

Congress of the Republic of Guatemala
DECREE NUMBER 58-2005
THE CONGRESS OF THE REPUBLIC OF GUATEMALA

Whereas:

That terrorism undermines the basis in which society is founded and produces instability in the economy, politics, culture and in general in the welfare of human beings; and that the number and seriousness of the international terrorism acts depend on the financing the terrorists may obtain, which is motive of profound concern for all the international community.

Whereas:

That the Government of Guatemala has subscribed and ratified international treaties with the commitment of elaborating and adopting effective and practical measures to prevent the terrorism financing in national territory, as well as to repress it through the judging and punishment to the perpetrators, to protect the stability and the constitutional order of Guatemala.

Therefore:

In exercise of the attributions Therefore: In exercise of the attributions conferred by article 171, letter a) of the Political Constitution of the Republic of Guatemala,

DECREES:

The following:

LAW TO PREVENT AND REPRESS TERRORISM FINANCING

CHAPTER I
GENERAL DISPOSITIONS

Article 1. Objective. The current law is declared of public interest and has as objective to adopt measures for the prevention and repression of terrorism financing. The terrorism financing is considered a crime against humanity and against the international right.

Article 2. Article 391 of Criminal Code, Decree number 17-73 of the Congress of the Republic is amended, and stays like this:

“**Article 391. Terrorism.** Commits the crime of terrorism, who, with the purpose of altering the constitutional order, the public order of the Government or coercing a juristic person of Public Right, national or international, attempts against human life or integrity, property or infrastructure, or who with the same purpose executes acts to provoke fires or cause railroad, nautical, fluvial or air destructions or disasters.

The responsible for this crime will be punished with immutable prison of ten (10) to thirty (30) years, plus a fine of twenty five thousand dollars (US\$ 25,000.00) to eighty thousand dollars (US\$ 80,000.00), or its equivalent in national currency. If explosive materials of great power of destruction were used for the perpetration of the crime, the responsible person or persons will be punished with the double of the fines.”

Article 3. Supplementary rules. The rules contained in the Criminal Code and in the Processing Criminal Code will be applicable to the established in the present law, to all that is not contradicted. In the criminal prosecution of the crimes and execution of the penalties established in the present Law, the procedure stated in the Processing Criminal Code for crimes of criminal action, will be applied.

CHAPTER II
OF THE CRIMES, THE RESPONSIBLE PERSONS AND THE PENALTIES

Article 4. Of the crime of financing terrorism. Commits the crime of financing terrorism who by any means, directly or indirectly, by his or herself or by mediation, in a deliberated way, gives, provides, collects, transfers, delivers, acquires, possesses, administrates, negotiates or manages money or any other kind of goods, with the intention to use the same, knowing that they will be used, all or just a part, for terrorism.

Likewise, commits this crime who performs some of the acts defined as financing of terrorism in any of the international arrangements approved and ratified by Guatemala.

The person guilty of this crime will be imposed non-commutable prison of six (6) to twenty five (25) years plus a fine of ten thousand dollars (US\$ 10,000.00) to six hundred and twenty five thousand dollars (US\$ 625,000.00), or its equivalent in national currency.

To commit a crime of terrorism financing, it will not be necessary to perform the terrorist acts, but it is a crime if there is a demonstration, by external material signs, of the intention to commit such acts. Neither will be necessary to have initiated an investigation, criminal proceedings or that a verdict of guilty was pronounced over the terrorist acts.

Article 5. Special aggravation. Who, being employee or public officer, commits the crime of terrorism financing, in advantage of his or her position, the same penalty will be applicable but increased in a third part. In addition the further penalty of the particular disability for the exercise of the position or public rank will be imposed, by the double time of the custodial sentence.

Article 6. Non applicable justifications. The crime of terrorism financing will not be justified, in any circumstances, by considerations of politic, philosophic, ideological, racial, religious or other similar nature.

Article 7. Criminal liability of juristic persons. Will liable to prosecution to juristic person, independently of the criminal responsibility of their owners, directors, managers, administrators, officers, employees or legal representatives, the crimes foreseen in this Law, regarding the acts performed by their regular bodies.

