

Agree to issue the REGULATION OF THE LAW TO PREVENT AND SUPPRESS TERRORISM FINANCING.

GOVERNMENT AGREEMENT NO. 86-2006

Guatemala, March 2nd, 2006.

The President of the Republic

Whereas:

That through Decree number 58-2005 of the Congress of the Republic, the Law to Prevent and Suppress Terrorism Financing was issued. The purpose of this law is to adopt measures of prevention and suppression of terrorism financing.

Whereas:

That according with the established in the Law to Prevent and Suppress Terrorism Financing, the Banking Superintendency, through the Intendancy of Special Verification has formulated to the Executive Body, the Proposal of Regulation of the same, for which it is proceeding to issue the pertaining government disposition.

Therefore:

In exercise of the functions conferred by article 183, letter e) of the Political Constitution of the Republic of Guatemala and according with article 24 of the Law to Prevent and Suppress Terrorism Financing, Decree number 58-2005 of the Congress of the Republic.

Agrees:

To issue the following:

REGULATION OF THE LAW TO PREVENT AND SUPPRESS TERRORISM FINANCING

**CHAPTER I
GENERAL DISPOSITIONS**

Article 1. Objective. The current Regulation has as objective to develop the principles that must be observed by the liable persons and the proper authorities in the application of the Law to Prevent and Suppress Terrorism Financing, Decree 58-2005 of the Congress of the Republic of Guatemala.

Article 2. Definitions. To the effects of the stated in the current Regulation it is understood by:

Goods:	Any kind of goods, physical or non physical assets, real assets, personal assets, independently of how they were obtained, and legal documents or instruments, no matter their form, including electronic of digital form, which accredits the property or other rights over such goods.
Law:	The Law to Prevent and Suppress Terrorism Financing, Decree 58-2005 of the Congress of the Republic.
Regulatory scheme against money or other assets laundering:	The Law against Money or other Assets Laundering, Decree number 67-2001 of the Congress of the Republic, its Regulation, contained in Government Agreement number 118-2002 as well as other administrative dispositions related to said subject.
Ordinand:	Person who gives origin to the transfer, who may be or may not be an owner of an account. The ordinand and the beneficiary may be the same person.
Suspicious transaction of Terrorism financing:	All operations without an obvious lawful purpose, or when suspected or when there are reasonable indications to suspect that there are funds linked with or that may be used to finance terrorism.
Funds transfer:	Any operation performed under the name of a person known as the ordinand, individual or juristic, by any means, including electronically means, with the purpose of making available a quantity of money to a person known as the beneficiary, as well as in national territory as abroad.

Article 3. Complementary. The established rules in this Regulation are complementary with the dispositions contained in the regulatory scheme against money and other assets laundering.

CHAPATER II REGIME OF LIABLE PERSONS AND ADMINISTRATIVE MEASURES

Article 4. Regime of liable persons. For effects of the established in article 15 of the Law, liable persons, must apply, during the sixty (60) days as of the legal force of the present Regulation, the regime, liabilities, policies, control measures and other duties established in the mentioned Law and in the present Regulation; and inform about it to the Banking Superintendency, through the Intendancy of Special Verification, at the latest, during the following five (5) working days after the end of the mentioned period.

Article 5. Compliance Manuals. The established in the previous article must be included in the manuals containing the programs, rules and procedures that the regulatory scheme against money or other assets laundering refers to.

The extensions or modifications performed to the mentioned manuals, as a result of the established in the previous paragraph, must be approved by the Board of Directors, the Administrations Board, the superior executive committee of the respective liable person; or the owner, in the case of individual businesses, who must send a copy of said manuals as well as a copy of the corresponding approval, to the Banking Superintendency, through the Intendancy of Special Verification, in a term of five (5) days.

