake, so that they have the possibility to correct it for future sending without being sanctioned for the notices with a mistake and presented before that date. In order to have access to the Quality Feedback Report, one must enter the Website and in the module “Notice Follow-up” look for the notices that have the text “MISTAKE IN SENDING” in the status column. Thanks to the options “See notices” and “See details” we will obtain the observations that must be taken into account for future notices.
10. Should you have a specific inquiry for the Financial Intelligence Unit, this inquiry can be sent in the name of the legal representative of the organization to the e-mail [uifmex@hacienda.gob.mx](mailto:uifmex@hacienda.gob.mx).

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<sup>9</sup> In many countries, such as for instance in the United States, the tax ID number of legal persons only has nine digits and no letter, unlike Mexico, where tax ID numbers have 12 positions for legal persons and 13 for natural persons.

## VI. Types of donors and documents to generate the ID file and data needed to issue notices.

As previously mentioned, there are two ways to comply with this law, depending on the amount of the grants that are being received. The first one consists in integrating one file for each donor, including copies of the paperwork specified here below. The second one, in addition to integrating the file, requires that the organizations inform the authority about receiving the grant and to this effect they have to provide some data from their donors. We have to consider that the information to notify, as well as the paperwork required can change according to the type of donor.

Here are the requirements in terms of information and paperwork classified by type of donor:

### 1. Mexican or foreign natural persons residing temporarily or permanently in Mexico (Annex 3 RCG).

*Examples of donors: Any individual that wishes to favor an organization and that, if it is not Mexican, resides in Mexico.*

#### **Documents to integrate the file:**

- Official valid ID and whose expiration date when presenting it is not over two years. It must contain photograph, signature and, given the case, place of business. Valid examples of ID are the voting card issued by the INE, passport and in the case of foreigners the paperwork issued by the National Immigration Institute that proves its residency status in the country.
- Proof of residency<sup>10</sup> when this document is not the same as the one from the ID or when it is not contained. The proof may not have a seniority of more than three months starting with the date when the funds are received.
- Proof of enrollment before the Federal Taxpayers Registry.
- Record that proves that the organization receiving the grant requested its donor (defined in the law as client or user) information about the existence of a “Beneficial Owner”. The answer of the donor will have to be signed by the legal representative.
- If the natural person states that there is indeed a Beneficial Owner, the receiver of the grant will have to identify it by following the guidelines of section VII of article 12 of the General Rules.
- When the natural person donor acts through a legal representative, a power of attorney or a certified copy of the document issued by notary public will have to be presented, which allows proving the powers conferred to the legal representative. The power of attorney will have to be presented along with a copy of an official ID and proof of residency of the person receiving the power of attorney.

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<sup>10</sup> The proof of residency can be a payment receipt for utilities or a bank statement with no more than three months seniority, or the leasing contract in force when presenting the notice.

**Data to present the notice:**

- Complete name with no abbreviations (father's last name, mother's last name and name or names). If the donor is a foreigner, you must have the complete last names and name.
- Date of birth
- Country of birth
- Country of nationality
- Activity, occupation, profession, activity or line of business of the donor.
- Complete place of business
- Phone number(s) where the person can be reached, including the long-distance dialing code and, if applicable, extension.
- E-mail
- Unique Population Registry Code and/or the code of the Federal Taxpayers Registry, when available. (Important note: it is not mandatory to provide these data in the notice if the date of birth has been provided).
- Data of the ID which was used for identification purposes (of which a copy was presented), in other words, type of ID, authority issuing it, and ID number.

Additionally, when dealing with persons whose place of residency is abroad and at the same time have a residency on domestic soil where they are able to receive targeted mail, the full residency will have to be established in the file.

**2. Mexican legal persons (Annex 4)**

*Examples of donors: Mexican domestic private, business, corporate or community foundations; as well as companies, corporations, associations or civil societies.*

**Documents to integrate the file:**

- Articles of incorporation that also prove the entry in the corresponding public registry. Review Annex 4 for more details, especially when dealing with entities recently created.
- Tax ID card and proof of enrollment in the Federal Taxpayers Registry.
- Proof of residency (review footnote Nr. 6 for details)
- Powers of attorney of the legal representative(s) if these are not included in the articles of incorporation.
- Valid ID of the legal representative(s).
- Record proving that the organization receiving the grant requested its donor (defined in the law as client or user) information on the existence of a "Beneficial Owner". The answer of the donor will have to be signed by the legal representative. If the legal representative confirms that there is indeed a Beneficial Owner, the receiver of the grant will have to present information and paperwork to identify it following the guidelines of section VII of article 12 of the General Rules.

