

DECREE NUMBER 67-2001

THE CONGRESS OF THE REPUBLIC OF GUATEMALA

WHEREAS: That the State of Guatemala has subscribed and ratified international treaties with the commitment of avoiding, controlling and sanctioning money laundering and the laundering of other assets, in order to protect the national economy and the stability and solidness of the Guatemalan financial system.

WHEREAS:

It is the obligation of the State to protect the formation of capital, savings and investment, and create the adequate conditions in order to promote investment in the country of national and foreign capital, making it necessary to dictate the legal agreements to prevent the use of the financial system for illegal negotiations.

THEREFORE:

The exercise of the attributions conferred in article 171, clause a), of the Political Constitution of the Republic of Guatemala.

DECREES:

The following:

LAW AGAINST MONEY AND OTHER ASSETS LAUNDERING

CHAPTER I

ARTICLE 1. Objective of the law. The present law has the objective of avoiding, controlling, watching and sanctioning money laundering and the laundering of other assets obtained in crimes, and establishes the norms that for this effect must be observed by the obligated persons referred to in article 18 of this law and the competent authorities

CHAPTER II

OF THE CRIME, OF THOSE RESPONSIBLE AND OF THE PENALTIES

SECTION I

OF THE CRIME

ARTICLE 2. Of the crime of Money laundering and the laundering of other assets. The crime of money laundering and the laundering of other assets is committed by the person themselves, or by an intermediary when:

- a) They invest, convert, transfer or perform any financial transaction with goods or money, knowing, or by reason of their position, employment, office

or profession is obligated to know, that these are product, proceed or are originated from a committed crime:

- b) Those who acquire, possess, administer, have or use goods or money knowing or by reason of their position, employment, office or profession is obligated to know, that these are product, proceed or are originated from a committed crime:
- c) Those who hide or obstruct the determination of the true nature, the origin, the location, the destination, the movement or the proprietorship of goods or money or of relative rights of goods or money, knowing or by reason of their position, employment, office or profession is obligated to know, that these are product, proceed or are originated from a committed crime:

ARTICLE 3. Extradition. The contemplated crimes in the present law will give way to the extradition of assets or liabilities, according to the current legislation.

SECTION II

OF THOSE RESPONSIBLE AND OF THE PENALTIES

ARTICLE 4. Individual Persons. The person responsible for the crime of money laundering and the laundering of other assets will be sanctioned with incommutable prison for six to twenty years, plus a fine equal to the value of the goods, instruments or products object of the crime; the confiscated goods, loss or destruction of the objects that are from the committing of the crime or of the instruments used for the committing; the payment of processing costs and expenses; and the publication of the sentence in, at least, two of the daily media publications of major circulation in the country. If the crime were committed by a foreigner the penalty of expulsion of the country will also be imposed, with the others, which will be executed immediately after having fulfilled all the other sentences.

ARTICLE 5. Juridical Persons. Juridical persons will be imputable, independently of the penal responsibility of the proprietors, directors, managers, administrators, officials, employees or legal representatives, for the crimes mentioned in this law, when it is about actions committed by their regular operations within the normal objective or apparent normality of the business.

In this case, added to the applicable sanctions of those responsible, the juridical person will be imposed with 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, pointing out the gravity and circumstances in which the crime was committed, and they will be warned that in the case of repeating the offense, the juridical personality will be cancelled definitely.

The juridical person will be sanctioned with the confiscation, loss or destruction of objects that are from the committing of the crime or of the instruments used for the committing; the payment of processing costs and expenses; and the publication of

the sentence in, at least, two of the daily media publications of major circulation in the country. When it is about juridical persons subject to surveillance and inspection of the Superintendence of Banks, the judge will notify the supervising branch of the sentence, so that it can proceed to apply the contained measures in the laws of the matter.

ARTICLE 6. Others responsible. Those who are found responsible of participating in the proposition or conspiracy of committing the crime of money laundering and the laundering of other assets as well as the tentative of committing, will be sanctioned with the same penalty of prison mentioned in article 4 for the crime consummated, reducing a third, and other accessory penalties.

ARTICLE 7. Specific Aggravation. If the crime of money laundering and the laundering of other assets were committed by those who are holding popularly elected offices, an official, or public employee or an official or employee of the Special Verification Intendance, in the exercise of this position, will be sanctioned with the corresponding penalty increased by a third, and other accessory penalties. Also, the accessory penalty will be imposed for the special disqualification for the exercise of charge or public employee for double the time of the penalty of deprivation of liberty.

