

CLIENT BRIEFING: TRANSPOSITION OF THE FOURTH DIRECTIVE ON THE PREVENTION OF MONEY LAUNDERING

I. INTRODUCTION

Spanish Royal Decree-Law 11/2018, of 31 August ("RD-Law 11/2018"), on the transposition of, among others, Directive (UE) 2015/849, of 20 May (the "Fourth Directive"), entered into force on 4 September and included important changes to Spanish Act 10/2010, of 28 April, on anti-money laundering (AML) and counter terrorist financing (CTF) ("Act 10/2010").

II. NEW PARTIES SUBJECT TO THIS LAW: NON-DIRECTOR SECRETARIES AND EXTERNAL ADVISORS

One change involves the addition, as new parties subject to this law, of those persons who provide, in a professional capacity on behalf of third parties, services as a non-director secretary of a board of directors or as an external advisor to a company.

III. ULTIMATE BENEFICIAL OWNERSHIP IN THE CASE OF TRUSTS AND OTHER SIMILAR FORMS

RD-Law 11/2018 includes a guide to identifying the ultimate beneficial owner in the case of Spanish fideicomisos or trusts, as they are known in English law, and similar forms such as fiduciaries or the treuhand under German law.

IV. NEW MEASURES REGARDING DUE DILIGENCE AND PERSONS WHO ARE PUBLICLY ACCOUNTABLE (PERSONAS CON RESPONSABILIDAD PÚBLICA, "PRPS")

- One change is that groups will now be able to turn to third parties to obtain ongoing monitoring of the business relationship.
- The possibility will now exist for the European Commission to publish up-to-date lists of those countries which have strategic deficiencies in this regard.
- Another change is that reinforced measures will now only apply to those private banking activities that exceed the thresholds established in the regulations.
- The concept of PRPs (personas con responsabilidad pública) or persons who are publicly accountable is enlarged and a new obligation is established to determine the minimum level of management necessary to authorise the establishment of business relationships with such persons in the company's internal procedures.

Key points of RD-Law 11/2018:

- Whistleblower channel for internal complaints is established, which can be used anonymously, to facilitate reporting AML and CTF infringements
- Non-director secretaries of the board and external advisors are now subject to this law
- Concept of ultimate beneficial ownership is defined, in the case of trusts and similar
- Obligatory for parties providing services to companies and trust to register at the Commercial Registry
- Threshold for cash payments is reduced from 15,000 to 10,000 euros

V. CONSERVATION OF DOCUMENTS ON CLIENTS IN RELATION TO THE PREVENTION OF MONEY LAUNDERING

The obligation is maintained to conserve documentation during a period of ten years, after which time it will be destroyed. As a new measure, five years after the relationship ends or the transaction is executed, access to such documentation will only be available to the company's internal supervisory bodies and to the parties in charge of its legal defence.

VI. WHISTLEBLOWER CHANNEL ("CANAL DE DENUNCIA") SPECIFICALLY DEDICATED TO MONEY LAUNDERING CONCERNS OR ADAPTATION OF THE GENERAL CHANNEL FOR COMPLIANCE PROGRAMMES (CRIME PREVENTION PLANS)

- It now becomes obligatory to establish a new internal channel for complaints so that employees, managers and agents can obtain information, even anonymously, on possible breaches in this regard.
- This new channel can be integrated into a whistleblower channel the company already has set up, to facilitate reporting conduct and acts other than those related to the prevention of money laundering and the financing of terrorism.

VII. EXTRA-TERRITORIALITY AND RESIDENCE IN SPAIN OF THE REPRESENTATIVE BEFORE THE SEPBLAC

- RD-Law 11/2018 makes express mention to the fact that the policies and procedures of SEPBLAC, the Executive Service of Spain's Commission for the Prevention of Money Laundering and Monetary Offences, will now apply to branches and subsidiaries of the group located in third countries, notwithstanding any adaptations that may be required pursuant to local regulations.
- The representative appointed by the company to appear before the SEPBLAC must be a resident of Spain.

