

# The new powers of the Comptroller General of the Republic and the Financial Intelligence Unit to lift bank secrecy and tax reserve

With the publication of [Law N° 31305](#), as of July 24 of this year, the lifting of bank secrecy and the tax reserve may be carried out at the request of the Comptroller General of the Republic and the Superintendent of Banking, Insurance and Private Pension Fund Administrators (SBS). This is a significant extension of the powers of these two entities -as they directly affect a fundamental right closely linked to the intimacy and privacy of natural and legal persons- which enables the lifting of bank secrecy and the tax reserve directly and without prior judicial authorization. On the one hand, the SBS, through the Financial Intelligence Unit (UIF-Peru), may access relevant information in strict compliance with its purposes and legal powers, related to the prevention of money laundering, financing of terrorism and other related crimes. For its part, the Comptroller General of the Republic (CGR) may access this information in relation to public officials

and servants who administer or manage funds of the State or public agencies at the three levels of government, within the framework of a control action.

Until the enactment of Law N° 31305, only judges, the Attorney General or an investigative commission of the Congress of the Republic could request the lifting of bank secrecy and the tax reserve, in relation to facts subject to an investigation carried out in accordance with their powers. As regards the SBS, although the General Law of the Financial System and the Insurance System establishes that the companies of the financial system are obliged to report suspicious transactions to the Financial Intelligence Unit (UIF-Peru), this entity only had access to limited information, so they had to have judicial authorization to access all the information protected by bank secrecy and the tax reserve.

However, this legislative amendment was based on the verification that this mechanism of indirect access to the lifting of bank secrecy and tax reserve was not sufficiently suitable mainly because: (i) the FIU-Peru had to prove to the judge, on each occasion, the need and relevance of access to information, which required an often cumbersome internal procedure; and, (ii) the time established for the delivery of information by the requested entities was a maximum of thirty (30) working days from the issuance of the court order, causing in practice that the information was not provided in a timely manner.

On the latter, both the Latin American Financial Action Task Force (GAFILAT) and the Organization for Economic Cooperation and Development (OECD) have been issuing reports and communiqués on the importance of prompt and timely access to information by the competent entities, warning that the absence of these mechanisms could represent an obstacle for the fight against money laundering, financing of terrorism, tax evasion and avoidance, as well as for the exchange of information and intergovernmental cooperation. It is not surprising, then, that the OECD has identified as risk countries those with

a strict banking secrecy regime. It must be noted that these two international organizations have expressed their concern and observations on the delay in access to information by the Peruvian authorities.

Precisely in response to these international requirements, many of the countries in the region regulate procedures for access to this information by their financial intelligence agencies or equivalent institutions, as is the case of Colombia, Ecuador, Argentina and Uruguay.

In short, with this extension of the powers of the CGR and the SBS, it is expected that these entities shall act more swiftly, which must be accompanied by a scrupulous respect for the constitutional guarantees and rights of those affected by these exceptional and restrictive measures, as well as a responsible use of these important powers<sup>1</sup>.

<sup>1</sup>In particular, in the light of CGR's recurring activity with regard to control actions. By way of reference, to date, the CGR has issued 14,201 control reports in the context of the health emergency due to COVID-19.

## News (1/2)

The Organization for Economic Cooperation and Development (OECD) published the Report on Phase 2 of the Implementation of its Convention against Bribery in Peru, highlighting the measures adopted and, in turn, highlighting the outstanding challenges on the matter.

Source: Organization for Economic Cooperation and Development (OECD)



On July 13, 2021, Proética presented the Peru Anti-Corruption Agenda, which emphasizes 10 issues among which is the need to improve whistleblower protection, among others.

Source: Proética



On July 5, 2021, the newly established High-Level Commission for the Prevention and Reduction of Environmental Crimes met to adopt its internal regulations and plan of activities for the period 2021-2022.

Source: Government of Peru



Through a press release, the Office of the Comptroller General of the Republic of Peru specified that State entities have until July 30 to submit virtually the reports for the period 2021 on the implementation and monitoring of the Internal Control System (SCI).