ARTICLE 8. Of the confiscation of goods. For the effects of this law the confiscation consists in the loss of favor of the State of the goods, instruments or products used or from the committing of the crime of money laundering and the laundering of other assets, declared in sentence, unless they belong to a third party, not responsible of the deed.

When the referred objects were of prohibited use or not of lawful commerce, the confiscation will be ordered even though the existence of the crime or the culpability of the indicated or accused is declared, or if the person of the crime is unknown.

CHAPTER III

SECTION I

OF THE PROCESS

ARTICLE 9. Of the process. In the penal persecution of the crimes and the execution of penalties established by law, the process signaled by the Penal Processing Code will be applied for the crimes of public action.

ARTICLE 10. Reservation of Investigation. Due to the nature of the crimes, the present law contemplates, with the observance of the prescribed in the Political Constitution of the Republic, the proceedings and the actions made in the course of the preparation procedures of the penal process will be reserved.

SECTION II

CAUTIONARY MEASURES

ARTICLE 11. Cautionary Measures. The judge or court that knows the process can dictate at any time, without notification or previous audience, any cautionary measure or guarantee measure established in the law directed to preserving the availability of the goods, products or instruments from or related to the crime of money laundering and the laundering of other assets, when requested by the *Ministerio Público* (equivalent to the Department of Justice). This requirement will be heard and resolved by a Judge or court immediately.

ARTICLE 12. Danger of Delay. In case of danger due to delay, the *Ministerio Público* (equivalent to the Department of Justice) will be able to order the seizure, embargo or immobilization of goods, documents and bank accounts, but it must request the judicial confirmation immediately, accompanied by inventory of these and indicating the place where they were found. If the judge or the court does not confirm the cautionary measures, it will order at the same time the return of the goods, documents or bank accounts, object of the seizure.

ARTICLE 13. Custody. The goods, products or instruments object of the precautionary measures will be in the custody of the *Ministerio Público* (equivalent to the Department of Justice) or of the person that it designates, who will be responsible of its conservation for the incorporation to the process.

ARTICLE 14. Revision. The precautionary measures decreed can be revised, revoked or modified at any time by the Judge or Court, at the request of the party, in every case the right to hearing is guaranteed.

ARTICLE 15. Destination of the goods, products or instruments object of the precautionary measures. When it is not possible to establish the property right of title or of any other real right over the objects, instruments and products of the crime of money laundering and the laundering of other assets subject to guarantee measures, or if they are not claimed during a three month period, the judge could, prior hearing for those according to what is stated in the file could be legitimately interested, authorize the temporary use of said goods, products or instruments for the authorities in charge of preventing, controlling, investigating and persecuting the crime of money laundering and the laundering of other assets.

ARTICLE 16. Third party of good faith. The measures and sanctions referred in articles 11, 12 and 15 will be applied except the rights of third parties of good faith.

ARTICLE 17. Return of goods in deposit. The judge or court on the case could decide to return, as a deposit during the process, the goods, products or instruments of lawful commerce to the claimant, when the following have been accredited and concluded incidentally:

- a) The claimant has legitimate right to the goods, products or instruments;
- b) The claimant can not be indicted for any participation, complicity or implication regarding the crime of money laundering and the laundering of other assets, object of the process.
- c) The claimant did not acquire any right to the goods, products or instruments of the processed person in circumstances that would reasonably lead to believe that the right over them was transferred to avoid the eventual seizure, later and
- d) The claimant did everything reasonable to forbid the illegal use of the goods, products and instruments.

The claimant will have the obligation to exhibit said goods, products or instruments when requested by a competent judge or court or by the *Ministerio Público* (equivalent to the Department of Justice).

CHAPTER IV

OF THE OBLIGATED PERSONS AND THEIR OBLIGATIONS

ARTICLE 18. Of the obligated persons. For the effects of the present law, obligated persons are the following:

- 1) The entities subject to surveillance and inspection of the Superintendence of Banks.
- 2) The individual or juristic persons dedicated to brokerage or to intermediation of the negotiation of values.
- 3) The issuing and operating entities of credit cards.
- 4) The off-shore entities that operate in Guatemala, that are defined as intermediary financial companies constituted or registered under the laws of other countries and that work mainly outside the jurisdiction of the country.
- 5) The individual or juristic persons dedicated to the following activities:
 - a) Systematic or substantial operations of cashing checks.
 - b) Systematic or substantial operations of issue, sale or purchase of traveler's checks or money orders.
 - c) Systematic or substantial transfers of funds and/ or capital movement.
 - d) Factorage.
 - e) Financial leasing.
 - f) Purchase-sale of foreign currency.
 - g) Any other activity that due to the nature of its operations could be used for money laundering and the laundering of other assets, as is established in the regulations.