VIII. CASH PAYMENTS

The threshold amount at which merchants who make cash payments are required to comply with anti-money laundering obligations is reduced from 15,000 to 10,000 euros.

IX. EXTRATERRITORIAL SUPERVISION AND INSPECTION BY THE SEPBLAC

- The SEPBLAC is given a new authority whereby it can now advise on the suitability of the policies and procedures applied by the parent company to its branches and subsidiaries outside of Spain.
- Deadlines are also now established for the SEPBLAC, to notify the conclusions of its inspection within a maximum of one year, which can be extended for a further six months.

X. AUTHORITY TO SUSPEND A TRANSACTION IF SIGNS OF MONEY LAUNDERING ARE DETECTED

Under RD-Law 11/2018, the SEPBLAC is now given the authority to suspend a transaction that is already underway, at the request of the Financial Intelligence Unit (FIU) of another EU Member State, when signs of money laundering or terrorist financing are detected.

XI. REGISTRY OF PROVIDERS OF SERVICES TO COMPANIES AND TRUSTS

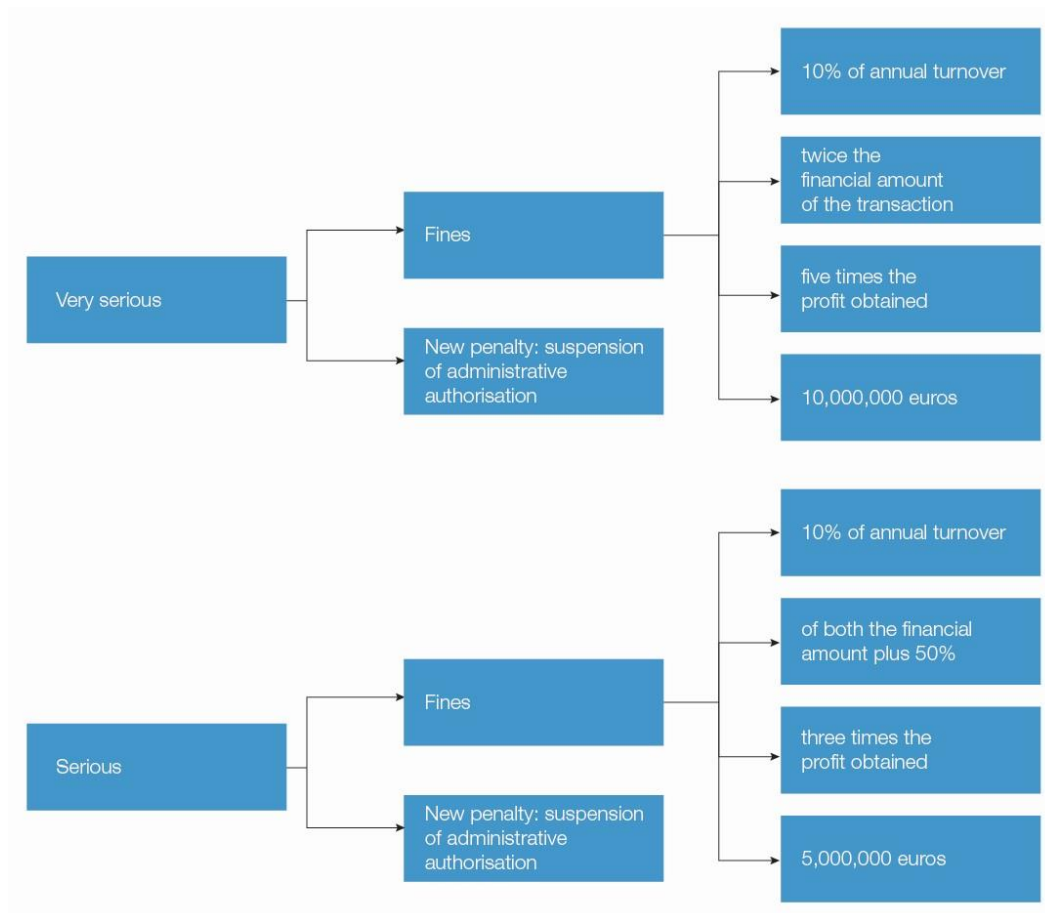
Registration at the Commercial Registry now becomes obligatory for those persons who, as part of their professional or business activities, provide services on behalf of third parties involving the incorporation of companies, giving advice on the sale and purchase of real estate and commercial entities, fund management or the opening of current accounts, among others. A breach of this obligation will constitute a minor offence.

