

DECREE NUMBER 67-2001

THE CONGRESS OF THE REPUBLIC OF GUATEMALA.

Whereas:

That the Government of Guatemala has subscribed and ratified international treaties with the commitment to prevent, control and punish the money or other assets laundering, in a way to protect the national economy and the stability and soundness of the Guatemalan financial system.

Whereas:

That it is obligation of the government to protect the creation of funds, savings and investments and to establish the proper conditions to promote the investment of national and foreign funds in the country, for which it is necessary to dictate the provisions of law to prevent the use of the financial system for the execution of illegal businesses. Therefore: In exercise of the faculties vested by article 171, letter a), of the Political Constitution of the Republic of Guatemala.

Decrees:

The following:

LAW AGAINST MONEY OR OTHER ASSETS LAUNDERING

CHAPTER I

Article 1. Purpose of the law. The current law has the purpose to prevent, control, surveil and punish the money or other assets laundering coming from the perpetration of any crime, and establishes the rules that for this effect, the liable persons to which article 18 of this law refers and the proper authorities, must observe.

CHAPTER II

OF THE CRIME, OF THE RESPONSIBLE PERSONS AND OF THE PENALTIES

SECTION I
OF THE CRIME

Article 2. Of the crime of money or other assets laundering. Commits the crime of money or other assets laundering the person who by his or herself or by mediation:

- a) Invests, converts, transfers or performs any financial transaction with goods or money, knowing, or that for reasons of his or her position, employment or profession is liable to know, that the same are product, come from, or are originated from the perpetration of a crime;
- b) Acquires, owns, administrates, has or uses goods or money knowing or that for reasons of his or her position, employment or profession is liable to know, that the same are product, come from, or are originated from the perpetration of a crime;
- c) Hides or withholds the determination of the true nature, the origin, the location, the destiny, the movement or the property of goods or money or of related rights to such goods or money, knowing or that for reasons of his or her position, employment or profession is liable to know, that the same are product of the perpetration of a crime.

Article 3. Extradition. The crimes stated in the current law will give place to the active or passive extradition in agreement with the law in force.

SECTION II
OF THE RESPONSIBLE PERSONS AND OF THE PENALTIES

Article 4. Individual persons. The responsible for the crime of money or other assets laundering will be punished with six to twenty years of immutable prison, plus a fine equal to the value of the assets, instruments or products used in the crime; the confiscation, loss or destruction of the objects from the perpetration of the crime or of the instruments used for the perpetration; the payment of costs and legal expenses; and the publication of the sentence in, and at least, two of the written mass media of greatest circulation in the country. If the crime was committed by a foreigner, in addition to the penalties deserved, this person will receive the penalty of deportation from the national territory, that will be executed immediately after fulfilling the other penalties.

Article 5. Juristic person. Independently of the criminal liability of the owners, directors, managers, administrators, officers, employees or legal representatives, the crimes covered in this law will be attributable to the juristic persons, when acts are performed by its regular bodies provided that they are in the line of normal or apparent purpose of their businesses. In this case, in addition to the applicable sanctions to the responsible persons, a fine of ten thousand dollars (US\$ 10,000.00) to six hundred twenty five thousand dollars (US\$ 625,000.00) or its equivalent in national currency, will be imposed to the juristic person, attending the importance and circumstances in which the crime was perpetrated and will be warned that in case of recurrence of infringement the annulment of its juristic personality will be

ordered decisively. The juristic person will also be punished with the confiscation, loss or destruction of the objects coming from perpetration of the crime or of the instruments used for the perpetration; the payment of costs and legal expenses, and the publication of the sentence in, and at least, two of the written mass media of greatest circulation in the country. When the juristic persons are subject to the surveillance and inspection of the Banking Superintendency, the judge will inform to said supervisor body about the corresponding conviction, for it to proceed to apply the measures contained in the laws.

Article 6. Other responsible persons. Those found responsible of participating in the proposition or conspiracy to commit the crime of money or other assets laundering, as well as the attempt to commit the crime, will be punished with the same penalty of imprisonment stated in article 4 for the committed crime, reduced to a third part and the other additional penalties.

Article 7. Specific aggravation. If the crime of money or other assets laundering was committed by those who have a position of popular election, an officer or public employee, or an officer or employee of the Intendancy of Special Verification, with occasion of the exercise to his or her position, will be punished with the corresponding penalty increased in a third part and the other additional penalties. In addition, the additional penalty of specific disability for the exercise of the position of public employment will be imposed for the double time of the custodial sentence.

