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Law No. 155-17

Law against Money Laundering and Terrorism Financing

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I. Introduction. As a result of the joint efforts made by the different sectors involved in the prevention of asset laundering to promote the legal framework against such illegal activity and the financing of terrorism, on June 1st,2017, the Law against Money Laundering and Terrorism Financing No. 155-17 (hereinafter, the "Law" or "Law 155-17) was enacted in the Dominican Republic, replacing and repealing Law No. 72-02 regarding Money Laundering proceeding from Drug Trafficking, enacted on June 7, of 2002. In accordance with the provisions of this Law, the Executive Branch shall issue, within a period of sixty (60) days after its enactment, its corresponding regulation for execution and application. Pursuant to Law 155-17, asset laundering is defined as the process by which natural or juridical persons and criminal organizations seek to give a legitimate appearance to illicit assets originated from the offenses specifically identified in the Law.

On another hand, for purposes of the Law, terrorism financing is considered as the international financing, subsidization, concealment or transfer of money or assets to be used to carry out any of the offenses corresponding to terrorism.

Through its provisions, Law 155-17 expressly identifies the infractions that shall qualify as asset laundering per se, the criminal offenses associated with asset laundering, as well as criminal offenses considered as terrorism financing. In this regard, the Law indicates that the classified offenses shall be investigated, prosecuted and ruled as independent actions from the previous offenses (term defined below herein) regardless of whether such previous offenses were committed in another jurisdiction.

It should be noted that this new legislation constitutes an important progress for the Dominican Republic, given that it introduces new international standards into our legal system regarding the prevention of asset laundering, terrorism financing, pursuant to the recommendations of the Financial Action Task Force on Money Laundering (FAFT), issued in February 2012 and updated in year 2016.

In addition, Law 155-17 arises as a response to terrorism financing, which has been a problem and a global challenge since the beginning of this century and has generated an important focus of the efforts of different countries in the detection and confiscation of the resources destined to the financing of this activity. Consequently, as a notably innovative aspect of this legislation, the Law introduces for the first time in our legal system the definition of criminal offenses related to terrorism financing.

II. Background. On June 10, 2002, the Dominican Republic enacted Law 72-02 on Money Laundering proceeding from Drug Trafficking and Controlled Substances in order to meet the needs of an appropriate legal framework adapted to the international standards for the prevention of money laundering. Previously, this issue was within the scope of Law 55-02, but this law had certain gaps, mostly related to the distribution of assets, products or securities obtained from illegal activities.

At that time, the country had ratified international agreements that required the adoption of a legal framework that would allow for the effective control of the transnational phenomenon of drug trafficking, such as the Inter-American Convention against Corruption held in Caracas, Venezuela, in 1996; the United Nations Convention against Transnational Organized Crime, held in Palermo, Italy, in the year 2000, among others. Subsequently, Law 72-02 was enacted as a response to these agreements.

Likewise, the Law is the direct result of the recommendations of the Financial Action Task Force on Money Laundering (FAFT), issued in February 2012 and updated in the year 2016, which made our previous Law 72-02 obselete, Law No. 155-17 repealing it as a whole except for (i) its provisions relating to the management of seized assets that are prone to quick deterioration or deprecation; and, (ii) the manner of distribution in the different governmental institutions of the funds resulting from the sale in public auction of confiscated property, until there is a legal text that specifically regulates this subject. The Financial Action Task Force on Money Laundering (FAFT) is an intergovernmental body established in 1989 by the ministers of its member countries. The purpose of this institution is to dictate standards and promote the effective implementation of legal, regulatory and operational measures to combat money laundering, terrorism financing, financing for the proliferation of weapons of mass destruction and other threats to the integrity of the international financial system. The FAFT's ongoing efforts also include identifying vulnerabilities to protect the international financial system from misuse, its recommendations are regularly updated, to strengthen the identified vulnerabilities and establish mechanisms that allow the dismantling of transnational criminal organizations and seizure of illicit assets generated through money laundering.

III. Purpose and Scope. Law 155-17 aims to establish: (i) the acts that are classified as asset laundering, the previous or determinant offenses and terrorism financing, as well as the applicable penal sanctions; (ii) special investigation techniques, mechanisms for international cooperation and judicial assistance, and precautionary measures applicable to asset laundering and terrorism financing; (iii) the system for the prevention and detection of asset laundering operations, terrorism financing and financing of the proliferation of weapons of mass destruction, determining the obligated parties, their obligations and prohibitions, as well as administrative sanctions applicable in case of their nonobservance of the provisions of the Law; and, (iv) the institutional framework n for purposes of avoiding the use of the national economic system for asset laundering, terrorism financing and financing of the proliferation of weapons of mass destruction.