In this case, in addition to the applicable sanctions to the responsible persons, a fine will be imposed to the liable person, equivalent to the amount of the goods object of the crime, and will be notified that in case of recurrence of infringement the annulment of its juristic personality will be ordered definitely.

The juristic person will also be punished with the confiscation, loss or destruction of the objects coming from the perpetration of the crime or from the instruments used for the perpetration, the payment of the costs and legal expenses and the publication of the sentence in, at least, two of the written mass media of greatest circulation in the country.

When regarding to the juristic persons subject to surveillance and supervision of the Banking Superintendency, the judge will notify to said supervisor body the corresponding given sentence, for it to proceed to apply the measures contained in the corresponding laws.

Article 8. Transferring of money. Commits the crime of transferring money who, omitting the performance of the corresponding affidavit in the port of departure of entry to the country, in the forms established by the Law Against Money or Other Assets Laundering, by his or herself or by mediation; carries, to or from abroad money in cash or negotiable documents payable to the bearer, for an amount higher than ten thousand dollars (US\$ 10,000.00), or its equivalent in national currency.

The responsible person of this crime will be punished with one to three years of prison.

The imposition of the corresponding penalties for the perpetration of this crime will be understood without detriment to the precautionary measures that proceed in case of the existence of omission of the affidavit or the existence of untruth in the same.

Article 9. Confiscation of goods. Without detriment to the main penalties determined for the crime of terrorism financing, the money or goods coming from the same or the product of these, will be confiscated in accordance with the established in the in force general legislation, except for the established in this article.

The goods object of the confiscation for the crimes established in the current Law, may be returned in accordance with the established in articles 15, 16 and 17 of the Law Against Money or Other Assets Laundering, in what they are applicable.

Article 10. Civil confiscation of goods. Without detriment to the established in the previous article, the *Procuraduría General de la Nación* [Roughly equivalent to the Office of the Solicitor General.], in representation of the Government, may request before a proper judge of the civil section, the money or goods to be object of civil confiscation, when they were used or will be used to finance terrorism.

The present action will be conducted in oral proceedings and will be independent of any criminal action related to this subject. The judge knowing about the present action will certify the conducive to the proper court of the criminal section, if it proceeds.

The goods object of the civil confiscation will be property of the government.

Article 11. Other perpetration degrees. Those responsible of participating in the proposal of conspiracy to commit any of the stated crimes in this Law, as well as the attempt of perpetration, will be punished with the same penalty of prison stated for the case of a committed crime, reduced in a third part, and other corresponding further penalties.

CHAPTER III PROCEDURE AND PRECAUTIONARY MEASURES

Article 12. Procedure and precautionary measures. The related to the procedure, confidentiality of investigation and precautionary measures of the crimes established in the present Law, will be controlled by the dispositions contained in the Law Against Money or Other Assets Laundering, in what does not oppose to the present Law.

CHAPTER IV

EXTRADITION, REFUGE, AND ASYLUM

Article 13. Extradition. The crimes contemplated in the present Law will give place to active or passive extradition in accordance with the Politic Constitution of the Republic, the international treaties that Guatemala is part of and the in force legislation.

Article 14. Refuge and asylum. The proper authorities of Guatemala will reject the quality of refugee to persons who have had committed the crimes of terrorism financing or that being aware, collaborated with the perpetration of such crime.

CHAPTER V REGIME OF LIABLE PERSONS AND ADMINSTRATIVE MEASURES

Article 15. Regime of liable persons. For the effects of the present Law, are considered liable persons the ones established in the Law Against Money or Other Assets Laundering, in its regulation and other dispositions related to this matter. For the effect, will be applicable the same regime, duties, liabilities, policies for acknowledgment of their clients and prohibitions that such regulation scheme establishes.

The liable persons that the current Law refers to, who already are registered as liable persons, who already appointed compliance officers and have registries of clients and employees, in accordance with the regulation scheme against money or other assets laundering, only will have to add to the prevention of terrorism financing, the other control, prevention measures and other duties established in such regulation scheme.

The compliance officers appointed by the liable person in accordance with the regulation scheme against money or other assets laundering must extend their functions and attributions to the fulfillment of the regulation scheme against financing of terrorism.

The destiny of the fines imposed for the application of the present Law or other applicable dispositions, will be managed by the stated in the regulation scheme against money of other assets laundering.

