



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.

ARGENTINA

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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E/NL.2003/11

Law No. 25.246

Amendment. Concealment and laundering of assets derived from criminal activities. Financial information unit. Obligation to inform. Parties subject to the obligation. Administrative criminal system. Department of Public Prosecution.

Enacted: 13 April 2000

Promulgated: 5 May 2000

Published in *Official Bulletin*: 10 May 2000

The Senate and the House of Representatives of the Argentine Nation assembled in Congress, etc., passed the following law:

Chapter I**Amendment to the Criminal Code**

Article 1: The heading of chapter XIII, title XI, of the Criminal Code shall be replaced by the following: “Chapter XIII: Concealment and laundering of assets derived from criminal activities”.

Article 2: Article 277 of the Criminal Code shall be replaced by the following:

“Article 277:

1. A person shall be sentenced to imprisonment for six (6) months to three (3) years, following the commission of a crime by another person in which he or she has not participated, if he or she:

(a) Helps any person avoid the authority’s investigations or evade proceedings instituted by it;

(b) Conceals, alters or destroys the traces, evidence or instrumentalities of the crime, or helps the perpetrator or accessory to conceal, alter or destroy them;

(c) Acquires, receives or hides money, goods or property deriving from a criminal offence;

(d) Fails to report the commission of a crime or to identify the perpetrator or accessory of a known crime, where he or she is under an obligation to further the criminal prosecution of a crime of that nature;

(e) Secures or helps the perpetrator or accessory to secure the product or proceeds of the criminal offence.

2. The penalty shall be raised to twice its minimum and maximum, in cases where:

(a) The action was a particularly serious offence, with a minimum penalty exceeding three (3) years’ imprisonment;

(b) The perpetrator acted with the purpose of making a profit;

(c) The perpetrator habitually engaged in concealment operations.

The aggravation of the penalty provided for in this subparagraph shall be operative only once, even when more than one of the aggravating circumstances occurs. In such a case, the court may consider the multiple causes when determining the penalty.

3. Persons acting for the benefit of their spouse, a relation below the fourth degree of consanguinity or the second of affinity or a close friend or person to whom they owe special gratitude shall be exempt from criminal liability. The exemption shall not apply to the cases covered by paragraphs 1 (e) and 2 (b).

Article 3: Article 278 of the Criminal Code shall be replaced by the following:

“Article 278:

1. (a) Any person who exchanges, transfers, administers, sells, encumbers or applies in any other way money or any other kind of goods deriving from a criminal offence to which that person has not been a party, with the possible consequence that the original or replacement property may come to appear of lawful origin, provided that its value exceeds the sum of fifty thousand pesos (\$50,000), whether it be in a single act or by the repetition of related acts shall be sentenced to imprisonment for two to ten years and a fine of two to ten times the value involved in the transaction;

(b) The minimum penalty shall be five years’ imprisonment in cases where the perpetrator commits the act habitually or as a member of an association or gang formed for the repeated commission of acts of this nature;

(c) If the value of the property does not exceed the amount indicated in subparagraph (a), the perpetrator shall be punished, as appropriate, under the provisions of article 277;

2. Any person who, out of recklessness or gross negligence, commits any of the acts described in paragraph 1 (a) shall be liable to a fine amounting to twenty (20) per cent to hundred and fifty (150) per cent of the value of the property involved in the offence;

3. Any person receiving money or other property deriving from a criminal offence, for the purpose of using it in a transaction that may give it the appearance of having a lawful origin, shall be punishable in accordance with the provisions of article 277;

4. The objects involved in the offence mentioned in paragraphs 1, 2 or 3 of this article may be liable to confiscation.”

Article 4: Article 279 of the Criminal Code shall be replaced by the following:

“Article 279:

1. If the penalty established for the aforementioned criminal offence is less than the penalty established by the provisions of this chapter, the penalty for the aforementioned offence shall apply;

2. If the aforementioned criminal offence is not punishable by imprisonment, its concealment shall be punishable by a fine of one thousand (\$1,000) to twenty thousand pesos (\$20,000) or with the penalty for the aforementioned criminal offence, if lower. The concealment of such an

offence, where committed through negligence under the terms of article 278, paragraph 2, shall not be punishable;

3. A public official who commits any of the acts described in article 277, paragraphs 1 or 2, or in article 278, paragraph 1, in the exercise or course of his or her duties shall, in addition, be disqualified from public service for three (3) to ten (10) years. The same penalties shall apply to any person acting in the exercise or course of a profession or post requiring special authorization. In the case of article 278, paragraph 2, the penalty shall be one (1) to five (5) years' disqualification;

4. The provisions of this chapter shall apply even where the criminal offence was committed outside the scope of application of this Code, provided that the offence is also punishable in the place of its commission."

Chapter II

Financial Information Unit

Article 5: The Financial Information Unit (FIU) is hereby established, operating independently under the jurisdiction of the Ministry of Justice and Human Rights and pursuant to the provisions of this law.

Article 6: The Financial Information Unit shall be responsible for the analysis, processing and transmission of information for the purposes of preventing and hindering the laundering of assets derived from:

- (a) Offences relating to illicit drug trafficking and trading (Law No. 23.737);
- (b) Arms-smuggling offences (Law No. 22.415);
- (c) Offences relating to the activities of an unlawful association under the terms of article 210 bis of the Criminal Code;
- (d) Unlawful acts committed by unlawful associations (article 210 of the Criminal Code) organized to commit offences for political or racial purposes;
- (e) Offences of fraud against the Public Administration (article 174, paragraph 5, of the Criminal Code);
- (f) Offences against the Public Administration, as contained in chapters VI, VII, IX and IX bis, title XI, Book Two, of the Criminal Code;
- (g) Offences involving prostitution of minors and child pornography, as set out in articles 125, 125 bis, 127 bis and 128 of the Criminal Code.

Article 7: The Financial Information Unit shall establish its head office in the capital city of the Republic and may establish regional agencies in other parts of the country.

Article 8: The Financial Information Unit shall be composed of eleven (11) members comprising the following:

- (a) An official of the Central Bank of Argentina;
- (b) An official of the Federal Administration of Public Revenues;
- (c) An official of the National Securities Commission;

(d) An expert on issues relating to the laundering of assets from the Secretariat for the Programming of Drug Trafficking and Addiction Prevention of the Presidency of the Nation;

(e) An official of the Ministry of Justice and Human Rights;

(f) An official of the Ministry of Economy;

(g) Five (5) financial, criminal law or criminology experts or other professionals having responsibilities relevant to the purposes of this Law.

The officials mentioned in subparagraphs (a), (b), (c), (d), (e) and (f) shall be selected through internal competition held by the body concerned and the result shall be submitted, as a binding proposal, to the National Executive for the corresponding appointment.

The experts mentioned in subparagraph (g) shall be selected through a public competition by an ad hoc committee constituted as follows:

1. Two members of the Judiciary Council, chosen by their peers, by a two-thirds majority;

2. Two officials from the Department of Public Prosecution, chosen by the Attorney-General of the Nation;

3. A member of the Board of Directors of the Central Bank, chosen by his or her peers by a two-thirds majority;

4. A member appointed by the Ministry of Justice and Human Rights;

5. A member appointed by the National Securities Commission;

6. A member appointed by the Ministry of Economy.

Following the public competition, the result shall be submitted, as a binding proposal, to the National Executive Branch, for the corresponding appointment.

Article 9: The selection of the above-mentioned experts shall be subject to the following:

(a) The candidates shall be selected through a public competition. The ad hoc committee shall announce the competition, and the dates of the examinations and the general conditions governing them shall be published for five days in the *Official Bulletin*, in two national newspapers and in one newspaper from each province;

(b) The evaluation criteria and mechanisms, and the personal records to be considered, shall be determined in advance;

(c) The names of the candidates that have passed the examinations related to their theoretical and practical training shall be published for five days in the same media specified in subparagraph (a). For sixty consecutive days following the last publication they shall be subject to any challenge that may be made by any citizen, group of citizens, intermediate bodies or juridical person.

The ad hoc committee shall provide, in the competition rules, for the regulations governing challenges.

Article 10: The members of the Financial Information Unit shall perform their duties on a full-time basis, subject to the same rules governing conflicts of interest and/or obligations established by law for public officials. They shall not be eligible to engage in or hold any interest in activities specified by the regulations for a period of two years following their separation from the Financial Information Unit.

Their term of office, which may be renewed indefinitely, shall be four years and they shall receive remuneration equivalent to that of a judge of a court of first instance.

They may be removed from office for unsatisfactory performance, gross negligence, the wilful commission of any kind of offence and physical or moral incapacity arising after their appointment. The removal procedure shall be the responsibility of the Court of Prosecution established by this Law.

The Court shall be made up of three members, former judges of the National Appeal Court for Criminal and Correctional Matters, appointed by lot by the Ministry of Justice and Human Rights. The cost of membership of the Court shall be borne by the State.

Court procedure shall be in accordance with its regulations, which shall respect the due process of law and the right to a defence.

Article 11: Members of the Financial Information Unit must meet the following requirements:

1. They must hold a university degree, preferably in law or in disciplines relating to economics or computer studies;
2. They must have a relevant technical and professional background;
3. They may not, while in office or for a year preceding their appointment, engage in or hold any interest in the activities specified by the regulations.