ARTICLE 19. Programs. The obligated persons must adopt, develop and execute programs, norms, procedures and ideal internal controls to avoid the incorrect use of their services and products in activities for money laundering and the laundering of other assets. These programs must include as a minimum:

- a) Procedures that assure the high level of integrity of the personnel and the knowledge of personal, work and patrimonial antecedents of the employees.
- b) Permanent training of personnel and instruction as to the responsibility and obligations derived from that law. The training must also cover the techniques that allow employees to detect the operations that could be linked to money laundering and the laundering of other assets and the ways to proceed in said cases.
- c) Establish auditing mechanisms for verification and evaluation of the fulfillment of programs and norms.
- d) The formulation and setting in motion of specific measures to get to know and identify clients.

Also, the obligated persons must designate managing officials in charge of overlooking that these programs and internal procedures are fulfilled, as well as the fulfillment of the obligations the present law imposes, including the maintenance and forwarding of adequate registries and the communication of suspicious and unusual transactions. These officials will serve as liaison with the competent authorities. The Superintendence of Banks, through the Special Verification Intendance must watch over the fulfillment of the obligations established in the present article.

ARTICLE 20. Prohibition of anonymous accounts. In no case will obligated persons maintain anonymous accounts nor accounts under fictitious or inexact names. In the case of non-nominative accounts, the obligated persons must maintain the registry referred to in article 21 of this law, which they will be obligated to exhibit through the order of a competent authority.

ARTICLE 21. Registries. The obligated persons must have a registry in the forms that will be designed by the Special Verification Intendance for individual or juristic persons with whom they establish commercial relations or draft or apparent of their business, whether they are occasional or habitual clients; and of the operations that they make, particularly when it refers to new accounts, fiduciary transactions in cash over the amount established in article 24 of the present law.

Also, they must truly verify the identity, business name or denomination of the person, age, occupation or social objective, marital status, domicile, nationality, legal capacity, and personality of the persons referred to in the previous paragraph. In case of foreigners, the obligated persons must demand authentic proof of income and legal permanence in the country, as well as their migratory condition and when they are not residents of the country, the identity of the person who will represent them legally.

ARTICLE 22. Identity of Third Parties. The obligated persons must adopt the necessary measures to obtain, make current, verify and conserve information

on the true identity of third parties, who are the beneficiaries of the accounts or when a transaction takes place that raises suspicion that the third party is acting on their own behalf, or at the same time acting on behalf of another third party, especially in the case of juristic persons that do not make commercial, financial or industrial operations in the country or in the country where they are domiciled or have their office.

ARTICLE 23. Keeping current and conserving registries. The registries referred to in articles 20, 21 and 22 of the present law, must be kept current during the commercial relationship, and conserved at least five years after the finalization of the transaction or the closing of the account. Equally, the obligated persons must maintain registries that allow the reconstruction of the transactions that are over the signaled amount in article 24 of the present law, for at least five years after the conclusion of the transaction.

ARTICLE 24. Obligation to daily registries. The obligated persons will have a daily registry, in the forms designed for that effect by the Special Verification Intendance of all transactions made in cash, whether occasional or habitual, in national or foreign currency, and that are over the amount of ten thousand United States dollars or their equivalent in national currency. The multiple transactions in cash, of national or foreign currency that together add up to the established amount in this article will be considered an only transaction if they are made in or for the benefit of the same person in one day.

ARTICLE 25. Declaration. Every natural or juristic person, national or foreign that transports money in cash or documents, to or from the republic, for themselves, or an intermediary, in the sum of or over ten thousand United States dollars or its equivalent in national currency, must report it in the port of entry or exit of the country in the forms made for that effect by the Special Verification Intendance. The competent authority can verify the information presented in a sworn statement contained in the form referred to in the previous paragraph. In case of omission of declaration or falsehood, the related money or documents will be confiscated and given to the authorities for the due process of criminal investigation.

