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E/NL.2001/33-34

1 June 2001

ENGLISH AND SPANISH ONLY

ORIGINAL: SPANISH

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

CUBA

Communicated by the Government of Cuba

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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ORDER No. 27**WHEREAS:**

It is necessary for the national financial system to possess updated information on financial risks that may have adverse effects on the performance of financial institutions or on the system in general;

Decree-Law No. 173 of 28 May 1997, in its article 54, stipulates that the Central Bank of Cuba shall be empowered to establish such rules, procedures and regulations as it deems necessary for carrying out banking supervision, auditing and inspection of financial institutions, representation offices and the Central Bank itself;

The functions of the President of the Central Bank of Cuba, pursuant to article 36 (b) of Decree-Law No. 172, of 28 May 1997, include the establishment of mandatory regulations to be complied with by all financial institutions and representation offices;

The issuer of this Order was appointed Minister-President of the Central Bank of Cuba by decision of the Council of State of 13 June 1997;

ACCORDINGLY, in the exercise of the powers conferred upon me,

I HEREBY ISSUE THE FOLLOWING ORDER:

Article 1. The Risk Information Centre (hereinafter called the CIR) shall be established under the responsibility of the Superintendent of the Central Bank of Cuba.

Article 2. The objectives of the CIR shall be to collate, process and disseminate information concerning late payers, suspected or actual cases of money-laundering, irregularities in the issue of cheques and unlawful or fraudulent acts connected with financial activities at financial institutions or at associations or enterprises with which those institutions maintain financial relations.

Article 3. All banks and non-banking financial institutions shall be required to submit each month to the Superintendent of the Central Bank of Cuba the information referred to in article 2 of this Order.

Article 4. The CIR shall each month distribute a summary report based on the data compiled, whose recipients shall be all banks and non-banking financial institutions, the Heads of the Central State Administration Bodies and the Presidents of the People's Provincial Authorities.

Article 5. Any bank, non-banking financial institution, Heads of the Central State Administration Bodies and Presidents of the People's Provincial Authorities may request updated information from the CIR whenever they so require, independently of the information that they shall receive each month.

Article 6. Any concealment, falsification or inaccuracy and any general breach of the contents of this Order shall be penalized in accordance with the stipulations of the regulations in force.

Article 7. The Superintendent of the Central Bank of Cuba shall be empowered to issue corresponding instructions concerning the procedure regarding information to be gathered from banks and non-banking financial institutions.

FINAL PROVISION

Single provision. This Order shall enter into force as from its publication in the Official Gazette of the Republic of Cuba.

TO BE COMMUNICATED to the Vice-Presidents, the Superintendent, the Auditor-General and Directors of the Central Bank of Cuba, to the presidents of banks and non-banking financial institutions and to any individuals and corporate entities required to have knowledge hereof.

TO BE PUBLISHED in the Official Gazette of the Republic of Cuba for general information, the original to be filed with the Secretariat of the Central Bank of Cuba.

Done in the city of Havana, this seventeenth day of December 1997, the year of the Thirtieth Anniversary of the Fall in Combat of the Heroic Guerrilla and his Comrades.

Francisco Soberón Valdés
Minister-President

CENTRAL BANK OF CUBA**ORDER No. 66 OF 1998****WHEREAS:**

Article 81 of Decree-Law No. 173, of 28 May 1997, on Banks and Non-banking Financial Institutions stipulates that financial institutions are obliged to maintain secrecy in respect of their accounts, deposits and operations in general;

It is appropriate to update and adapt the rules governing the protection and scope of bank secrecy, in line with changes that have taken place in the banking system;

In the light of article 36 (a) and (b) of Decree-Law No. 172, of 28 May 1997, on the Central Bank of Cuba, the President of the Central Bank of Cuba, in the exercise of his executive authority, is empowered to issue mandatory regulations to be complied with by all economic organs, bodies, enterprises and entities of the State, economic or other associations and organizations, cooperatives, the private sector and the population, as well as by financial institutions and representation offices;

The issuer of this Order was appointed Minister of the Interior and President of the Central Bank of Cuba by decision of the Council of State of 13 June 1997;

ACCORDINGLY, in the exercise of the powers conferred upon me:

I HEREBY ISSUE THE FOLLOWING REGULATIONS**ON BANK SECRECY**

ONE: For the purposes of this Order:

Bank secrecy shall mean the confidentiality that is to be observed in respect of details relating to the sources, destination, amount, names of interested parties and other particulars of accounts and operations handled by banks and non-banking financial institutions, hereinafter referred to as financial institutions, authorized to operate in the national territory on behalf of their customers, the names of holders of deposit or credit accounts, their type, numbers and balances, financial statements and private reports on monetary, credit, commercial and other activities ordinarily presented by customers to financial institutions in connection with the processing and execution of operations;

Documents shall mean statements of account, deposits, cheques and other securities, transfers, collection and payment orders, contracts, records, correspondence or other deeds or vouchers required as evidence of operations conducted by customers or on their behalf.

