

LAW No. 1015/96 PREVENTING AND PENALIZING UNLAWFUL ACTS TO LAUNDER MONEY OR PROPERTY

THE CONGRESS OF THE PARAGUAYAN NATION ENACTS THE FOLLOWING WITH FORCE OF LAW:

CHAPTER I GENERAL PROVISIONS

Article 1. Scope of application

The present Law:

1. Regulates the obligations, measures and procedures to prevent and forestall the use of the financial system and other sectors of economic activity for the commission of acts to launder money or property derived directly or indirectly from the criminal activities covered by this Law, such acts being hereinafter described as offences of money or property laundering;
2. Establishes and penalizes the offence of money or property laundering; and
3. Shall apply without prejudice to other acts or omissions established and penalized under criminal law.

Article 2. Definitions

For the purposes of this Law:

1. **Proceeds**" means property obtained or derived directly or indirectly from the commission of an offence established under this Law;
2. **Property**" means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and the legal instruments or documents evidencing title to or interest in such assets;
3. **Crime**" means any offence for which the mid-range penalty of imprisonment is more than two years;
4. **Criminal gang**" means a structured or organized association of three or more persons formed for the purpose of committing punishable acts or achieving its aims by the use of arms, and any persons who assist them economically or provide them with logistic support; and
5. **Terrorist group**" means a structured or organized association of three or more persons that uses violence, including the commission of offences, to achieve its political or ideological aims, including its moral mentors.

CHAPTER II PENAL PROVISIONS

Article 3. Establishment of the offence of money or property laundering

An offence of money or property laundering shall be committed by anyone who fraudulently or wrongfully:

1. Conceals any proceeds derived from a crime, or from an offence perpetrated by a criminal gang or terrorist group, or from an offence established under Law No. 1.340/88¹] suppressing the illicit traffic in narcotic and dangerous drugs, or under any amendments thereto;
2. Disguises the origin of such proceeds, frustrates or endangers the discovery of its source or location thereof, or the disposition, seizure, confiscation, distraint or provisional attachment thereof; and
3. Obtains, acquires, converts, transfers, keeps or uses, for himself or another, proceeds as referred to in subparagraph (a) above. Assessment of knowledge or negligence shall be based on the circumstances and physical elements of the specific case concerned.

Article 4. Penal sanctions

The offence of money or property laundering shall be punished by a penalty of imprisonment of between two and ten years.

The judge may refrain from applying the penalty to an accomplice or accessory if that person voluntarily and effectively cooperates with the authorities in uncovering the unlawful criminal act established under the present Law, in identifying the main perpetrators or in locating the property, interests or assets forming the subject of the offence.

Article 5. Confiscation

The property or instrumentality used in the preparation or commission of the offence of money or property laundering shall be confiscated.

Article 6. Special confiscation

Should the perpetrator of the offence of money or property laundering obtain any income there from, for himself or for a third party, such income shall be confiscated.

Should special confiscation not be possible, the payment of a sum of money equivalent to the value of the income obtained shall be ordered in place thereof.

Article 7. Effect of confiscation and special confiscation

In the event of confiscation or special confiscation, ownership of the confiscated item or interest shall pass to the State at the time when the sentence becomes enforceable.

Confiscated property shall be disposed of in the manner set out in this Law.

Article 8. Bona fide third parties

The penalties and measures set out in this Law shall apply without prejudice to the rights of bona fide third parties.

Article 9. Summoning of interested third parties

All persons who may have a legitimate interest in judicial proceedings initiated pursuant to this Law shall be summoned by means of public notices to be published over ten consecutive days in two newspapers having a wide circulation.

Article 10. Gradation of punishment

Incitement, complicity or concealment, as well as attempted and frustrated offences shall also be punishable, in accordance with the provisions of this Law.

An incitor shall be liable to the same penalty as that imposed on the actual offender; complicity shall incur one half of the penalty applicable to the actual offender, and concealment one fifth of the penalty applicable to the actual offender.

An attempted offence shall be punished by one half of the penalty applicable to the consummated offence and a frustrated offence by two thirds of the penalty applicable to the consummated offence, in accordance with the relevant provisions of the Penal Code.

Article 11. Aggravating circumstances

The fact that employees, officers, managers, owners or other authorized representatives of the obligors, acting as such, participate in the offence of money or property laundering shall constitute an aggravating circumstance.

The penalties referred to in the preceding articles shall be doubled if the accused was a public official at the time when the offence was committed.

CHAPTER III ADMINISTRATIVE PROVISIONS

Article 12. Scope of application

The obligations set out in this chapter shall apply to:

1. All transactions in excess of ten thousand US dollars or the equivalent thereof in other currencies, subject to the exceptions provided for in this Law; and
2. Any transactions for less than the amount indicated in the preceding subparagraph if it may be inferred from such transactions that they were divided into several operations for the purpose of evading the identification, recording and reporting obligations.

