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Law No. 20,119
AMENDING LAW No. 19,913, WHICH ESTABLISHED THE FINANCIAL ANALYSIS UNIT

Bearing in mind that the Hon. Congress has endorsed the below bill, originated on the motion made by Congressmen Gabriel Ascencio Mansilla, Jorge Burgos Varela, Juan Bustos Ramírez, Guillermo Ceroni Fuentes; Carlos Montes Cisternas, José Miguel Ortiz Novoa and Eduardo Saffirio Suárez, and the then Congressmen Messrs. Edgardo Riveros Marín, Rodolfo Seguel Molina and Exequiel Silva Ortíz;

BILL:
Single section.- The following amendments are made to Law No. 19,913, which established the Financial Analysis Unit:
1. The following letter (b) is inserted into paragraph one, section 2, the present letters (b) to (g) becoming (c) to (h), respectively:
“(b) Request from any of the individuals or legal entities referred to in section 3 of this law the information that - during the review of a suspicious operation informed to the Unit or detected by it in the discharge of its duties – is necessary to develop or
complete the analysis of said operation and the information to be collected according to letter (g) of this section. The persons so requested shall be bound to provide the information within the term appointed.

If the information referred to in this letter were secret or confidential or must be requested from a person that is not listed in section 3 of this Law, authorization shall be sought from such Justice from the Court of Appeals as may be appointed by lot by the Chief Justice of said Court immediately upon request. The justice shall, without a hearing and without intervention from third parties, make a decision. Both the request for secret or confidential information made by the Unit and the decision of the court shall be grounded on specific facts, record of which shall be expressly left on both documents. If the request is rejected, the Financial Analysis Unit may file an appeal. The appeal shall be heard by the Court, without further ado, immediately upon receipt of the information. The file shall be confidential and shall be fully returned to the Unit once a ruling is made.

The information requested under this letter shall be provided free of cost and of any kind of fees and taxes.

The persons who are not bound to depose for confidentiality reasons shall not be subject to the provisions in this letter, but only to the extent such confidentiality covers matters referred to herein, as stated in section 303 of the New Criminal Procedure Code”.

2.- The following letters (i) and (j) are inserted into section 2, paragraph one:
“(i) Gain access, as agreed with the senior executives of the respective entities, to the background information existing at databases maintained by public agencies which - during the review of a suspicious operation informed to the Unit or detected by it in the discharge of its duties – is necessary to develop or complete the analysis of said operation and the information to be collected according to letter (g) of this section. If the
information were secret or confidential, the provisions in letter (b), paragraph two, of this section shall be applied.

(j) Impose such administrative sanctions as may be established by this law.”

3.- Section 3, paragraph one, is amended to read as follows:

(a) The expression “legal representatives of duty-free zones” is replaced with “managing companies and users of duty-free zones”.

(b) The word “general” between “agents” and “customs” is deleted.

(c) Conjunction “and” separating the expressions “notaries public” and “registrars” is replaced with a semicolon (;). Next to “registrars”, the expression “pension fund managers and professional sports corporations governed by law No. 20,019” is inserted.

4.- In section four, paragraph one, insert between the expressions “to bearer” and “to the country” the expression “from and”, and, in the same paragraph, replace the expression “four hundred and fifty Unidades de Fomento” with “ten thousand US dollars”.

5.- In section 6, insert the following paragraph as paragraph two:

“The same prohibition shall apply to those who are requested pursuant to letter (b), section 2, and to the persons rendering services, by any way, to the persons and institutions referred to in the foregoing paragraph who have been aware of the request for information by the Financial Analysis Unit or the remission of information to said entity.”

6.- In section 7, insert the following paragraph as paragraph two:

“The same penalty shall be applied to those who – being bound under this law to provide the Unit with information – deliberately destroy, tamper or conceal the information or documents they are bound to provide or else provide false information.”

7.- In section 13, the following paragraph is inserted as second paragraph, the current paragraphs two et seq. becoming paragraphs three et seq.:

“The provisions in the foregoing paragraph are without prejudice to the powers
of the Director to disseminate or provide global – not personal – information solely for statistical or managerial purposes.”

8.- After section 18, insert the following Title II, the current Title II becoming Title III, and correct the numbering accordingly.