IV. Main Concepts. In addition to the regulatory provisions, Law 155-17 includes important new terms that had not been contemplated by other legislation of a similar nature, among which are:

-Asset or Good: Although this definition is not new, it is an essential concept in order to understand a legislation of this nature. In this regard, the Law has broadened the definition, so that an Asset or Good is understood as money, securities, bonds, bills, or goods of any kind, such as, but not limited to, tangible or intangible, natural resources, notwithstanding how they may have been acquired, legal documents or instruments in any form, including in electronic or digital form, evidencing the ownership of, or participation in, such funds or other assets.

-Competent authorities: the authorities responsible for the prevention, persecution and sanction of asset laundering, financing of terrorism and the proliferation of weapons of mass destruction, in accordance with the powers granted thereto by this and other specific laws. For the purposes of this Law, the following entities are considered, without limitation, as competent authorities, Public Prosecutor's Office, the Financial Analysis Unit (UAF), the National Drug Control Office, the Superintendence of Banks, the Monetary Board, the Superintendence of Insurances, the Superintendence of Securities, the Superintendence of Pensions, the Superintendence of Private Security, the General Directorate of Internal Taxes, the General Directorate of Customs, the Directorate of Casinos and Gambling Activities, and the Cooperative Development and Credit Institute, and any authority to whom is attributed regulatory or supervisory authority regarding a certain activity or economic sector, subject to this Law.

-Shell Bank: refers to any entity of financial intermediation that does not have significant physical presence in the country where it has been incorporated and licensed to operate, and has not stated to the regulatory authorities its affiliation to any local bank or financial group subject to supervision by a supervisory body.

-Beneficial Owner: The natural person who exercises ultimate effective control over a legal person or holds at least twenty percent (20%) of the capital of the legal person, including the natural person (s) on whose behalf a transaction is being conducted.

-Due Diligence: a set of procedures, policies and measures through which the obligated parties can obtain adequate information about their current and potential clients and related parties thereto, beneficial owners and the activities they perform. The Law subdivides this concept into two (2): (i) extended due diligence, which consists of a set of more rigorous and demanding policies and procedures to obtain extensive information of a client or beneficial owner, based on the results of the procedures for evaluation, diagnosis and mitigation of identified risks; and, (ii) simplified due diligence, which consists of a set of less rigorous policies and procedures, designed to simplify the elements of the knowledge of a client or beneficial owner, based on the results of the procedures for the assessment , diagnosis and mitigation of identified risks.

-Previous or determinant offense: this is an important new term implemented by Law 155-17, which, unlike the previous law, regulates the actions that originated the assets subject to laundering. The law defines this term as the offense that generates goods or assets susceptible to money laundering. The Law includes a list of the actions that fall under this category, such as: trafficking of drugs and controlled substances, any terrorism related crimes and terrorism financing, human trafficking (including that of illegal immigrants), extortion, falsification of currencies and securities, fraud against the State, embezzlement, bribery, influence peddling,

prevarication and crimes committed by public officials in the exercise of their duties, among others. Equally, the Law indicates that any serious offense punishable with a penalty greater than three (3) years will be considered as a previous offense.

-Obligated party: any natural or legal person that, under this Law, is bound to comply with the obligations related to preventing, detecting, evaluating and mitigating the risk of money laundering, terrorism financing and other measures to prevent financing of the proliferation of weapons of mass destruction.

V. Criminal Offenses. The Law specifically defines money laundering as (i) the conversion, transfer or transportation of goods, knowing full well that they are derived from any of the previous offenses, for the purpose of hiding or concealing the nature, origin, the location, disposition, movement or real ownership of goods or rights over goods; (ii) hiding or concealing the nature, origin, the location, disposition, movement or real ownership of goods or rights over goods, knowing full well that such goods are derived from any of the previous infractions; (iii) acquire, possess, administer or use goods, knowing that they are derived from any of the previous infractions; (iv) assisting, advising, facilitating, inciting or collaborating with persons who are involved in money laundering to avoid prosecution, judicial processes and criminal conviction; and, (v) participation, as an accomplice, in any of the activities mentioned previously, the association to commit these types of actions, attempts to perpetrate them and assisting with the committing thereof by providing an element essential to perform these actions or facilitate their execution.

