



NEW ANTI-SMUGGLING LAW

Law 1762 of 2015

Dear Clients,

Law 1762 of 2015 has been effective since July 6, 2015, which was sanctioned with the intention of modernizing and adapting existing regulations in connection with illegal smuggling, tax fraud and money laundering operations.

The law provides the amendment of certain criminal legal classifications related to smuggling activities and the implementation of penalties of an administrative nature, while modifying also regulations under the commercial code and creating new entities. This bulletin provides the most relevant aspects amended or supplemented to the provisions regulating this subject matter.

1. Criminal legal classifications: The law modifies the penalty for the crimes of smuggling, smuggling of oil and oil byproducts, abetting and facilitating smuggling, abetting smuggling of oil or oil byproducts, abetting by public servant, money laundering and conspiracy to commit a crime.

a) Smuggling: The penalty for entering or removing wares in an amount exceeding 50 Effective Minimum Legal Monthly Salaries is imprisonment from 4 to 8 years (formerly it was from 4 to 7.5 years) and the fine will be calculated based on the customs value of the wares subject matter of such crime (from 200% to 300%). Formerly the fine was not calculated over the value of the wares and instead it was a fixed fine which could range from 400 to 2,205 Effective Minimum Legal Monthly Salaries. Likewise, in the event the wares exceed a value of 200 Effective Minimum Legal Monthly Salaries, the penalties have been increased from 9 to 12 years.

b) Smuggling of oil and oil byproducts: The penalty to be levied for entering or extracting oil from Colombia through non-authorized places in quantities ranging from 20 to 50 gallons will now be 3 to 5 years (formerly if was from 48 to 90 months) of imprisonment, if the quantity exceeds 50 gallons it will be from 4 to 8 years and if it exceeds 80 gallons, it will be from 10 to 14 years. Finally the law supplements the scope and the respective penalty in the event the crime of oil smuggling relates to a quantity exceeding 1,000 gallons. In such event, the penalty to be levied will be from 12 to 16 years and a fine from 1,500 to 50,000 Effective Minimum Legal Monthly Salaries.

c) Smuggling abetting and facilitation: Under the new law, the actions of loading and unloading such wares will also lead to the commission of the crime of smuggling abetting and facilitation. Likewise, under the aforesaid law, the penalty and fine will be calculated according to the value held by the wares subject matter of such crime. Imprisonment from 3 to 6 years and a fine from 200% to 300% the value will be applied when the value of such wares ranges from 50 to 200 Effective Minimum Legal Monthly Salaries. If such value exceeds 200 Effective Minimum Legal Monthly Salaries, the penalty to be levied will vary from 6 to 10 years while the fine will have the same percentage as mentioned above. The amendment made to the criminal code provides that this crime and expanded scope will not be applied to the final consumer when the wares are found in his hands and are supported by an invoice meeting all legal requirements.

d) Customs Fraud: The crime of customs fraud is subject to a significant amendment as it is been expanded to the actions of handling and hiding information when required by customs authorities or when provision of the same is required under the law. In the event these actions take place in connection with wares and/or objects whose actual value exceeds 20 Effective Minimum Legal Monthly Salaries, the criminal effects of the same will be imprisonment from 8 to 12 years and a fine from 1,000 to 5,000 Effective Minimum Legal Monthly Salaries.



e) Money Laundering: The criminal penalty to be levied is 10 to 30 years of imprisonment and a fine from 1,000 to 5,000 Effective Minimum Legal Monthly Salaries.

2. **Administrative Penalties:** Penalties have been established for excise tax evasion, which will be applied in the event of failure to comply with obligations and duties relating to the excise tax and/or failure to comply with specific duties of control of wares subject to the excise tax. The penalties that may be levied are detailed below:

a) Seizure of wares

b) Closing of commercial establishment: In those establishments where products subject to the excise tax are traded or stored, regarding which such tax has not been reported or paid, the authorities from the corresponding Department and the Capital District of Bogotá may order temporary closing of the establishment as follows:

i. Closing for up to 30 calendar days, when the value of the wares is less than 228 UVT (COP \$6,450,000)

ii. Closing for up to 60 calendar days, when the value of the wares is from 228 UVT up to 684 UVT (COP \$19,350,000)

iii. Closing for up to 90 calendar days when the value of wares is from 684 UVT up to 1,139 UVT (COP \$32,210,000)

iv. Closing for up to 120 calendar days when the value of the wares exceeds 1139 UVT.

c) Suspension or final cancellation of licenses, concessions, authorizations or registrations.

