

# RITCH

## M U E L L E R

### **Guidelines for the Prevention and Detection of Operations with Illegally Obtained Resources in the Financial System derived from Acts of Corruption**

The National Banking and Securities Exchange Commission (*Comisión Nacional Bancaria y de Valores*) has published the Guidelines for the Prevention and Detection of Operations with Illegally Obtained Resources in the Financial System derived from Acts of Corruption<sup>1</sup> (“Guidelines”) in order to assist Supervised Subjects (General Deposit Warehouses; Investment Advisors; Brokerage Houses; Exchange Houses; Exchange Centers; Credit Institutions; Financial Technology Institutions; Companies Authorized to Operate with Novelty Models; Investment Fund Operating Companies; Investment Fund Stock Distribution Companies; Popular Financial Companies; Multiple Purpose Financial Companies; among others) to better understand the risk factors related to acts of corruption, derived from their business relationships with Politically Exposed Persons (individuals who perform relevant public functions such as heads of state, political leaders, government officials, judicial officers, among other functions, hereinafter “PEP”), or with Vulnerable Persons (clients or users who may represent a risk derived from illegally obtained resources, related to corruption).

The Guidelines recommend Supervised Subjects to have a risk management system to identify whether a customer or final beneficiary is a PEP or a Vulnerable Person and that they use a Risk Based Approach (“RBA”), which is the essential basis for any regime for prevention of money laundering and financing of terrorism. The RBA focuses on identifying and knowing the customers and users, as well as understanding the nature of the business relationship and applying due diligence measures when circumstances require so, in order to monitor the relationships and transactions of PEPs and Vulnerable Persons and mitigate the risk of money laundering and financing of terrorism in an appropriate manner. Risk management focuses on “large-scale corruption”, which refers to offences such as bribery, influence peddling, embezzlement, unlawful enrichment or illicit financing.

#### **Risk Mitigation Measures**

It is important to establish that, for the purpose of classifying PEPs and Vulnerable Persons degree of risk (high and low), the inherent and transactional characteristics of these must be analyzed individually, in order to establish specific risk management and mitigation measures. The risk mitigation measures adopted by the Supervised Subjects, derived from the relationship with customers that are considered Vulnerable Persons or PEPs, must be documented based on the Compliance Manual of each Supervised Subject. It is recommended that the Supervised Subjects provide staff training programs in areas of compliance, in order to improve understanding of the risks of corruption.

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The Guidelines establish measures that must be adopted for PEPs and high-risk Vulnerable Persons:

- (i) The implementation of a customer or user monitoring scheme, analyzing that each of their transactions and operations remain within stable parameters, considering the type of operations they usually perform, the frequency with which they perform them, the amount and their characteristics, such as the currency, geographical area of operation, channel for sending or receiving resources, and the information on persons with whom they have financial relations. The foregoing, in order to understand and mitigate risks in an appropriate manner.
- (ii) In the event that the PEPs or Vulnerable Persons are partners or shareholders of any company, it must be corroborated whether the company is on the list of companies with allegedly non-existent operations issued by the SAT (Tax Administration Service) (*Servicio de Administración Tributaria*), as well as identify whether the company is on COMPRANET, which is the list of State procurement suppliers, on the National Register of Suppliers, or on any state register of suppliers of any Local Public entity.
- (iii) For PEPs or Vulnerable Persons who are public officials, a copy of the most recent version of their declaration of assets and interests must be requested from the Internal Control Body of the agency, entity or public body in which they work.

## **Risk Analysis Considerations**

The Guidelines refer to a series of factors that allow the identification of transactions with illegally obtained resources, in order to avoid getting involved with PEPs and Vulnerable Persons with possible unusual transactions:

- **Identity Concealment**

PEPs or Vulnerable Persons may try to hide their identity in order to avoid detection of illicit behavior. For example, the use of corporate vehicles such as trusts or legal entities that are often complex and have corporate schemes located in several foreign jurisdictions, or that have more than three levels of corporate structuring, without an underlying legal or economic rationale.

- **Atypical Behavior**

The specific atypical behavior and individual characteristics of PEPs and Vulnerable People are indicative of risk factors. For example, the transfer of unusual funds to the client as wages and salaries, a high rate of cash use in the client's accounts, or an unjustified increase in the client's income or assets.

- **Atypical Behavior in the accounts of Public Agencies, Entities or Bodies**

The way accounts are operated on behalf of public agencies, entities or bodies is indicative of risk factors. For example, an analysis should be made of whether there is a high rate of cash withdrawals without apparent justification or during electoral processes or identifying whether transfers of funds are made from accounts in the name of public agencies, entities or bodies to third parties without apparent reason.

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- **Analysis of market prices and open sources.**

In the analysis of unusual operations, the search for information in open sources (information that is available to the public eye) will be carried out, since these can be a source of additional information when determining the origin of the client's resources. For example, an analysis should be made of whether the price of operations carried out by PEPs or a Vulnerable Person coincides with the usual market price or whether they denote unjustified charges; also, journalistic notes in which the persons in question are mentioned, as well as the analysis of social networks in which it is possible to identify behavior or assets beyond the reach of the person by reason of the functions performed, his or her responsibility and the level of income declared to the Supervised Person (trips, cars, luxury goods, real estate, among others).

### **Anti-Bribery Policy**

Supervised Subjects must have an anti-bribery policy, supported by an anti-bribery management system. This should take into account the risks involved for the employees of the Supervised Subject from a customer or user who may seek to bribe them. The anti-bribery management system should reflect international standards, as well as the provisions of applicable national legislation. For the proper implementation of such system, anonymous channels of reporting must be enabled, internal criteria, measures and procedures, policies on gifts and hospitality, conflict of interest, donations or inducements, among others, must be documented.

If you require additional information or any issue regarding compliance, anti-corruption, prevention of money laundering and financing of terrorism, please contact Luis Dantón Martínez Corres ([ldanton@ritch.com.mx](mailto:ldanton@ritch.com.mx)) or Marco Portillo Díaz ([mportillo@ritch.com.mx](mailto:mportillo@ritch.com.mx)).

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