After establishing the actions that are considered as asset laundering, Law 155-17 establishes the criminal offenses associated with money laundering. By way of example, the Law considers as an offense related to money laundering, when an employee, executive, officer, director or any other authorized representative of any of the obligated parties subject to this Law who, acting in such capacity, intentionally fails to comply with the information or reporting obligations established in the Law.

As a particular novel aspect of this Law, when a public notary or public registrar, including mercantile registrars, without the corresponding reliable evidence of means of payment, participates, prepares or registers any of the cash transactions prohibited by the Law, is considered as an offense associated with money laundering. Consequently, the Law imposes an important responsibility on public notaries and public registrars, who shall perform the corresponding due diligence process to comply with the provisions of the Law. Pursuant to Law No. 155-17, in case of their noncompliance, these persons could be held criminally liable.

With regards to terrorism financing, said legislation indicates that a person commits this offense when it:

-In any way, directly, or indirectly, provides, collects, offers, finances, makes available, facilitates, administers, stores, custodies, or delivers goods or services, with the intention of, or knowing full well that the goods or services are or will be used to promote, organize, support, maintain, favor, finance, facilitate, subsidize or support an individual or individuals, terrorist organizations, even in the absence of a direct relationship with a terrorist act, or to commit terrorist acts;

-Participates as an accomplice, assists, associates with, conspires, attempts, aids, facilitates, organizes, directs others to commit, advises or publicly or privately incites the committing of any of the offenses identified in the paragraph above, or who helps a person who has participated in such crimes to evade the legal consequences of their acts; and,

- The person who travels to a State other than its country of residence or nationality to commit, plan or prepare terrorist acts or participate in them, or to provide or receive training for terrorist purposes.

Law 155-17 makes it clear that terrorism financing offenses constitute crimes even if the terrorist acts have not been carried out, the assistance to terrorists has not been provided or the terrorist act has been committed or is attempted to be committed in another territorial jurisdiction. In all cases of the offenses foreseen in the Law, the attempt thereof will be punished as the offense itself.

Each and every one of the offenses established in the Law will be investigated, prosecuted and ruled as autonomous actions of the previous offense or regardless of whether the offense was committed in another jurisdiction.

With respect to the offenses classified under Law 155-17, such expressly establishes the aggravating circumstances for each type. In the particular case of money laundering, it is worth noting that the Law contemplates as an aggravating circumstance when the person who commits the crime is a director, official or employee of an obligated party under the Law.

For the purposes of Law 155-17, a person will be considered to be a recidivist when having been convicted of any of the offenses under the Law, it again commits an offense contained in such legal text, and will be punished with the maximum penalty.

VI. International Cooperation. Although our repealed Law 72-02 established mechanisms of international cooperation, Law 155-17 includes new elements in this respect, of which we can mention:

-Homologation. A judgment issued by a competent judge or court of another State in relation to a money laundering offense, previous offenses, or terrorism financing, other offenses described in the Law, and other offenses in criminal laws ordering the confiscation of goods, products or instruments located in the Dominican Republic, shall be ratified by the competent local court, in accordance with the principle of reciprocity contained in multilateral and bilateral agreements signed or acceded to by the country, and have been ratified by the National Congress.

-Extradition. Money laundering and terrorism financing shall be considered as extraditable offenses which shall have clear and efficient processes, without restrictive or unreasonable conditions. The application of extradition shall be subject to the domestic laws and agreements signed by the Dominican State with other States.

The international cooperation of the Law is based on reciprocity; it being understood that when there is no bilateral or multilateral agreement ratified by the Dominican Republic, the competent authorities will be able to provide the widest cooperation based on the principle of reciprocity between nations. Accordingly, under the provisions of the Law, the Public Prosecutor's Office will have the discretion to act and cooperate with international organizations or other States depending on the particular circumstances of each case, within the framework of the Law.

VII. Precautionary measures, forfeiture and destination of goods. While one of the offenses established in the Law is being investigated, the competent preliminary judge, at the request of the Public Prosecutor's Office, shall order, at any time and without need of notification or prior hearing, an order of seizure, forfeiture or temporary immobilization of movable property or banking products, or opposition to transfer of real property, in order to preserve the availability of movable and immovable property involved in an investigation of the offenses indicated in this Law, until the issuance of a final and definitive judgment with the authority of *res judicata.*

The Public Prosecutor's Office may exceptionally adopt, by means of a reasoned resolution, the measures previously indicated when the delay may endanger the investigation or the disposal of the goods may occur. In these cases, the Public Prosecutor's Office shall present the case to the competent jurisdiction within the seventy-two (72) hours following the decision adopted by this institution.