The penalty to be levied by the Finance Secretary's Office of the Department or Capital District will be suspension of registration or authorization to trade for up to one year. In the event of recidivism, the registration or authorization will be cancelled.

d) Fine:

a. In the event the excise tax is not reported in due time, the fine to be assessed will be 20% the value of those wares as determined by tax authorities for the time period for which such reporting is missing.

b. In the event of failing to pay the excise tax over import of any goods subject to the same, a fine will be levied for 20% the value of the wares subject to such tax.

c. In case of late filing in registration before the corresponding Finance Secretary's Office, the fine to be levied will be 228 UVT (COP \$6,450,000) for each month or portion thereof.

d. In the event of failing to mobilize the goods assessed with the excise tax, the corresponding Finance Secretary's Office will levy a penalty of 46 UVT (COP \$1,310,000) for each day of delay.

3. Amendment to the Commercial Code

a) Functions of the Statutory Auditor:

With the entry into force of the aforementioned law, the statutory auditor will now have the additional function of reporting to the Financial Information and Analysis Unit those operations that may be classified as suspicious in connection with the regular course of activities of such auditor. Operations in connection with assets, liabilities or other resources will be considered suspicious when the amount or characteristics of the same fail to show any relationship between reality and the economic activity of the company. In addition, other transactions will also be considered suspicious if the amounts involved or the specific characteristics of the same may reasonably lead to the suspicion that the company is being used to transfer, manage, take advantage or invest moneys or funds obtained from criminal activities or intended to finance the same.

b) Penalties for violations to the prohibitions regarding books of accounts, obligations of the merchant and others (Article 58 of the Commercial Code):

According to the amendments made by the anti-smuggling law, a fine has been established ranging from 10 to 1,000 Effective Minimum Legal Monthly Salaries in case of violation to the obligations and prohibitions



established under Articles 19 (Merchant Obligations), 52 (Compulsoriness of periodically preparing an inventory and balance sheet), 57 (book of accounts prohibitions), 59 (concurrence between books of accounts and vouchers) and 60 (retention of books and accounting papers) of the Commercial Code. Likewise, the fine will be levied in the event of failing to provide the information required by authorities as provided under effective regulations or in case of breaching the prohibition of exercising the business, profession or trade. This fine will be levied by the Superintendence of Business Companies.

We hope the above information will prove to be useful and relevant. We remain at your disposal to provide any additional information in this regard.

Sincerely yours,

SANCLEMENTE FERNÁNDEZ ABOGADOS
Tax Department

Should you require additional information, please contact us at:

María Fernanda Castillo
mcr@sfa.com.co

Pablo Fernandez
pfb@sfa.com.co

Fredy Castano
fcf@sfa.com.co

The information in this bulletin is confidential and addressed only to the clients of SANCLEMENTE FERNÁNDEZ ABOGADOS S.A. for the exclusive use thereof, and is only for informational purposes and it does not constitute legal advice or counsel. Legal advice should be sought in connection with any particular matter or issue.

Total or partial reproduction, use, copy, transformation, edition, distribution, sale, rental, public communication or any other procedure is prohibited to any person, company or entity other than the addressee of this communication. Express authorization in writing from SANCLEMENTE FERNÁNDEZ ABOGADOS S.A. is required for reproduction or forwarding of this information to any other person.

The content of this bulletin is based on effective regulations in Colombia at the time of preparation. The rules considered at the time of drafting the same may be subject to changes at any time. Such amendments may render the information contained in this document partially or entirely invalid.