ARTICLE 26. Communication of suspicious or unusual financial transactions. The obligated persons will pay special attention to all the transactions, concluded or not, complex, unusual, significant, and all patterns of transactions that are not habitual and the transactions that are not significant but periodical, that have no economic foundation or evident legal, communicating it immediately to the Special Verification Intendance.

ARTICLE 27. Reserve of the Requested Information. The obligated persons can not divulge the information, except to a court or to the *Ministerio Público* (equivalent to the Department of Justice), that information has been requested or has been presented to another court or competent authority.

ARTICLE 28. Obligation to Inform. The obligated persons must provide the Special Verification Intendance of the information that it requests in the form and term established in the regulation, regarding data and documentation referred to in the previous articles, for the purposes of that law.

When the obligated to provide information can not do it in a stipulated time by the Special Verification Intendance, they can request an extension with the due anticipation explaining the reasons that justify and this must be resolved before the conclusion of the term established originally.

No breach of confidentiality must occur at any moment, of for any reason, imposed by law or by contract, of the information that the obligated persons must provide the competent authorities with in fulfillment of this law or the agreements that regulate it

ARTICLE 29. Copy of the Registries. The obligated persons must send a copy of the registries referred to in articles 21, 22 and 24 of this law, in the form and time pointed out in the regulation, to the Special Verification Intendance when it is required.

ARTICLE 30. Exemption of responsibility. Any debtor, proprietor, director, manager, administrator, official, legal representative, or employee duly authorized is expressly exempt of criminal, civil or administrative responsibility who presented information in fulfillment of this law.

ARTICLE 31. Procedures and sanctions. The obligated persons referred to in article 18 of the present law will be responsible for the lack of fulfillment of the obligations that are imposed and will be sanctioned by the competent administrative management with a fine of ten thousand US dollars (US\$ 10,000.00) to fifty thousand US dollars (US\$ 50,000.00), or its equivalent in national currency, according to the gravity of the crime; also having to fulfill with the omitted obligation that gave way to the sanction in the term established by the competent authorities, and without harm of the criminal responsibilities incurred.

CHAPTER V SECTION I

CREATION AND FUNCTIONING OF THE SPECIAL VERIFICATION INTENDENCE

ARTICLE 32. Creation. Within the Superintendence of Banks is created the Special Verification Intendance, which will be known as Intendance or with the acronym IVE (for its name in Spanish), which will be in charge of looking out for the objective and fulfillment of this law and its regulation, with the functions and attributions established in the same.

ARTICLE 33. Functions. The Special Verification Intendance has the following functions:

- a) Require and/or receive from the obligated persons all the information related to the financial, commercial or business transactions that can be linked to the crime of money laundering and the laundering of other assets.
- b) Analyze information obtained in order to confirm the existence of suspicious transactions, as well as operations or patterns of money laundering and the laundering of other assets.
- c) Make or maintain the necessary registries and statistics for the development of their functions.
- d) Exchange information with homologous entities of other countries for the analysis of related cases in money laundering and the laundering of other assets, prior subscription with said entities of memorandum of understanding and other agreements of cooperation.
- e) In the case of incidence of a crime present the corresponding accusation before the competent authorities, signal and present the known proof and work in its power.
- f) Provide the *Ministerio Público* (equivalent to the Department of Justice) with any assistance required for the analysis of information that it has, and cooperate with the investigation of the actions and crimes related with money laundering and the laundering of other assets.
- g) Impose on the obligated persons the administrative money fines that correspond to the omissions in the fulfillment of the obligations imposed by this law.
- h) Others derived from the present law or of other legal agreements and international conventions approved by the State of Guatemala.

ARTICLE 34. Legal Mutual Assistance. With the goal of easing the actions and relative judicial investigations of the crimes referred to in this law, the *Ministerio Público* (equivalent to the Department of Justice), the Special Verification Intendance and any other competent authority, can offer and request assistance from the competent authorities of other countries for:

- a) Receiving testimony or taking sworn statements from persons.
- b) Present judicial documents.
- c) Inspect and seize.
- d) Examine objects and places.
- e) Facilitate information and elements of proof.
- f) Present originals or authenticated 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 probatory term purposes.
- h) Any other form of juridical reciprocal assistance, authorized by the internal right.

All public or private entities are obligated to offer the cooperation requested by the Special Verification Intendance for the realization of the objectives of the present law.

ARTICLE 35. Administrative Assistance. The *Ministerio Público* (equivalent to the Department of Justice), the Special Verification Intendance and any other competent authority can offer and request administrative assistance to the competent authorities of other countries with the end of facilitating the actions that must be made for the fulfillment of the objectives of the present law.

