

Decision No. 300-95, adopting the Regulation on offences and laundering of assets related to illicit traffic in drugs and controlled substances in the Dominican Republic.

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President of the Dominican Republic

NUMBER: 300-95

WHEREAS: The legal instrument amending Law 50-88, of 30 May 1988, containing provisions for the prosecution and punishment of the laundering of assets proceeding from or related to illicit traffic in drugs and controlled substances in the Dominican Republic, stipulates in its final article no. 116 (transitional) that for its entry into force it is necessary to enact the Regulation for its implementation.

HAVING IN MIND Law 50-88 of 30 May 1988 on Drugs and Controlled Substances in the Dominican Republic,

HAVING IN MIND the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, signed in Vienna, Austria, on 20 December 1988, ratified by the National Congress and promulgated by the Executive on 23 June 1993.

In exercise of the functions conferred on me by paragraph 2) of Article 55 of the Constitution of the Republic, I hereby enact the following

DECREE:

Article 1.

The following Regulation on offences and the laundering of assets related to illicit traffic in drugs and controlled substances in the Dominican Republic is adopted.

ARTICLE I DEFINITIONS

Except where otherwise specified, the following definitions shall apply exclusively to the entire text of the following Regulation:

1. Goods" means assets of any kind, corporeal or incorporeal, movable or immovable, tangible or intangible, and the legal documents or instruments conferring ownership and other rights to such assets.
2. Confiscation" means the definitive expropriation of any item of property by the decision of a court.
3. Seizure" means the temporary custody or control of goods by an order issued by a court or the National Drug Control Directorate, after fulfilling the appropriate legal requirements.
4. Instrument" means the objects used or intended for use with the intention of committing the offence of illicit traffic or related offences.
5. Person" means all natural or legal beings able to acquire rights or contract obligations, such as a corporation, a company, a trustee, an estate, a limited company, an association, a joint venture or other entity or group whether or not registered as a civil or commercial company.

6. Product" means the goods obtained or derived directly or indirectly from the commission of an offence of illicit traffic or related offences.
7. Illicit traffic" means the offences specified in Law 50-88 on Drugs and Controlled Substances of the Dominican Republic, of 30 May 1988, and its amendments.
8. Related offences" means the actions or activities specified in Articles 99, 100 and 101 of Law 50-88 and its amendments.

ARTICLE 2 JURISDICTION

1. The offences defined in Law 50-88 on Drugs and Controlled Substances in the Dominican Republic of 30 May 1988 and its amendments, shall be investigated by the competent authority and shall be tried and adjudged by the court, regardless of whether the offence of illicit traffic or related offences occurred in another foreign territorial jurisdiction, without prejudice to extradition when this takes place according to law.

ARTICLE 3 PROTECTIVE MEASURES AGAINST GOODS, PRODUCTS OR INSTRUMENTS

1. In accordance with the procedural rules and Law 50-88 and its amendments, the court shall, at any time without notification or prior hearing, make an order for seizure or for any other protective measure intended to preserve the availability of the goods, products or instruments related to an offence of illicit traffic or related offences, until final judgment is handed down.

ARTICLE 4 CONFISCATION OF GOODS, PRODUCTS OR INSTRUMENTS

1. When a person is convicted of an offence of illicit traffic or related offences, the court shall order that the goods, products or instruments related to the offence be confiscated, and shall dispose of them according to law.
2. When any of the goods, products or instruments mentioned in the foregoing clause cannot be confiscated as the result of any act or omission by the convicted person, the court shall order the confiscation of any other goods of the convicted person, to an equivalent value, and shall order him to pay a fine of that amount.

ARTICLE 5 THIRD PARTIES IN GOOD FAITH

1. The measures and sanctions to which Articles 3 and 4 of this Regulation refer shall apply without prejudice to the rights of third parties in good faith.
2. In accordance with procedural rules, the necessary notification shall be given to enable all those able to show a legitimate legal interest to the goods, products or instruments received as a result of the commission of the offence of illicit traffic in drugs and related offences, to assert their rights.
3. Lack of good faith of the third party may be inferred at the discretion of the court or as the result of the process of investigation by the National Drug Control Directorate, and from the objective circumstances of the case.
4. In accordance with procedural rules and Law 50-88 and its amendments, the court or the National Drug Control Directorate may, consequent upon the investigation process, determine that the goods, products and instruments which have been confiscated should be handed over to a claimant where it has been proved and shown that:
 1. The claimant has a legitimate legal interest in respect of the goods, products or instruments;
 2. No participation of any kind respecting an offence of illicit traffic and related

- offences to which the proceedings relate can be imputed to the claimant;
3. The claimant was unaware of the illegal use of the goods, products or instruments, or if he was aware of it, did not voluntarily consent to such use;
 4. The claimant has not acquired any right to the goods, products or instruments of the indicted person, in circumstances from which it can reasonably be inferred that the right to any of them was transferred to him for the purpose of avoiding any subsequent confiscation; and
 5. The claimant has taken all reasonable steps to prevent the illegal use of the goods, products or instruments.

