

Decree Number 67-2001

Congress of the Republic of Guatemala

Whereas:

The State of Guatemala has subscribed to and ratified international treaties with the commitment to prevent, control and punish the laundering of money or other assets in order to protect the national economy and the stability and foundation of the Guatemalan financial system.

Whereas:

It is the State's obligation to protect capital formation, savings and investment, and to create adequate conditions for promoting investment in the country by domestic and foreign capital. It is therefore necessary to dictate the legal dispositions to prevent use of the financial system for illegal business.

Therefore:

In the exercise of article 171, part a) of the Political Constitution of the Republic of Guatemala.

Decrees: The following:

Anti Money or Asset Laundering Law

CHAPTER I

ARTICLE 1.

Objective of the law. The objective of herein law has is the prevention, control, supervision and punishment of the laundering of money and other asset that come from the commission of any crime, and it establishes norms to be followed to that effect by competent authorities and obligated persons, referred to in Article 18 of this law.

CHAPTER II LEGALLY RESPONSIBLE AND PENALTIES

SECTION I ABOUT CRIME

ARTICLE 2.

Regarding the crime of money or other asset laundering. Money or asset laundering is the crime committed by those who themselves, or through intermediaries:

- a) Invest, convert, transfer or undertake any financial transactions with goods or money, with prior knowledge, or because of their responsibilities, employment, office or profession, should know that the goods or money are the product of or originate from the commission of a crime.
- b) Acquire, possess, administer, have or use assets or money with the knowledge, or because of their responsibilities, employment, office or profession, should know that the assets or money are the product of or originate from the commission of a crime.
- c) Hide or obstruct in the determination of the true nature, the origin, the whereabouts, the destiny, the movement or the ownership of assets or money, or the relative rights to such assets or money, with the knowledge that same are the product of or originate from the commission of a crime.

ARTICLE 3.

Extradition. The crimes referred to here give way to the active or passive extradition, within the bounds of the legislation in effect.

SECTION II ON THE PERPETRATORS AND THE PENALTIES

ARTICLE 4.

Individual persons. The individual responsible for committing the crime of money or asset laundering is subject to a non-commutable prison term of from six to twenty years, and additionally a fine equal to the value of the assets, instruments or products resulting from the crime; the seizure, loss or destruction of the objects resulting from commission of the crime or the instruments used in its commission; payment of court costs; and publication of the sentence in at least two of the country's major-circulation print media.

If the person committing the crime is a foreigner, in addition to the any penalties to which such person may be subject, said individual will also be expelled from the national territory after fulfilling the terms any prior penalties accumulated.

ARTICLE 5.

Legal entities. Legal entities will be held responsible for the crimes referred, independently of the criminal liability of the owners, directors, managers, administrators, officers, employees or legal representatives, when acts committed by its regular components when found to occur within the normal or apparently normal conduct of business activities.

In such cases, in addition to the applicable penalties, the legal entity shall be subject to a fine from ten thousand dollars (US \$10,000.00) to six hundred twenty-five thousand dollars (US \$625,000.00) in U.S. dollars or its equivalent in local currency, the exact amount being subject to the gravity and circumstances that surround the commission of the crime, and additionally, the entity shall be warned that a recurrence will result in definitive cancellation of its legal status.

The legal entity shall also suffer the seizure, loss or destruction of those objects resulting from the commission of the crime; payment of court costs, and publication of the sentence in at least two of the country's major-circulation print media.

When referring to legal entities subject to supervision and auditing by the Superintendency of Banking, the Presiding Judge shall notify the mentioned organization of the sentence so that it might proceed in application of appropriate measures according to the laws governing these activities.

ARTICLE 6.

Other responsible parties. Those found guilty of participating in the planning or conspiracy to commit the crime of money or asset laundering, as well as the attempt to do so, will be subject to the same penalties of imprisonment described above in article 4 referring to commission of the crime, reduced by a factor of one third, plus the additional associated penalties.

ARTICLE 7.