**Data to present the notice:**

- Corporate name
- Date of constitution or Federal Taxpayers Registry (one of these data is enough to fill out the form)
- Country of nationality of the donor institution
- Activity, line of business, corporate purpose or activity
- Place of business
- Phone number(s) from said place of business, including the long-distance dialing code and, if applicable, extension number.
- E-mail
- Name and full last names of the legal representative
- Date of birth, or code of the Federal Taxpayers Registry or Unique Population Registry Code of the legal representative,
- Data of the ID which was used to identify (of which a copy was presented), in other words, type of ID, authority issuing it, and ID number.

**3. Mexican legal persons governed by public law (Annex 4 BIS)**

*Examples of donors: Except the government entities that are included in Annex 7 BIS A (explained here below) this category includes all the federal, state and municipal government entities that grant funds in the form of grants as described by the Civil Code<sup>11</sup>.*

The legal persons governed by public law are all federal, state, and municipal government institutions, corporations or agencies other than the ones included in Annex 7 BIS, which will be included here below, and which basically includes federal ministries.

**Documents to integrate the file:**

- Document that works to prove its legal existence
- Tax ID Card issued by the SAT, if applicable
- Proof of residency (review footnote Nr. 6 for details) or proof of enrollment in the Federal Taxpayers Registry
- Document that works to prove the powers of the public servants that carry out the act or operation on behalf of the Mexican legal person governed by public law, in accordance with the provisions from the laws, regulations, decrees or corporate bylaws that create them and regulate their constitution and operation and, if applicable, a certified copy of their appointment or through public deed issued by notary public
- ID of each one of the public servants that carry out the act or operation on behalf of the Mexican legal person governed by public law

**Data to present the notice:**

- Name of the corresponding Mexican legal person governed by public law
- Date of creation or constitution

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<sup>11</sup> Article 2332 of the Federal Civil Codes establishes that the “Grant is a contract through which a person transfers to another person, free of charge, a part or all of its present assets”

- Complete place of business
- Phone number(s) of said place of business, including the long-distance dialing code and, if applicable, the extension
- E-mail
- Code of the Federal Taxpayers Registry, when applicable
- Name(s) and father's and mother's last names, with no abbreviations, as well as date of birth, or code of the Federal Taxpayers Registry, or Unique Population Registry Code of the public servants that carry out the act or operation on behalf of the corresponding Mexican legal person governed by public law.
- Data of the ID presented for the public official accredited, in other words, type of ID, authority issuing it, and ID number.

#### 4. Foreign natural persons whose stay in Mexico is as a visitor (Annex 5)

*Examples of donors: Any non Mexican person, that does not live in Mexico and that offers a grant to a Mexican organization.*

##### **Documents to integrate the file:**

- Passport or original official document issued by a competent authority of the country of origin, which proves the nationality. The document must be valid, and its expiration date, when presenting it, must not be over two years. This ID must include photograph and signature. It may include the residency but this is not indispensable.
- Official document issued by the National Immigration Institute, that proves its entry permit or legal stay in the country, when available;
- Proof of residency<sup>12</sup> when this one is different from the one on the ID or when it does not include it. The proof may not have a seniority of more than three months starting with the date when the funds were received.
- Record proving that the organization receiving the grant requested its donor (defined in the law as client or user) information on the existence of a "Beneficial Owner". The answer of the donor will have to be signed by the legal representative. If the legal representative confirms that there is in fact a Beneficial Owner, the receiver of the grant will have to present information and paperwork to identify it, following the guidelines of section VII of article 12 of the General Rules.
- When the natural person donor acts through a legal representative, a power of attorney or certified copy of the document issued by notary public will have to be presented, which allows proving the powers conferred to the legal representative. The power of attorney will have to be presented with a copy of an official ID and proof of residency of the person receiving the power of attorney.