Article 12: The Financial Information Unit shall be supported by liaison officers appointed by the heads of the Ministry of Justice and Human Rights, the Ministry of Foreign Affairs, International Trade and Worship, the Secretariat for the Programming of Drug Trafficking and Addiction Prevention, the Central Bank of Argentina, the Federal Administration of Public Revenues, the Inspectorate-General of Justice, the Public Trade Register or similar bodies from the provinces, the National Securities Commission and the National Insurance Office.

The Financial Information Unit may request the heads of bodies of the national or provisional government to appoint liaison officers, where appropriate.

The role of such officers shall be to advise and coordinate the activities of the Financial Information Unit with those of the bodies to which they belong.

Article 13: The Financial Information Unit is competent to:

1. Receive, request and file the information referred to in article 21 of this Law;
2. Decide and direct the analysis of actions, activities and operations that may, pursuant to this law, appear to lend legitimacy to assets derived from the unlawful activities listed in article 6 of this Law and, where appropriate, make the

evidence obtained available to the Department of Public Prosecution for any relevant action;

3. Work with the judicial authorities and the Department of Public Prosecution, in pursuance of the relevant actions, in the criminal prosecution of the offences punishable under this Law;

4. Determine its internal regulations, for which the vote of two thirds of its total membership is required.

Article 14: The Financial Unit shall be authorized to:

1. Request reports, documents, records and such other items of evidence as it may deem useful for the fulfilment of its duties from any public, national, provincial or municipal body or from public or private physical or juridical persons, all of which shall be obliged to supply them within a specified period on pain of a summons.

In cases where the Financial Information Unit encounters regulations establishing the confidentiality of the information requested, it may, in each case, request authorization from the competent judge with jurisdiction in the place where the information should be supplied or in the domicile of the Financial Information Unit, as it may choose;

2. Receive voluntary statements;

3. Request the assistance of all State information services, which shall be obliged to provide it in accordance with articles 398 and 399 of the National Code of Civil and Commercial Procedure;

4. Operate in any part of the country, in performance of the functions established by this Law;

5. Request the Department of Public Prosecution to request the competent judge to order, before the event, the suspension for a period to be determined by the latter of the performance of any operation or action previously reported in accordance with article 21 (b) or any other action related to such operation or action, where suspicious activities are under investigation and there is serious evidence that they involve the laundering of assets derived from any of the offences listed in article 6 of this Law. An appeal against this measure may be permitted only with devolutive effect;

6. Ask the Department of Public Prosecution to request the competent judge to order the search of public or private places, the inspection of personal goods or the seizure of documents or evidence that might be useful in the investigation. Request the Department of Public Prosecution to apply all legal measures that may be needed to obtain information from any source or origin;

7. Order the implementation of internal oversight systems for the persons referred to in article 20 in the cases and in accordance with the procedures determined by the law;

8. Apply the penalties provided for in chapter IV of this Law, guaranteeing the due process of law;

9. Organize and administer archives and records relating to the activities of the Financial Information Unit itself or information obtained in the exercise of its duties for the recovery of information relating to its mandate. It may conclude agreements and contracts with national, international or foreign organizations in order to participate in information networks, on condition that it enjoys effective and necessary reciprocity;

10. Issue guidelines and instructions to be enforced and implemented by the subjects bound by this Law, with prior consultation with the specific oversight bodies.

Article 15: The Financial Information Unit shall be subject to the following obligations:

1. Present an annual management report to the Honourable National Congress.

2. Appear before the committees of the Honourable National Congress whenever required to do so and issue such reports, opinions and advice as they may request.

3. Compile the Single Information Register from the databases of the bodies under an obligation to submit them and from information that it receives in connection with its activities.

Article 16: The Financial Information Unit shall meet in plenary session at least four times per month in the manner established by its internal regulations. The quorum to hold a session shall be six members, and decisions shall be adopted by an absolute majority of the members present, except where this Law requires a specific majority.

Article 17: The Financial Information Unit shall receive information, keeping secret the identity of those required to report information. Confidentiality in respect of such identity shall terminate when a report is made to the Department of Public Prosecution.

Subjects of law outside the public sector and not bound by the obligation to report information as stipulated in article 20 of this Law may submit reports to the Financial Information Unit.

Article 18: Compliance in good faith with the obligation to report information shall not give rise to liability under civil, commercial, labour, criminal, administrative or any other law.

Article 19: Where information submitted or analysis by the Financial Information Unit results in evidence sufficient to give rise to the suspicion that any of the offences in this Law has been committed, the Department of Public Prosecution shall be informed immediately so that it may start criminal proceedings.

Chapter III

Obligation to report. Parties subject to the obligation

Article 20: Pursuant to article 21 of this Law, the following shall be required to report to the Financial Information Unit:

1. Financial entities subject to the provisions of Law No. 21.526, as amended, and pension fund managers;
2. Entities subject to the provisions of Law No. 18.924, as amended, and physical or juridical persons authorized by the Central Bank to buy and sell foreign currency in the form of money or checks issued in foreign currency or by means of credit or debit cards or to transfer funds within and outside the national territory;
3. Physical or juridical persons that run gambling operations as their regular business;
4. Stockbrokers and brokerage firms, companies which manage joint investment funds, brokers operating in the open electronic market place and all intermediaries involved in the buying, leasing or lending of securities through stock exchanges, with or without markets attached;
5. Brokers registered in the futures or options markets in whatever field;
6. Public trade registers, representative bodies for oversight and audit of juridical persons, real estate registries, motor vehicle registries and registries of liens;
7. Physical and juridical persons engaged in buying and selling works of art, antiques or other luxury goods, or stamp or coin collections, or in the export, import, manufacture or industrial production of jewellery or goods containing precious metals or stones;
8. Insurance companies;
9. Companies that issue traveller's checks or operate credit or charge card schemes;
10. Companies specializing in the transport of funds;
11. Companies providing postal services or with postal service concessions which carry out foreign currency transfer operations or transfers of particular types of currency;
12. Notaries;
13. Entities covered by article 9 of Law No. 22.315;
14. Physical or juridical persons inscribed in the registers established pursuant to article 23, paragraph (t), of the Customs Code (Law No. 22.415, as amended);
15. Public administration bodies and decentralized and/or self-governing entities that regulate, oversee, monitor and/or supervise financial activities and/or legal transactions and/or subjects of law, whether individual or corporate: the Central Bank of the Argentine Republic, the Federal Administration of Public Revenues, the National Insurance Superintendency, the National Securities Commission and the General Inspectorate of the Judiciary;
16. Insurers, insurance advisers, agents, intermediaries, experts and insurance claims adjusters whose activities are governed by Law No. 20.091 and Law No. 22.400, as amended, and concordant and supplementary laws;

17. Qualified economists whose activities are regulated by professional associations, except when they appear as defendants in trial proceedings;

18. All juridical persons who receive gifts or contributions from third parties.

Legal provisions relating to banking, tax or professional secrecy or confidentiality agreements established by law or by contract shall not be applicable and may not be invoked by the subjects under a reporting obligation pursuant to this Law where a request for information is made by a judge with jurisdiction in the place where the information must be provided or in the domicile of the Financial Information Unit, at the latter's discretion, or by any other competent court on the basis of this Law.

Article 21: The persons listed in the previous article shall be subject to the following obligations:

(a) To obtain from their clients, whether drawing or depositing funds, documents providing irrefutable proof of their identity, legal personality, domicile and other data as required in each case in order to engage in the relevant activity. This obligation may not apply, however, where the amounts are lower than the minimum established by the relevant regulations.

Where clients, whether drawing or depositing funds, act on behalf of third parties, all the necessary measures must be taken to establish the identity of the person for whom they are acting.

All information must be filed within the time limits and according to the procedures established by the Financial Information Unit;

(b) To report any suspicious event or transaction, regardless of its value. For the purposes of this Law, suspicious transactions are those which, compared with the normal conduct of the activity in question and according to the experience and expertise of the persons under the obligation to report, are deemed unusual, having no economic or legal justification, or of an unwonted or unjustified complexity, whether performed on a single occasion or repeatedly.

The Financial Information Unit shall provide clear guidelines to establish the procedures, criteria and limits for compliance with this obligation for each category of person under a reporting obligation and each type of activity;

(c) To refrain from revealing to the client or to third parties the actions being performed in compliance with this Law.

Article 22: Officials and employees of the Financial Information Unit shall be obliged to keep secret information received by reason of their position or any intelligence activities that ensue. The same obligation to maintain secrecy applies to the persons and entities bound by this Law to supply data to the Financial Information Unit.

An official or employee of the Financial Information Unit, or any person who, through his own agency or through a third party, discloses secret information without reference to the Financial Information Unit shall be liable to six months' to three years' imprisonment.

