New Belgian Anti-Money Laundering Rules*

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The new law entered into force on February 5, 2010. Its objective is threefold: (i) to implement Directive 2005/60/EC, (ii) to apply the recommendations of the Financial Action Task Force on money laundering (FATF) following its audit of Belgian anti-money laundering legislation in June 2005, and (iii) to take into account the Belgian Constitutional Court's decision Nr. 10/2008 of January 23, 2008. The new law also consolidates the law of January 11, 1993 and renumbers its provisions. It both imposes additional obligations on lawyers and relaxes some of the obligations they are subject to.

The additional obligations the law imposes on lawyers include:
- Obligation to put in place appropriate and adequate procedures for client due diligence, reporting, document retention, internal control, risk assessment and management, monitoring of compliance and communication.1
- Obligation to designate one or more in-house compliance officer(s) (only for lawyers operating in large undertakings) (modalities to be defined by the bar authorities).2
- Possible obligation to double third-party accounts.3
- Obligation to prepare written reports on unusual transactions (modalities to be defined by the bar authorities).4

The law also relaxes some of the obligations imposed on lawyers, such as:
- Where the obligation to identify a prospective client cannot be fulfilled, the lawyer may still enter into a business relationship with the prospective client.5
- In line with the Belgian Constitutional Court’s judgment No. 10/2008, information obtained or received by an attorney while acting as counsel, even when (s)he assists his/her client in preparing or performing financial or real

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1  Article 16(1) of the consolidated text.
2  Articles 18 and 38 of the consolidated text.
3  Articles 11(1)3 and 11(3) of the consolidated text.
4  Articles 14(2) and 38 of the consolidated text.
5  Articles 7(5) and 8(5) of the consolidated text.
estate transactions, does not have to be communicated to the authorities, unless
the advice is given or requested for money-laundering purposes.6

- In line with the Belgian constitutional Court’s judgment No. 10/2008, in law firms
  only lawyers or the compliance officer(s), but not employees, are under the
  obligation to report reportable information.7

- The law introduces a number of exceptions to the obligation not to disclose the
  fact that reportable information was reported to the authorities. For instance, a
  lawyer who attempts to dissuade his/her client from participating in an illegal
  activity does not engage in such a prohibited disclosure.8 Neither does
  communication between lawyers of the same law firm constitute prohibited
  disclosure.9 Lawyers may also communicate with other professionals (notaries
  public, accountants) subject to a reporting obligation who advise the same client
  concerning the same transaction.10

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6 Article 26(3) of the consolidated text.
7 Article 29 of the consolidated text.
8 Article 30(1) of the consolidated text.
9 Article 30(3)(a) of the consolidated text.
10 Article 30(3)(b) of the consolidated text.