“TITLE II

Infringements and sanctions

Section 19.- Any individuals or legal entities that fail to discharge the duties or fulfill the obligations contained in this law shall be punished by the Unit Director, taking due consideration of the solvency of the offender and of the seriousness and consequences of the act or omission committed, in accordance with the following rules:

(a) Minor offenses shall mean non-fulfillment of instructions given by the Financial Analysis Unit under section 2, letter (f), of this Law;

(b) Intermediate offenses shall mean any contravention to the provisions in sections 4 and 5 of this Law;

(c) Serious offenses shall mean non-compliance with the duties contained in sections 2, letter (b), and 3 of this law.

Section 20.- The infringements described in the above paragraph shall lead to the imposition of the below sanctions, in accordance with the seriousness and recurrence of the infringements:

1.- Sanctions imposed for minor offenses:

(a) Warning, and

(b) Fine for fiscal benefit, up for the equivalent to 800 Unidades de Fomento.

For this sanction to be imposed, the Financial Analysis Unit shall demonstrate that the offender was aware of the breached instruction.

2.- Sanctions for intermediate offenses:

(a) Warning, and
(b) Fine for fiscal benefit up to the equivalent to 3,000 Unidades de Fomento.

In the case of non-fulfillment of the obligation contained in section 4, special consideration shall also be taken of the amount of the non-declared securities; however, the fine shall, in no case, exceed thirty per cent of said securities.

3.- Sanctions for serious offenses:

(a) Warning, and

(b) Fine for fiscal benefit up to the equivalent to 5,000 Unidades de Fomento.

In the case of reiterated infringements, irrespective of their nature, a fine of up to three times the amount indicated may be imposed. “Recurrence” shall mean two or more infringements of a same kind being committed, within a term not to exceed twelve months.

Section 21.- If the infringement has been committed by a legal entity, sanctions referred to in the foregoing section may also be imposed on its Directors or legal representatives who have consented to the infringement.

Section 22.- Administrative proceedings aimed at imposing the administrative sanctions referred to in this Title shall abide by the following rules:

1.- The proceeding shall begin with charges being brought against the offender, which shall provide an accurate account of the facts, the date of commission, the rule allegedly infringed, the provision setting the sanction, the sanction imposed and the term for the defense to be submitted.

2.- The decision originating the administrative proceedings referred to herein shall be served in person, in accordance with the applicable provisions in the Civil Procedure Code. A full copy thereof shall be handed down to the alleged offender or his legal representative, either at the registered address available to the Unit or any other place where he/she may carry out his trade or occupation which he/she had informed to the Internal Revenue Service – if appropriate - the Unit’s premises or any other public
access place.

Personal service shall be performed by a Unit’s official, appointed to such effect by the Financial Analysis Unit Director, who shall serve as an authenticating officer.

3.- Any other service performed during the proceedings shall be made in writing, by registered letter sent to the address recorded with the Unit or any other place where the alleged offender performs his trade or occupation or, in the case of the individuals referred to in section 4, at such place as is recorded with the Customs Service. Service shall be deemed as performed as from the fifth day following receipt of the notice at the relevant mail office.

4.- The alleged offender shall have ten working days as from service of the relevant notice to defend himself.

5.- Upon receipt of the defense or lapse of the term appointed therefore, an eight-day discovery period shall be opened.

The Unit shall take such steps as required by the alleged offender in his defense, provided they are reasonable. Otherwise, the Unit shall reject the same in a reasoned decision.

6.- The facts under investigation and liability by alleged offenders may be proven by any admissible evidence, and shall be weighed pursuant to sound reason rules.

7.- A ruling terminating the proceeding shall be well-grounded and decide any issues raised in the file, as well as each and every pleading and defense by the alleged offender, and indicate the sanction imposed or the acquittal of the offender. The ruling shall be made within ten days as from the date on which the last legal step decreed in the file has been carried out.

8.- A ruling sanctioning an offender shall indicate legal and administrative actions to be initiated against it under this law, the authorities before which the relevant actions shall be filed and the filing term.
Section 23.- A reconsideration appeal may be filed against any sanctioning ruling by the Unit, in accordance with section 59 of Law No. 19,880, within five days as from service of the sanction notice. The Unit shall have ten days to make a decision on the appeal.