Article 13. Obligors

The following entities shall be subject to the obligations set out in this chapter:

1. Banks;
2. Financial institutions;
3. Insurance companies;
4. Bureaux de change;
5. Stockbroking companies and securities dealers (stock exchanges);

6. Investment companies;
7. Trust companies;
8. Administrators of mutual investment and pension funds;
9. Credit and consumer cooperatives;
10. Gambling establishments;
11. Real estate agencies;
12. Non-governmental organizations and foundations;
13. Pawn shops; and
14. Any other natural person or legal entity regularly engaged in financial broking, trading in precious metals, stones and jewellery, works of art or antiques, or investing in stamps or coins.

Article 14. Obligation to identify clients

The obligors shall record and check, by reliable means, the identity of their clients, whether regular or occasional, upon entering into business relations with them, as well as of all persons intending to carry out transactions.

Article 15. Method of identification

Identification shall consist of establishing the actual identity, party stated as being represented, domicile and occupation or corporate purpose in the case of a legal entity.

Article 16. Identification of the principal of the client

If there is reason to assume or certain knowledge that clients are not acting on their own behalf, the obligors shall obtain precise information in order to ascertain the identity of the persons on whose behalf they are acting.

Article 17. Obligation to record transactions

The obligors shall identify and record clearly and precisely any transactions conducted by their clients.

Article 18. Obligation to preserve records

The obligors shall keep for a minimum period of five years any documents, files and correspondence establishing or identifying the transactions. The five-year period shall be computed from completion of the transaction or from the time when the account was closed.

Article 19. Obligation to report suspicious transactions

The obligors shall report any act or operation, regardless of the sums involved, if there is an indication or a suspicion that such act or operation is connected with an offence of money or property laundering.

The following in particular shall be considered suspicious transactions:

1. Operations which are complex, unusual or large, or do not follow the pattern of habitual transactions;

2. Operations which, although not large, occur periodically and with no reasonable legal or economic basis;
3. Operations which by their nature or volume are not consistent with the credit or debit operations conducted by the clients in the light of their activities or previous business practice; and
4. Operations which, with no justifiable cause, involve cash payments by a large number of persons.

Article 20. Duty of confidentiality

Obligors shall not reveal, either to the client or to third parties, any steps taken or communications effected by them in compliance with the obligations set out in this Law and the regulations issued hereunder.

Article 21. Duty to maintain internal audit procedures

Obligors, whether or not legal entities, shall establish appropriate procedures for the internal auditing of information in order to discover, forestall and prevent the execution of any operations for the purpose of money or property laundering. The obligors shall notify their directors, managers, and employees and impose on them the duty to comply with the provisions of this Law, and with the internal procedures and regulations, for the purposes indicated in this article.

Article 22. Duty to cooperate

Obligors shall provide all information relating to the matters covered by this Law that may be required by the enforcement authority hereby established, in which case provisions concerning bank secrecy shall not apply. None the less, the duty of bank secrecy shall be observed by the enforcement authorities; unless the criminal court judge requests such information, and then only in relation to a specific pre-trial investigation or lawsuit.

Article 23. Special obligations

Obligors who operate gambling establishments, particularly casinos, shall comply with the provisions of article 19 if

1. Payments are made to clients by cheque in exchange for gambling tokens;
2. The transfer of funds to a bank account or any other payment procedure not involving cash is authorized or ordered; and
3. Certificates are issued of the client's winnings.

Article 24. Administrative penalties for legal entities

Failure to comply with the obligations set out in this chapter and in the regulations shall be punished by:

1. A caution;
2. A public reprimand;
3. A fine of between 50 (fifty) and 100 (one hundred) per cent of the amount of the transaction in the course of which the offence was committed; and
4. Temporary suspension for between thirty and one hundred and eighty days.

Article 25. Gradation of punishment

The penalties applicable in respect of the commission of offences set out in the preceding article shall be graduated taking account of the following circumstances:

1. The degree of responsibility or wilfulness in the commission of the acts;
2. The prior conduct of the obligor with regard to the requirements set out in this Law;
3. The income derived from the offences;
4. Voluntary efforts to mitigate the effects of the offence; and
5. The seriousness of the committed offence, under the terms of this Law.

CHAPTER IV ENFORCEMENT AUTHORITY

Article 26. Secretariat for the Prevention of Money and Property Laundering

A secretariat for the prevention of money and property laundering, to be attached to the Office of the President of the Republic, shall be established as the authority responsible for enforcing the present Law.

Article 27. Composition

The Secretariat for the Prevention of Money and Property Laundering shall be made up of:

1. The Minister of Industry and Trade, who shall preside over the Secretariat;
2. A member of the board of directors of the Central Bank of Paraguay, nominated by the board, who shall deputize for the president if the latter is absent or indisposed;
3. A member of the National Securities Commission, nominated by the Commission;
4. The Executive Secretary of the National Drug Control Secretariat (SENAD);
5. The Superintendent of Banks; and
6. The Commander of the National Police Force.