Specific aggravating circumstances. If the crime of money or asset laundering is committed by a person serving in a popularly elected office, a public officer or employee or an officer or employee of the Special Verification Intendency, while in the exercise of their responsibilities, such person will be subject to the established criminal penalties increased by a factor of one third, in addition to the additional associated penalties. Additionally, such persons will be subject to the accessory penalty of prohibition from the exercise of public office or employment for a term equal to twice the term of incarceration.

ARTICLE 8.

On the seizure of property. Under the terms of this law, seizure refers to surrender to the State of the assets, instruments or products, identified in the sentence and used in or resulting from the commission of the crime of money or asset laundering, unless they belong to an innocent third party.

When the objects referred to are prohibited for use or illegal for trade, their seizure shall be ordered regardless of whether or not a crime is determined to have occurred, or whether or not the guilt of any party is determined, or whether or not the guilty party is ever identified.

CHAPTER III

SECTION I REGARDING THE PROCEDURE

ARTICLE 9.

Regarding the procedure. In the criminal prosecution of the crimes, and for the execution of the penalties established by this law, the procedures outlined in the Criminal Procedures Code for public action shall apply.

ARTICLE 10.

Confidentiality of investigation. Due to the nature of the crimes contemplated herein, within the bounds of the Political Constitution of the Republic, the activities and actions undertaken during the preparatory phase of the criminal process are confidential.

SECTION II PRECAUTIONARY MEASURES

ARTICLE 11.

Precautionary measures. The presiding judge or court may, at any time, without notification or previous hearing, dictate any legally established precautionary measure or guarantee destined to preserve the availability of assets, products or instruments resulting from or related to the crime of money or asset laundering, at the request of the Public Ministry. This requirement must be heard and ruled upon immediately by the Judge or court.

ARTICLE 12.

The danger of delay. In the case of danger of delay, the Public Ministry may order the embargo or freezing of assets, documents or bank accounts, but it must immediately request judicial concurrence accompanied by the respective inventory and indicating their whereabouts. If the Judge or Court doesn't approve the precautionary measure, it will simultaneously order the return of the assets, documents or bank accounts under consideration.

ARTICLE 13.

Custody. The assets, products or instruments object of precautionary measures will remain in the custody of the Public Ministry, or the person it designates, who will be responsible for their conservation and incorporation in the judicial process.

ARTICLE 14.

Review. The Judge may, at anytime review, revoke or modify the decreed precautionary measures at party's request under guarantee of a hearing.

ARTICLE 15.

Destiny of assets, products or instruments subject to precautionary measures. When it is not possible to establish the titled ownership or any other real right over the assets, instruments and products of the crime of money or asset launderingD /F1 11.625 Tf 0444 Tcrai5T1429.0.0334 subject to pre

- b) The claimant cannot be imputed with any participation, collusion or implication regarding the crimes of money or asset laundering connected to the case;
- c) The claimant did not acquire any rights to the assets, products or instruments from the accused under circumstances that would reasonably lead to the conclusion that the rights to such were transferred to avoid their eventual seizure; and
- d) The claimant made reasonable effort to prevent the illegal use of the assets, products or instruments.

The claimant is obliged to exhibit said assets, products or instruments when so requested by the judge or tribunal in reference or by the Public Ministry.

CHAPTER IV REGARDING OBLIGATED PERSONS AND THEIR OBLIGATIONS

ARTICLE 18.

Regarding obligated persons. Within the context of the law herein, obligated persons are:

1. The entities subject to the supervision and inspection of the Superintendency of Banks.
2. Individuals or legal entities dedicated to brokerage or intermediation in the negotiation of assets.
3. Those entities that issue and operate credit cards.
4. Those foreign domiciled entities known as off-shore that operate in Guatemala that describe themselves as entities dedicated to financial intermediation organized or registered under the laws of another country that undertakes activities mainly outside the jurisdiction of that country.
5. Individuals or legal entities that undertake any of the following activities:
 - a) Systematic or substantial check cashing operations.
 - b) Systematic or substantial operations issuing, sale or purchase of travelers checks or postal money orders.
 - c) Systematic or substantial funds transfers and/or capital movement.
 - d) Factoring.
 - e) Financial lending.
 - f) Currency exchange.
 - g) Any other activity that, by the nature of its operations, can be used for money or asset laundering as established in the regulations.