ARTICLE 6 DESTINY OF THE CONFISCATED GOOD, PRODUCTS OR INSTRUMENTS

1. Whenever goods, products or instruments are confiscated in accordance with Article 4 and are not to be destroyed, and are not harmful to the public, the court shall proceed as provided in Articles 35 and 108 of Law 50-88 and its amendments.

ARTICLE 7 GOODS, PRODUCTS OR INSTRUMENTS OF OFFENCES COMMITTED ABROAD

1. According to law, the court may order the seizure or confiscation of goods, products or instruments located in its territorial jurisdiction which are connected to an offence of illicit traffic or a related offence which has been committed against the laws of another country, when such an offence, if committed within its jurisdiction, would also be regarded as such.

ARTICLE 8 FINANCIAL INSTITUTIONS AND ACTIVITIES

1.
 1. Commercial banks, development banks, construction loan banks, the National Housing Bank, savings and loan banks, commercial finance banks, small loan funds, credit card issuing firms, financial groups, savings and credit cooperatives and any other entity which, by the nature of its activities, acts as such under the legislation in force, whether under public, private or mixed ownership;
 2. Natural or legal persons engaged in broking or dealing in bonds or securities;
 3. Natural or legal persons engaged in foreign exchange transactions.
2. Financial institutions also include natural or legal persons performing the following activities, among others:
 1. Systematic exchange operations for cheques or other negotiable instruments;
 2. Systematic issue, sale or redemption operations for travellers cheques or postal giro orders;
 3. Systematic transfers of funds, whether through the financial institutions, by special mail, by electronic means or by any other means;
 4. Any other activity subject to the supervision of the monetary authorities.

ARTICLE 9 IDENTIFICATION OF CLIENTS AND KEEPING OF REGISTERS

1. The financial institutions must keep named accounts. Anonymous accounts or accounts under fictitious or inaccurate names may not be kept.
2. The financial institutions must register and verify by authentic means the identity, standing, domicile, legal capacity, occupation and corporate aims of persons, and other identifying data, whether they are occasional or regular customers, through identity

documents such as passports, identity cards and electoral certificates, birth certificates, driving licences, or any other official documents, whenever commercial relations are

established, especially the opening of new accounts, the issue of deposit books or the completion of cash transactions for sums exceeding the value in national currency of US\$10,000.

3. The financial institutions must adopt measures to obtain and conserve information concerning the true identity of persons (natural or legal) for whose benefit an account is opened or a transaction performed, especially where there is doubt that such clients may not be acting on their own behalf.
4. The financial institutions must maintain, for at least five (5) years from the date of the transaction, records of the information and documentation required in this article, whether by means of the documents themselves, microfilms or any other electronic means for the conservation of documentation and information.
5. Every financial institution shall be bound, at the request of the court and/or the National Drug Directorate, via the Banking Superintendent, to offer information concerning any account opened for a client.

ARTICLE 10 AVAILABILITY OF RECORDS

1. The financial institutions must provide, within a period of not more than seventy two (72) working hours from the date the request is received, information requested by the competent authorities relating to the information and documentation referred to in the foregoing article, for use in investigations and criminal proceedings as appropriate, concerning an offence of illicit traffic or related offences, or breaches of the provisions of Law no. 50-88 and its amendments.

The financial institutions may not disclose to any person the fact that information has been requested by or supplied to the court or competent authority. This information may be shared with the competent authorities of another foreign territorial jurisdiction, in accordance with judicial requirements and the norms of international law.

2. The competent authorities shall treat as confidential the information to which this article refers, except where the information is necessary in criminal investigations and proceedings related to the offences of illicit traffic and related offences, according to the provisions of Law no. 50-88 and its amendments.
3. The legal provisions referring to banking secrecy shall not constitute an impediment to compliance with this article, provided always that the information is requested through the Banking Superintendent.

ARTICLE 11 REGISTER OF TRANSACTIONS

1. Every financial institution must register, on a form designed by the Banking Superintendent, every transaction in national or foreign currency exceeding the value, in national currency, of US\$10,000.

The financial institutions may submit to the Banking Superintendent a list of clients (natural or legal persons) whose cash transactions by the nature of their operations exceed the value, in national currency, of US\$10,000, in order to be exempted from these requirements.

