

Law 72-02 on Asset Laundering in the Dominican Republic

I. BACKGROUND

On June 10, 2002 the Dominican Republic passed Law 72-02 on Laundering of Assets Obtained from the Illegal Traffic of Drugs and Controlled Substances, in order to satisfy the need of a legal framework adapted to international standards in the fight against money laundering. Previously, this matter was under the scope of Law 55-02, but this statute had certain gaps, mainly concerning the distribution of goods, products or securities obtained from illegal activities.

The country ratified international commitments that required the adoption of a statute that could serve to effectively control the transnational phenomena of drug-trafficking, such as the International Convention against Corruption held in Caracas in 1996, the United Nations Convention against Organized Crime held in Palermo, Italy, in 2002, and others.

II. PURPOSE OF THE LAW

The provisions of this Law, together with the regulation for their application contained in Decree 20-03 of 14 January 2003, have been established for the purposes of (a) defining the activities that may be considered as laundering of assets deriving from criminal activities; (b) establishing the mechanisms and instruments necessary for the prevention and detection of asset laundering; (c) creating an entity that would coordinate the public sector's efforts towards avoiding the use of our economy for asset laundering; and (d) providing the legal framework through which local authorities shall provide international judicial assistance as agreed in the various international agreements mentioned above.

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III. DEFINITIONS

Assets are monies, securities, titles, notes or goods obtained through the commission of a serious offense. Goods are understood to include all types of goods, tangible or intangible, movable or real estate properties, and the documents which contain ownership rights over them. Products are all goods obtained or deriving directly or indirectly from the commission of a serious infraction.

Competent Authorities: Competent judicial authority shall be deemed to include the courts and the public general attorney's office. Competent authority shall include the entity in charge of supervising the compliance of the law by the persons subject to its provisions; the Banking Superintendence, the Internal Revenue Department and the Drug Control Office.

Confiscation: To deprive a person of property, on a definite basis, by virtue of a decision issued by a competent court.

Seizure or Freezing of Funds: The temporary prohibition to transfer, exchange, sale or move property, or the custody or temporary control of property by virtue of an order issued by a competent court or authority.

Serious Offense: includes illegal drug trafficking, illegal arms trafficking, any crime related to terrorism, illegal traffic of humans or their organs, kidnapping, extortions related to video and audio recordings, vehicle theft when it involves transporting the vehicle to another country for the purpose of selling it, sexual trafficking, currency forgery, fraud, and any other infraction sanctioned with at least three (3) years of prison under Dominican law.

Person or Entity Subject to Law 72-02: any person or entity that, by virtue of Law 72-02 or its regulations, is obligated to comply with the obligations destined to prevent, impede or detect asset laundering. These are specifically:

- a) Regulated financial institutions;
- b) Persons or entities dedicated to brokerage activities of securities, investments or futures;
- c) Persons or entities working with currency exchange;
- d) The Central Bank of the Dominican Republic; and,
- e) Any other person or entity involved in activities that are susceptible to be used in asset laundering such as casinos, real estate brokerage, car dealers, insurance companies and brokers, weapons dealers, professional services, etc.

Simulation: the use of a false identity or a third party's identity with their knowledge, with the intent to obtain goods, funds or instruments from any financial institution, without regard to whether these goods were obtained through the commission of a serious offense or not. Also, any action of using public or private documents, electronic means or similar instruments to transfer assets in their favor for profit causing harm to others who had not consented to such transfer.

Minimum Wage: the average national minimum wage established by the competent authority in labor matters, on the day the infraction is committed.

IV. PUBLIC ENTITIES CREATED BY THE LAW

NATIONAL COMMISSION AGAINST ASSET LAUNDERING

The National Commission against Asset Laundering is created by Law 72-02 to promote, coordinate, detect, prevent and sanction asset laundering in the Dominican Republic. It is presided by the President of the National Drug Council and composed by the General Attorney, the State Secretary of Finance, the Bank Superintendent and the President of the National Committee for Drug Control.