Chapter IV

Criminal administrative system

Article 23:

1. A juridical person whose board or executor assigns assets derived from a criminal activity with the possible consequence of giving them the appearance of a lawful origin as defined by article 278, paragraph 1, of the Criminal Code shall be liable to a fine of two (2) to ten (10) times the value of the assets involved in the offence. An offence shall be considered to have been committed where the value established by that provision has been exceeded, even when the different individual acts, related to each other which together exceeded that limit were committed by different physical persons without prior agreement amongst them and were therefore not liable to criminal prosecution;

2. Where the same act is committed out of recklessness or gross negligence on the part of the board or executor of a juridical person or by several of its boards or executors, as defined by article 278, paragraph 2, of the Criminal Code, the fine imposed on the juridical person shall be twenty (20) per cent to sixty (60) per cent of the value of the assets involved in the offence;

3. Where the board or executor of a juridical person commits, in that capacity, the offence referred to in article 22 of this Law, a fine of ten thousand pesos (\$10,000) to one hundred thousand pesos (\$100,000) shall be imposed.

Article 24:

1. A person who, acting as the board or executor of a juridical person, or a person having visible existence who fails to comply with any of the obligations to report to the Financial Information Unit established by this Law, shall be liable to a fine of one to ten times the total value of the assets or transaction involved in the offence, provided that the act does not constitute a more serious offence.

2. The same penalty shall be imposed on a juridical person within which the offender performs his or her functions.

3. Where the actual value of the assets cannot be established, the fine shall be ten thousand pesos (\$10,000) to one hundred thousand pesos (\$100,000).

Article 25: The decisions of the Financial Information Unit provided for in this chapter may be appealed against in the administrative courts, which may apply the relevant provisions of Law No. 19.549 on Administrative Procedures.

Article 26: The relations between the judicial decision in the criminal case and the administrative process arising out of the offences provided for in this Law shall be governed by articles 1101 et seq. and 3982 bis of the Civil Code, in which the term "civil action" shall mean "administrative criminal action".

Article 27: An appropriate budgetary allocation shall be made for the operation of the Financial Information Unit.

In all cases, the proceeds from the sale or administration of assets or instrumentalities deriving from the offences provided for in this Law and from the seizures ordered as a result, as well as unlawfully obtained profits and the proceeds from the fines imposed therefor, shall be deposited in a special account of the

national Treasury. These funds shall be allocated to financing the operations of the Financial Information Unit, the programmes provided for under article 39 of Law No. 23.737, as amended by Law No. 24.424, the health and occupational training programme, in accordance with the relevant regulations.

Money and other assets or resources seized by court order for the offences provided for in this Law shall be transmitted by the trial court to a special fund to be established by the National Executive.

In accordance with the above provisions, the fund may administer the assets and dispose of the money, assuming responsibility for its return to the appropriate party when so required by a final judicial decision.

Chapter V

Department of Public Prosecution

Article 28: For cases before federal or national courts, the Attorney-General appointed by the Office of the Attorney-General shall receive complaints concerning the possible commission of indictable offences under the provisions of this Law for processing in accordance with the procedural laws and the regulations of the Department of Public Prosecution; in other cases, officials of the relevant prosecution office shall proceed likewise.

The members of the Department of Public Prosecution shall investigate the activities to which the complaints relate or shall order the relevant jurisdictional action in accordance with the provisions of the National Code of Criminal Procedure and the Organization Act of the Department of Public Prosecution, or, where appropriate, of the province concerned.

Article 29: Article 25 of Law No. 23.737 (decreed text) is hereby repealed.

Article 30: To be communicated to the National Executive. DONE IN THE CHAMBER OF THE ARGENTINE CONGRESS, IN BUENOS AIRES, ON THE THIRTEENTH DAY OF THE MONTH OF APRIL OF THE YEAR 2000.

- REGISTERED UNDER NO. 25.246
- JUAN PABLO CAFIERO
- CARLOS ALVAREZ
- Jorge H. Zabaley
- Mario L. Pontaquarto.

Executive Order 370/2000
Buenos Aires, 5 May 2000

Pursuant to Legislative Bill No. 25.246, approved by the Honourable National Congress on 13 April of this year, and

WHEREAS:

It is deemed advisable that article 278, paragraph 2, of the Criminal Code should be replaced by article 3 of the Legislative Bill;

The general rule in criminal matters is that conduct of a fraudulent nature, including, in exceptional circumstances, some forms of criminal offence, shall be punishable in accordance with the need to provide proper protection for the legal assets involved;

Criminalization of the conduct provided for under article 278, paragraph 1 (a), of the Criminal Code appears sufficient to protect the interests at stake;

The great complexity that may characterize the various activities forming the basis for punishable conduct makes it extremely difficult to identify a criminal offence; since the conduct in question is of the type known as “open”, a judge’s ruling is required of the precise duty of care that has been breached in order to establish criminal liability;

For this reason, the various model rules and legislation that represent a more complete development of the subject generally provide only for fraud per se. As an example of model rules, reference may be made to the Model Regulations concerning Laundering Offences Connected to Illicit Drug Trafficking and Other Serious Offences (CICAD) of the Organization of American States and the Forty Recommendations of the Financial Action Task Force on Money Laundering. In respect of the legislation of the countries of the region, it may be noted that, with the exception of the Republic of Paraguay, this is the approach adopted by the Federative Republic of Brazil, the Republic of Chile, the Eastern Republic of Uruguay and the Republic of Bolivia;

The reasons given above as the basis for observation do not appear applicable to article 23, paragraph 2, of the Legislative Bill, despite the fact that it also refers to actions committed through recklessness or gross negligence. Since the provisions in question are administrative penal provisions applicable to juridical persons, they would seem appropriate to the objective pursued by the legislation;

The second paragraph of article 10 of the Legislative Bill provides that members of the Financial Information Unit shall hold office for four (4) years and “shall receive remuneration equivalent to that of a judge of a court of first instance”;

Expediency, merit and appropriateness argue in favour of retaining this last provision, while leaving the National Executive the regulatory power to set the relevant remuneration scale;

Moreover, the fourth paragraph of the said article 10 establishes that the court charged with the procedure for dismissing members of the Financial Information Unit shall be constituted by three (3) members who shall be former judges of the National Appeal Court for Criminal and Correctional Cases;

The grounds for dismissal are not strictly criminal, so to restrict the provenance of judges to a single court is incomprehensible, since there could be no objection to appointing former judges from the federal civil or administrative courts, etc.;

Article 12 of the Legislative Bill provides that the Financial Information Unit shall have the support of liaison officers appointed by heads of service such as those of the Ministry of Justice and Human Rights and the Inspectorate-General of Justice;

The latter unit is a body that reports to the Ministry of Justice and Human Rights and is not a decentralized entity; it is therefore not fitting that its head should appoint a liaison officer;

Article 28 of the Legislative Bill, in referring to the powers of the Department of Public Prosecution, states that “for cases before federal or national courts” the Attorney-General appointed by the Office of the Attorney-General shall be the recipient of complaints concerning the possible commission of indictable offences, adding that “in other cases, officials of the relevant prosecution office shall proceed likewise”;

Moreover, in the last paragraph of the said article, in referring to the rules of procedure to be applied in specific circumstances, it is established that action shall be taken in accordance with the provisions of the National Code of Criminal Procedure and the Organization Act of the Department of Public Prosecution, “or, where appropriate, of the province concerned”;

The Supreme Court of Justice had repeatedly maintained that the National Congress cannot remove the constitutional authority of the provinces to legislate on procedure, since that is a power reserved for them pursuant to articles 75, paragraph 12, and 121 of the National Constitution;

The measure proposed does not affect the spirit or consistency of the Legislative Bill adopted by the Honourable National Congress;

The National Executive is empowered to enact these present provisions pursuant to article 80 of the National Constitution;

Now, therefore,

The President of the Argentine Nation, in general agreement with the Cabinet of Ministers, orders vetoes as follows:

Article 1: Article 278, paragraph 2, of the Criminal Code, as replaced by article 3 of Legislative Bill No. 25.246.

Article 2: In article 279, paragraph 2, of the Criminal Code, as replaced by article 4 of Legislative Bill No. 25.246, the sentence: “The concealment of such an offence, where committed through negligence under the terms of article 278, paragraph 2, shall not be punishable”.

Article 3: In article 279, paragraph 3, of the Criminal Code, as replaced by article 4 of Legislative Bill No. 25.246, the sentence: “In the case of article 278, paragraph 2, the penalty shall be one (1) to five (5) years’ disqualification.”

Article 4: In the second paragraph of article 10 of Legislative Bill No. 25.246, the phrase: “and they shall receive remuneration equivalent to that of a judge of a court of first instance”.

Article 5: In the fourth paragraph of article 10 of Legislative Bill No. 25/246, the phrase: “of the National Appeal Court for Criminal and Correctional Matters,”.

Article 6: In article 12 of Legislative Bill No. 25.246, the words: “the Inspectorate-General of Justice”.

Article 7: In article 23, paragraph 2, of Legislative Bill No. 25.246, the words: “as defined by article 278, paragraph 2, of the Criminal Code”.

Article 8: In article 28 of Legislative Bill No. 25.246, the phrases: “For cases before federal or national courts”; “; in other cases, officials of the relevant prosecution office shall proceed likewise” and “, or, where appropriate, of the province concerned”.

Article 9: With the provisos established in the preceding articles, Legislative Bill No. 25.246 shall be enacted, promulgated and adopted as national law.

Article 10: The Honourable National Congress shall be notified.

Article 11: It shall be hereby communicated, published and submitted to the National Directorate of the Official Registry and filed.