Confiscation. When a person is convicted of a violation of the Law, the court shall order the confiscation of the goods, products and instruments related to the offense without prejudice of the rights of bona fide third parties. When any of the assets cannot be seized, the court shall order the confiscation of any other property of the convicted person for an equivalent value or order the same to pay a fine for said value.

VIII. Obligated Parties. For purposes of explaining who constitute the obligated parties subject to this Law, according to the definition of this term, said Law has classified them as follows:

- Financial Obligated Parties:

• Financial intermediation entities;
• Securities intermediaries, meaning, persons who carry out operations of brokerage of securities or interme diation of securities, investments and future sales;
• Persons who intervene in the exchange and remittance of currency;
• Central Bank of the Dominican Republic;
• Legal persons authorized or licensed to operate as trustees;
• Savings and Credit Cooperatives;
• Insurance companies, reinsurance and insurance brokerage companies;
• Investment funds managing companies;
• Securitization companies;
• Stock exchanges and securities brokers;
Centralized deposits of securities;

• Centralized deposits of securities;
• Entities that issue public offering securities that reserve the primary offering.

-Non- Financial Obligated Parties: natural or legal persons who engage in other professional, commercial or business activities which because of their nature are likely to be used in money laundering and terrorism financing activities. The following shall be considered as such:

• Casinos, activities related to gambling, lottery or betting pools, and lottery and gambling dealers;
• Factoring companies;
• Real estate agents when they engage in transactions for their clients concerning the purchase and sale of real estate;
• Merchants of precious metals, precious stones and jewels;
• Lawyers, public notaries, accountants, and other professionals of the legal field, when they are willing to carry out transactions or carry out transactions for their clients involving certain activities indicated in the Law;
• Companies or individuals who are regularly engaged in the purchase and sale of vehicles, firearms, boats and airplanes, motor vehicles ;
• Pawnshops; and,
• Construction companies.

Through regulations, the National Anti-Money Laundering Committee may include, as obligated parties, those who carry out other activities not included in the Law and who are considered to present money laundering and terrorism financing risks.

In accordance to the Law, the obligated parties shall incorporate the following practices:

-Adopt, develop and execute a compliance program based on risk, appropriate to the organization, structure, resources and complexity of the operations they carry out.

- Implement policies and procedures that include due diligence based on risk, which must also be carried out continuously as a monitoring mechanism.

- Maintain records related to the transactions of their customers for at least ten (10) years after the end of the business relationship or after the date of the occasional transaction.

-Appoint a high-level executive, with technical capacity, to supervise the strict observance of the compliance program. Said official will serve as the liaison between the entity and the entity's supervisory body.

-They shall register and report all transactions related to customers and users that equal to or exceed the amount of fifteen thousand dollars (US$15,000.00) or its equivalent in national currency. In the case of casinos, these entities shall register and report all related transactions by customers and users that equal to or exceed

exceed the amount of three thousand dollars (US$3,000.00) or its equivalent in national currency.

-Report suspicious transactions to the Financial Analysis Unit (UAF) within five (5) business days after the transaction is made or attempted. The obligated parties, as well as their directors, officers and employees, may not disclose to third parties that information has been sent to the Financial Analysis Unit (UAF) or to the competent authority, or that an operation is being considered for suspicion of being linked to money laundering and the terrorism financing.

- Maintain the records and documents indicated by the Law and its regulations, available to the Public Prosecutor's Office, competent court, and the Financial Analysis Unit (UAF), for use in investigations and criminal and administrative proceedings related to money laundering, previous offenses and terrorism financing. The obligated parties shall provide the information required by the UAF, the Public Prosecutor's Office, and the country's criminal courts, without limitation or delay.

- Monitor whether a client, beneficial owner or potential client is on the lists issued by the United Nations.

-Proceed without delay to carry out a preventive freeze of the goods or assets of the client and/or the beneficial owner that are in the lists indicated in the Law, and notify such measures without delay to the Public Prosecutor's Office and to the Financial Analysis Unit (UAF). The obligated parties may not disregard the preventive freezing until they receive a judicial notification in this regard.

As an extremely important aspect, the Law indicates that the legal provisions relating to bank and professional secrecy shall not be an obstacle for the fulfillment of the obligations of the obligated parties in the matter of money laundering and terrorism financing as established in this Law.