ARTICLE 19.

Programs. Obligated persons should adopt, develop and execute programs, norms, procedures and appropriate internal controls to avoid the improper use of their services and products in money or asset laundering activities. These programs will include as a minimum:

- a) Procedures that assure a high level of personnel integrity and awareness of the personal, work and patrimony background of employees.
- b) Permanent personnel training and instruction regarding their responsibilities and obligations derived from this law. The training must also include knowledge of techniques that allows employees to detect operations that may be linked to money or asset laundering and how to proceed in such cases.
- c) Establishment of auditing means to verify and evaluate compliance with the programs and norms.
- d) The formulation and implementation of specific measures to know and identify clients.

Obligated persons must also designate management officers charged with overseeing compliance with the internal programs and procedures, as well as compliance with the obligations this law imposes, including the maintenance and delivery of adequate registries and communication of suspicious and unusual transactions and operations. These officers will be the link with competent authorities. The Banking Superintendency through the Special Verification Intendency must oversee the compliance with established obligations in this article.

ARTICLE 20.

Prohibition of anonymous accounts. Under no circumstances may obligated persons maintain anonymous accounts or accounts that appear under fictitious or inexact names. In the case of unnamed accounts, the obligated persons must maintain a registry referred to in article 21 of this law, and which must be shown upon order of the competent authority.

ARTICLE 21.

Registries. Obligated persons must maintain a registry, in forms designed for this purpose by the Special Verification Intendency, of individuals or legal entities with whom they establish commercial relationships or relationships in the normal or apparently normal course of business, whether these clients are occasional or frequent; and the operations they undertake with them, particularly those dealing with the opening of new accounts, the execution of fiduciary transactions, leasing of safety deposit boxes, or the execution of cash transactions that exceed the amount established in article 24 of the law herein.

Additionally, they must faithfully establish the identity, corporate or personal identity of persons referred to in the previous paragraph. In the case of foreigners, the obligated persons must demand evidence of the legal entry into the country as well as migratory status and when they are not permanent residents, the identity of their legal representative.

ARTICLE 22.

Third party identity. Obligated persons must adopt the measures needed to obtain, update, and store information regarding the true identity of third parties in whose benefit an account is opened

or a transaction is undertaken where there is doubt that such third parties may be acting in their own behalf, or at the same time, that they might be acting on behalf of another third party, especially in the case of legal entities that do not conduct commercial, financial or industrial activities in the country in which they are registered or headquartered.

ARTICLE 23.

Updating and preservation of registries. The registries referred to in articles 20, 21 and 22 of the law herein must be updated throughout the commercial relationship, and be stored, as a minimum, for five years after termination of the transaction that closes the account. By the same token, obligated persons must maintain registries for at least five years after terminating, that allow reconstruction of transactions that exceed the amount established in article 24 of the law herein.

ARTICLE 24.

The daily registry obligation. Obligated persons must maintain a daily registry, or forms designed for this purpose by the Special Verification Intendency, of all cash transactions, whether routing or occasional, in local or foreign currency, that exceed the amount of ten thousand United States dollars (US \$10,000.00) or its equivalent in national currency. Multiple cash transactions, whether in national or foreign currency, that together exceed the amount established in this article will be considered a single transaction if they are undertaken to benefit a single person on a single day.

ARTICLE 25.

Declaration. All individuals or legal entities, nationals or foreigners, that transport into or out from the Republic, themselves or through intermediaries, a sum exceeding ten thousand United States dollars (US 10,000.00) or its equivalent in national currency, must report it and the port of exit or entry in forms designed for this purpose by the Special Verification Intendency.

The competent authorities may verify the information provided in the sworn declaration contained on the form referred to in the previous paragraph. In cases where an omission or falsity exists, the related money or documents will be seized and placed at the disposal of the authorities for criminal investigation.

ARTICLE 26.