##### **Data to present the notice:**

- Full name with full last names with no abbreviations or diminutives.
- Date of birth

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<sup>12</sup> The proof of residency can be a payment receipt for utilities or a bank statement with no more than three months of seniority, or the leasing contract in force when presenting the notice.

- Country of birth
- Country of nationality
- Activity, occupation, profession, activity or line of business of the donor.
- Complete place of business
- Data of the document which was used as identification, consisting in: type of ID, authority issuing it, and ID number.
- Furthermore, if in addition to residency abroad, the donor has a place of business or residency in national territory where mail can be received, the file will have to include the data corresponding to said place of business, with the same elements as the ones contemplated in this Annex.

## 5. Legal persons of foreign nationality (Annex 6)

*Examples of donors: Most of the international non-governmental donors that finance organizations in Mexico belong to this category. It includes private and public foundations, corporate or community foundations, private philanthropic funds, second-floor donors, i.e. organizations that collect funds in order to subsequently offer grants, or that work as intermediaries of larger donors), as well as companies and another type of non-Mexican entities with the purpose of offering grants in Mexico.*

### **Documents to integrate the file:**

- Document proving its constitution
- Country of nationality of the institution
- Proof of residency. (review footnote Nr. 6 for more details)
- Evidence or certified copy of the public deed that contains the powers of attorney of the legal representative(s), when these are not contained in the document that proves the constitution of the legal person at issue.
- Valid ID of the legal representative. The ID must be issued by a competent authority, valid or with an expiration date, when presenting it, of no more than two years from the date it was presented, that contains the photograph, signature and, if applicable, residency of the referred person. For Mexican legal representatives, it is recommended to provide a copy of the voting card. For non-Mexican legal representatives, if residing in Mexico we recommend presenting a copy of the immigration form issued by the National Immigration Institute; if not residing in Mexico, we recommend.
- Tax ID Card issued by the SAT or in the absence of this, proof of assignment of the tax ID number, issued by a competent authority from its country of nationality, when any of these is available, and
- Record proving that whoever receives the grant requested its donor (defined in the law as client or user) information of whether it is aware of the existence of a beneficial owner, which will have to be signed by the client or user. If the foreign donor should state the existence of a “beneficial owner”, this one will also have to present information and paperwork for identification purposes (Article 12 section VII of the General Rules)

**Data to present the notice:**

- Corporate name
- Date of constitution
- Country of nationality of the donor institution
- Activity, line of business, or corporate purpose
- Code of the Federal Taxpayers Registry or, if applicable, tax ID number from its country of nationality
- Complete place of business (P.O. boxes not allowed)
- Phone number(s) of said place of business, including the long-distance dialing code and, if applicable, the extension number,
- E-mail,
- Name and full last names with no abbreviations or diminutives of the legal representative (as appearing in the ID).
- From the legal representative, it is required to have either the date of birth, or the code of the Federal Taxpayers Registry (RFC) or the Unique Population Registry Code (CURP). It is a fact that for foreign persons it is easier to provide the date of birth, given that they might not have RFC or CURP.
- Data of the ID, including type of ID; authority issuing it, and ID number.

**6. Embassies, Consulates or International Organizations accredited before the Mexican government with seat or residency in the country. (Annex 6 BIS)**

*Example of donors: In addition to the embassies per se, there are international cooperation programs that are channeled through diplomatic seats such as for instance the Global Opportunity Fund of the British Government. It also includes other non-Mexican governmental players such as USAID, the European Union, SIDA, and GIZ among others.*

**Documents to integrate the file:**

- Document proving the constitution, representation or establishment in Mexico, such as the consular registration card
- Proof of residency
- Evidence or certified copy of the public deed containing the powers of attorney of the legal representative(s); or document issued by a competent authority that proves the powers of representation of the natural person acting as representative of the foreign entity.
- Valid ID of the legal representative or natural persons previously mentioned. The ID must contain photograph, signature and residency of the holder, even though this last data is not mandatory. Should the legal representative find itself outside of Mexico and without a passport, the ID will necessarily have to be an official original document issued by a competent authority of the country of origin, valid or with the expiration date, when being presented, of no more than two years, that contains the photograph, signature and, if applicable, residency of the mentioned representative. The following are considered valid ID documents: driver's license and the credentials issued by federal authorities of the country at issue.