XII. PENALTY SYSTEM

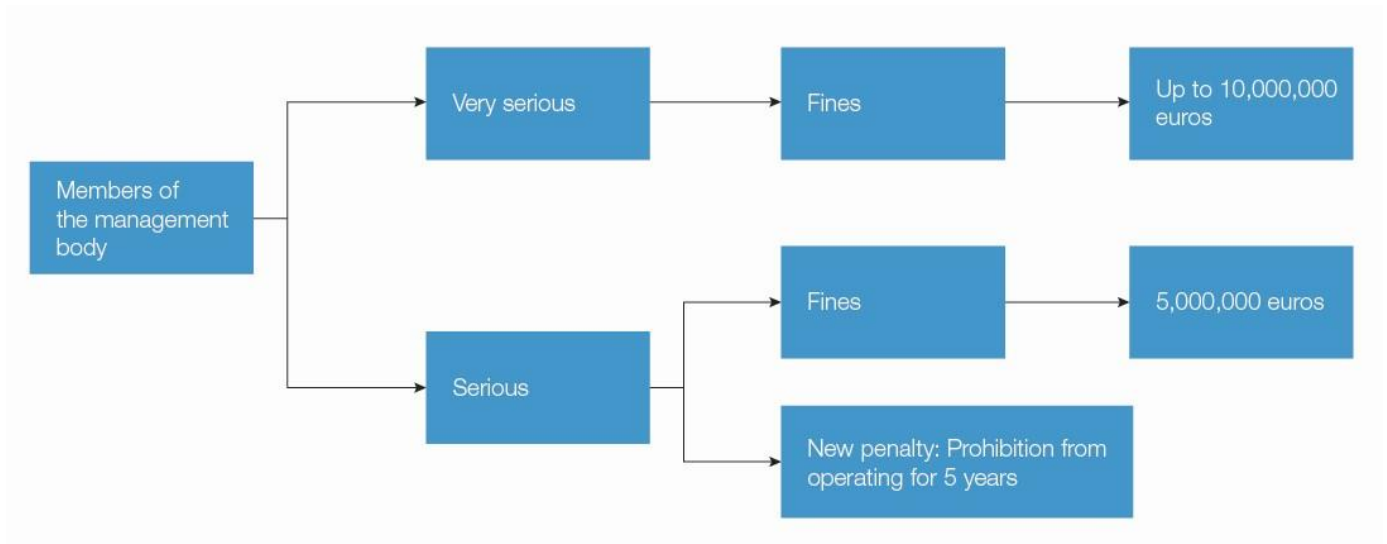
Offences can now be classified as 'serious' or 'very serious'.

Penalties have been modified as follows:

- For the parties' subject to this law:



- For companies's management bodies:



- Criteria have been added for scaling penalties according to the degree of seriousness and duration of the offence, the degree to which the offender cooperated with the authorities, the degree of responsibility or intentionality, and the financial capacity of the party charged.

CONTACTS

Carlos Zabala
Counsel

T +34 91 590 7515

E Carlos.Zabala@
cliffordchance.com

Sonia Trendafilova
Associate

T +34 91 590 4172

E Sonia.Trendafilova
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2018

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.