Article 16. Report of suspicious transactions –RTS- The liable persons must report promptly and with duly diligence to the Banking Superintendency, through the Intendancy of Special Verification, all transactions that apparently do not have an obvious lawful purpose, or when suspected or if there are reasonable signs to suspect that there are funds linked with or that might be used to finance terrorism.

For the effect, liable persons must apply the corresponding procedures established in the regulation of this Law, and in its absence, in the regulation scheme against money or other assets laundering, inclusive the relative to the registry of unusual transactions not informed to the proper authorities.

Article 17. Fund transfers. In the case of the systematic, substantial, cablegram or electronic fund transfers, and related messages, the liable persons must collect proper and significant information about the person performing the transfer, inside or outside the national territory, in accordance with the established by the regulation of the present Law. Such information must be kept with the transfer or related message through the chain of payment.

The liable persons will pay special attention to the transfers that do not contain all the information referred in the previous paragraph and, in case of considering the transactions suspicious, they must report them to the Intendancy of Special Verification.

The non-compliance of these dispositions will be punished in accordance with the established in article 19 of this Law.

Article 18. Special regime. Is created a regime of persons that, by nature of their activities will be liable to provide the Banking Superintendency through the Intendancy of Special Verification, with information and reports, when required, for the compliance of their functions. Likewise, will allow such Superintendency to have free access to all their sources and systems of information for the verification or the extension of the information provided by them, or when necessary for the analysis of cases related to terrorism financing.

This special regime will be applicable to individual or juristic persons who perform the following activities:

- a) Activities of property promotion or purchase and sale;
- b) Activities purchase and sale of vehicles;
- c) Activities related with commerce of jewelry, stones and precious metals;
- d) Activities related with the commerce of art objects and antiques;
- e) Notaries, public accountants and auditors; and expert accountants; and
- f) Any other activity that by nature of its operations might be used for terrorism financing, for which, the President of the Republic will be able to make extensive the special regime established by the present article or any other kind of activities.

In all the rest, will be applicable the liabilities established in article 16 of the present Law and 28 of the Law Against Money or Other Assets Laundering, except for the case of the persons indicated in letter a) of the present article, who will not be liable to fulfill with the stated in article 16 of the present Law.

Article 19. Sanctions. The persons referred in articles 15 and 18 of the present Law, will be responsible for the non-compliance of the liabilities this Law imposes them, its regulation, or other dictated dispositions in this matter; 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, attending the seriousness of the occurrence, in addition to fulfilling with the omitted liability that gave place to the punishment, in the period fixed by the proper authority, without detriment to criminal and civil responsibilities incurred.

Article 20. Function of the Intendancy of Special Verification –IVE–. The Banking Superintendency, through the Intendancy of Special Verification, will be the institution in charge of keeping a vigil over, strictly in the administrative scope, the compliance of the objective of the present Law; for the effect it will have the same faculties, functions and attributions conferred by the Law Against Money or Other Assets Laundering, its regulation and other dispositions related to this matter.

All public or private entities will be liable to render the collaboration requested by the Banking Superintendency, through the Intendancy of Special Verification, for the performance of the objectives of the current Law.

In case of evidence of the perpetration of the crimes stated in the current Law, it must be informed to the proper authorities.

The Banking Superintendency, through the Intendancy of Special Verification, will render collaboration and assistance to the *Ministerio Público* [Equivalent to the Department of Justice.] in the subject of terrorism financing, function that will stay strictly limited to the unit or prosecuting authority specifically designated for the effect in the organization structure of said institution, with basis on written request of the fiscal agent in charge of the unit or prosecuting authority, which will be a link between the Intendancy and the *Ministerio Público* [Equivalent to the Department of Justice.]

CHAPTER VI INTERNATIONAL COOPERATION

Article 21. 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.] and the proper judicial authorities will be able to render and request assistance to the proper authorities of other countries to:

- a) Receive testimonials or take declaration of the persons.
- b) Submit judicial documents.
- c) Perform inspections and seizures.
- d) Examine objects and places.
- e) Facilitate information and elements of proof.
- f) Deliver originals or genuine copies of documents and files related to the case, including bank, financial y commercial information.
- g) Identify or detect the products, instruments and other elements with probative purposes.
- h) Any other mutual form of judicial assistance authorized by internal laws.

