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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.*

HONDURAS

Communicated by the Government of Honduras

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 [...].

DECREE No. 202-97 OF 17 DECEMBER 1997

LAW AGAINST THE OFFENCE OF MONEY-LAUNDERING

Decree No. 202-97 of 17 December 1997

Law against the Offence of Money-Laundering

The National Congress,

CONSIDERING that the free, independent and democratic Republic of Honduras is a sovereign constitutional State, constituted to ensure that its inhabitants enjoy among other things, justice, security and economic well-being;

CONSIDERING that the international treaties concluded between the Republic of Honduras and other States become part of domestic law upon being ratified by the National Congress and promulgated, so that the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988 has accordingly been adopted as a law of the Republic;

CONSIDERING that the Republic of Honduras has undertaken to enact Legislation on the Fight against the Offence of Money-laundering, Related Offences and Instrumentalities of the Offence within the Framework of the Presidential Agreements of the Summit of the Americas of Miami in December 1994 and the recommendations of the Ministerial Communiqué of Buenos Aires of 2 December 1995;

FURTHER CONSIDERING the final declaration of the Second Forum of Presidents of the Legislative Bodies of Central America (FOPREL), meeting in Panama on 11 and 12 April 1996, promoting the adoption of the pertinent legal instrumentalities.

CONSIDERING the joint initiatives of the United Nations International Drug Control Programme (UNDCP), the Inter-American Drug Abuse Control Commission of the Organization of American States (CICAD/OAS), the Permanent Central American Commission for the Eradication of the Illicit Production, Traffic, Consumption and Use of Drugs and Psychotropic Substances (CCP) and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), for the creation of the Regional Centre for Legal Development and Cooperation in Central America on drug production and traffic (CEDEJU).

THEREFORE,

DECREES:

As follows:

LAW AGAINST THE OFFENCE OF MONEY- LAUNDERING

CHAPTER I

Concerning the offence of money-laundering

ARTICLE 1. The offence of money-laundering, carrying a custodial sentence of twelve (12) to twenty (20) years, consists of:

- (1) Converting or transferring assets which are known, or should be known, by the perpetrator to derive directly or indirectly from the illicit traffic in drugs, narcotics and psychotropic substances or other related unlawful transactions;
- (2) Acquiring, possessing, holding or drawing down of assets which are known, or should be known, by the perpetrator to be the proceeds of an offence of illicit traffic in drugs, narcotics and psychotropic substances or other related illicit transactions; and
- (3) Concealing, covering up or preventing discovery of the nature, origin, location, destination, movement or ownership of assets, or rights relating to such assets, in the knowledge that such assets are the proceeds of an offence of illicit traffic in drugs, narcotics and psychotropic substances or related illicit transactions.

ARTICLE 2. The crimes defined in this chapter shall be investigated, prosecuted and punished by the courts as an offence independent of the offence of illicit traffic in drugs, narcotics and psychotropic substances and of any other offence.

ARTICLE 3. Public officials or employees, members of the armed forces, police officers or State security agents, and persons elected or appointed to government office, who use their office to participate directly or indirectly in, or facilitate or benefit from the commission of criminal acts covered by this Law, shall receive the appropriate punishment increased by one third (1/3) and shall be permanently debarred from the exercise of their functions.

CHAPTER II

Competence

ARTICLE 4. The person competent to try the offence described in this Law shall be the professionally qualified judge of the place closest to the scene of the offence, whether or not the offence of illicit traffic in drugs, narcotics and psychotropic substances in which the money or assets originated was committed in another territory.

CHAPTER III

Precautionary measures

ARTICLE 5. The courts, at the request of the Public Prosecution Department or the Office of the Attorney-General of the Republic, may at any time issue, without prior notification or hearings, a warrant of seizure, preventive confiscation or any other

precautionary measure designed to preserve the availability of the assets, proceeds and instrumentalities of the offence of money-laundering.

ARTICLE 6. The court in question may award the assets, proceeds or instrumentalities to the injured party or claimant when there is proof that:

- (1) The claimant has a legitimate juridical interest in the assets, proceeds or instrumentalities;
- (2) The claimant cannot be accused of any type of involvement in the offence that is being prosecuted;
- (3) The claimant was unaware of the unlawful origin of the assets, proceeds or instrumentalities or, although aware of it, did not voluntarily participate in their unlawful use;
- (4) The claimant has not acquired any right to the assets, proceeds or instrumentalities of the defendant in circumstances that reasonably suggest that that right was transferred for the purpose of averting the possibility of their subsequent seizure; and
- (5) The claimant has taken all reasonable steps to prevent the unlawful use of the assets, proceeds or instrumentalities.