Article 8. Of the confiscation of assets. For the effects of this law the confiscation consists of the loss, in favor of the government, of the assets, instruments or products used or that come from the perpetration of the crime of money or other assets laundering, declared in the sentence, unless they belong to a third party not responsible for the act. When the referred objects were of forbidden use or if they are not of lawful commerce, the confiscation will be ordered, even though the existence of the crime is not declared or the guiltiness of accused party or if it is ignored who is the responsible person for the crime.

CHAPTER III

SECTION I OF THE PROCEDURE

Article 9. Of the procedure. In the prosecution of the crimes and execution of the penalties established by this law, the procedure stated in the Processing Civil Code, for the crimes of public action, will be applied.

Article 10. Investigation confidence. For the nature of the crimes that the current law contemplates, with observance of the specified in the Political Constitution of the Republic, the legal measures, the procedural steps carried out during the preparatory procedure of the criminal case will be confident.

SECTION II PRECAUTIONARY MEASURES

Article 11. Precautionary measures. The judge or court acquainted with the process will be able to dictate at any time, without notification nor preliminary hearings, any precautionary measure or guaranty measure established in the law to preserve the availability of the goods, products or other instruments coming from or related to the crime of money or other assets laundering when required by the *Ministerio Público* [Equivalent to the Department of Justice.] This requirement must be known and settled immediately by the judge or court.

Article 12. Risk of delay. In case of risk of delay, the *Ministerio Público* [Equivalent to the Department of Justice.] will be able to order the impoundment, seizure, or freezing order of goods, documents and bank accounts, but it must request immediately the judicial recognition, together with the corresponding inventory of these and indicating the place where they are. If the judge or the court do not confirm the precautionary measure, it will order in the same act the return of the goods, documents or bank accounts objects of the same.

Article 13. Custody. The goods, products or instruments object of the precautionary measures will stay under custody of the *Ministerio Público* [Equivalent to the Department of Justice.] or the person appointed by this, who will be responsible for their conservation to join the process.

Article 14. Review. The decreed precautionary measures may be reviewed, revoked or modified at any time by the judge or court, by request, always ensuring the right for hearing.

Article 15. Destiny of goods, products or instruments object of the precautionary measures. When not possible to establish the holder of the right ownership or any other real right over the objects, instruments and products of the crime of money or other assets laundering subject to guarantee measures, or if these are not claimed during a crime of money or other assets laundering period of three months, the judge, with a preliminary hearing to those that according with the file may have legitimate interest over the same, will be able to authorize a temporary use of such goods, products or instruments to the authorities in charge of preventing, controlling, investigating and pursuing the crime of money or other assets laundering.

Article 16. Bona fide third parties. The measures and sanctions referred on articles 11, 12 and 15 will be applied unless the rights of bona fide third parties.

Article 17. Return of deposited goods. The judge or court of the case will be able to decide to return, as deposit during the process, to the claimer of the goods, products of instruments of lawful commerce when accredited and concluded in the collateral process that:

- a) the claimer has legitimate right over the goods, products of instruments;
- b) the claimer may not be accused of any kind of participation, collusion or implication regarding to the crimes of money or other assets laundering, object of the process.
- c) the claimer did not acquired any rights over the goods, products of instruments of the prosecuted person in circumstances that will reasonably lead to conclude that the right over those was transferred to the claimer to avoid the unexpected seizure of the same, and
- d) the claimer did everything reasonable to avoid the lawful use of the goods, products of instruments.

The claimer will be liable to show such goods, products of instruments when requested by the corresponding judge or court or the *Ministerio Público* [Equivalent to the Department of Justice.]

CHAPTER IV OF THE LIABLE PERSONS AND THEIR LIABILITIES

Article 18. Of the liable persons. For the effects of the present law, the following are considered liable persons:

- 1) Entities subject to surveillance and inspection by the Banking Superintendency.
- 2) Individual or juristic persons dedicated to brokerage or intermediation of securities trading.
- 3) Credit cards issuers and operators.
- 4) Off-shore entities that operate in Guatemala, which define themselves as entities dedicated to financial intermediation constituted or registered under the laws of other country and that perform their activities mainly out of the jurisdiction of said country.
- 5) Individual or juristic persons who perform any of the following activities:
 - a) Systematic or substantial operations of payment of checks.
 - b) Systematic or substantial operations of issuance, purchase or sale of traveler's checks or money orders.
 - c) Systematic or substantial fund transfers and /or capital flows.
 - d) Agencyship.
 - e) Financial leasing.
 - f) Purchase and sale of foreign currencies.
 - g) Any other activity that by nature of its operations may be used for money or other assets laundering , as established in the regulation.