Regarding the obligated parties' above-mentioned obligations, the Law expressly provides for an exemption from civil, administrative and criminal liability for the obligated parties, their employees, officers, directors or other authorized representative, when in compliance with the obligations imposed on them by the Law, they submit reports of suspicious transactions and cash transactions to the Financial Analysis Unit (UAF) or provide information to the competent authorities.

IX. Administrative Sanctions. Law 155-17 states that when one of the offenses contemplated by this legislation is attributable to a legal person, regardless of the criminal liability of its owners, directors, managers, administrators or employees, the company may also be held liable, resulting in pecuniary sanctions.

The obligated parties, as well as their officers and employees, may be subject to penalties and administrative for the violation of the provisions contained in the Law and its regulations, prior to compliance with the due administrative process contemplated in Law No. 107-13, regarding the rights of persons in their relations with the Administration and administrative procedure. The competent body to apply the administrative sanctions provided for in this Law shall be the body or entity responsible for supervising the obligated party. In this regard, the supervisory body will apply administrative sanctions based on the classification thereof, whether

very serious, serious and minor, and may be evaluated on the occasion of the cases that are expressly mentioned by Law.

In the cases were penalties are applied for very serious offenses or recidivism, when the punished entity is a legal person subject to administrative authorization or licensing, the regulator may order the suspension or revocation of the corresponding license or authorization.

Persons in administrative or management positions in the obligated entities, whether one-person or collegiate, shall be liable for the offenses attributable to the legal persons where they perform their duties, in addition to the liability of the obligated entity.

Regarding the statute of limitations of offenses, for the purposes of the Law, very serious offenses will prescribe at five (5) years, those of a serious nature at three (3) years and the minor offenses at one (1) year, counted from date on which the offense was committed.

X. Regulatory Authorities

-Committee against Money Laundering and the Terrorism Financing. It is the coordinating collegiate body responsible for the efficient functioning of the system for the prevention, detection, control and combating of money laundering, terrorism financing, and the financing of the proliferation of weapons of mass destruction.

-The Financial Analysis Unit (UAF). It is the technical entity that exercises the technical secretary of the National Committee against Money Laundering and Terrorism Financing, included as a unit of the Ministry of Finance, whose task will be to carry out analyses to identify and provide to the Public Prosecutor's Office financial analysis reports regarding possible money laundering offenses, previous offenses and terrorism financing.

- Supervising entities of the obligated parties. The bodies and/or supervisory bodies of the obligated parties under the Law, in addition to the powers provided in their respective sectoral laws, are vested with powers of regulation, supervision, inspection, information request, and application of penalties on the obligated parties and their personnel, in accordance with the standards established in this Law.

XI. General Provisions. Another innovative and relevant element of this Law is that through a general provision it amends and adds important provisions to other laws. First, it amends Article 305 of the Law 479-08 on Commercial Corporations and Individual Companies of Limited Liability, which provided that shares could be issued in registered form, to the order of or in bearer form. Law No. 155-17 provides that shares may only be issued in registered form.

For such purposes, Law No. 155-17 has established a period of one (1) year, counted from the entry into force of said Law, for the purpose of converting shares that have been issued to the order of and / or in bearer form to registered shares. The Mercantile Registry and the General Directorate of Internal Taxes (DGII) are responsible for the verification of compliance with this provision. If the conversion is not carried out within the

responsible for the verification of compliance with this provision. If the conversion is not carried out within the indicated period, the owner of the shares may not exercise any right inherent to such securities vis-a-vis the company, whether they be of a social or patrimonial nature.

Another important modification is with respect to Letter C, Article 50 of the Tax Code, which indicates that taxpayers, responsible parties and third parties are required to register in the National Registry of Taxpayers and the relevant special registers, to which they will provide the necessary data and shall communicate their modifications in a timely manner, and shall certify this registration for the performance of all acts indicated by law, regulations or administrative rules.

This article has been amended to include that in the cases specified by Law 155-17, any legal person or entity without legal personality, whether resident or non-resident is required to have updated information of its beneficial owners.

Likewise, letter H of said article is amended, which indicates that taxpayers, responsible parties and third parties are obliged to keep in an orderly manner, for a period of ten (10) years: accounting books, special books and records, background information, receipts or proof of payment, or any document, whether in physical or electronic, relating to the operations and activities of the taxpayer. This modification includes that the documentation necessary for compliance with letter C of Article 50 must also be kept.

On the other hand, Law 155-17 introduces a transitional article to Law 141-15 of the Restructuring and Liquidation of Companies and Merchants, through which the DGII is granted the powers to regulate by means of a general rule, the procedure for the prompt liquidation of companies.