DE LA RUA. Rodolfo H. Terragno. Federico T. M. Storani. Adalberto Rodríguez Giavarini. Ricardo R. Gil Lavedra. Juan J. Llach. Rosa Graciela C. de Fernández Mejjide. Nicolás V. Gallo. Héctor J. Lombardo. Ricardo R. López Murphy. Mario A. Flamarique. José L. Machinea.

Note: Law No. 25.246 is reissued, owing to the fact that in the version issued on Wednesday, 10 May 2000, through a technical printing error, the text of column 1, page 2, was reproduced in an incomplete form.

E/NL.2003/12

Law No. 25.345
Buenos Aires, 14 November 2000
Official Bulletin: 17 November 2000

Prevention of tax evasion. Restriction on cash transactions. Primary production measurement system. Special system for social security and pension contributions collection system. Special system for determination and collection of social security and pension contributions for the Single Social Security System for Small and Medium-sized Construction Companies. National Tax and Social Security Identification System (*Sistema de Identificación Nacional Tributario y Social (SINTyS)*). Cigarette and fuel exports. Taxes on liquid fuel and natural gas. Rules related to labour relations and non-registered employees. Other provisions.

Note: Decree No. 1.058/00 (*Official Bulletin: 17 November 2000*), for promulgation, may be found at the end of the Law.

Chapter I
Restriction on cash transactions

Article 1: Total or partial payments of sums exceeding ten thousand pesos (\$10,000), or its equivalent in foreign currency, shall not produce effects between the parties or against third parties if made later than 15 days after publication in the *Official Bulletin* of regulations by the Central Bank of the Argentine Republic as provided for in article 8 hereof, unless made by means of:

1. Deposits on the accounts of financial entities.
2. Bank drafts or transfers.
3. Cheques or settlement cheques.
4. Credit cards.
5. Other procedures expressly authorized by the Executive.

Payments to financial entities covered by Law No. 21.526, as amended, or made before a competent national or provincial court shall be excepted.

Article 2: Payments made by means other than those provided for in article 1 of this Act shall not be accounted as tax deductions or credits or as having other taxation effects applying to the tax payer or person in charge, even where such persons furnish evidence of the authenticity of such transactions.

In such a case, the procedure provided for in Law No. 11.683, article 14, text consolidated in 1998, as amended, shall apply.

Article 3: The Executive may, during the first year that this Law is in force, reduce the amount provided for in article 1 to five thousand pesos (\$5,000).

Registration

Article 4: The following shall be added to Act No. 17.801 as article 3 bis:

“Article 3 bis: Documents mentioned in article 2 (a) shall not be registered or recorded if the identification code or key issued to participating parties by the Federal Administration of Public Revenues or the National Social Security Administration, as applicable, is not available.”

Article 5: Article 20 (e) and (g), paragraph 2, of Decree Law No. 6.582/58, ratified by Act No. 14.467 (text consolidated by Decree Law No. 1.114/97), shall be replaced by the following texts:

“(e) Given name and family name, nationality, marital status, domicile, identity document and identification code or key issued by the Federal Administration of Public Revenues or the National Social Security Administration and, in the case of juridical persons, company name, registration, registered office and identification code or key.”

“(g) (2) Transfer of ownership, with buyer’s personal or company data, domicile, identity documents and identification code or key.”

Article 6: The following text shall be inserted in Act No. 19.170, annex A, article 1 (b), as the second paragraph:

“Documents in which the code or key of the participating parties, as issued by the Federal Administration of Public Revenues or the National Social Security Administration, as applicable, is not available shall be issued with a provisional registration for a period determined according to the regulations.”

Article 7: Add the following text to Decree Law No. 4.907/73, article 19, as (g):

“(g) Identification code or key of participating parties issued by the Federal Administration of Public Revenues”.

Settlement cheques

Article 8: A settlement cheque is an instrument issued by the Central Bank of the Argentine Republic under terms and conditions established according to the regulations and shall constitute an appropriate means of discharging the obligation to pay cash, having the same effect as that established for such obligations in the Civil Code.

Article 9: The Central Bank of the Argentine Republic shall determine the conditions under which settlement cheques shall be issued to the public through the Central Bank or through financial bodies authorized by it.

1. *In no case shall the payment of commission and/or charges for the issue or sale of a settlement cheque be authorized.*

1. *Second paragraph vetoed by Decree Law No. 1.058/00 (Official Bulletin, 17 November 2000).*

Article 10: A settlement cheque shall have the effect of payment from the time of its presentation to the creditor, to whom it shall be transmitted by means of a

named endorsement. Up to two (2) further named endorsements shall be permissible.

Endorsements shall be certified by a notary public, a judicial authority or a banking authority.

Article 11: Enforcement of the provisions of this chapter shall be the responsibility of the Central Bank of the Argentine Republic, which shall determine the relevant rules, including those relating to the procedure in cases of loss or theft, within 30 days of the publication of this Law.

Chapter II

Primary production measurement system

Article 12: All industrial plants engaged in stock farming and grain milling shall be obliged to adopt electronic measurement and production control systems in their operations, including systems operating in real time, in accordance with the rules established by the implementation authority.

The implementation authority shall be authorized to establish electronic production measurement and control systems at other stages of implementation and for other types of animal or plant production.

The Federal Administration of Public Revenues (AFIP) and the Agriculture, Livestock, Fisheries and Food Secretariat (SAGPyA) shall, through the National Agricultural Trade Control Office (ONCCA), according to their respective fields of reference, be the implementation authorities for this article, with the requirement of establishing the rules indicated in the first paragraph and the procedures enabling AFIP to obtain and analyse information received with a view to improving tax controls and SAGPyA to obtain statistical data and production monitoring.

For the implementation of the provisions of the preceding paragraphs, the provisions of Act No. 11.683, text consolidated in 1998, as amended, shall apply.

Article 13: The implementation authorities shall establish the system provided for in this chapter, with the option of introducing a set of rules providing exceptions for small producers or family enterprises.

Chapter III

Social security and pension contribution collection system

Article 14: The Executive shall be authorized to fix a commission of up to 0.7 per cent on the total volume of personal pension contributions for the capitalization system under Law No. 24.241 and the employer's contributions under Law No. 24.557.

This commission shall be established in order to finance the expenditure required for the operations of the Federal Administration of Public Revenues and shall be administered by the Pension Fund Administrators and the Employment Risk Insurers, who will assign the credits prior to the transfer of the relevant funds. To this effect alone, Decree Law No. 863 of 27 July 1998 is hereby ratified.

Chapter IV

Special system for assessment and collection of social security and pension contributions for the Single Social Security System for Small and Medium-sized Construction Companies

Subjects and aims

Article 15: A special system is hereby established for the assessment, collection and payment of social security and pension contributions to the Single Social Security System by construction companies with an annual turnover below the limit fixed by the rules to that effect, providing personal insurance for their employees in implementation of Law No. 22.250, as amended, for the purposes indicated in article 16 and in accordance with the requirements, time limits and conditions indicated in this Law.

Article 16: The system established under this Law shall apply to the enterprises indicated in article 15, whatever their legal status, including one-person enterprises, temporarily merged enterprises or any other form of association acting as a lessee in the following lease arrangements:

(a) Leases listed in article 3 (a) of the Value-Added Tax Act, consolidated in accordance with Law No. 23.349, as amended. This comprises all works agreed between the same parties, “client and contractor”, to the extent to which the completion dates of the respective contracts are contained within the same period, whether partially or in full.

(b) Public works on buildings of any nature (building, installations, repairs, maintenance or conservation). This comprises any public works ordered by any State authorities (national, provincial or municipal), their decentralized and/or self-governing entities, the enterprises or companies covered by article 1 of Law No. 22.016 and other bodies having delegated public authority or powers by virtue of an express legal mandate, whatever their organizational structure, including holders of public works and services concessions.

Agents responsible for assessing and paying contributions

Article 17: Enterprises in the construction industry and enterprises holding public service concessions, whatever their legal status, including one-person enterprises, temporary mergers among any enterprises comprising a corporation, or any other form of association which, on the basis of its final balance and results, has an annual turnover equal to or higher than that established by the regulations to that effect, shall be liable for calculating and determining the social security contributions, which are imposed under this Law on contractors and subcontractors in the construction industry in respect of the entire workforce engaged in the contracted works.

Article 18: Where the principal contractor is an enterprise in the construction industry which, owing to its annual turnover, is covered by the special system, the determination of social security contributions under the system shall be restricted to its own employees. In this case, the principal contractor shall have no obligation to assess or pay the contributions of the subcontractors.

A subcontractor must determine its own liabilities under the procedures of the special system and effect the payment of the social security liability in accordance with the provisions established to that effect by the Federal Administration of Public Revenues, a self-governing body under the Ministry of the Economy.

Exclusions

Article 19: Those responsible for assessment and payment, as defined in article 17, shall continue to assess and pay contributions to the Single Social Security System for their employees, in accordance with the regulations of the general system.

Article 20: The special system shall not apply to employees of contractors or subcontractors subject to the simplified system for small contributors established under Law No. 24.977, as amended.