Article 6. Compliance Officers. For the designation and exercise of the position of compliance officer of the liable persons in accordance with the established in the regulatory scheme against money or other assets laundering and in the third paragraph of article 15 of the Law, the liable persons and the persons performing such position must fulfill, when corresponding, the following requirements:

- a) **Exclusive right of functions:** The compliance officer must have a dependence relationship with the liable person, dedicate full time to its service and the functions will be incompatible with the exercise of any other position in the entity, whether recompensed or not, except for the established in the final paragraph of article 21 of Regulation of the Law Against Money or other assets laundering. The designation of the compliance officer must be approved by the Board of Directors, the Administrations Board, the superior executive committee of the respective liable person; or the owner, in the case of individual businesses, which must be informed to the Banking Superintendency, through the Intendancy of Special Verification, in a form designed for such effect. The documentation stated in such form must be attached.
- b) **Substitution:** Together with the designation of the compliance officer, the liable persons must appoint the person who will substitute the compliance officer in case of temporary absence, who must have the conditions of exercise indicated in the present article. The designation of the deputy must be performed in accordance with the stated in the second paragraph of letter a) of the current article and it must be informed in the same way to the Banking Superintendency, through the Intendancy of Special Verification.
- c) **Faculties:** The compliance officer must have enough authority, rank, and access to all the information of the entity for the good exercise of the position; the officer will depend directly on the Board of Directors, the Administrations Board or the superior executive committee; or on the owner, in the case of individual businesses, who must give all the necessary support to the officer, as well as the corresponding human and technical resources.

The fulfillment of the conditions of exercise previously described, will be object of verification by the Banking Superintendency, through the Intendancy of Special Verification, and the noncompliance will rise to the administrative sanctions established in article 19 of the Law and regulatory scheme against money and other assets laundering, without detriment to the corresponding criminal and civil liabilities.

Article 7. Report of Suspicious Transactions of Terrorism Financing – RTS/FT - For effects of the fulfillment of the established in article 16 of the Law, the liable persons indicated in articles 15 and 18 of the same Law, must apply the form designed by the Banking Superintendency, through the Intendancy of Special Verification, and observe the terms and procedures established in article sixteen (16) of the Regulation of the Law against Money or other Assets Laundering.

The liable persons to which article 15 of the Law refers, that do not detect suspicious transactions of terrorism financing in a trimester, must inform this, through the compliance officer or the deputy to the Banking Superintendency, through the Intendancy of Special Verification, during the following month after the end of corresponding trimester.

This report and the one established in article 17 of the Regulation of the Law Against Money or Other Assets Laundering, may be presented together, by a letter, indicating that during the trimester there were no suspicious transactions detected, related to money or other assets laundering and related to terrorism financing.

Without detriment to the established in the final paragraph of article 18 of the Law, the liable persons indicated in letter e) of said article, will be able to report suspicious transactions of terrorism financing or they will lay a criminal complaint before the corresponding authority when they have acknowledgement of the possible perpetration of a crime defined in the Law.

Article 8. Extension. In the cases that the information contained in a Report of Suspicious Transactions of Terrorism Financing, is incomplete, confusing, ambiguous or contradictory, the Banking Superintendency, through the Intendancy of Special Verification, will be able to ask the corresponding liable person for the corresponding extensions to such report and the necessary documents.

Article 9. Funds Transfers. For the fulfillment of the established in articles 17 and 20 of the Law, the liable persons must use the form that for the effect the Banking Superintendency, through the Intendancy of Special Verification, will design, which must contain, at least, the following proper and significant information:

- a) Personal identification data of the ordinand;
- b) personal identification data of the beneficiary;
- c) Amount of the transaction;
- d) Number of the account and in its absence, a number identifying the transfer.

Special attention must be paid to the complete names and last names, address, place and date of birth, and number of identification document, as well as of the ordinand and of the beneficiary.

The Banking Superintendency, through the Intendancy of Special Verification, is authorized to issue guidelines or other type of complementary measures, necessary for the fulfillment of this article.

Article 10. Special regime of liable persons. For the fulfillment of the established in article 18 of the Law, the liable persons indicated in said article must send their general information, to the Banking Superintendency, through the Intendancy of Special Verification, when required, with a written notice and in a stated period. Special forms designed for this effect must be used.

When modifications are performed in the reported information, such liable persons will have to inform about these to the Banking Superintendency, through the Intendancy of Special Verification, in a period of (20) twenty days after the corresponding modifications were performed.