CHAPTER IV

Destination of seized assets

ARTICLE 7. The judge shall collect, inventory and secure the articles relating to the offence, or shall rule that they, together with their instrumentalities, be returned to those persons unconnected with the offence, who expeditiously meet the conditions set forth in the preceding article. Where money is concerned, the amount returned shall comprise the principal plus the respective interest paid into the national financial system. In the case of easily destructible or perishable goods, the judge shall dispose of them by public auction within five (5) days.

Six (6) months following the confiscation referred to in the preceding paragraph, in the event that no person unconnected with the crime has claimed that the articles be returned to him as the proven owner, the court or tribunal hearing the case shall issue a single notice of that fact in a national newspaper, together with an announcement that if no person lays claims to them with proof of ownership within thirty (30) days, they shall be declared abandoned, and the court or tribunal shall determine the destination most appropriate to the administration of justice. In that event, the competent authorities shall issue the relevant permits and record the transfer in the appropriate register. The authority or State agency receiving the donation must produce the articles whenever it is required to do so by the court or tribunal hearing the case from which the articles originated, for purposes of its investigation.

ARTICLE 8. At the end of the criminal trial, if the final sentence includes confiscation, once that sentence becomes final, the public auction shall be held and the proceeds of the sale and the confiscated moneys, including bank accounts, securities, other accounts, and revenue penalties, shall be paid into the Treasury of

the Republic and shall be earmarked for prevention, health and education programmes and for setting up rehabilitation centres.

CHAPTER V

Identification of clients of financial institutions and record keeping

ARTICLE 9. The institutions of the financial system may not accept anonymous deposits or open anonymous accounts or accounts under fictitious or inexact names.

ARTICLE 10. The institutions of the financial system shall make a full identification of all depositors and customers in general and keep updated records of the documents and personal information provided by each of them.

ARTICLE 11. The institutions of the financial system shall take reasonable steps to obtain and store information on the identity of persons for whom an account is opened or a transaction conducted, when there is doubt as to whether such customers are or are not acting on their own behalf, especially in the case of legal entities with no commercial, financial or industrial operations on the national territory.

ARTICLE 12. The institutions of the financial system shall maintain for the lifetime of any operation, and for at least five (5) years from the end of the transaction, records of the information and documentation required under this chapter.

ARTICLE 13. The institutions of the financial system shall keep, for at least five (5) years after the closure of financial transactions involving amounts that exceed those established by the Central Bank of Honduras, records from which they can be reconstructed.

CHAPTER VI

Availability of records

ARTICLE 14. The institutions of the financial system shall furnish the courts of justice with any information they request in accordance with the law.

ARTICLE 15. The institutions of the financial system may not inform any person that information concerning them has been either requested or provided to the court or competent authority.

CHAPTER VII

Recording and notification of cash transactions

ARTICLE 16. The institutions of the financial system shall enter on a form designed by the National Banking and Insurance Commission any cash transaction, in the national currency or in foreign currency, that exceeds the amount established by the Central Bank of Honduras.

ARTICLE 17. For each transaction, the forms referred to in this chapter must contain at least the following:

- (1) The identity, signature and address of the person physically making the transaction;
- (2) The identity and address of the person on whose behalf the transaction is effected;
- (3) The identity and address of the beneficiary or consignee of a transaction;
- (4) The identity of the accounts, if any, involved in the transaction;
- (5) The type of transaction, such as: deposits, withdrawals, currency exchange, cashing of cheques, purchases of certified cheques or cashier's cheques, payment orders or other payments or transfers effected by whatever means;
- (6) The identity of the institution of the national financial system at which the transaction was conducted; and
- (7) The place, date, time and amount of the transaction.

ARTICLE 18. The records described in this chapter shall be diligently and accurately maintained by the financial institutions, and shall be completed within five (5) working days of the day on which the transactions were made. Within the first ten (10) days of each month, the financial institutions shall submit the records for the preceding month to the National Banking and Insurance Commission, and shall keep a photostat, photographic, microfilm or other type of copy for a period of five (5) years.

ARTICLE 19. Multiple cash transactions, in both national and foreign currency, that exceed the amount established by the Central Bank of Honduras shall be deemed a single transaction if they are conducted by or on behalf of a specific person in the course of a single banking day or within any other time period set by the Central Bank of Honduras.

When the financial institution learns of such a transaction, it shall forthwith record it on the form referred to in this chapter.

ARTICLE 20. If transfers made on one's own account between the institutions of the financial system exceed the amount established by the Central Bank of Honduras, they must be entered on the form referred to in this chapter.

ARTICLE 21. The records required under this chapter shall be kept at the disposal of the court or tribunals, the Public Prosecution Department and the National Banking and Insurance Commission for use in their investigations and in criminal and civil administrative proceedings, as appropriate, concerning the commission of the offences envisaged in this Law.

CHAPTER VIII

Communications on suspect transactions

ARTICLE 22. The institutions of the financial system shall pay special attention and care to transactions, effected or otherwise, which are complex, isolated or significant, to any type of unusual transaction and to insignificant but regular transactions with no clear economic or legal basis.