Social security liabilities

Article 21: Revenue originating as a result of the implementation of this special system for enterprises that are contractors and/or subcontractors in the construction industry shall serve as part payment for the following liabilities for social security cover:

- (a) Employer's contribution to the Integrated Pensions System.
- (b) Employer's contribution to the Pensioners Institute for Social Services.
- (c) The employer's contribution for the national family allowance and subsidy system and for the National Employment Fund.
- (d) Employer's contribution to the national social welfare system and the national health insurance system.
- (e) Employee's personal contribution to the Integrated Pensions System.
- (f) Employee's personal contribution to the Pensioners Institute for Social Services.
- (g) Employee's personal contribution to the national social welfare system and the national health insurance system.

A worker's personal contributions may not exceed those which, at current rates, correspond to his or her salary as per the sale of assets.

Periodicity of assessment and payment

Article 22: Enterprises which, pursuant to the provisions of article 17 of this Law, are required to act as agents for the assessment and payment of social security contributions to the Single Social Security System for the employees of contractor and subcontractor enterprises in the construction industry shall effect the assessment and payment to the Treasury of the corresponding amounts on a monthly basis and in accordance with the time limits and modalities established to that effect by the Federal Administration of Public Revenues, a self-governing body under the Ministry of the Economy.

Article 23: Where the amounts assessed and paid to the Treasury by enterprises pursuant to the special system relate to work in progress in respect of which the contractors or subcontractors have not yet been given final approval, such amounts shall be entered to the credit of the assessment and payment agent and may be deducted from the payment to be made in respect of the contractors.

Article 24: Enterprises that are required to act as assessment and payment agents pursuant to the special system shall assume personal liability for the debt of the other companies, without prejudice to joint liability with employers for the payment of social security contributions.

Registration by contractors and subcontractors with the Construction Industry Institute of Statistics and Registry does not provide exemption from joint responsibility for obligations under this Act.

For all purposes of this Law, the joint liability established in article 30 of the Labour Contract Law No. 20.744, consolidated in 1976, as amended, and article 32 of Law No. 22.250 shall apply.

Article 25: There shall be a strict requirement that the calculation of liabilities under this system shall be effected monthly. To that end, if the person commissioning the contract is not responsible for assessment and payment, the contractor shall independently assess and discharge to the Treasury its liabilities under this system, provided that it is a construction enterprise and is covered by the provisions of article 15 of this Law.

Calculation of liabilities under the special system. Basis of social security liabilities

Article 26: Social Security liabilities shall be determined by the implementation authority in accordance with:

- (a) The levels appropriate to the current scale of contributions to the Single Social Security System, with any relevant reduction due to the location of the work.
- (b) The monthly reference values ascribed to the labour categories covered in annex 1 of this Act.
- (c) The monthly period worked, which shall be the number of days worked within a calendar month by a duly registered employee.

Article 27: In order to calculate social security liabilities, contractor and subcontractor enterprises in the construction industry covered by the system shall be obliged to submit the following information to the principal contractor, as being responsible for assessment and payment:

- (a) A list of its employees' identified according to the Single Labour Identification Code (CUIL) and arranged according to the labour categories defined in annex 1.
- (b) The number of days worked by each registered employee appearing in the above-mentioned list of names during the calendar month in question.
- (c) Family allowances paid during the reporting period.

They must also submit to the principal contractor evidence of having paid the relevant employer's contribution to the Construction Industry Unemployment Fund.

Article 28: Sums collected through the special system shall be distributed monthly among the various funds and systems listed in article 21 in the proportion allocated to each under Social Security Unified Contribution and in accordance with the relevant contribution rate, which shall provide a basis for calculating any additional emoluments or payments established under current law.

Article 29: The enterprises indicated in article 15 shall, on the completion of the work or every six months, if the work extends beyond that period, submit a sworn statement certifying the contributions to the Single Social Security System under the general system by employees covered by the system on the basis of taxable remuneration that has actually been paid.

Social insurance contributions, once paid, shall be allocated towards settlement of the balance set forth in the sworn statement indicated in the previous paragraph and shall in no case generate a surplus balance for the contributor.

Social security contributions

Article 30: Employees of construction industry enterprises covered by this system shall be entitled to all the social security contributions established in Law No. 24.241, as amended, Law No. 24.174, as amended, Law No. 19.032, as amended, Law No. 23.660, as amended, and Law No. 23.661, as amended.

Article 31: The system established by this chapter shall take effect one hundred and eighty (180) days following the publication of this Law.

In the case of data to which this simplified system does not apply, the Federal Administration of Public Revenues shall, under the authority vested in it, apply a deduction system on payments made by the client to any building contractor or subcontractor. Such deductions shall be considered part payment of dues to the Consolidated Social Security Tax.

Chapter V

National Tax and Social Security Identification System (*Sistema de Identificación Nacional Tributario y Social*)

Article 32: The establishment of the National Tax and Social Security Identification System (SINTyS) is hereby ratified. The National Executive shall issue the relevant regulations within thirty days of the adoption of this Law.

Article 33: Entities of the national public administration, whether centralized or decentralized, shall in all cases observe the obligation of confidentiality applicable by virtue of the special legislation governing them.

Article 34: The National Government shall conclude with the provincial states and the Governor of the autonomous city of Buenos Aires agreements on setting up, in their respective jurisdictions, information systems complementary to SINTyS, including the use of interaction mechanisms.

Article 35: The National Tax and Social Security Identification System shall be integrated with information provided by, among others, the Federal

Administration of Public Revenues (AFIP), the National Social Security Administration (ANSeS), the National Registry of Persons, the Inspectorate-General of Justice, the Real Estate Registry, the National Register of Shipping, the National Aircraft Registry, the National Registry of Motor Vehicles, Public Trade Registers, the Consolidated Beneficiary Household Identification Registry System (SISFAM), the Consolidated Register of Social Programme Beneficiaries (PUBPS), the National Register of Livestock Producers (RENSPA) and provincial bodies, following a membership agreement.

Article 36: The Office of the Cabinet of Ministers, as the body in charge of the system, shall, following consultations with the bodies mentioned in article 35, lay down the technical guidelines and standards required for the exchange and transfer of information between the public bodies referred to in the previous article, maintaining the principles of privacy, confidentiality and security.

Chapter VI

Cigarette and Fuel Exports

Article 37 (1): *Where cigarettes are exported or constitute part of the cargo of ships engaged in international trade or of international airlines, the exemption provided for in article 10 of Law No. 24.674 on Domestic Taxes, as amended, and those arising out of the implementation of that Law with regard to the taxes established by the National Law on Tobacco (No. 19.800), as amended, and Law No. 24.625 on the Emergency Supplementary Tax on the Sale Price of Cigarettes, as amended, shall be effective only by means of a system of refunding the above-mentioned taxes to the taxpayers concerned.*

The same procedure as in the previous paragraph shall apply to the operations listed therein conducted in the Free Area or the Special Customs Area defined by Law No. 19.640, as amended, or the Free Zones established under Law No. 24.331, as amended and supplemented.

The National Executive shall, within a period of one hundred and twenty days, establish the terms, time limits and conditions governing this system and the competent bodies that shall undertake the refunding of the above-mentioned taxes.¹

Article 38:¹ *For the purposes of the provisions of the previous article, calculation and payment of the taxes covered therein shall be conducted in accordance with the legal provisions applying to the taxable products.*

Article 39: The packets of cigarettes covered by this system shall comply with the tax control instruments established by Article 3 of the Law on Domestic Taxes No. 24.674, as amended, by displaying the legend: "Tax-Free". Each packet shall also bear the legend: "For export only—sale prohibited in the territory of Argentina".

Article 40: The mere discovery of such products within the national territory in quantities that make them subject to regulation shall constitute grounds for the presumption that they were the object of some form of smuggling, which will form

¹ Article vetoed by Decree No. 1.058/00 (*Official Bulletin*, 17 November 2000).

the basis for the institution of administrative or criminal proceedings, as the case may be, against the owner of the illegal products concerned.

Article 41: Where the declaration made by the exporter of cigarettes and fuel differs from the results of the inspection conducted by the customs service, the exporter shall, regardless of the penalties imposable for any offences that he may have committed, pay a fine five times the amount of the domestic tax due or the tax on the fuel or natural gas which would have been exempted and/or refunded where it had passed unnoticed by the port authorities. In such case, the procedure provided for under the Customs Code shall apply.

This Law shall also apply to exports of any hydrocarbon mixture, whether for fuel use or not, including aliphatic and/or aromatic solvents and/or turpentine and/or condensed and/or natural gas, and chemical and petrochemical products resulting from the use of the above-mentioned items or products as raw materials, and in respect of the destinations listed in article 7 (b) of Law No. 23.966, Title III, consolidated in 1988, as amended. The exporter shall remain liable until arrival at the final destination stated in the customs declaration has been confirmed.

In cases in which the goods referred to in the previous paragraphs were subject to an export prohibition, as provided for in the Customs Code, articles 374 and 385, the penalty provided for therein shall apply to the exporter, wherever the inspection might take place, whether by the customs service in the official export destination, by the customs service at the point of departure or at some point on the journey the goods have made between the two.

The tax invoice sent by the Federal Administration of Public Revenues shall constitute a sufficient basis to pursue tax enforcement.