Article 28. Duties

The Secretariat for the Prevention of Money and Property Laundering shall have the following functions and duties:

1. It shall, within the framework of the laws, issue administrative regulations to be observed by the obligors with a view to preventing, detecting and reporting operations to launder money or property;
2. It shall obtain from public institutions and the obligors all information that may be related to money laundering;
3. It shall examine information received in order to establish suspicious transactions and operations or patterns of money or property laundering;
4. It shall keep statistical records of the movement of property connected with money or property laundering;
5. It shall order the investigation of any transactions that give rise to a reasonable presumption of an offence of money or property laundering;
6. It shall refer to the Office of the Public Prosecutor any cases in which circumstantial evidence arises of the commission of an offence of money or property laundering so that the appropriate judicial investigation may be initiated; and

7. It shall report to the bodies and institutions responsible for supervising the obligors any detected cases of administrative infringements of the law or the regulations, for the purposes of their investigation and punishment, as appropriate.

Article 29.

Administrative infringements of the law and the regulations relating to the offence of money or property laundering may be regulated, investigated and penalized only through the institutions responsible for the supervision and monitoring of the obligors, according to their nature.

The procedure shall be as established in the relevant laws governing each obligor.

Article 30. Financial analysis unit

The Secretariat for the Prevention of Money and Property Laundering shall administer a financial analysis unit, to be composed of professional and technical staff skilled in finance and data processing, for the purpose of evaluating and analysing the information received by the Secretariat.

Article 31. Economic Crime Investigation Unit

The investigation referred to in subparagraph 5 of article 28 shall be carried out by the Economic Crime Investigation Unit, attached to SENAD.

Article 32. Duty of professional secrecy

All individuals working for the Secretariat for the Prevention of Money or Property Laundering and anyone obtaining from it information of a confidential nature or having knowledge of its activities or of particulars of a similar nature shall be obliged to maintain professional secrecy. Failure to comply with this obligation shall give rise to liability as stipulated by law.

Article 33. International cooperation

Pursuant to international agreements and conventions, the Secretariat for the Prevention of Money and Property Laundering shall assist in the exchange of information, directly or through international agencies, with the enforcement authorities of other States exercising similar jurisdiction, which shall also be subject to the duty of confidentiality. The relevance of aspects relating to sovereignty and the protection of national interests shall be evaluated when responding to requests for information from other States.

Article 34. Exemption from liability

Information furnished to the Secretariat for the Prevention of Money and Property Laundering in compliance with this Law and regulations shall not constitute a breach of secrecy or confidentiality, and obligors, their managers, directors and officers shall be exempt from civil, criminal and administrative liability, regardless of the outcome of the investigation, except in the event of their complicity in the offence under investigation.

FINAL CHAPTER

Article 35. Criminal jurisdiction

If the offence established under the present Law was committed on Paraguayan territory, the courts of the Republic of Paraguay shall have jurisdiction, without prejudice to any investigations that may be or have to be conducted under foreign jurisdiction in connection with related offences, and whether or not the offences that gave rise to the proceeds from laundering took place in a different territorial jurisdiction.

Article 36. Precautionary measures

The judge may, *ex officio* or at the request of a party, upon the commencement or at any stage of the proceedings, order the provisional attachment or distraint of the property or any other precautionary measure for the purpose of safeguarding the property, proceeds or instrumentalities connected with the offence established in article 3 of this Law.

Article 37. Final disposal of the property, proceeds and instrumentalities

Property, proceeds and instrumentalities as referred to in the preceding article which do not have to be destroyed or are dangerous to the population, shall be transferred, once the final judgement becomes enforceable, to organizations specializing in the fight against illicit trafficking in and the control and prevention of the abuse of narcotic drugs and psychotropic substances, for the purposes of rehabilitation and social

reintegration of addicts. The judge may rule that part of the proceeds from the property be transferred to another country that has participated in their seizure, provided that international agreements governing the matter exist.

Article 38.

Judicial cooperation

The competent judge shall cooperate with his counterparts in other States in the processing of warrants of attachment and other precautionary measures, as provided for in our procedural law, for the purpose of identifying the offender and locating the property, proceeds and instrumentalities connected with the offence established in article 3 of this Law, to which end he shall grant all requests made by letters rogatory received from abroad.

Article 39.

To be communicated to the Executive.

Done in the Chamber of Senators on the twenty-fourth day of the month of October of the year one thousand nine hundred and ninety-six, and in the Chamber of Deputies, the Law being enacted on the third day of the month of December of the year one thousand nine hundred and ninety-six.

Atilio Martínez Casado Miguel Abdón Saguier

President President

Chamber of Deputies Chamber of Senators.

Edgar Ramirez Cabrera Victor Sánchez Villagra

Parliamentary Secretary Parliamentary Secretary

Asunción, 10 January 1997

To be regarded as a law of the Republic, published and placed in the Official Registry.

The President of the Republic

Angel Roberto Seifart

Vice-President of the Republic,

Acting President

Luis Vera Cañisa Juan Manuel Morales

Deputy Minister Minister of the Interior

of Finance

Sebastian González Insfrán Dario Peralta Sosa

Minister of Justice and Labour Deputy Minister of Industry and Trade