

New Sanctions – Law 2195 of 2022

May 2022

New Sanctions – Law 2195 of 2022

Last January 18th, Law 2195 of 2022 was enacted, adopting measures regarding transparency, prevention and fight against corruption. Article 27 of the mentioned law modifies Article 58 of the Code of Commerce on "sanctions for violations to the prohibitions on the commercial books, to the obligations of the merchant and others", modifying the maximum value of the sanctions that may be imposed by the Superintendence of Companies for:

- I. failure to comply with the merchant's obligations set forth in Articles 19 and Chapter 1 of Title IV of Book 1 of the Code of Commerce (Merchant's Books and Papers - Articles 48 to 60 of the Code of Commerce), or
- II. failure to provide the information required by the authorities in accordance with the regulations in force, or
- III. failure to comply with the prohibition to engage in commerce, profession or trade, issued by a competent judicial authority.

Before the issuance of this regulation, the cap of these sanctions was up to 1,000 minimum wages (approx. COP1,000,000,000 - USD256,400) for all cases. Article 58, as amended, considerably increases these caps, raising them up to two thousand (2,000) minimum wages (approx. COP2,000,000,000 - USD512,800) in the case of individuals and up to one hundred thousand (100,000) minimum wages (approx. COP100,000,000,000 - USD25,641,000) in the case of legal entities.

The obligations for which non-compliance is subject to penalties for the above-mentioned ceilings are the following:

- Registration before the mercantile registry;
- Registration of all acts, books and documents subject to registration before the mercantile registry (e.g., among others, appointment of administrators, statutory reforms, disclosure of control situation);
- Keeping regular accounting records of its business in accordance with legal requirements;
- To denounce before the competent judge the cessation in the current payment of its mercantile obligations;
- Refraining from engaging in acts of unfair competition;
- Conformity of the merchant's books and papers to commercial provisions;
- Compliance with the requirements of the Code of Commerce with respect to the manner in which the accounts must be kept;
- Obligation to prepare financial statements at least once a year, as of December 31st;



- Violation of the prohibitions on commercial books described in Article 57 of the Code of Commerce;
- Retention of the merchant's books and papers for at least 10 years.

Notwithstanding the fact that in the imposition of sanctions the authority must be governed by the principles of proportionality, economic capacity of the offender, recidivism, benefit obtained by the offender, damage or danger generated, among others, we recommend taking special care in complying with these obligations and reviewing and updating your corporate and accounting books, as well as taking special care to comply with the deadlines granted to answer any request for information from a competent authority, to avoid the imposition of sanctions whose new caps are significantly onerous.

- ❖ Should you require more information, please contact our Partner, Gabriel Sánchez at gabriel.sanchez@phrlegal.com