The Commission has the following duties:

- a)** Coordinate public and private sector efforts directed towards avoiding the use of our economic, commercial, and financial systems for asset laundering;
- b)** Analyze and evaluate the application of the legal provisions relating to asset laundering and its results as well as recommend the Executive Power the adoption of any administrative or legal measures which it deems necessary for the prevention or investigation of asset laundering;
- c)** Supervise the records and information analyses submitted by the Persons or Entities Subject to Law 72-02 for which purposes the Commission will have a technical division known as "Financial Analysis Unit";
- d)** Make sure that the people responsible for investigating offenses receive timely financial information which the Financial Analysis Unit, a department created for such purposes, may find suspicious;
- e)** Develop educational campaigns for the population to explain the dire economic, political

and social consequences of asset laundering, coordinate training programs for court personnel, employees in the general attorney's office and other public officials in charge of supervising, and investigating asset laundering;

- f)** Prepare the annual budget of the Commission, the Financial Analysis Unit, and the Office of Custody and Management of Confiscated Assets.

DEPARTMENTS AND UNITS WITHIN THE COMMISSION

Financial Analysis Unit: This is the executive body of the National Commission against Asset Laundering. Its main duties are to receive, request, analyze and divulge to the competent authorities the reports of suspicious financial transactions and the reports of cash transactions of more than US\$10,000.00 or their equivalent in any other currency. This Unit also provides technical support to other competent authorities during their investigations. The Financial Analysis Unit may also order precautionary measures, and perform inspections of the Persons or Entities Subject to Law 72-02 whenever it deems it necessary, with the coordination of the financial authorities, when it involves financial institutions or by itself if it involves any other Persons or Entities Subject to Law 72-02.

Office of Custody and Management of Confiscated Assets: This office has the essential duty to look after, manage and sell confiscated assets obtained by means of any of the infractions defined in Law 72-02. The Department may also hire national or foreign companies to manage such assets.

V. ASSET LAUNDERING

Pursuant to Law 72-02, a person will be deemed to have incurred in asset laundering, if the individual, knowing that the assets, funds or securities derive from a serious infraction:

- a)** Converts, transfers, transports, acquires, has, uses or manages such assets;
- b)** Hides, conceals or prevents the determination of the nature, origin, location, destination, movement or ownership of the assets and the rights relating thereto;
- c)** Becomes partner with, assists, promotes, facilitates, counsels other parties to perpetrate the infractions provided in the Law, or helps them avoid the application of Law 72-02;
- d)** Collects or provide funds with the intent of committing infractions established by law or by international agreements on terrorism.

The law enables the authorities to determine the intent, the knowledge or the objective, which are needed to classify an offense as asset laundering, by analyzing the objective circumstances of the case. Furthermore, any person having been found to possess assets that derive from a serious infraction without the proper legal justification for possessing those assets shall be deemed to have incurred in asset laundering.

Asset Laundering infractions are prosecuted and condemned independently from the serious offense which the perpetrating party may have committed. Additionally, the intent to commit asset laundering shall be condemned as if the perpetrator had committed the offense of asset laundering itself.

Individuals found to have incurred in the asset laundering activities mentioned under a) and

b) above are subject to five (5) to twenty (20) years in prison and a fine of fifty (50) to two hundred (200) minimum wages. Individuals found to have incurred in the asset laundering activities mentioned under c) above are subject to three (3) to ten (10) years in prison and a fine of fifty (50) to one hundred (100) minimum wages. Individuals that assist facilitate or counsel the perpetrators in committing the asset laundering infraction or to avoid the application of the law shall be condemned to the immediately inferior penalty of the author of the infraction. Repeat offenders must be condemned to the maximum sentence available for the particular infraction.

In cases where a company is involved in asset laundering, a competent court of law may order the temporary suspension of its activities or the permanent foreclosure of the establishment.

The individuals condemned under Law 72-02 may not post Bonds and are not eligible for conditional liberty or pardon.

VI. OTHER INFRACTIONS

PENAL SANCTIONS

A) An employee, officer, director or authorized representative of Persons or Entities Subject to Law 72-02, that acting as such (i) do not comply with the obligations of keeping for a period of ten (10) years documents which contain the operations of the entity and the identity of the persons doing business with it or (ii) forge or illegally change reports of transactions over US\$10,000.00, shall be condemned to two (2) to five (5) years in prison and a fine of fifty (50) to one hundred (100) minimum wages.

B) The public official who by means of his office obtains information from the Persons or Entities Subject to Law 72-02, or from the Financial Analysis Unit and publicly divulge such information, or to third parties not expressly authorized by the law, shall be condemned to six (6) months to two (2) years in prison, and a fine of ten (10) to twenty (20) minimum wages.