- Tax ID Card issued by the SAT or in the absence of this, proof of assignment of the tax ID number, issued by a competent authority from its country of nationality
- Record proving that the organization receiving the grant requested its donor (defined in the law as client or user) information about the existence of a “Beneficial Owner”. The answer of the donor will have to be signed by the legal representative. Should the legal representative confirm that there is in fact a Beneficial Owner, the receiver of the grant will have to present information and paperwork to identify it, following the guidelines of section VII of article 12 of the General Rules.

**Data to present the notice:**

- Name of the representation
- Date of establishment in national territory or code of the Federal Taxpayers Registry
- Complete place of business (P.O. boxes are not allowed)
- Phone number(s) of said place of business, including the long-distance dialing code and extension if applicable.
- E-mail
- Complete name and last names, with no abbreviations and no diminutives of the legal representative
- Date of birth, or Federal Taxpayers Registry or Unique Population Registry Code of the legal representative
- Data of the ID that has been presented, including name of the ID, authority issuing it, and ID number

**7. Legal persons, agencies and entities referred to in Annex 7-A of the RCG (Annex 7)**

*Examples of donors: Various entities that belong mostly to the financial system. They are clearly defined in Annex 7-A mentioned here below.*

If the CSOs receive grants from any of the entities referred to in Annex 7-A, it is not necessary to integrate a file, and a notice will be presented only when the grant exceeds the threshold of 3,210 minimum wages. This is known as the simplified regime

**Data to present the notice:**

- Corporate name
- Activity or corporate purpose
- Date of constitution or code of the Federal Taxpayers Registry
- Complete place of business
- Phone number(s) of said place of business, including the long-distance dialing code and extension number if applicable.
- E-mail
- Complete name with no abbreviations of the legal representative
- Date of birth, or code of the Federal Taxpayers Registry or Unique Population Registry Code of the legal representative
- Data will have to be compiled as to the ID of the legal representative, even though it is not mandatory to keep a copy on file.

Annex 7-A: List of companies, entities and agencies for which the simplified regime will be applicable based on article 12 section V of the General Rules:

- Holding Companies of Financial Groups
- Mutual Funds
- Mutual Funds Specializing in Pension Funds
- Companies Managing Mutual Funds
- Companies Distributing Mutual Funds Shares
- Credit Institutions
- Brokerage Firms
- Currency Exchange Offices
- Companies Managing Pension Funds
- Insurance Institutions
- Mutual Insurance Companies
- Sureties Institutions
- Bonded Warehouses
- Financial Leasing Companies
- Savings and Loan Cooperatives
- Popular Financing Companies
- Rural Financing Companies
- Limited-Purpose Financing Companies
- Multi-Purpose Financing Companies
- Credit Unions
- Financial Factoring Companies
- Securities Issuers<sup>13</sup>
- Financial Entities from Abroad<sup>14</sup>
- Federal, state and municipal public Agencies and Entities
- Securities Markets
- Depository Institutions
- Companies managing mechanisms to facilitate securities trading
- Central Counterparties

## **8. Mexican legal persons governed by public law for which the simplified regime is applicable (Annex 7 BIS)**

*Example of donors: Government agencies clearly defined in Annex 7 BIS A, which is mentioned here below.*

The Mexican legal persons governed by public law referred to in Annex 7 BIS are the government agencies referred to in Annex 7 BIS A (the listing of agencies is presented here

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<sup>13</sup> Whose securities are registered in the National Securities Registry

<sup>14</sup> Who are constituted in countries or territories where measures are applied to prevent, detect and fight operations with resources of illicit origin and financing for terrorism and that are supervised in terms of the compliance with said measures

below). For grants coming from these entities, the simplified regime is applicable, which only consists in presenting notices when the grants received reach the threshold of 3,210 SMVDF.