Communication of suspicious or unusual financial transactions. Obligated persons will give special attention to all transactions, where completed or not, that are complex, singular, significant, and all those unusual transaction patterns and those insignificant periodical transactions, that have no evident economic or legal basis, and must report them to the Special Verification Intendency.

ARTICLE 27.

Confidentiality of requested information. Obligated persons may not reveal to anyone except a Court or the Public Ministry that any information has been requested or provided to another court or competent authority.

ARTICLE 28.

The obligation to inform. Obligated persons must provide the Special Verification Intendency information requested, in a manner and timeframe established in the regulations, regarding data and documentation referred to in previous articles, in compliance with the law herein.

When those obliged to provide the information cannot do so within the time stipulated by the Special Verification Intendency, they may request an extension within the timeframe and provide justification. The request must be resolved within the originally stipulated timeframe.

No opposition, contractual or legal may oppose the obligation of obligated persons to provide requested information to the competent authorities in compliance with the law herein or the regulations that implement it.

ARTICLE 29.

Copy of registries. Obligated persons must send a copy of the registries referred to in articles 21, 22, and 24 of the law herein, in the format and within the time stipulated in the regulations, to the Special Verification Intendency, when the unit so requires.

ARTICLE 30.

Exoneration from responsibility. Obligated persons, their owners, directors, managers, administrators, officers, legal representatives and duly authorized employees are expressly freed from criminal, civil or administrative responsibility when they have provided information in compliance with the law.

ARTICLE 31.

Procedure and sanctions. The obligated persons referred to in article 18 of the law herein will be held responsible for non-compliance with the conditions it imposes, and they will be punished by the competent administrative authority with a fine of from ten thousand United States dollars (US \$10,000.00) to fifty thousand United States dollars or its equivalent in national currency, according to the gravity of the circumstances; additionally they will be compelled to comply with the omitted obligation that caused levying of the fine, this within the time established by the competent authority, and are subject to additional criminal penalties that may also apply.

CHAPTER V

SECTION I THE CREATION AND OPERATION OF THE SPECIAL VERIFICATION INTENDENCY

ARTICLE 32.

Creation. Inside the Superintendency of Banks a Special Verification Intendency have been created that will be in charged with overseeing the objectives and compliance with the law herein and its regulations and any others the law requires, with the operations and attributions these laws establish. Its name may be abbreviated using the initials SVI.

ARTICLE 33.

Functions. The Special Verification Intendency as established in article 32 of the current law will have the following as its functions:

a) Require and/or receive from obligated persons all information related to financial, commercial or business transactions that may be connected to money or asset laundering.

- b) Analyze the contained information for the purpose of confirming the existence of suspicious transactions as well as operations or patterns of money or asset laundering.
- c) Prepare and maintain the registries and statistics needed to undertake its functions.
- d) Exchange with like entities in other countries, the information for the analysis of cases related to money or asset laundering after the prior exchange of memoranda of understanding or other cooperative agreements.
- e) In the case of indicators of commission of a crime, the presentation of the corresponding complaint to the competent authorities identifying and providing the means of proof they are aware of and possess.
- f) Provide the Public Ministry any assistance it requires in the analysis of information it possesses, and support the investigation of acts and crimes related to money or asset laundering.
- g) Impose upon obligated persons the administrative fines in amounts corresponding to the omission of obligations committed, and imposed by the law herein.
- h) Other duties derived from the law herein or other legal dispositions and international agreements approved and ratified by the Government of Guatemala.

ARTICLE 34.

Mutual legal assistance. With the objective of facilitating the judicial actions and activities referring to crimes described by this law, the Public Ministry, the Special Verification Intendency and any other competent authority may lend and request assistance from competent authorities in other countries for:

- a) Receiving testimony or taking statements from persons.
- b) Presenting legal documentation.
- c) Undertaking inspections and seizures.
- d) Examining objects and places.
- e) Facilitating information and elements of proof.
- f) Delivering originals or authenticated copies of documents and files related to a case, including banking, financial and commercial documentation.
- g) Identifying or detecting the product, instruments or other elements during the task of establishing proofs.
- h) Any other reciprocal judicial assistance approved under domestic law.