Chapter VII

Taxes on liquid fuel and natural gas

Article 42: The Law on Taxes on Liquid Fuel and Natural Gas No. 23.996, Title III, consolidated in 1998, as amended, is hereby amended as follows. The National Executive shall provide a system of registering and monitoring end use under article 12 (c) of Law No. 25.239, the time period provided for in the first paragraph of the article contained in Law No. 23.966, article 7 (b), being reckoned from sixty (60) days following the entry into force of this Law:

- (a) Replace the first paragraph of article 7 (c) by the following:

“(c) With regard to aromatic solvents, virgin oil and natural or pyrolytic gas and other hydrocarbon items or derived products, their purpose for use as raw materials in chemical and petrochemical processes shall be restrictively determined by the National Executive, since such processes bring about a substantial transformation of the raw material by altering its original properties or applying procedures such as to denature them for use as liquid fuel or, in the case of hexane, its use in an industrial process for the extraction of vegetable oils; these products are required on the local market or imported directly by the enterprises which use them for the processes indicated above; and those effecting such procedures are authorized operators of the processing plants. The exemption provided for shall apply where the beneficiary enterprises provide certified confirmation of the industrial processes used, the

capacity installed, the details of the raw materials utilized and other conditions establishing authorization by providing unequivocal evidence of the chemical or petrochemical use or the declared industrial use for the extraction of vegetable oils, together with scope of the exemption provided.”

(b) The article inserted after article 9 shall be replaced by the following:

“Article ...: The National Executive shall be authorized to establish a system under which this Title shall apply to those persons who are not covered by article 7 (c) but have settled and invoiced the above-mentioned tax on the purchase of aliphatic and/or aromatic solvents and turpentine, provided that they are used as raw materials in the preparation of chemical and/or petrochemical products or as elements in the production of thinners, adhesives, printing dyes, rubber products or wax or as ingredients of generically named diluents which are in turn used as ingredients in other industrial processes or for other non-fuel uses, where it is shown, within the scope covered by the regulations, that the process or use in question requires the production of a diluent of a fixed specification, which shall be required to be approved before commercial release.

(1) Such a refund shall be made no later than ten days following the date on which the tax was to have been paid by those responsible for payment or from the date of submission of the request for the refund, where such a request was made at a later date; the request for a refund should be approved within the agreed time period.

(1) Second paragraph vetoed by Decree No. 1.058/00 (Official Bulletin, 17 November 2000).

Where appropriate in the particular conditions of an industrial sector, the National Executive may establish a system of guarantees to replace payment of the tax under the Title, on the terms determined by the regulations.”

(c) The following shall be inserted to follow the unnumbered article inserted after article 9:

“Article ...: The National Executive shall be authorized to establish physicochemical methods of unambiguously distinguishing hydrocarbon items and/or products for the purposes indicated in the preceding article. The use of such methods shall be compulsory in the plants of producers and/or importers, under the terms established by the competent authority.

In addition, and in order to ensure that the hydrocarbon items and/or products declared for the purposes indicated in the preceding article are not by-products of their use as fuel, the National Executive shall establish monitoring systems that shall be compulsory for the owners of service stations.

The foregoing is in accordance with the purposes provided for in Law No. 25.239, article 12 (d), which appears as chapter VI in Law No. 23.966, Title III, consolidated in 1998, as amended. The National Executive shall also specify the bodies with competence to conduct inspections at the various stages of the marketing chain.”

(d) The following shall be added to follow article 7:

“Article ...: The exemption provided for in article 7 (d) of this Law shall be monitored by means of the following system: The National Executive shall establish a system to register and confirm the origin and purpose of exempt fuel, in accordance with article 7 (d) of this Law with a view to establishing systematic monitoring of such fuel by identifying all stages of the process, including the origin, transportation, inspection, unloading and external auditing of the whole procedure.

These regulations shall be governed by the following general principles:

(a) The register shall maintain a record of those who produce, use, distribute, store, transport, sell retail or engage in any stage of the marketing chain of the products covered by this Law No. 23.966, Title III, on Taxes on Liquid Fuel and Natural Gas, consolidated in 1998, as amended, for the purposes for which exemption is established under article 7 (d).

(b) Inclusion in the register shall be a prerequisite for authorization of those responsible to engage in the marketing chain and also for subsequent authorization of the exempted products for the uses in question.

(c) Only exempt operations shall be entered in the register.

(d) Monitoring of compliance with these regulations shall be subject to auditing by the National Audit Office and final inspection shall be the responsibility of the Federal Administration of Public Revenues.

(e) The enterprises involved shall make available to the Federal Administration of Public Revenues statistical information as evidence of the movements of the fuel and any supporting documentation identifying the products exempt under [article 7] (d) of this Law.

(1) With a view to implementing the inspection and monitoring system, the implementation authority shall adopt the following measures:

(1) Establish permanent inspection posts at the points of entry and departure of fuel transportation at:

(a) Police posts in the province of Chubut de Arroyo Verde, National Route No. 3, border between the provinces of Chubut and Río Negro.

(b) Gendarmería Nacional post on Route 258 in Río Villegas, or a new area comprising an extension of the exempt area at San Carlos de Bariloche, Villa La Angostura, San Martín de los Andes and Junín De los Andes.

(c) Town of Sierra Grande.

(d) Ports south of Sierra Grande, province of Río Negro.

(e) Registered refineries supplying fuel exempt under article 7 (d) of the Law.

2. The implementation authority shall allocate the necessary resources for the implementation of the above-mentioned system, including wages, subsistence allowances, information and communication systems and auditing costs.”

(1) *Final paragraph vetoed by Decree No. 1.058/00 (Official Bulletin, 17 November 2000).*

Chapter VIII

Rules relating to labour relations and non-registered employees

Article 43: The following should be added as article 132 bis of Law No. 20.744 (consolidated by Decree No. 390/76):

“Article 132 bis: Where an employer has withheld an employee’s contributions to the social security authorities or subscriptions, periodic payments or contributions that workers are obliged to make by virtue of legal rules or regulations arising out of collective labour agreements, or by virtue of their membership or workers’ associations with trade union status, or as members of mutual or cooperative societies, or for services and other benefits provided by such bodies, and on the termination of the contract has failed for whatsoever reason to pay such contributions, in full or in part, to the bodies, entities or institutions to which they should have been paid, he shall immediately pay the employee concerned a monthly sum equivalent to the monthly remuneration to which the employee was entitled at the time that the termination of the contract came into effect, which sum shall be paid with the same periodicity as the salary, until the employer is able to show convincing evidence that he has discharged the payment of the funds withheld. The imposition of the penalty provided for in this article shall be without prejudice to any penalties imposable in the event of an offence having been committed under criminal law.”

Article 44: The following text shall be added as the second paragraph of article 15 of the Law on Contracts of Employment:

“Notwithstanding, where one or both parties claim not to be covered by the rules governing the obligation to pay or deduct contributions for the social security bodies, or where the available evidence indicates that the employee concerned is not properly registered or that he was registered late or his salary was stated as lower than the actual amount or the contributions in question have not been paid, in part or in full, the administrative or judicial authority involved shall be obliged to submit the relevant documents to the Federal Administration of Public Revenues in order that the latter may establish whether any obligations have not been fulfilled and act accordingly. A judicial or administrative authority that fails to take action in the manner laid down under this rule shall be held liable for serious dereliction of official duty and shall accordingly be liable to the sanctions and penalties prescribed in such cases.

In all cases, administrative or judicial approval of conciliation, settlement or exemption agreements shall give them the force of *res adjudicata* between the parties thereto, but shall not entitle them to oppose the bodies engaged in collecting payments, subscriptions and other contributions to the social security system with regard to the nature of the relations between the parties and the requirement to fulfil the obligations to the social security bodies that arise out of those relations.”

Article 45: The following final paragraph is added to article 80 of the Law on Contracts of Employment (consolidated by Decree No. 390/76):

“If the employer has not supplied the evidence or certificate provided for in paragraphs 2 and 3 of this article respectively within two working days of the date following receipt of a request properly made to that effect by the employee, he shall be ordered to pay compensation to the employee equivalent to three times the maximum regular monthly salary received by the employee during the previous year or during the period for which he has served, if less than one year. This fine will be awarded without prejudice to any sanctions imposed by the competent judicial authority for the omission.”

Article 46: The following is inserted as the final paragraph of article 132 of Law No. 18.345 (consolidated by Decree No. 106/98):

“If the final judgment determines that the person in question is an employee, and that this status was not known to the employing enterprise when it responded to the charge, or if the date on which the employee took up his post, as established in the judgment, was earlier than the date claimed by his employer, or if it is found by any other means that the employer omitted to forward the payments or contributions due under the various social security systems to the relevant agencies, the registrar of the court dealing with the case must transmit the file to the Federal Administration of Public Revenues for the determination and enforcement of the sums due.

Before transmitting the file, it shall issue the testimony and the certification required to enable the procedure for enforcement of the judgment to continue until the outstanding sums are paid in full.

A registrar who fails to act in the manner laid down in this article shall be held liable for serious dereliction of official duty and shall accordingly be liable to the sanctions and penalties prescribed in such cases.”

Article 47: Article 11 of Law No. 24.013 is amended to read as follows:

“The compensation prescribed in articles 8, 9 and 10 shall be payable when the employee or the trade union representing him have duly performed the following actions:

(a) Request the employer to make the entry in the record and to establish the actual date of taking up employment or the true amount of remuneration; and

(b) Proceed immediately, and in any event not later than one working day afterwards, to transmit to the Federal Administration of Public Revenues a copy of the request referred to in the foregoing paragraph.

