

NEW LAW AT PANAMA:

International Fiscal Transparency, Prevention of Money Laundering, Financing of Terrorism and the Proliferation of Mass Destruction Weapons

MONTHLY NEWSLETTER
THE LAW FIRM OF CENTRAL AMERICA

On November 11, Law 254 was enacted, which introduces adjustments to the legislation on international tax transparency and the prevention of money laundering, the financing of terrorism, and the proliferation of mass destruction weapons. Some of the most relevant adjustments are:

I. AMENDMENTS TO LAW 23 OF 2015

With this new law, new obligations are introduced for non-financial obligated subjects, which must carry out the following:

- Obtain information and documentation related to the financial and transactional profile of its clients, following their risk rating
- Know the nature of their clients' business:
 - Gather information from your clients to know the nature of their professional or business activity
 - Check the declared activities of its clients as established in the regulations of this Law
 - Identify and know who is/are the ultimate beneficial owner/owners
- Continuous monitoring of the business relationship

The amount of non-specific sanctions for the resident agent who does not comply with the provisions of the Law is increased and they will be sanctioned with a fine ranging from 5 thousand dollars to 5 million dollars, depending on the severity, the degree of recidivism, the magnitude of the damage and the size of the obligated subject, applicable by its supervisory body or at the request of the Financial Analysis Unit.

II. AMENDMENTS TO LAW 52 OF 2016

Legal entities that do not carry out operations that are perfected, consumed or produce their effects within the Republic of Panama, as well as those that dedicate themselves to being exclusively holders of assets, within the Republic of Panama or abroad, are obliged to keep accounting records and their supporting documentation. The accounting records and supporting documentation must be kept for a minimum period of 5 years, counted as of the last day of the calendar year in which the transactions posted in the accounting records were generated.

The new Law indicates that legal entities will be obliged to provide their Resident Agent annually, as of April 30, the accounting records or a copy of the accounting records relating to the fiscal period that ended on December 31 of the previous year. On the other hand, the resident agent is obliged to keep, in its offices in Panama, a copy of the share certificates and shareholders' registry of the corporations for which it acts as such.

The accounting records must be submitted as follows:

- Legal entities that do not carry out commercial acts according to article 2 of the Commercial Code of the Republic of Panama and that are exclusively dedicated to being holders of assets, whatever their class, must provide information that demonstrates the value of the assets that are held, the income received from those assets and the liabilities related to those assets.
- Legal entities that carry out commercial acts, as defined in article 2 of the Commercial Code of the Republic of Panama, abroad and any other legal entity not covered by the previous paragraph, must provide a Journal and a Ledger.
 - Acts of commerce established in Article 2, numeral 2 of the Commercial Code are exempted from this requirement and must provide a statement of account of the custodian or a general balance of the company in lieu of the Journal and Ledger.

It should be noted that the legal entities incorporated before the enactment of this law will have a period of 6 months to deliver the accounting records or a copy thereof, which will be kept in the offices of the resident agent. The competent authority, for the purposes of national or international cooperation, may request any information in accordance with the provisions of the Law and its regulations, without it constituting a violation of confidentiality.

The legal person that does not comply with the obligations established in this Law will be sanctioned with a fine ranging from 5 thousand dollars to 1 million dollars. On the other hand, the resident agent will be sanctioned with fines ranging from 5 thousand dollars to 100 thousand dollars. These sanctions will be applied by the General Directorate of Revenue, considering the seriousness of the offense, the recurrence, and the magnitude of the damage.

III. AMENDMENTS TO LAW 129 OF 2020

The term to register the data of legal entities and its ultimate beneficial owner/owners as well as the term to update said information in the Unique System of Registration of Ultimate Beneficial Beneficiaries are reduced. Previously, the resident agent had a term of 30 business days following the date of incorporation or the date of the change, but now the term has been reduced to 15 business days. Consequently, every legal person is obliged to provide its resident agent with the information required to identify the ultimate beneficial owner/owners, as well as notify its resident agent of any change in the information of the latter, within a maximum term of 15 business days following the date of any change.

The resident agent will be sanctioned with fines ranging from 1 thousand dollars to 50 thousand dollars for each legal person whose information is not registered or updated, considering the seriousness of the offense, the degree of recidivism, the magnitude of the damage, and the size of the resident agent. On the other hand, the Superintendency of Non-Financial Subjects will order the Public Registry of Panama to suspend the corporate rights of legal entities that have not been registered or updated in the Unique System of Registration of Ultimate Beneficial Owners by their resident agent.

For more information and/or consultations about the new Law on Transparency, International Tax and Prevention of Money Laundering, the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction, please do not hesitate to contact us.

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