The Banking Superintendent shall, within a reasonable period, give his approval and shall

reject any client failing to fulfil the specified requirements.

2. The forms to which the foregoing paragraph refer must contain at least, for each transaction, the following data:
 1. The identity, signature and address of the person physically performing the transaction;
 2. The identity and address of the person on whose behalf the transaction is performed;
 3. The identity and address of the beneficiary or intended recipient of the transaction, if any;
 4. The identity of the accounts affected by the transaction, if any;
 5. The type of transaction concerned, whether cash deposits, currency exchange, purchase of cheques and transfers effected by or through the financial institution;
 6. The identity of the financial institution in which the transaction was performed; and
 7. The date, time and amount of the transaction.
3. This record must be completed accurately and in full by the financial institution on the date on which the transaction is performed, and shall be kept for a period of five (5) years from that date.
4. Multiple cash transactions which, in combination, exceed the value in national currency of US\$10,000 shall be regarded as a single transaction if carried out by or on behalf of a specific person in the course of one working day. In that case, when the financial institution, its employees, officials or agents become aware of such transactions, they must make a record of it on the form designed for that purpose.
5. In the case of transactions effected on their own account among the financial institutions defined in Article 8, paragraph 1 A), which are subject to supervision by the national banking or financial authorities, a record in the form specified in this article shall not be required.
6. These records must remain at the disposal, via the Banking Superintendent, of the court or of the National Drug Control Directorate, according to law, for use in criminal investigations and proceedings, as appropriate, with regard to an offence of illicit traffic or related offences, or breaches of the provisions of Law no. 50-88 and its amendments.
7. When deemed appropriate, the court or the National Drug Control Directorate may request the financial institutions to submit to it, through the Banking Superintendent, within the time limit set in Article no. 10 1) of this Regulation, the form specified in paragraph 2) of that article. This document will be used as evidence or as an official report, and will serve the same purposes as those specified in paragraph 6) of that article.
8. The financial institutions defined in Article 8, paragraph 1) a) of this Regulation shall be bound, through the Banking Superintendent, and where appropriate, the entities defined in paragraphs b) and c) of that article, through the tax administration, to make available to the court, to the National Drug Control Directorate and to the international institutions, the necessary information as requested, provided it is required in elucidation of criminal proceedings instituted into illicit trafficking and related offences.
9. Legal provisions referring to banking secrecy or confidentiality shall not constitute an impediment to compliance with this article, when the information is requested, through the Banking Superintendent, by the court or by the National Drug Control Directorate.

ARTICLE 12 COMMUNICATION OF SUSPECT FINANCIAL TRANSACTIONS

1. The financial institutions shall pay special attention to all transactions, whether completed or otherwise, which are complex, unusual or significant, and to all types of transactions which are unusual and those which, without being significant, are regular and have no obvious economic or legal basis.
2. If they suspect that the transactions described in paragraph 1) of this article may

- constitute, or be related to, activities connected with illicit traffic and related offences, the financial institutions must forthwith notify the authorities of the Banking Superintendent.
3. The financial institutions may not bring to the notice of any person the fact that information has been requested by or supplied to the court, the Banking Superintendent or the National Drug Control Directorate.
 4. When the communication to which paragraph 2) of this article refers is made in good faith, the financial institutions, their employees, officials, directors, proprietors and other representatives authorized by law shall be exempt from civil and criminal responsibility, as appropriate, for compliance with this article or for disclosing information which is restricted under contract or by any other legislative, regulatory or administrative provision, whatever the outcome of the communication.

ARTICLE 13 RESPONSIBILITIES OF THE FINANCIAL INSTITUTIONS

1. Where financial institutions or their employees, officials, directors, shareholders and other authorized representatives, acting in that capacity, take part in or act in complicity with an offence of illicit traffic or related offences, they shall be sanctioned in accordance with Law 50-88 on Drugs and Controlled Substances, and its amendments.

Where complicity is proved on the part of the financial institutions, the measures specified in Article 104 shall be applied to them.

ARTICLE 14 PROGRAMMES TO BE COMPULSORILY COMPLIED WITH BY THE FINANCIAL INSTITUTIONS

1. The financial institutions subject to regulation and supervision as provided in Article 16 of this Regulation must adopt, develop and implement internally programmes, standards, procedures and controls to prevent and detect the offences defined in Law no. 50-88 of 30 May 1988 and its amendments. These programmes shall include, as a minimum:
 1. The establishment of procedures ensuring a high standard of integrity among the staff and a system for evaluating the personal background, career history and asset ownership of their staff;
 2. Ongoing staff training programmes such as "know your clients" and induction into the responsibilities defined in Articles 9 to 12 of this Regulation;
 3. The internal audit shall include completion of the programmes to which this article refers.
2. The financial institutions must also require their staff at the management level to monitor the execution of the internal programmes and procedures, including the keeping of adequate records and the notification of suspect transactions. These officials shall liaise with the competent authorities.