Article 19. Programs. The liable persons must adopt, develop and perform suitable programs, rules, procedures and internal controls to avoid the inadequate use of its services and products in activities of money or other assets laundering. This programs will include, at least:

- a) Procedures that assure a high level of integrity of the personnel and of knowledge of the personal, working and patrimonial background of the employees.
- b) Permanent training to the personnel and instructions regarding the responsibilities and liabilities coming from this law. The training must also embrace the knowledge of techniques that allow the employees to detect the operations that might be related to the money or other assets laundering and the ways to proceed in such cases.
- c) Establishment of a mechanism of audit to verify and evaluate the compliance of programs and rules.
- d) The creation and development of specific measures to know and identify the clients. Likewise the liable persons must appoint managers in charge of surveil the compliance of the programs and internal procedures, as well as the maintenance and remittance of proper registries and the communication of suspicious and unusual transactions. This managers will be a link with the corresponding authorities. The Banking Superintendency, through the Intendancy of Special Verification must keep a vigil over the compliance of the established liabilities in this article.

Article 20. Prohibition of anonymous accounts. By no means, the liable persons will be able to keep anonymous accounts nor accounts under fake or inexact names. In the case of non nominative accounts, the liable persons must keep the registry that article 21 of this law refers to, which they will be under obligation to disclose by an order from the corresponding authority.

Article 21. Registries. The liable persons must keep a registry in the forms, designed for the effect by the Intendancy of Special Verification, of the individual of juristic persons with which they have commercial relationship or normal relationships of their businesses, even if these are occasional or customary clients; and of the operations performed with these persons, specially the regarding to the opening of new accounts, the performing of fiduciary transactions, rental of safe deposit boxes or of the performance of cash transactions that exceed the established amount in article 24 of the present law. Likewise, they must verify the identity, corporate name or name of the person, age, occupation or corporate purpose, marital status, address, nationality, personality, legal capacity and personality of the persons referred on the previous paragraph. In the case of foreigners, the liable persons must require a certified proof of their incomes and legal permanence in the country, and when they are not residents in the country, the identity of the person who will legally represent them.

Article 22. Identity of third parties. The liable persons must adopt the necessary measures to obtain, bring up to date, verify and maintain the information about the real identity of third parties in whose benefit an account is opened or if a transaction is performed when there is doubt that such third parties may be acting for their own benefit or, at the same time, they may be doing it in benefit of other third party, specially in the case of juristic persons that do not perform commercial, financial or industrial transactions in the country or in the country were they have its central office or domicile.

Article 23. Updating and maintenance of registries. The registries referred in articles 20, 21 and 22 of the present law, must be updated during the legal force of the commercial relationship, and maintain them at least for five years after the end of the transaction or after the cancellation of the account. Likewise, liable persons must maintain registries that will allow the reconstruction of the transactions exceeding the amount established in article 24 of the present law, at least during five years after the conclusion of the transaction.

Article 24. Liability of daily registries. The liable persons must have a daily registry, in the forms designed for the effect by the Intendancy of Special Verification, of all the cash transactions performed, even if these are occasional or customary clients, in national or foreign currency, and that exceed the amount of ten thousand dollars (US\$ 10,000.00) or its equivalent in national currency. The multiple cash transactions, as well as in national or foreign currency that together exceed the established amount in this article will be considered as one transaction if they are performed by or in benefit of the same person during one day.

Article 25. Declaration. Every natural or juristic person, national or foreign who carries to or from overseas, by his or herself or by mediation, money in cash or documents, for an amount higher than ten thousand dollars (US\$ 10,000.00) or its equivalent in national currency, must report it in the port of entry or the port of departure of the country, in the forms that for the effect will be designed by the Intendancy of Special Verification. The corresponding authority will be able to verify the information given in the affidavit contained in the form stated in the previous paragraph. If there is omission of the declaration or untruth of the same, the money or the related documents will be confiscated and put at the disposal of the authorities for the process of legal investigation.

