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Mexico's Anti-Money Laundering Law Affects U.S. Donors

A number of our clients have asked about Mexico's *Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita* (Mexico's Anti-Money Laundering statute or the "AMLL"), which became effective July 17, 2013. The AMLL identifies specific transactions that require a Mexican entity that engages in these activities to identify and verify the identity of its customers and clients. The AMLL treats the receipt of donations (cash or property) with value equal to, or greater than, 1,605 times the Mexican minimum daily wage (currently approximately \$7,463.25 USD) by nonprofit entities as an activity that requires identification obligations for the Mexican entity. For these purposes, an organization that donates money to a Mexican charity is treated as a "customer and client." Further, the AMLL requires Mexican charities that receive donations with value equal to, or greater than, 3,210 times the Mexican minimum daily wage (currently approximately \$14,766 USD) to report these transactions to Mexican authorities.

Because the reporting requirements are obligations of the Mexican entity, this discussion will focus on the identification requirements, which have a more direct impact on US donors.

Las Reglas de Carácter General to the AMLL (the "General Rules"), which became effective September 1, 2013, provide that organizations receiving donations from foreign entities must obtain (and keep for 5 years) the following information:

- › Legal Name of the Entity
- › Date of Formation
- › Country of Origin
- › Nature/Purpose of Activity
- › EIN/Tax ID Number
- › Address
- › Phone Number (including long distance code)
- › Email Address
- › Name, Date of Birth, and Federal Identification Number (if applicable) of the individual representative of the organization entering into the transaction in the name of the entity

Further, the General Rules state that an organization must ask for and keep a copy of the following documents:

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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- › Formation documents, such as Articles of Incorporation (or other document evidencing formation)
- › Proof of address (e.g., utility bill, bank statement with the entity's address, etc., which must not be older than three months from the date it is submitted, or copy of a currently-effective lease)
- › Affidavit or proof of the named representative's authority to act on behalf of the entity and proof of identification of the named representative (if not in the entity's governing documents). Any proof submitted must be official and have some legal authority (e.g., notarized).
 - › Note: The General Rules require that any proof of identification must include the photo, signature, and address of the named representative. For these purposes, the named representative may provide a copy of his/her passport or driver's license. However, the General Rules allow for any form of identification, so long as it is issued by a state/federal government and includes the named representative's photo, signature, and address.
- › Proof of entity's EIN/Tax ID
- › Proof that the entity asked the donor whether the donor knew who would ultimately receive the donated funds (i.e., the ultimate beneficiary of the funds).

An organization that does not comply with the identification and reporting requirements may be subject to monetary and criminal penalties. Again, both the identification and reporting requirements are obligations of the Mexican organization that receives donations above the threshold amounts. Nevertheless, U.S. donors should understand that a Mexican organization may ask its U.S. donors to provide the above information in order for it to comply with the AMLL. U.S. donors should carefully consider what information they are willing to provide.