**Data to present notices:**

- Name of the corresponding legal person governed by public law
- Date of creation or code of the Federal Taxpayers Registry
- Complete place of business
- Complete name and last names, with no abbreviations, as well as date of birth of the public officials or public servants that carry out the act or operation on behalf of the agency, entity, office or body at issue.

Annex 7 BIS A: List of agencies included in this provision for which the simplified regime will be applicable based on article 12, section V of the General Rules:

- Ministry of the Interior (SEGOB)
- Ministry of Foreign Relations (SRE):
- Ministry of National Defense (SEDENA)
- Ministry of the Navy (SEMAR)
- Ministry of Finance (SHCP)
- Ministry of Communications and Transports (SCT)
- Ministry of Public Administration (SEFUPU)
- Center for Research and National Security (CISEN)
- National Immigration Institute (INM)
- Technical Secretariat of the Coordination Council for the Implementation of the Penal Justice System
- Tax Authorities (SAT)

## 9. Public trust funds (Annex 8)

**Documents to integrate the file:**

- Evidence or certified copy of the public deed containing the constitution of the public trust fund
- Tax ID Card of the public trust fund, issued by the SAT, if available, and
- Powers of attorney of the legal representative or trustee delegate, when these are not contained in the public deed that proves the constitution of the public trust fund
- ID of the legal representative or trustee delegate

**Data to present notices:**

- Corporate name of the trustee
- Code of the Federal Taxpayers Registry of the public trust fund or number, reference or identifying code of the public trust fund
- Full name, with no abbreviations, of the legal representative or trustee delegate
- Date of birth, or code of the Federal Taxpayers Registry or Unique Population Registry Code of the legal representative or trustee delegate

- Data of the ID used to identify the legal representative or trustee delegate, including type of ID, authority issuing it, and ID number

## VII. Recommendations

Complying with the obligations of the Anti-Money Laundering Act adds a layer of complexity to the already intricate puzzle of regulations civil society organizations in Mexico have to comply with.

As mentioned throughout these guidelines, the largest concern surrounding the Anti-Money Laundering Act is the risk of being sanctioned due to noncompliance, given that the administrative sanctions include potential fines that are so high that they may endanger the financial viability of any organization. This is why these recommendations strive to provide ideas so that the CSOs verify whether or not they are appropriately complying with the Law.

1. First of all: COMPLY WITH THE LAW. It is indispensable to keep up-to-date in the compliance of the obligations that the law imposes if this has not been already done until now, as stated by some organizations in the diagnosis. Therefore it is very important to take into account that those who still have not complied with these provisions can invoke Article 55 of the law, provided they regularize their notices before being formally required to do so by the authority:

*Article 55. The Ministry will refrain from sanctioning the offending party, **for one single time**<sup>15</sup>, if this is the first violation it commits, provided that it complies, spontaneously and before the start of the verification powers of the Ministry, with the corresponding obligation and explicitly acknowledges the breach it committed.<sup>16</sup>*

2. Many organizations expressed in the diagnosis that they have delegated the compliance of this obligation to a third party, almost always an external accounting firm, and many others rely on their accounting areas to comply with these requirements. If compliance is the responsibility of a third party, the **recommendation is to ensure** that this supplier is complying appropriately with the law by generating files, and when necessary, filling out notices with truthful and verifiable information.

We recommend thoroughly filling out the information and incomplete paperwork or paperwork lacking documents to back it.

3. Integrate, review and fill out files retroactively since the coming into force of the Law, and the first version of its regulations and General Rules. It is very important to include the information request on the existence of a Beneficial Owner. In follow-up conversations with representatives from some organizations that answered the survey and that have made a very significant effort to comply with this law, we found that this information has not been collected. A simple way to do this is through a brief signed statement that can be included in a standard format to collect information such as the example presented in the Annexes.

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<sup>15</sup> Emphasis added by the author.

<sup>16</sup> Numeral set by the Federal Law for Preventing and Identifying Operations with Resources of Illicit Origin.