ARTICLE 23. If the institutions of the financial system suspect, or obtain evidence, that the transactions described in the preceding article may constitute or be connected with unlawful activities, they shall forthwith communicate that fact to the National Banking and Insurance Commission on the form prepared by the Commission for that purpose.

ARTICLE 24. The financial institutions and their officials, directors, shareholders, authorized representatives and employees authorized by law shall be exempt from civil, administrative and criminal liability, as appropriate, when, in accordance with the preceding article, they make the communication forthwith in good faith, or for disclosing any information restricted by contract or by any other legal provision, regulation or order through an agreement or decision, whatever the outcome of the communication.

CHAPTER IX

Liability of the financial institutions and their officials

ARTICLE 25. Without prejudice to the civil or criminal liability of the financial institutions or their officials for offences of money-laundering or related offences, their failure to fulfil the obligations set forth in this Law shall be punishable in accordance with the provisions of the Law on Institutions of the Financial System.

CHAPTER X

Compulsory programmes for the financial institutions

ARTICLE 26. The institutions of the financial system shall adopt, develop and implement programmes to prevent and detect the offences provided for in this Law.

Such programmes shall include at least:

- (1) The establishment of procedures that ensure a high level of personal integrity and a system for evaluating the personal, professional and financial backgrounds of their employees, officials, directors, shareholders or other legally authorized representatives;
- (2) Ongoing programmes for training personnel to fully identify their clients, and instruction in their legal responsibilities; and
- (3) A monitoring mechanism to verify whether such programmes are being duly implemented.

ARTICLE 27. The financial institutions are obliged to appoint one or more senior officials to monitor the implementation of the internal programmes and procedures, including the keeping of proper records and the communication of suspect transactions. Those officials shall liaise with the competent authorities.

CHAPTER XI

Provisions for other persons under obligation

ARTICLE 28. All the provisions relating to the institutions of the financial system shall also apply to persons engaged in the following activities:

- (1) Systematic or substantial cheque-clearing operations;
- (2) Systematic or substantial operations involving the issue, sale or purchase of traveller's cheques or postal orders;
- (3) Systematic or substantial fund transfers; and
- (4) Any other activity subject to the supervision of the Central Bank of Honduras or the National Banking and Insurance Commission.

CHAPTER XII

Obligations of the competent authorities

ARTICLE 29. The obligations of the National Banking and Insurance Commission shall comprise:

- (1) Regulating and ensuring the effective fulfilment of the recording and notification obligations to be met by the institutions of the financial system, as established by this Law;
- (2) Verifying, through regular inspections, that the financial institutions possess and implement the compulsory programmes referred to in this Law;
- (3) Analysing and consolidating information originating with the financial institutions;
- (4) Furnishing the competent authorities with the information obtained from financial institutions in accordance with this Law, including those resulting from an inspection of any of them; and
- (5) Issuing instructions or recommendations for helping financial institutions detect suspicious behaviour on the part of their clients. These guidelines shall be developed, bearing in mind modern and reliable techniques of asset management and shall serve to educate the staff of the financial institutions.

ARTICLE 30. The National Banking and Insurance Commission shall notify the Public Prosecution Department, the Office of the Attorney-General of the Republic or other competent authorities of information received from the financial institutions concerning suspect transactions or activities possibly connected to the offences covered by this Law and to the offences of the traffic in drugs, narcotics and psychotropic substances or related offences.

CHAPTER XIII

International cooperation

ARTICLE 31. The courts or tribunals of the Republic, the Central Bank of Honduras, the National Banking and Insurance Commission, the Public Prosecution Department and the other competent authorities shall cooperate with their counterparts in other countries, taking the appropriate measures to offer them assistance in matters relating to the offences of money-laundering or related offences, in accordance with this Law and within their own competence.

CHAPTER XIV

General provisions

ARTICLE 32. The Central Bank of Honduras is authorized to determine the amount of cash sums for registry and notification when they are transported from or to the Republic of Honduras.

ARTICLE 33. The tellers of the institutions of the financial system are prohibited from paying cash against cheques made out to third parties, whether it be to bearer or to a person by name, for imports in excess of those fixed by the Central Bank of Honduras. Beneficiaries of the papers referred to in this article and of other payment orders of similar size shall be required to deposit the paper in a current or savings account.

With that end in view, the financial institutions shall record, in chronological order, the information identifying persons who present themselves at a teller's window to cash the papers referred to above.

The above provisions shall be null and void when the person requesting cash payment of a cheque is the holder of the account.

ARTICLE 34. This Law shall take effect twenty (20) days after its publication in the Official Gazette.

Done at the City of Tegucigalpa, Municipality of the Central District, in the Chamber of the National Congress, on the seventeenth day of December, nineteen hundred and ninety-seven.