Proper authorities also will be able to render or request assistance to the proper authorities of other countries to establish the identity, the whereabouts and the activities of the persons who have reasonable suspicions that they participate in the crime of terrorism financing.

Article 22. Transfer of persons. The persons detained or serving a sentence in national territory, may be transfer to another government, as long as they have judicial authorization and as long they have purposes of rendering testimonial or of identification or to help obtain necessary proof for the investigation or the judging of the crimes established in the international instruments that Guatemala is part of. For effect, the compliance of the following conditions will be necessary: a) That the person freely renders acknowledgment, once informed, and; b) That both governments agree as provided by the conditions that they consider appropriate, specially in regard to the time of the duration of the diligence. For the effects of the present article, the proper authorities of Guatemala, under its most strict responsibility, must keep vigil over the compliance of the following requirements:

- a) The government to which the person is being transferred will be authorized and liable to maintain this person detained and under the proper custody, except if the government that is transferring the person, requests or authorizes something else.

- b) The government to which the person is being transferred will fulfill without delay its liability of returning the custody to the government from which the person was transferred.
- c) The government to which the person is being transferred will not be able to demand the government from which the person was transferred, to initiate extradition procedures for the return.
- d) The time that the person was detained in the government to which was transferred will be taken into account, for the effects of reducing it from the penalty to fulfill in the government from which was transferred.
- e) The person will not be submitted to any other restriction of his or her personal freedom in the territory of the government he or she is transferred, in regard to acts and sentences previous to the departure of the territory of the government from which was transferred.
- f) The cost of the transfer, custody and security of the persons transferred, will be paid by the government to which the person is being transferred.

The proper authorities of Guatemala are authorized to promote the entering into agreements with other governments regarding this subject.

Article 23. Administrative assistance and exchange of information. The administrative assistance and exchange of information that the Intendance of Special Verification performs with similar entities of other countries; regarding terrorism financing matters, will be controlled by the established in the Law Against Money or Other Assets Laundering. For this effect, the understanding memoranda or the cooperation agreements subscribed regarding money or other assets laundering may include the relating to terrorism financing.

Without detriment to the previous, the Banking Superintendency, through the Intendancy of Special Verification, will be able to enter into understanding memoranda for the exchange of information regarding terrorism financing.

CHAPTER VII TEMPORARY AND FINAL PROVISIONS

Article 24. Regulation. The regulation of this Law must be elaborated by the Banking Superintendency, through the Intendancy of Special Verification, and submitted to consideration of the President of the Republic for its approval, within a period of one hundred and twenty days following to the legal force of this Law. The regulation of this Law must be approved within a period of thirty days after it is submitted to the consideration of the President of the Republic.

Article 25. Subscribed understanding memoranda. The understanding memoranda and the cooperation agreements that to the date of the legal force of the present Law, are already subscribed regarding money or other assets laundering, may be extended with the purpose of including the related to terrorism financing.

Article 26. Legal force. The current decree will come into force the day of its publication in *Diario Oficial*.

**SUBMIT TO THE EXECUTIVE BODY FOR ITS SANCTION, ENACTMENT AND PUBLICATION.
ISSUED IN THE PALACE OF THE LEGISLATIVE BODY, IN GUATEMALA CITY, ON AUGUST 31ST, 2005.**

[Illegible signature.] Jorge Méndez Herbruger. President.

[Illegible signature.] Luis Fernando Pérez Martínez. Secretary.

[Illegible signature.] Francisco Javier Del Valle. Secretary. [There appears an illegible round rubberstamp.]

NATIONAL PALACE: Guatemala, September 26th, 2005.

PUBLISH AND FULFILL.

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

[Illegible signature.] Carlos Vielmann Montes. *Ministro de Gobernación*. [Equivalent to Secretary of Home Office. There appears a round rubberstamp that translates:] *Ministro de Gobernación*. [Equivalent to Secretary of Home Office.] Secretary Office. Guatemala, C.A.

[Illegible signature. Illegible.] Giovanni Verbena. Vice-minister of Treasury. [Illegible. There appears an illegible round rubberstamp.]

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