4. The organizations must request from their donors the information and paperwork they need, carefully explaining, preferably in writing, the requirements of the Law and the potential consequences they would face in case of noncompliance. We recommend proactively working and offering the donors written guarantees as to the confidential handling of the information that must be included in their files.
5. It is very important to stress that **even receiving public funds can generate obligations under the LFPIORPI**; even when the funds received from the government are classified in accounting terms as a subsidy and not as a grant. In order to determine whether the public funds received by an organization are susceptible of being identified and of generating a notice under the premises of the LFPIORPI, it is very important to review the agreements signed with the government entities in order to assess whether these funds qualify as grants based on the provisions that article 2332 of the Federal Civil Code establishes as to the fact that a *“Grant is a contract through which a person transfers to another person, free of charge, a portion or all of its present assets”*.
6. With regard to the previous point, many organizations have mentioned the enormous difficulty they face to collect information from the different government agencies that finance them. In this sense, it is recommendable that the CSOs request in writing the information and paperwork that the law specifies for Mexican legal persons governed by public law. It is paramount that organizations preserve the evidence proving they have requested the corresponding information and paperwork and that they keep available the acknowledgement receipts in case of an inspection by the UIF. In the Annexes we offer an example of this information and documentation request letter to government agencies.

## VIII. Annexes

### 1. Form to collect information from the donors

Here we present a suggestion for the form that can work for practically all the types of donor, and that can be adapted for legal persons governed by public law (government agencies other than the ones included in Annex 7 BIS A), and the Public trust funds.

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In order to comply with the new Law for Preventing Money Laundering in Mexico<sup>1</sup> we kindly request you to provide us the following information:

1. Corporate or business name:	
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#### 2. FULL ADDRESS

a) Street, avenue or way:			
b) Street number		c) House number:	
d) Zip Code		e) Phone number	
f) State, province, department or corresponding political territory			
g) Country			

\* Please attach scanned proof of residency

#### 3. FOUNDATION INFO

3. Activity or line of business	
4. Date of constitution	
5. RFC or Tax ID number	

\* Please attach scanned copies of your corporate bylaws or articles of incorporation, as well as your record of tax registration.

#### 4. INFO OF THE FOUNDATION'S LEGAL REPRESENTATIVE

a) Full name of the legal representative and with no abbreviations, nor only initials			
b) Date of birth or,	Day:	Month:	Year:
c) RFC or Tax ID number or,			

<sup>1</sup> Money laundering act: full name Federal Law for Preventing and Identifying Operations with Resources of Illicit Origin.

d) CURP	
e) Type of ID	(example: Passport)
f) Authority issuing the ID	
g) ID number	

\* Please attach the scanned ID of the legal representative where date of birth is specified

**5. INFO OF THE GRANT GIVEN TO XXX NAME OF THE ORGANIZATION XXX**

a) Form of payment			
b) Date of payment	Day:	Month:	Year:
c) Currency of payment			
d) Amount of payment			
e) Tracking number of interbank transfer			
f) Internal transfer number if account is from same bank			
g) International transfer			
h) Originating Institution for the payment			
i) Account number from where the payment was made			
j) Country of origin where the payment was made			

\* Please attach the scanned bank transaction receipt

**6. RECORD OF NONEXISTENCE OF CONTROLLING BENEFICIAL OWNER**

I hereby acknowledge that \_\_\_\_\_ (name of the Foundation), is a non-profit organization and that it does not have a controlling beneficial owner; in other words, there is no person or group of persons that through us ultimately exercises the rights of use, enjoyment, advantage or provision of a good or service.

Signature of Legal Representative

\_\_\_\_\_

We thank you in advance for your support so that XXXX NAME OF THE ORGANIZATION XXXX may comply with the Financial Obligations in Mexico associated with this new Law.

Yours sincerely,

XXXXXXXXXX  
Director General of XXXXXXXX

## 2. Timetable for issuing notices for 2015.

# 2015

2015	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S											
January					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31											
February								1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28											
March							1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31									
April				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30													
May					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31											
June		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30															
July				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31												
August						1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31										
September			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30														
October					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31											
November							1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30										
December			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31													

Sixth digit of the RFC code	Day after the 17	Day	Color
1 and 2	First following business day	Deadline for presenting Notices	Yellow
3 and 4	Second following business day	First following business day	Light Blue
5 and 6	Third following business day	Second following business day	Light Green
7 and 8	Fourth following business day	Third following business day	Pink
9 and 0	Fifth following business day	Fourth following business day	Light Orange
		Fifth following business day	Light Green

Source: Money Laundering Prevention Website (Consulted on March 31 2015)

### 3. Suggestion for information and documentation request for legal persons governed by public law.

Legal persons governed by public law are all the government entities except the ones included in Annex 7 BIS A of the General Rules and that are subject to the simplified compliance regime.