When presenting the request, the employee must state the actual date on which he took up employment and the actual circumstances from which it can be inferred that the original entry was inaccurate. If the employer responds and complies in full with the request within thirty days, he shall be exempt from payment of the compensation stated above.

For the purposes of articles 8, 9 and 10 of this Law, only remuneration paid up to two years prior to the date of its entry into force shall be taken into account.”

Article 48: A new subparagraph is added to article 2 of Law No. 23.789, as follows:

“(d) The employee or the trade union representing him, to send to the Federal Administration of Public Revenues a copy of the request sent to his employer under the provisions of paragraph (b) of article 11 of Law No. 24.013.”

Chapter IX

Other provisions

Article 49: The provisions of articles 37 and 52 and, as appropriate, of chapter XV of Law No. 11.683, consolidated in 1998, as amended, shall apply to payments and contributions intended for the Single Social Security System which remain wholly or partially unpaid on the date of entry into force of this Law.

Article 50: Until the National Executive regulates the monitoring systems referred to in article 42 above, the exemption provided in article 7 (c) and (d) of Law No. 23.966 (consolidated in 1998, as amended) shall continue to take effect in the manner applicable on the date of adoption of this Law, and with the monitoring mechanisms in force on that date.

Article 51: Article 46 of Law No. 24.921 on Multimodal Transport shall be amended to read as follows:

“Temporary admission of containers

Article 46: With a view to rationalizing the use of foreign registered containers, a time limit of four hundred and eighty days shall be imposed under the temporary admission scheme for these containers. When this time limit is reached, the customs authority shall award a daily fine of one hundred pesos (\$100) against the person responsible for the temporary admission of the container, for a maximum period of ninety days, after which the container in question will be sold at auction.

Financial penalties awarded under article 46, second paragraph, of Law No. 24.921 are hereby declared as being forgiven automatically by law, in accordance with article 877 and concordant articles of the Civil Code. Administrative and judicial procedures instituted under the amended article are likewise declared to be without effect.”

Article 52: Decree P.E.N. 434 of 30 May 2000 is hereby repealed from the date of promulgation of this Law and its publication in the *Official Bulletin*.

Article 53: *De forma*.

ANNEX I

Employment categories: watchmen, assistants, semi-skilled workers, skilled workers, specialist workers, multiple non-classified workers (specialized workers not included in the foregoing categories).

DECREE 1.058/00

Buenos Aires, 14 November 2000

Official Bulletin: 17/11/00

Article 1: The second paragraph of article 9, chapter I of the Legislative Bill registered under No. 25.345 is hereby vetoed.

Article 2: Articles 37 and 38, chapter VI of the Legislative Bill registered under No. 25.345 are hereby vetoed.

Article 3: In article 42, chapter VII of the Legislative Bill registered under No. 25.345, amended by Title III of Law No. 23.966 on Tax on Liquid Fuels and Natural Gas, consolidated in 1998 as amended, the following are hereby vetoed:

(a) In paragraph (b), replaced by the article added at the end of article 9 of the Tax Law, the second paragraph of that article.

(b) In paragraph (d), incorporated in an article following article 7 of the Tax Law: the last paragraph of that article, including subparagraphs 1 and 2 referred to therein.

Article 4: The Legislative Bill registered under No. 25.345, with the exceptions provided in the foregoing articles, shall be enacted, promulgated and adopted as national law.

Article 5: *De forma.*

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DECREE 169/2001

REGULATION OF THE FINANCIAL INFORMATION UNIT

Concealment and laundering of proceeds of crime

Regulation under Law No. 25.246¹ governing this offence. Definition of the basic terms relating to the operation of the Financial Information Unit and of various terms used in that Law, to ensure the efficient and effective application of the procedure contemplated therein.

Buenos Aires, 13/2/2001

HAVING REGARD TO Law No. 25.246 relating to the concealment and laundering of proceeds of crime, and

WHEREAS:

Since the adoption of Law No. 23.737 defining the offence of laundering funds obtained from drug trafficking, a truer appreciation of the scale of this crime has developed nationally and internationally;

In our country, the public in general and the State in particular are required not merely to respond or react to such offences once they have been committed, and it is therefore essential to adopt preventive measures to deal with this criminal phenomenon from a realistic perspective, drawing upon instruments which have proved effective for that purpose at the international level;

In the Law cited above the definition of the offence of “money-laundering” has been extended to other forms of conduct, and a new system of prevention and control has been defined, consisting basically of establishing a definition of a “suspicious transaction” and determining which persons have a duty to provide information, and also defining the framework of a State body to analyse and process this information;

For this purpose, in chapter II of Law No. 25.246, a FINANCIAL INFORMATION UNIT was created, with defined functions, powers and authority, on the basis that its personnel are to be appointed through a competitive procedure;

A number of different government agencies are to participate in the selection process, as well as an ad hoc commission to be responsible for selecting on the basis of public competition and personal histories FIVE (5) experts in finance, criminal law, criminology and other professions relevant to the purposes of this Law;

This selection process is by its nature complex and expected to take a considerable time, for which reason it is considered necessary to establish the Unit

¹ Note by the Secretariat: E/NL.2003/11.

on a transitional basis, in order to enable the actions prescribed by the Law to be carried out immediately;

It will also be the duty of this Unit to draw up its own budget and to propose improvements and additions to the rules contained in this decree;

It is necessary to define for the purposes of this text the basic terms relating to the operation of the FINANCIAL INFORMATION UNIT;

It is necessary, moreover, to define a number of terms used in Law No. 25.246, to ensure the efficient and effective application of the procedure contemplated therein;

This measure is enacted in exercise of the powers conferred by article 99, paragraphs 1 and 2, of the National Constitution,

Therefore,

THE PRESIDENT OF THE ARGENTINE NATION HEREBY DECREES AS FOLLOWS:

Article 1: The FINANCIAL INFORMATION UNIT established under article 5 of Law No. 25.246 shall be formed in accordance with article 8 of the same Law, and its members shall be selected by internal competition within the relevant public agency, or on the basis of a public competitive procedure and personal histories, as appropriate, according to article 8 and subsequent articles.

Without prejudice thereto, and until the selection procedure referred to above has been completed, the Unit shall consist, on a transitional basis, of the following:

- (a) The Minister of Justice and Human Rights, who shall act as its Chairman and shall represent it for legal purposes,
- (b) The Minister for the Economy,
- (c) The Secretary for Programming of Drug Addiction and Trafficking Prevention, under the auspices of the PRESIDENT OF THE NATION,
- (d) ONE (1) official of the CENTRAL BANK OF THE ARGENTINE REPUBLIC,
- (e) ONE (1) official of the FEDERAL ADMINISTRATION OF PUBLIC REVENUES,
- (f) ONE (1) official of the NATIONAL SECURITIES COMMISSION.

Decisions will be taken by a simple majority of the votes of members present and in the event of a tie, by the casting vote of the Chairman. A quorum shall exist when FOUR (4) of the members are present.

The agencies referred to in paragraphs (d), (e) and (f) shall propose to the national executive the names of officials to be appointed to represent them, within TEN (10) days of enactment of this decree.

Article 2: The members of the FINANCIAL INFORMATION UNIT shall remain in office until all the members selected through the competitive procedure laid down in the Law have been appointed.

Within THIRTY (30) days, the Ad Hoc Commission established under article 8 of Law No. 25.246 shall be constituted, the FINANCIAL INFORMATION UNIT being responsible for addressing notice of convocation to the agencies from which it is to be appointed.

The competitions provided for in article 8 of Law No. 25.246 shall be held within ONE HUNDRED AND TWENTY (120) days of the appointment of the Ad Hoc Commission.

Article 3: The Chairman of the FINANCIAL INFORMATION UNIT shall be responsible for recruiting up to TWENTY (20) officials from various Government departments, who shall be qualified to provide it with the necessary administrative, technical and professional support to perform its functions.

Article 4: The FINANCIAL INFORMATION UNIT shall have a budget assigned to it within Portfolio 40: Ministry of Justice and Human Rights, by the Head of the Cabinet of Ministers, for which purpose the holder of that office shall make the budgetary appropriations required in that portfolio, within the limits established by Law No. 25.401 and without prejudice to due compliance with the requirements of article 27, paragraph 2, of the Law.

Article 5: The FINANCIAL INFORMATION UNIT shall have its headquarters in a place assigned to it, at its request, by the National Property Agency, in the capital of the Argentine Republic, in accordance with article 7 of the Law.

Article 6: For the purposes of article 6 of Law No. 25.246:

(a) “information analysis” means the process of cross-checking and studying information received by the Financial Information Unit relating to paragraphs (a) and (g) of the article, in order to obtain the objective evidence to enable it to exercise its authority under the Law;

(b) “information processing” means the task of systemizing all the information obtained for the purposes of the Law;

(c) “information transmission” means notifying the Department of Public Prosecution, in accordance with articles 19 and 28 of the Law, that offences as defined by the provision in question may have been committed.

Article 7: In accordance with article 7 of the Law, the Financial Information Unit shall be empowered to establish such regional offices as it considers necessary. These offices may not exceed ONE (1) for each region. Their function will be to receive, supplement and cross-check information produced in their respective jurisdictions, for subsequent transmission to the Central Office of the Financial Information Unit.

