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NEW LOBBYING REGULATION, LAW N° 20,730

On August 28th, Decree N° 71 of the Ministerio Secretaría General de la Presidencia was published in the Official Gazette, establishing the Regulation for Law 20.730 (the " **Regulation** " and the " **Law** ", respectively), which regulates lobbying and activities on behalf of particular interests before authorities and State administration officials1. Both the Law and the Regulation will come into force three months after the publication of the latter, on November 28, 2014.

The new rules regulate transparency in lobbying and other actions on behalf of individual interests before public authorities. Such rules modify the approach in which informal negotiations with public authorities are carried out, in the sense that such authorities must disclose their agendas and individuals are obligated to disclose who they are representing and the purposes behind the requested hearings or meetings. To that effect, a public registry is created.

Consequently, the Law and Regulation shall be binding on all individuals whose actions are included under the scope of the law, explained in the following section 1, and not only for professional lobbyists.

1) Concept of lobbying –scope of the law–. "Lobbying" is considered to be (and thus, regulated by this Law) any conduct or remunerated activity, with a purpose to promote, defend or represent any particular interest before public authorities, with the intention of influencing the decisions that such authorities make in the execution of their functions.

2) Passive subjects of lobbying. The passive subjects are the public authorities that could be subject to lobbying. Most of those authorities are listed in the Law. Such subjects include, but are not limited to:

1. Ministers, Under Secretaries, Head of Services, Regional Directors of Public Services, Intendentes, Governors, Secretarías Regionales Ministeriales, Ambassadors, Chief of Staff of the previously mentioned officials (if any);

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2. Members of the Regional and Municipal administration;
3. In the General Comptroller of the Republic: The National Comptroller and the Vice National Comptroller (Subcontralor General);
4. In the National Congress: Representatives, Senators, General Secretary and Assistant Secretary of the House of Representatives, General Secretary and Assistant Secretary of the Senate, and the legal advisors annually designated by each congressman;
5. In the Public Ministry: The National Prosecutor and regional prosecutors;
6. The counselors of the Council for the Defense of the State (Consejo de Defensa del Estado), Directive Council of the Electoral Service (Consejo Directivo del Servicio Electoral), Council for Transparency (Consejo para la Transparencia), Council of the High Public Directives (Consejo de Alta Dirección Pública), Council of the National Television (Consejo Nacional de Television), National Institute of Human Rights (Instituto Nacional de Derechos Humanos), the members of the Expert Panels (Paneles de Expertos) and Technical Panel (Panel Técnico), but only regarding to execution their functions. Likewise, the members of the Evaluating Committees of public biddings (Comisiones Evaluadoras de licitaciones públicas), established by the Law N° 19.886, will be deemed as passive subjects, but only regarding to the performance of their duties and while holding the post.
7. The Judicial Power, the Constitutional Court and Electoral Justice may exercise the power to designate passive subjects, issuing for that purpose the subsequent agreements or resolutions, which must be permanently published on their websites.
8. Others as Armed Forces, Central Bank, etc.

Moreover, the public bodies may order the addition of other officials to the list, if these hold a post or function with relevant decisive powers.

3) Excluded conduct from the scope of the Law. The scope of the law is explicit in excluding certain conduct, such as: **(a)** Public plans or proposals; **(b)** The petition to access the current state of an administrative procedure; **(c)** The information delivered to a public authority that had specifically requested such information, for the purposes of performing an activity or making a decision; **(d)** The formal submissions made within an administrative procedure, as long as such submission does not request the adoption, modification or

derogation of legal rules or regulations or the change of administrative processes or choices; **(e)** The counseling made by professionals or researchers that are hired by public bodies and congressmen; **(f)** The declarations and information made or delivered before a National Congress commission; **(g)** The defense in trial, the power of attorney in judicial or administrative cases, but only with regard to conduct belonging to the judicial or administrative procedures; **(h)** The declarations or communications made by the affected individual or by its representatives within an administrative procedure or investigation; among others.

4) Obligations linked to lobbying. People engaged in lobbying activities or representing particular interests must provide true and timely information to the requesting authorities and officials, as established by the Law. Such information includes:

1. **Individualization of the people requesting and attending the hearing or meeting** , by providing their full name, national identification number or passport number in the case of foreigners lacking ID. An e-mail address, telephone or any other means of contact must be provided.
2. **Individualization of the person, organization or entity being represented** ,providing the following data: In the case of acting on behalf of a natural person, the individualization would be fulfilled by stating the complete name, national identification number or passport number if the individual is foreign. If the represented party is a legal person, its legal or business name must be given, as well as its taxpayer identification number (or the indication of being a foreign company without such number), description of the activities that the company performs, domicile, name of the legal representative, nature of the legal person and the name of the natural people on the Board or any other entity in charge of the management of the company, if they are known by the lobbyist. In the case of entities without legal personality, the name and description of the activities will be sufficient.
3. **Whether payment is received** , due to the lobbying activity or acting on behalf of particular interests.
4. **The matters that will be assessed in the meeting** , making reference to the specific decision that is sought, in connection with Article 5 of Law 20.730.
5. In the case of legal persons, the information that is requested by every public body in relation to structure and composition. Nevertheless, this does not force them to provide classified or

strategic information.

The above-mentioned information will be requested through a form that, for these purposes, the Ministry of the General Secretariat of the Presidency (Ministerio Secretaría General de la Presidencia) will prepare in relation to certain passive subjects.

Consequently, starting on November 28, 2014, when requesting meetings with public authorities (for matters within the scope of the Law), the petitioner must file the form with all of the requested data. In those cases where no form is needed, we recommend requesting the meeting by sending an e-mail listing the information of the previous letters a, b, c and d.

5) Lobbyists Registry. Each public entity shall have a public registry of lobbyists, where people holding hearings with the public authorities will be listed. In the registry, lobbyists and those acting on behalf of others may previously and voluntarily register themselves, in order to facilitate the delivery of information.

6) Sanctions. Whoever requests a meeting or hearing, failing to disclose the indicated information without excuse or knowingly providing inexact or false information about those issues, will be sanctioned with a fine of ten to one hundred and fifty monthly tax units ("UTM"), regardless of other existing fines.

7) Registry of official and protocol donations . The passive subjects must register the donations that they receive during the execution of their functions.

8) Term. This new regulation establishes a term of 3 business days within which the authority must decide upon the request of a hearing or meeting.

9) Duty to denounce. Finally, it is important to take into account that every public official has the duty to inform of any breach to this Law. Finally, please bear in mind that the provisions contained in the Regulation are of a general character, and each public service may issue particular rules in order to regulate the matters contained in the Law.

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