ARTICLE 36. Reserve. With the objective of guaranteeing the reserve of the financial operations, the persons who integrate the Special Verification Intendance and any other person who due to their office knows or has access to information regarding this law, are obligated to maintain it in reserve, even after having left office.

However, the publication of data is authorized for statistical reasons, as long as they are done in a manner that they can not identify the persons or entities related directly or indirectly, in an individual name.

ARTICLE 37. Destination of the fines. The amount of the fines imposed by the administrative sanctions derived by the breach of this law will be perceived by the Superintendence of Banks, that will destine fifty percent (50%) of them for the raising of funds for the Special Verification Intendance, and the other fifty percent (50%) will increase its budget.

SECTION II

OF THE SPECIAL VERIFICATION INTENDANCE

ARTICLE 38. Administration. The Special Verification Intendance IVE (for its acronym in Spanish) will be placed in charge of a Special Verification Intendant.

ARTICLE 39. Qualities. The Special Verification Intendant must have the following qualifications:

- a) He/she must be Guatemalan as dictated by article 144 of the Political Constitution of the Republic.
- b) Over the age of thirty years.
- c) Be of recognized honorability and professionally capable.
- d) To be in the free exercise of their civil rights.
- e) Be an accredited professional with an academic degree, preferably in the economics, finance or judicial area.
- f) Have exercised their profession for at least five years.

ARTICLE 40. Impediments. Persons who can not be named or hold the office of Special Verification Intendant.

- a) Persons who are directors or leaders of organizations with a political, business, union or trade union character.
- b) The ministers of any cult or religion.
- c) The relatives within the fourth degree of consanguinity or second of affinity with the President or Vice-president of the Republic; Presidents of State branches; the ministers or vice-ministers of the State or members of the Monetary Board, and of partners of obligated persons referred to in this law whose participation is equal or above five percent (5%) of the paid capital, directors or administrators of obligated persons referred to in this law.

ARTICLE 41. Nomination. The Special Verification Intendant will be named by the Monetary Board, proposed by the Superintendent of Banks.

ARTICLE 42. Temporary Substitution of the Intendant. In the case of temporary absence of the Special Verification Intendant, for any reason, the Superintendent of Banks will designate a substitute. -----

ARTICLE 43. Right to an ante-trial. A criminal process can not be initiated against the Superintendent of Banks or of the Special Verification Intendant, or those who substitute their offices, without the Supreme Court of Justice declaring that it is proceeding.

CHAPTER VI

FINAL DISPOSITIONS

ARTICLE 44. Regulation. The regulations of this law must be made by the Superintendence of Banks, through the Special Verification Intendance, within the sixty days following its enforcement, and submitted to the knowledge and consideration of the President of the Republic for his approval.

The regulations of this law must be approved within ninety days after the enforcement of this law.

ARTICLE 45. Beginning of operations. The Special Verification Intendance will begin its functions within one hundred and eighty days after the enforcement of this law.

ARTICLE 46. Prevalence of this law. The dispositions of this law will prevail over any other dictated previously, or that would be dictated afterward, regarding this matter, identically or similarly, except for the express derogation.

ARTICLE 47. Annulment. Decree number 51-2001 is annulled by the Congress of the Republic.

ARTICLE 48. Enforced. The present decree will be enforced on the date it is published in the official newspaper (*Diario Oficial*).

**PASS ON TO THE EXECUTIVE BRANCH FOR SANCTION,
PROMULGATION AND PUBLICATION.**

**GIVEN IN THE PALACE OF THE LEGISLATIVE BRANCH, IN THE CITY
OF GUATEMALA, ON NOVEMBER EIGHTEENTH, TWO THOUSAND ONE**

**JOSE EFRAIN RIOS MONTT
PRESIDENT**

**JORGE ALFONSO RIOS CASTILLO
SECRETARY**

**EDGAR HERMAN MORALES
SECRETARY**

*SANCTION DECREE OF THE CONGRESS NUMBER 67-2001
NATIONAL PALACE: Guatemala, December eleventh, two thousand one.*

*PUBLISH AND ENFORCE
PORTILLO CABRERA*

General de Division
EDUARDO AREVALO LACS
Minister of the Home Office

*Lic. J. Luis Mijangos C.
Secretray General,
Presidency of the Republic.*

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