Article 26. Communication of suspicious or unusual financial transactions. The liable persons will pay special attention to all the transactions, concluded or not, complex, unusual, significant and to all the patterns of non customary and to the non significant transactions but periodical, that do not have a clear economic or legal reason, and immediately communicate this to the Intendancy of Special Verification.

Article 27. Confidentiality of requested information. The liable persons will not be able to let know any person, except to a court or to the *Ministerio Público* [Equivalent to the Department of Justice.], that information has been requested or that they have given it to other court or proper authority.

Article 28. Liability to inform. The liable persons must give to the Intendancy of Special Verification the information requested in a way and period established in the regulation, related to data and documentation to which the previous articles refer, for the purposes of this law.

Article 29. Copy of the registries. The liable persons must send to the Intendancy of Special Verification, when requested, a copy of the registries to which articles 21, 22 and 24 of this law refer, in the way and period indicated by the regulation.

Article 30. Exemption of responsibility. The liable persons, their owners, directors, managers, administrators, officers, legal representatives and employees duly authorized who gave the information to fulfill this law, are expressly exonerated from legal, civil or administrative responsibility, and of any other kind.

Article 31. Procedure and sanctions. The liable persons to whom article 18 of this law refers will be responsible for the non-compliance of the liabilities that this law imposes and will be punished by the proper administrative authority with a fine of ten thousand dollars (US\$ 10,000.00) to fifty thousand dollars (US\$ 50,000.00), or its equivalent in national currency, according with the seriousness of the occurrence; in addition of having to comply with the omitted liability that

gave place to the sanction in the period fixed by the proper authority, and without prejudice to the legal responsibilities incurred.

CHAPTER V

SECTION I CREATION AND OPERATION OF THE INTENDANCY OF SPECIAL VERIFICATION

Article 32. Creation. The Intendancy of Special Verification is created inside the Banking Superintendency. It may be called just as Intendancy of with the abbreviation by initials *IVE*, that will be in charge of looking after the purpose and compliance of this law and its regulation, with the functions and attributions established in the same.

Article 33. Functions. The following are functions of the Intendancy of Special Verification:

- a) To require and / or receive from the liable persons all the information related with the financial , commercial or business transactions that might be linked to the crime of money or other assets laundering.
- b) To analyze the information obtained to confirm the existence of suspicious transactions, as well as operations or patterns of money or other assets laundering.
- c) To elaborate and maintain the necessary registries and statistics for the development of its functions.
- d) To exchange with similar entities of other countries information for the analysis of cases related to money or other assets laundering, with a previous subscription with this entities of understanding memoranda or other cooperation agreements.
- e) In case of evidence of the perpetration of a crime; to make the formal complaint before the proper authorities, to appoint and provide the means of proof of its acquaintance or in its possession.
- f) To provide to the *Ministerio Público* [Equivalent to the Department of Justice.] any required assistance needed in the analysis of information in its possession and contribute with the investigation of the acts and crimes related with the crime of money or other assets laundering.
- g) Impose to the liable persons the administrative fines in money corresponding for the omissions in the compliance of the liabilities imposed by this law.
- h) Others coming from the current law or from other legal dispositions and international settlements approved by the Government of Guatemala.

Article 34. Mutual legal assistance. With the purpose of facilitating the court procedures and the enquiries ordered by the court relative to the crimes referred by this law, the *Ministerio Público* [Equivalent to the Department of Justice.], the Intendancy of Special Verification and any other proper authority, will be able to give and request assistance to the proper authorities of other countries to:

- a) Receive the testimonials or take statements to the persons.
- b) Submit judicial documents.
- c) Perform inspections and seizures.
- d) Examine objects and places.
- e) Facilitate information and elements of proof.
- f) Submit originals or genuine copies of documents and files related to the case, including banking, financial and commercial documentation.
- g) Identify or detect the product, the instruments and other elements with purposes of proof.
- h) Any other way of mutual judicial assistance, authorized by the internal law.

All public or private entities are liable to give the collaboration requested by the Intendancy of Special Verification for the performance of the purposes of the current law.

Article 35. Administrative assistance. The *Ministerio Público* [Equivalent to the Department of Justice.], the Intendancy of Special Verification and any other proper authority will be able to give and request administrative assistance to proper authorities of other countries with the purpose of facilitating the actions that must be performed for the fulfillment of the purposes of the current law.