Article 11. Internal and external audit. The liable persons indicated in article 15 of the Law, who have internal audit must include, as part of the proceedings of this, the tending mechanisms to verify and evaluate the compliance of the programs, rules and proper procedures to the prevention and detection of terrorism financing. Independently from the previous, when they hire the services of an external audit, in the contract must be stated that the external auditors must issue a written opinion about the compliance of the programs, rules and proper procedures to the prevention and detection of terrorism financing, at least once a year. The liable persons must send a copy to the Banking Superintendency, through the Intendancy of Special Verification, of said opinion in a period no longer that fifteen (15) days after its reception.

In the case of entities subject to the surveillance and inspection of the Banking Superintendency, the proceedings in the previous paragraph referring to the internal audit must be performed at least once a year. A copy of the informs presented by said audit to the corresponding authority, should be sent to the Banking Superintendency, through the Intendancy of Special Verification, in a period no longer than fifteen (15) days after its reception.

Without detriment to the established in the current article, the Banking Superintendency, through the Intendancy of Special Verification, when it deems necessary, will be able to verify the compliance of the programs, rules and proceedings referring to the prevention and detection of terrorism financing.

Article 12. Sanction Procedure. For effect of the imposition of sanctions established by article 19 of the Law, the procedures established by the regulatory scheme against money and other assets laundering will be applied, observing the proper process.

Article 13. Civil confiscation. For the fulfillment of all the stated in article 10 of the Law, the *Procuraduría General de la Nación* [Roughly equivalent to the Office of the Solicitor General.] will act through the *Unidad de Abogacía del Estado* [Equivalent to the Unit of legal representative of the state.]

CHAPTER III COMMUNICATION OF ADMINISTRATIVE MEASURES

Article 14. Instruction of administrative measures. The Banking Superintendency, through the Intendancy of Special Verification, will be able to instruct the liable persons referred in articles 15 and 18 of the Law, in the way it deems pertinent, about the new measures that they should apply, including the concerning to the proceedings of designation of persons, whose assets or goods are suspected to be related with terrorism, as well as the special measures that in such cases must be applied.

Pursuant to the previous, the liable persons must perform the modifications in their compliance manuals when necessary.

The noncompliance of said instructions will be punished in accordance with the established in article 19 of the Law.

In case of finding information about the stated in the first paragraph of this article, the Banking Superintendency will be able to inform the *Ministerio Público* [Equivalent to the Department of Justice.], institution that will proceed in

accordance with the established in article 12 of the Law and in the regulatory scheme against money and other assets laundering.

CHAPTER IV TEMPORARY AND FINAL PROVISIONS

Article 15. Information of compliance officers. For effects of the stated in letters a), second paragraph, and b) of article 6 of the present Regulation, the liable persons must, in a period of forty (40) numbered days since the day of the legal force of the same, send to the Banking Superintendency, through the Intendancy of Special Verification, the information and documentation indicated in such letters, using the forms designed for the effect.

Article 16. Registration of the liable persons. Those who in accordance with the regulatory scheme against money and other assets laundering, the Law to Prevent and Suppress Terrorism Financing, and the present Regulation, are liable persons and have been created and authorized subsequent to the enforcement of such legal provisions, must proceed to their entry and / or registration, during a period of fifteen (15) numbered days since the beginning of their operations or since they display this capacity.

For effect of the previous, it is an essential requirement that the entry and / or registration must be performed using the form designed for the effect, to which the information described in the same form must be attached.

Article 17. Legal force. The present Agreement will begin to be in force eight (8) days after its publication in *Diario de Centro América*.

Let it be known

[Illegible signature.] Oscar Berger. [There appears a round rubberstamp that translates:] Presidency of the Republic. Guatemala, C.A.

[Illegible signature.] Marcio Cuevas Quezada. *Ministro de Economía*. [Equivalent to Secretary of Commerce. There appears an illegible round rubberstamp.

[Illegible signature.] Carlos Vielmann Montes. *Ministro de Gobernación*. [Equivalent to Secretary of Home Office. There appears an illegible round rubberstamp.

[Illegible signature.] Jorge Raúl Arroyave Reyes. Secretary-general of the Presidency of the Republic.