All public and private entities remain obligated to lend the cooperation required by the Special Verification Intendency in fulfilling its duties under the law herein.

ARTICLE 35.

Administrative assistance. The Public Ministry, the Special Verification Intendency and any other competent authority may give and request administrative assistance in conjunction with competent authorities in other countries to the end of facilitating activities that fulfill the law herein.

ARTICLE 36.

Confidentiality. With the objective of guaranteeing the confidentiality of financial operations, personnel of the Special Verification Intendency and any other person that, by the nature of responsibilities, has knowledge of or access to information related to this law, is obliged to maintain confidentiality, even after cessation of duties.

ARTICLE 37.

Use of fines. The amount of fines levied through administrative sanctions as a result of non-compliance with the law herein will go to the Superintendency of Banking who will use fifty percent (50%) of the same for training personnel in the Special Verification Intendency against money or asset laundering, and the remaining fifty percent (50%) will increase its budget.

SECTION II OF THE INTENDENT OF THE SPECIAL VERIFICATION INTENDENCY

ARTICLE 38.

Direction. An Intendent will head the Special Verification Intendency and it will be staffed as required for operations.

ARTICLE 39.

Qualities. The Intendent for the Special Verification Intendency must fill the following requirements:

- a) Be Guatemalan in accordance with article 144 of the Political Constitution of the Republic.
- b) Be older than thirty years of age.
- c) Be of recognized honesty and professional ability.
- d) Enjoy free use of civil rights.
- e) Be an accredited professional, preferentially in the economic, financial or legal areas.
- f) Have exercised his or her profession for at least five years.

ARTICLE 40.

Ineligibility. The following persons are ineligible to be named as Intendent of Special Verification:

- a) Leaders of political, guild, business or union organizations.
- b) Ministers of any cult or religion.

c) Blood relatives to the fourth degree or by marriage to the second degree of the President or vice-President of the Republic; Presidents of the Organs of State; of ministers or vice-ministers of state or members of the Monetary Board or of the members, directors or administrators of the obligated persons referred to in the present law, which their participation is equal or greater than five percent (5%) of the paid capital, as well as the directors or administrators.

d) The partners, directors or administrators referred to in the present law.

ARTICLE 41.

Designation. The Intendent of Special Verification will be designated by the Monetary Board, in proposal of the Bank Superintendent.

ARTICLE 42.

Temporary substitution of the Intendent. In the case of temporary absence of the Intendent of Special Verification, for any reason, will be substituted by an official that will be designated by the Bank Superintendent.

ARTICLE 43.

The right to prior confirmation of indictment. Criminal procedures may not be initiated against the Bank Superintendent and the Intendent of Special Verification or a temporary substitute without prior confirmation of an indictment by the Supreme Court of Justice.

CHAPTER VI FINAL DISPOSITIONS

ARTICLE 44.

Regulations. The regulation of this law must be elaborated by the Banking Superintendency, through the Special Verification Intendency, within sixty days of becoming law. It will be submitted to the President through proper channels for consideration and approval.

The regulations must take effect within 90 day of the law herein taking effect.

ARTICLE 45.

Start of operations. The Special Verification Intendency will begin its duties within 180 days after the law herein takes effect.

ARTICLE 46.

Prevalence of this law. The dispositions of this law shall prevail over any prior or subsequent legislation related or similar to this subject, unless it is specifically stricken.

ARTICLE 47.

Derogation. It derogates Decree number 51-2001 from the Congress of the Republic of Guatemala.

ARTICLE 48.

Enforcement. The present Decree will take effect the day of its publication in the Official Governmental Publication (Gazette).

PASS TO THE EXECUTIVE BRANCH FOR APPROVAL, PROMOTION, AND PUBLICATION.

PASSED IN THE PALACE OF THE LEGISLATIVE BRANCH, IN GUATEMALA CITY, THE TWENTY-EIGHTH DAY OF THE MONTH OF NOVEMBER IN THE YEAR TWO THOUSAND AND ONE.

SIGNATURES OF:

JESÚS B. Y. MICHIELSON DE MONTESERÍN, PRESIDENTE DE LA REPÚBLICA