Filing of said appeal shall suspend the term for filing the illegality complaint referred to in the following section.

Section 24.- Those affected by Unit’s decisions having their origin in the sanctioning proceeding governed by this law who find that decisions fail to conform to law may file a complaint against the same within ten days as from service, before the Court of Appeals with jurisdiction over the place of residence of the person having been sanctioned.

Decisions imposing a fine may always be subject to complaint and shall only be enforceable upon lapse of the term to file the relevant complaint or a decision having been made on the complaint.

Once admitted, the Court of Appeals shall decree that a copy of the complaint be sent to the Unit and grant it a ten-day term to make any comments thereon, as from the date on which service is made of the complaint filed.

Once the copy has been sent to the Unit or the term for comments to be made has lapsed, the Court shall close the case to new evidence and cause the case to be incorporated into the next ensuing court calendar, once the court division is selected by lot.

If deemed appropriate, the Court may open a discovery period – which may not be in excess of 7 days – and hear the allegations of both parties, if requested by either of them.

The Court shall make a decision within fifteen days.

The decision by the Court of Appeals may be appealed before the Supreme Court, within ten days, and the Supreme Court shall hear the case as provided for in the
foregoing paragraphs.

Section 25.- Once the decision imposing sanctions has become final, the Unit shall inform the Treasury and the agency with jurisdiction over infringing entities, if any, of the same.

Section 26.- Administrative terms set in this Title shall be counted in working days, which are exclusive of Saturdays, Sundays and holidays.”

9.- In sections 1, 2, 13, 23, 24, 25 and 27, Law No. 19,913, any reference to sections “19” and “20” shall be replaced with sections “27” and “28”, as appropriate.

10.- The below section 33 bis is inserted:

“Section 33 bis.- Without prejudice to the provisions in section 32, where in the course of an investigation of offenses referred to in sections 27 and 28 of this law information or copy of secret or confidential information is provided which contains no leads for the clarification of the facts, the prosecutor – notwithstanding the provisions in section 167 of the New Criminal Procedure Code - may temporarily suspend the investigation until more clarifying information is obtained.”

The provisions in section 93, No. 1, of the Chilean Political Constitution having been complied with, and upon this Bill having been endorsed and sanctioned, be it enacted and enforced as a Chilean law.


Transcribed for your cognizance.

Respectfully yours,

María Olivia Recart Herrera, Undersecretary, Ministry of Finance.

CONSTITUTIONAL COURT
Bill amending Law No. 19,913, which established the Financial Analysis Unit.

The undersigned Constitutional Court Clerk does hereby certify that the Hon. Lower Chamber submitted the bill referred to above – endorsed by the National Congress – for this Court to see to the legality under the Constitution of section 1, No. 1, related to paragraph two, letter (b), inserted into section 2 of Law No. 19,913, and of No. 8, in relation to new section 24 incorporated into the said law. By decision dated August 1, 2006, made in case roll No. 521, it has been decreed as follows:

1.- The legal provisions contained in No. 8, section 1, of the bill sent to this Court, which incorporates a new section 24 to Law No. 19,913, conform to the Constitution.

2.- The legal provisions contained in paragraph two, letter (b), No. 1, section 1, of the bill, without prejudice No. 3, conform to the Constitution, in the light of clause seven of this decision, and of the fact that the demand that both the request for secret or confidential information and the decision by the Court of Appeals justice authorizing the provision thereof are based on “specific facts justifying said provision” shall serve as grounds for prosecuting liability deriving from any illegal or arbitrary action by the Unit to the detriment of the rights a person or entity affected may assert under the law rule discussed herein. According to the provisions in clauses twenty-five to twenty-seven, the above also holds true if considering that, by law, courts are bound to ensure full respect for the rights and guarantees enshrined in the Constitution, which imperative derives from the respect for the constitutional supremacy principle binding all the State agencies, including this Court.

3.- As regards the same law rule as above, the expression “immediately” is unconstitutional and, therefore, must be deleted.

4.- The provisions in sections 2 and 3 of the bill are unconstitutional and must be deleted.

Santiago, August 14, 2006.
Rafael Larrain Cruz, Clerk.