ARTICLE 15 OTHER BINDING PROVISIONS

1. When considered appropriate, the tax administration shall extend application of the relevant provisions relating to financial institutions contained in this Regulation to any kind of economic activity where the transaction is made in cash and exceeds the equivalent value of US\$10,000 in national currency, such as:
 1. The sale or transfer of roots, weapons, metals, art objects, archaeological objects, jewellery, cars, ships, aircraft and other durable consumer goods, collectors' items or services related to travel or sports training;
 2. Casinos and other operations related to games of chance; or

3. Professional services.

ARTICLE 16 OBLIGATIONS OF THE COMPETENT AUTHORITIES

1. In accordance with law, the duties of the Banking Superintendent shall include:
 1. Recommending the Monetary Board to suspend or revoke licences or permits for the operation of financial institutions;
 2. Adopting the necessary measures to prevent and/or avoid any unsuitable person from controlling or participating, directly or indirectly, in the direction, management and operation of a financial institution;
 3. Examining, monitoring or controlling the financial institutions, and regulating and overseeing effective compliance with the record-keeping and notification obligations set down in this Regulation;
 4. Ascertaining, by means of regular checks, that the financial institutions have and are applying the compulsory programmes to which Article 14 of this Regulation refers;
 5. Providing to other competent authorities the information obtained from financial institutions in accordance with this Regulation, including information derived from scrutiny of each of them, when so requested;
 6. Issuing instructions or recommendations which will help the financial institutions to detect suspect trends in the behaviour of their clients.

These guidelines are to be followed taking account of modern and secure asset management techniques, and will serve as educational material for the staff of the financial institutions;

7. Cooperating with the National Drug Control Directorate in the context of investigations and procedures relating to the offences of illicit trafficking or related offences.
2. The Banking Superintendent and the tax administration must notify the National Drug Control Directorate, within seventy-two (72) working hours from the date on which they receive any information from financial and commercial institutions, respectively, referring to suspect transactions or activities which may be connected to the offences of illicit trafficking or related offences.
3. The Banking Superintendent and the tax administration, through the National Drug Control Directorate, must cooperate closely with the competent authorities of other foreign territorial jurisdictions in investigations, procedures and operations connected with the offences of illicit trafficking or related offences.

ARTICLE 17 INTERNATIONAL COOPERATION

1. The court or competent authority shall cooperate with the court or competent authority of another State, and shall take appropriate steps in order to provide assistance in matters relating to an offence of illicit trafficking or related offences, in conformity with the respective juridical procedures and the norms of international law.
2. The court and the competent authority may formulate and receive requests from a court or competent authority of another State to identify, detect, seize or confiscate goods, products or instruments connected with an offence of illicit traffic or related offences, as provided in Law 50-88 and its amendments.
3. A court order or judgment ordering the confiscation of goods, products or instruments, issued by a competent court of another State in relation to illicit traffic or related offences, may be admitted in evidence that

the goods, products or instruments to which the order or judgment refers may be subject to confiscation in accordance with the legislation in force.

4. The court and competent authority may formulate, receive and take appropriate measures concerning a request by a court or competent authority relating to a criminal investigation or procedure in connection with an offence of illicit traffic or related offences, or breaches of this Regulation. Such assistance may include supplying originals or authentic copies of the relevant documents and records, including those of financial institutions and government agencies, obtaining testimony in the requested State, enabling voluntary attendance in the requesting State of persons required to make statements, including persons in custody; the location or identification of persons; the delivery of summonses, the examination of objects and places, effecting inspections and seizures, supplying information and evidence, and preventive measures.
5. Legal provisions referring to banking secrecy or confidentiality shall not constitute an impediment to compliance with this article, when the information is requested via the Banking Superintendent and in accordance with international law.
6. Assistance offered in implementing this article shall be given in accordance with law.

Article 2.

To be communicated to the National Drug Council, the Ministry of the Armed Forces, the Chief Constabulary, the National Drug Control Directorate and the office of the Attorney-General of the Republic, for strictest observance.

GIVEN at Santo Domingo de Guzman, National District, Capital of the Dominican Republic, on the seventeenth (17) day of December of the year one thousand nine hundred and ninety five, in the 152nd year of independence and the 133rd year of the Restoration.

Joaquin Balaguer