TWO. Managers, officials and other employees of financial institutions, when acting in the discharge of their functions and at any time, even if they have ceased to do so, shall be obliged to maintain bank secrecy and not to disclose either directly or indirectly any information that comes to their knowledge.

THREE. Bank secrecy shall cease to have any meaning if reports on information relating to subjects or aspects referred to in section one are requested by the holders of accounts or other banking transactions in connection with their own accounts or transactions, by their heirs and beneficiaries or their proxies and legal representatives, on matters that legitimately and strictly concern them, all such persons to be duly identified in the following manner:

(a) **Holders:** by the production of account books, where applicable, or of other documents stipulated in the regulations;

(b) **Heirs:** by the presentation of the notarial deed of declaration of inheritance, with a certification of its registration with the General Registry of Declarations of Inheritance, or certifications from the Population Registry evidencing the owner's death and the applicant's status of presumed heir, accompanied by a negative certification from the General Registry of Last Wills and Testaments, with a certification of the owner's death and the corresponding positive certification from the General Registry of Last Wills and Testaments;

(c) **Beneficiaries:** by the presentation of the document certifying the death of the account holder and the beneficiary's identity document;

(d) **Proxies and legal representatives of the above persons:** by the presentation of documents evidencing their representation in accordance with the law and of documents evidencing the entitlement or interest of the persons represented by them, to the extent of the powers held by them.

FOUR. Notwithstanding the restrictions relating to bank secrecy, the reports, data and documents referred to in section one shall be furnished by financial institutions whenever required by the authorities specified below:

(a) The courts, prosecutors and investigating officers of the State security bodies;

(b) The tax authorities;

(c) Inspectors of the Bank Supervisory Authority, internal auditors of the financial institutions themselves and auditors of the National Audit Office.

FIVE. In cases of presumed or suspected movement of illicit funds, the financial institutions shall provide any information or documents requested of them by the empowered authorities relating to financial transactions or banking operations conducted by persons who are involved in such unlawful activities or are the subject of investigations.

SIX. The authorities responsible for gathering information protected by bank secrecy shall use such information with the discretion and strictness laid down in that connection by this Order and by any others regulating the activities performed by them, and shall maintain such information confidential insofar as that is not incompatible with the public interest affected.

SEVEN. Bank secrecy shall not be an obstacle to the provision of information of a general nature in the following cases:

(a) Where it is supplied by authorized officials for any of the following purposes:

- Statistical requirements;
- Formulation of monetary policy and its follow-up;
- Preparation of reports drawn up by financial institutions for publication or for use by senior levels of government;

(b) Where it is furnished to financial institutions abroad with which correspondent agreements are maintained, or which are interested in initiating relationships of that nature, on matters deemed appropriate in accordance with such activity;

(c) Where general information of a confidential nature is provided in connection with the conduct of customers, in particular for purposes of credit rating, at the request of another institution within the system, but without that implying any authority to disclose individualized transactions;

(d) Where financial institutions supply information that they are periodically required to submit to the Risk Information Centre of the Central Bank of Cuba.

EIGHT. Financial institutions shall be released from their obligation to maintain bank secrecy in cases where a dispute arises with a customer and is brought before the courts. In such situations, they reserve the right to present all the documentation that they deem necessary to defend their own interests before whosoever may be concerned.

NINE. Managers, officials and other employees of financial institutions may not disclose to any person except another empowered authority the fact that information has been requested from or provided to a competent authority.

TEN. Managers, officials and other employees of financial institutions shall take the necessary precautions to prevent the occurrence of any breaches of the regulations concerning bank secrecy.

ELEVEN. Managers, officials and other employees of financial institutions who commit breaches of the regulations concerning bank secrecy shall be liable to disciplinary measures in accordance with the relevant statutory provisions laid down and without prejudice to any civil or criminal liability arising out of the offence.

SPECIAL PROVISIONS

SINGLE PROVISION. Empowered officials of financial institutions may supply documents and information protected by bank secrecy to the competent authorities only.

TRANSITIONAL PROVISIONS

SINGLE PROVISION. The Central Bank of Cuba shall in due course issue such legal provisions as may be necessary for the implementation of the measures regulated in this Order and also the procedure for the provision of information and documentation requested by the empowered authorities.

FINAL PROVISIONS

SINGLE PROVISION. Order No. 104, of 22 April 1987, of the President of the National Bank of Cuba and any other provisions at variance with the stipulations contained herein are hereby repealed.

TO BE COMMUNICATED to the Vice-Presidents, the Superintendent, the Auditor and Directors of the Central Bank of Cuba, to the presidents of banks and non-banking financial institutions, to the Presiding Judge of the People's Supreme Court, to the Attorney-General of the Republic, to the Head of the National Audit Office and to the Head of the National Office of Tax Administration.

TO BE PUBLISHED in the Official Gazette of the Republic for general information, the original to be filed with the Secretariat of the Central Bank of Cuba.

Done in the city of Havana, this first day of June 1998.

Francisco Soberón Valdés
Minister-President
Central Bank of Cuba