\*\*

Date

Name of Public Official

Position

Agency

Dear XXXX:

In order to comply with the obligations imposed on me by the Federal Law for Preventing and Identifying Operations with Resources of Illicit Origin, in the terms of section II Bis, of article 12 of the General Rules of said Law, I hereby kindly request from you the information and documents established in Annex 4 Bis, added in the reform of July 24 2014 of said Rules. Here I quote word for word its content, which constitutes the legal basis for my request as legal representative of XXX NAME OF THE ORGANIZATION XXX:

**“ANNEX 4 BIS OF THE GENERAL RULES REFERRED TO IN THE FEDERAL LAW FOR PREVENTING AND IDENTIFYING OPERATIONS WITH RESOURCES OF ILLICIT ORIGIN**

IDENTIFICATION INFORMATION AND DOCUMENTS OF THE CLIENTS OR USERS OF THOSE WHO CARRY OUT VULNERABLE ACTIVITIES, VIS-À-VIS THOSE WHO ARE MEXICAN LEGAL PERSONS GOVERNED BY PUBLIC LAW.

a) Establish the following data:

- i) Name of the corresponding Mexican legal person governed by public law;
- ii) Date of creation or constitution;
- iii) Place of business, made up by the following elements: name of the street, avenue or way at issue, duly specified; street number and, if applicable, house number; district or development; territorial boundary, municipality or corresponding similar political territory, if applicable; city or county, federal state, state, province, department or corresponding similar political territory, if applicable; zip code and country;
- iv) Phone number(s) of said place of business, including the long-distance dialing code and, if applicable, extension number;
- v) E-mail, if applicable;
- vi) Code of the Federal Taxpayers Registry, when at hand, and
- vii) Name(s) and father's and mother's last names, with no abbreviations, as well as date of birth, code of the Federal Taxpayers Registry or Unique Population Registry Code of the

public servants that carry out the act or operation on behalf of the Mexican legal person governed by public law at issue. Likewise, information will have to be gathered in terms of its identification, consisting in: name of the identification; authority issuing it, and identification number;

**b)** Include a copy of the following documents concerning the Mexican legal person governed by public law:

**i)** Document that works to prove its legal existence;

**ii)** Tax ID card issued by the SAT, in case of having one;

**iii)** Record that proves the place of business referred to by numeral iii), of previous subsection a), which can be any receipt of payment for direct debit services or bank statements, all of them with a seniority of no more than three months after its date of issuance, or the leasing contract in force at the time of the presentation by the Client or User and recorded before the competent tax authority, the Proof of registration in the Federal Taxpayers Registry, as well as the others that, if applicable, were approved by the UIF, and

**iv)** Document that works as proof of the powers of the public servants that carry out the act or operation on behalf of the Mexican legal person governed by public law, which will have to comply with the dispositions established by the laws, regulations, decrees or corporate bylaws that constitute them and regulate them in terms of their constitution and operation and, if applicable, certified copy of their appointment or through a public deed issued by notary public, as applicable, as well as the identification of each one of the public servants that carry out the act or operation on behalf of the Mexican legal person governed by public law, that will have to be, in any case, an original official document issued by a competent authority, valid or with an expiration date, when being presented, of no more than two years, that contains the photograph, signature and, if applicable, residency of the referred to person. For the purposes of the provisions established by this numeral, the following will be considered as valid identification documents: the voting card issued by the National Electoral Institute (INE), as well as any valid identification or with an expiration date, when being presented, of no more than two years with photograph and signature, issued by Mexican federal, state or municipal authorities and, the others that, given the case, may be approved by the UIF.”

I hope to hear from you and receive this information, which can be provided in electronic format.

Yours sincerely,

XXXXXXXXXXXX

Position

Name of the organization.