C) The public official in charge of the office that supervises and controls the compliance of the Persons or Entities Subject to Law 72-02 of the obligations imposed on them who, by neglect or knowingly, does not initiate the sanctioning process within the terms prescribed by the law when a Person or Entity Subject to Law 72-02 has incurred in a serious offense shall be condemned to six (6) months to two (2) years in prison, and a fine of ten (10) to twenty (20) minimum wages .

D) The person who falsely alleges of having rights, on their own or in representation of a third party, over an asset with the purpose of avoiding its confiscation shall be condemned to two (2) months to five (5) years in prison, and a fine of double the value of the asset.

E) Any national or foreign individual, who at the moment of entering the country carries funds or securities to bearer in excess of US\$10,000.00 or its equivalent in any currency or who mails them into the country by public or private mail, without declaring them or making false statements in the forms prepared for such purposes shall be condemned to six (6) months to two (2) years in prison, and a fine of ten (10) to twenty (20) minimum wages.

F) The individual who directly or through third parties obtains profit for himself or others

from the illegal activities established in the law are subject to three (3) to ten (10) years in prison and a fine equivalent to the profit made by such infraction. If the individual found guilty of this infraction is a public official, at the time of committing it, then the individual will be awarded no less than five (5) years in prison.

G) Any public official that intervened in the confiscation process provided by the law and uses the confiscated assets for their own personal benefit are subject to five (5) to twenty (20) Years in prison and a fine of fifty (50) to two hundred (200) minimum wages.

ADMINISTRATIVE SANCTIONS

A Person or Entity Subject to Law 72-02 which does not comply with its obligations as provided under the Law is subject to a private reprimand or a fine of fifty (50) to one hundred and fifty (150) minimum wages. In case of an entity, an independent sanction shall also apply to the person directly responsible for committing the infraction. This sanction is to be administered by the Banking Superintendency, in the case of banks, and the Internal Revenue Department, in all other cases.

VII. PRECAUTIONARY MEASURES. USE OF SEIZED PROPERTY

When a money laundering case is under investigation, the competent judicial authority or the Financial Analysis Unit may at any time order the provisional seizure of property in order to ensure the preservation of the goods, products or instruments related to the offense until a final judgment has been rendered. Any seized funds and goods shall be inventoried and transferred to the Office of Custody and Management of Confiscated

Assets and, in the case of cash funds; they will be transferred into an account under the name of the Office, within the same bank where they were found. The entity immobilizing such funds under an order of the competent judicial authority will not bear any liability for doing so against the owner of such funds or assets. Assets seized pursuant to an investigation of a drug related crime may be temporarily used by the authorities to fight these types of crimes with the authorization of the National Commission against Asset Laundering.

The competent judicial authority may also demand from any Person or Entity Subject to Law 72-02 the delivery of documents which may be in their power for the investigation purposes. Financial institutions or independent professionals may not invoke professional secret to avoid submitting information to the authorities under this law when they have been duly requested.

Goods in danger of depreciation or that require a permanent action for their preservation, may be sold at public auction or bid provided the owner of the property does not object. The sums obtained from the sale shall be placed on Deposit Certificates of the State-owned commercial bank (“Banco de Reservas de la República Dominicana”) until a final judgment has been rendered.

VIII. CONFISCATION OF ASSETS

When an individual has been condemned under Law 72-02, the competent judicial authority shall order the asset, goods, products and instruments related to the infraction to be confiscated and used in accordance to the law. In cases where the assets related to money laundering may not be confiscated,

the court may order other assets owned by the condemned party to be confiscated, for an equivalent value or may order the condemned party to pay a fine for such value.

In the case of confiscated property obtained from illegal drug- trafficking, the National Commission against Asset Laundering shall use it as follows, if the property is not harmful to society:

- a) 15% for institutions dedicated to rehabilitation of drug addicts;
- b) 50% for the Drug Control Office;
- c) 35% for the National Drug Council, to prevent and to educate against drug consumption.

When in the process of investigation another government has participated, the local authorities may decide with this government the destination of the confiscated assets. For those assets that stay in the country, their destination is determined by the rule provided above.

For all other confiscated assets related to all other serious offenses defined in Law 72-02, the following shall be their destination:

- a) 50% for the institutions mentioned above and the same proportion as provided therein;
- b) 50% for the State’s General Fund.