For the purposes of this regulation, the national territory shall comprise the following regions:

(1) The Central Region, comprising the provinces of Córdoba and Santa Fe, with its headquarters in the city of Córdoba;

(2) The Region of Cuyo, comprising the provinces of La Rioja, Mendoza, San Juan and San Luis, with its headquarters in the city of Mendoza;

(3) The Coastal Region, comprising the provinces of Corrientes, Entre Ríos and Misiones, with its headquarters in the city of Corrientes;

(4) The Northern Region, comprising the provinces of Catamarca, Chaco, Formosa, Jujuy, Salta, Santiago del Estero and Tucumán, with its headquarters in the city of Salta;

(5) The Region of Pampeana, comprising the provinces of Buenos Aires and La Pampa, with its headquarters in the city of Bahía Blanca, and

(6) The Patagonia Region, comprising the provinces of Chubut, Neuquén, Río Negro, Santa Cruz and Tierra del Fuego, Antarctic and South Atlantic Islands, with its headquarters in the city of Comodoro Rivadavia.

Article 8: The regional offices shall have a maximum of FIVE (5) officials each, to be assigned or transferred from the various agencies of the national Government. These officials shall be appointed in a category not exceeding Grade B of the National Civil Service system (SINAPA), or the equivalent in other staffing tables, and ONE (1) of them will be appointed by the Chairman of the Financial Information Unit to be Coordinator of the office.

Article 9: Each of the offices referred to in article 12 shall, within FIFTEEN (15) days of the entry into force of this decree, appoint ONE (1) Liaison Officer to carry out the functions laid down in that article.

Article 10: The duty to provide information is defined as the legal obligation on the part of the persons specified in article 20 of the Law, within their field of activity, to report to the Financial Information Unit any conduct or activities of natural or legal persons indicating an abnormal situation possibly constituting a suspicious act or operation.

Knowledge of any suspicious act or operation shall carry with it the obligation on the part of those persons to act as described above.

The fulfilment of this reporting obligation shall not be limited by the law governing banking, tax or professional secrecy, or by confidentiality agreements established by law or by contract.

Article 11: If, in responding to requests for information by the Financial Information Unit, any of the persons referred to in article 20 of the Law, with the exception of those referred to in paragraph 6, invokes restrictions derived from statutory rules on banking, tax or professional secrecy, or confidentiality agreements established by law or by contract, the competent court shall take action under the terms and conditions laid down in the last paragraph of article 20.

Article 12: For the purposes of paragraph (b) of article 21 of the Law, the following shall be regarded, for the purposes of definition only, as “suspicious acts or operations”:

(a) Those covered by the regulations laid down, within their respective fields of competence, by the supervisory authorities specified in article 20, paragraph 15: the Central Bank of the Argentine Republic, the Federal Administration of Public Revenues, the National Insurance Superintendency, the National Securities Commission and the Inspectorate-General of Justice, within the framework of the Law;

(b) The postal services, wherever the quantity or conditions of the dispatch manifestly and significantly exceeds reasonable limits for the nature of the operation;

(c) Sales of metals or precious stones, and transport of cash or its carriage by freight companies, whether or not as part of ordinary business, if it exceeds reasonable limits;

(d) Simultaneous sequential transactions and electronic transfers from one place to another, without apparent reason;

(e) The formation of companies without a normal regular business turnover which carry out transactions in movable or immovable property, contracts of sale, import or export invoicing, or lending and which do not have adequate capitalization;

(f) Records of operations or transactions between individuals or companies, associations or trusts where the scale, nature or frequency of the operations or transactions are outside the ordinary practices of the market;

(g) Contracts for the transport of property which by their size and nature indicate transactions outside the ordinary course of business of the contracting companies;

(h) Transactions known to or registered by insurance companies, where the nature or circumstances of such transactions are judged by such companies to be abnormal in relation to the ordinary insurance market;

(i) Activities by court clerks, notaries, auctioneers, administrators of estates, accountants, customs agents, customs clearance officials and other trade professionals and assistants in the ordinary course of their profession, the scale and nature of which distinguishes them from the ordinary practices of the market;

(j) Indications whereby the entities referred to in article 9 of Law No. 22.315 detect in their operations the presence of marginal transactions, increases in wealth or fluctuations in the value of assets exceeding the general average rates;

(k) Situations in which, on the basis of some of the factors in the foregoing paragraphs combined with other evidence, it may be presumed the conduct in question exceeds the ordinary regular parameters of the business in question.

Article 13: Decisions made by the Financial Information Unit, as prescribed in chapter IV of the Law, may be appealed directly to the National Appeal Chamber in the Federal Administrative Court.

Article 14: A direct judicial appeal may be made only on the ground that the appealed decision is unlawful, and must be lodged with a statement of the grounds of appeal within TWENTY (20) days of the date when notice is given of the appeal.

Article 15: The administrative authority must hand over, at the request of the Court, all the administrative documents relating to the appealed decision.

Article 16: The applicable rules shall be the relevant rules of the National Law No. 19.549 on Administrative Procedure, as amended, its Regulatory Decree

No. 1759/72 (consolidated in 1991) and the National Code of Civil and Commercial Procedure.

Article 17: The Financial Information Unit shall adopt its rules of procedure, subject to the requirements of the Law and of this Decree, and within NINETY (90) days shall propose rules under article 27 of the Law.

Article 18: The Financial Information Unit is hereby authorized to determine the procedures and modalities for complying with the reporting obligation under article 20 of the Law.

Article 19: The Ministry of Justice and Human Rights shall be the responsible authority for the purposes of this Decree.

Article 20: To be communicated, published, transmitted to the National Department of Official Registration and placed in the archives.

DE LA RUA

Chrystian G. Colombo

Jorge E. De La Rúa

José L. Machinea

**NATIONAL ADMINISTRATION FOR MEDICAMENTS,
FOOD AND MEDICAL TECHNOLOGY**

**SPECIAL MEDICINES
ORDER No. 6809/2001**

The use and marketing of the drug phenylpropanolamine as a monodrug in magistral or compounded preparations is hereby prohibited.

Buenos Aires, 18/12/2001

HAVING REGARD TO Order ANMAT No. 7977/00, entry No. 2002-1067-01-1 in the register of the Ministry of Health, entry No. 1-47-10898-00-5 in the register of the National Administration for Medicaments, Food and Medical Technology, and

WHEREAS

Order ANMAT No. 7977/00 provides that holders of certificates for medicinal preparations containing phenylpropanolamine as a decongestant must submit the documentation required by Order No. 2790/97, requesting a change of formula; the documentation submitted must also include the draft prospectus required by Order No. 5904/96 and all submissions must be made within the time limit specified in the Order.

It is also provided that proprietors of medicinal preparations containing phenylpropanolamine whose formulas do not conform to the foregoing must request cancellation of the certificate within a period not exceeding 180 (one hundred and eighty) days of the date of publication of the Order in the *Official Bulletin*, after which cancellation shall be automatic.

It is also provided that proprietors of medicinal preparations containing phenylpropanolamine with an indication of anorexic effect must withdraw them from the market within the time limits laid down in the Order.

The Department for the Registration and Control of Establishments and Professionals of the Ministry of Health, by Directive No. 2002-1067-01-1, issued under Order ANMAT No. 7977/00, considers it necessary to prohibit the use, prescribing and marketing of phenylpropanolamine in magistral preparations.

The Department of Legal Affairs of the Ministry of Health has issued an opinion that the proper mechanism for general prohibition of the use of the drug phenylpropanolamine in magistral preparations is for the ANMAT to enact a regulation amplifying and/or supplementing the ANMAT Order No. 7977/00.

Phenylpropanolamine is a psychoactive substance and its import is subject to the supervision, authorization and control of the National Institute of Medicaments Department of Psychotropic and Narcotic Substances of the National Administration for Medicaments, Food and Medical Technology, in accordance with Law No. 19.303.

That Department, under the 1971 United Nations Convention on Psychotropic Substances, compiles statistics on the consumption of psychotropic substances and reports to the International Narcotics Control Board (INCB).

Article 2 of Decree No. 4589/71, enacting regulations for Law No. 19.303, authorizes the Ministry of Social Welfare (now the Ministry of Health) to issue through its specialized bodies supplementary, explanatory or interpretative provisions as required for the purpose of applying the regulations under this Decree.

The Department of Legal Affairs has acted within its authority.

The present measure is promulgated in exercise of the powers conferred by Decree No. 1490/92 and Decree No. 847/00,

THEREFORE

the Supervisory Commission of the National Administration for Medicaments, Food and Medical Technology hereby orders as follows:

Article 1: The use and marketing of the drug phenylpropanolamine as a monodrug in magistral or compounded preparations is hereby prohibited.

Article 2: This Order shall be communicated to the Department for the Registration and Control of Establishments and Professionals of the Ministry of Health, to enable it to take such measures as it deems appropriate within its scope of competence.

Article 3: To be registered and notified to the Department for the Registration and Control of Establishments and Professionals of the Ministry of Health. It shall be communicated to CILFA, CAEME, COOPERALA, CAPGEN, COMRA, SAFyBI, COFA and FACAF.

To be transmitted to the National Department of Official Registration for publication and placed in the archives.

Norberto Pallavicini

Roberto Lugones