Source: Office of the Comptroller General of the Republic of Peru



Through the publication of Law N° 31284 on July 16, 2021, Legislative Decree 1182 was amended, a decree that regulates the use of data derived from telecommunications for the identification, location and geolocation of communication equipment, in the fight against crime and organized crime.

Source: El Peruano



On July 5, the Basel Institute on Governance reported that 25 practitioners from 12 countries met online on June 29 for the first virtual meeting of the new Knowledge Community on Asset Recovery in Latin American.

Source: Basel Institute on Governance



As part of the European Commission's legislative proposals to strengthen European Union (EU) anti-money laundering and counter-terrorist financing rules, on July 20, 2021, the Commission has proposed the creation of a new authority to oversee compliance with these rules across the EU.

Source: European Union (EU)



On June 30, 2021, the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") established what the U.S. Government's priorities shall be to combat money laundering and terrorist financing.

Source: Treasury Department's Financial Crimes Enforcement Network ("FinCEN")



## News (2/2)

France updates its strategy in the fight against corruption in cooperation actions 2021-2030, emphasizing 3 areas of intervention: consolidation of the French anti-corruption system, promotion of the fight against corruption and strengthening governance in international cooperation and support for the work of international organizations, non-state actors and local institutions.

Source: French Ministry of Europe and Foreign Affairs



The U.S. Government has published a list of individuals identified as having a high incidence of corruption matters in El Salvador, Guatemala and Honduras.

Source: U.S. Government



Through the draft law on "preventive measures in the contractual activity promoted by the Ministry of Public Works and Transport and its decentralized bodies with instrumental legal personality", the Government of Costa Rica ensures that companies involved in corruption cases linked to contracting processes may not participate directly or indirectly in new contracts with the aforementioned Ministry.

Source: Government of Costa Rica



On July 2, 2021, the "Follow-up Report on the Organization for Economic Cooperation and Development ("OECD") Study on Integrity in Argentina: Adopting a strategic approach to integrity" was submitted, detailing the progress on integrity and good practices related to the monitoring and definition of performance indicators.

Source: Government of Argentina



The National Electoral Institute of Mexico (INE) imposed fines on political parties and their candidacies for various misconducts linked to accounting issues for a total amount of more than 60 million dollars.

Source: National Electoral Institute of Mexico (INE)



The Central Bank of Argentina published Circular SINAP 1-135 containing measures to mitigate fraud in transactions with digital wallets.

Source: Central Bank of Argentina



# Resources

On July 22, the Basel Institute on Governance published a compendium with legal precedents on the application of the Peruvian Extinction of Ownership Law, emphasizing that at the time of preparation Peru has managed to recover around US\$41 million using this legal mechanism.

Source: Basel Institute on Governance



On July 5, the Basel Institute on Governance provided its Quick Guide on source and application of funds analysis to inform corruption and money laundering investigations and prosecutions and to generate evidence that could be used in court.

Source: Basel Institute on Governance



The Financial Action Task Force (FATF) has completed a second implementation review of its regulations against money-laundering and terrorist financing applicable to virtual assets and virtual asset service providers.

Source: Financial Action Task Force (FATF)



The Financial Action Task Force (FATF) has submitted a report that identifies available and emerging technologies to improve the quality and efficiency of measures to combat money laundering and terrorist financing.

Source: Financial Action Task Force (FATF)



On July 5, the Bank for International Settlements ("BIS") published a Financial Stability Institute ("FSI") discussion paper on the regulation of non-bank payment service providers, including references to the prevention of money laundering and terrorist financing.

Source: Bank for International Settlements ("BIS").



On July 20, the European Union published a report examining the state of development of relevant issues in its various EU countries, such as justice systems, creation of an anti-corruption agency, whistleblower protection, declaration of assets of elected officials, among others.

Source: European Union (EU)



The European Court of Auditors has published a report noting the "institutional fragmentation" and poor coordination at the European Union (EU) level when it comes to acting on the prevention of money laundering and terrorist financing, making a series of recommendations.

Source: European Union (EU)



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