Article 36. Confidentiality. With the purpose of guarantying the confidentiality of the financial operations, the persons who integrate the Intendancy of Special Verification and any other person that for his or her position knows or has

access to the information related to this law, are liable to maintain it in confidence, even after having ceased the position. Nevertheless, the publication of data with statistic purposes is authorized, as long as it is published in a way that the persons or entities related may not be identified directly or indirectly.

Article 37. Destiny of the fines. The amount of the fines imposed by the administrative sanctions coming from the non-compliance of this law will be collected by the Banking Superintendency, who will allot fifty percent (50%) of this for the training of the personnel of the Intendancy of Special Verification, and the other fifty percent (50%) will increase its budget.

SECTION II OF THE INTENDANT OF SPECIAL VERIFICATION

Article 38. Management. The Intendancy of Special Verification /VE will be under the charge of an intendant and will have the necessary personnel for its operations.

Article 39. Qualities. The intendant of Special Verification must gather the following qualities:

- a) Be Guatemalan of the ones stated in article 144 of Political Constitution of the Republic.
- b) Have more than thirty years of age.
- c) To be of recognized honesty and professional capacity.
- d) To be in the benefit of his or her legal rights.
- e) To be a professional with an academic degree, with preference in economic, financial or legal matters.
- f) Have had practiced his or her profession at least for five years.

Article 40. Impediments. Cannot be appointed for the position of intendant of Special Verification:

- a) Leaders of organizations with political, guild, business or trade-union character.
- b) Ministers of any cult or religion.
- c) Relatives in the fourth degree of relationship by consanguinity or second degree of relationship by affinity of the President or Vice-president of the Republic; of the Presidents of the government bodies; of the ministers or viceministers of the government or of the members of the Monetary Board and of the associates of the liable persons to whom this law refers, whose participation is equal or higher to the five percent (5%) of the paid up capital, as well as of the directors or administrators of these.
- d) The associates whose participation is equal or higher to the five percent (5%) of the paid up capital, directors of administrators of the liable persons to whom this law refers.

Article 41. Appointment. The intendant of Special Verification will be appointed by the Monetary Board, by proposal of the Banking Superintendent.

Article 42. Temporary substitution of the intendant. In case of temporary absence of the intendant of Special Verification, by any cause, he or she will be substituted by the officer appointed by the Banking Superintendent.

Article 43. Right of impeachment. No criminal proceedings will be able to commence against the Banking Superintendent or the Intendant of Special Verification, or the deputies in the exercise of their positions, without the previous declaration of the Supreme Court of Justice.

CHAPTER VI FINAL PROVISIONS

Article 44. Regulation. The regulation of this law must be developed by the Banking Superintendency, through the Intendancy of Special Verification, during the following sixty days of its legal force, and subject to the knowledge and consideration of the President of the Republic for its approval. The regulation of this law must be approved during the following ninety days after this law comes into force.

Article 45. Beginning of operations. The Intendancy of Special Verification /VE will begin its operations during the one hundred and eighty days after the date this law comes into force.

Article 46. Prevalence of this law. The provisions of this law will prevail over any other previously dictated, or later dictated, related to the same matter, in identical or similar way, except if expressly repealed.

Article 47. Repealing. Decree number 51-2001 of the Congress of the Republic is repealed.

Article 48. Legal force. The present decree will come into force the day of its publication in *Diario Oficial*.

GO TO THE EXECUTIVE BODY FOR THE SANCTION, ENACTMENT AND PUBLICATION.

GIVEN IN THE PALACE OF THE LEGISLATIVE BODY, IN GUATEMALA CITY, ON NOVEMBER 28TH, 2001.

[Illegible signature.] José Efraín Ríos Montt. President.

[Illegible signature.] Jorge Alfonso Ríos Castillo. Secretary.

[Illegible signature.] Edgar Herman Morales. Secretary.

SANCTION TO DECREE OF THE CONGRESS NUMBER 67-2001.

National Palace: Guatemala, December 11th, 2001.

PUBLISH AND FULFILL.

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

[Illegible signature.] Major General Eduardo Arévalo Lacs. *Ministro de Gobernación* [Roughly equivalent to Secretary of Home Office. There appears a round rubberstamp that translates:] *Ministerio de Gobernación* [Equivalent to the Home Office.] Guatemala, C.A.

[Illegible signature.] J. Luis Mijangos C. General Secretary. Presidency of the Republic.