IX. THIRD PARTY RIGHTS

According to Law 72-02 the confiscation of assets derived from a serious offense shall not affect third party rights. For such purposes, within thirty (30) days of the confiscation, the general attorney’s office shall publish an ad in the newspaper for three (3) consecutive weeks advising of the assets confiscated so

that any third parties having rights over said assets may claim their corresponding rights.

Individuals or entities having rights over the confiscated assets will have to prove the origin of the assets through the documentation required by law for proving ownership rights, such as, Deeds of Title, Investment Certificates, Share Certificates, etc. The assets then may be turned over to the corresponding owners after they have proved: (i) to have a legitimate right over the assets, securities or goods; (ii) that the claimant has no relation to the crime committed; (iii) that the claimant had no knowledge of the fact that the goods derived from a serious offense; (iv) that the claimed assets were not purchased from the perpetrator in a way that would make it seem that the perpetrator was transferring the asset to avoid its confiscation and (v) that the claimant did everything in its power to avoid the illegal use of the assets.

X. OBLIGATIONS IMPOSED ON THE PERSONS OR ENTITIES SUBJECT TO LAW 72-02

Those defined in the law as Persons or Entities subject to Law 72-02 have the following obligations:

- a)** Client Identification: identify their clients at the moment of starting business relations with them through the use of the Official Identification Card or Passport for foreigners.
- b)** Identification of Third Party Beneficiaries: in case of doubt, the Person or Entity Subject to Law 72-02 must seek information to determine the real identity of the owner of the funds on behalf of which the client is acting.
- c)** Independent Professionals: if the client is an independent professional acting as finan-

cial broker, such person may not invoke professional secret to avoid revealing the identity of the third party in the transaction.

d) Reports of cash transactions: inform the Financial Analysis Unit via the Banking Superintendency, within the first fifteen (15) days of every month, all transactions completed in excess of US\$10,000.00 or its equivalent in any foreign currency. Transactions completed on behalf of the same person or entity on the same day shall be grouped and reported if together they exceed the aforementioned amount.

e) Suspicious Transactions: examine, with special attention, any operation, without regard to its amount, which may be related to asset laundering, especially those that are too complex or unusual and request additional information to the client regarding the origin, objective of the transaction and the identity of the parties involved.

f) Keep documentation: keep for at least ten (10) years the documents containing the operations and the identity of the people involved, as well as documents revealing the identity of persons or entities that have done business with the institution.

g) Collaboration with the National Commission Against Asset Laundering: for such purposes (i) inform any operation or activity with regards to which there are indications or certainty of asset laundering; (ii) provide information that the Commission may need to perform its duties.

h) Confidentiality: not reveal to the client or any third party that information has been provided to the authorities or that a suspicious operation is being examined.

i) Procedures, programs, and internal control units: establish procedures and internal

control units, at a management level, to prevent and avoid operations related to asset laundering. These measures shall include: (i) the application of procedures assuring a high level of personnel integration and a system to evaluate their personal, labor and financial history; (ii) the application of a permanent plan of personnel training on “knowing your client”; (iii) focusing on suspicious transactions which need to be reported within 24 hours of occurring; (iv) using the appropriate form to register transactions that exceed US\$10,000.00; and (v) applying internal control measures to insure the application of Law 72-02.

j) Inform its employees of the obligations provided by the law: take the necessary measures to inform the employees and officials of such obligations.

XI. DUTIES IMPOSED ON OTHER PUBLIC INSTITUTIONS

The State Ministry of Finance, the Banking, Insurance, Securities, and Pension Funds Superintendencies, and any other competent authority supervising any sector or entity of the national economy, shall have the following obligations:

a) Recommend the Monetary Board or superior authority responsible, the suspension or cancellation of licenses or permits for the operation of regulated institutions which have incurred in a serious offense;

b) Adopt the necessary measures to prevent and/or avoid that any person with certain convictions, inabilities or conflicts of interest, control or participate directly or indirectly in

the management or operation of one of the Persons or Entities Subject to Law 72-02;

c) Examine, control or supervise the Persons or Entities Subject to Law 72-02 and regulate the compliance of the obligations of information and registry keeping as provided by law;

d) Verify that the supervised entities have and are executing the programs required by law to guarantee compliance with it;

e) Submit to the Financial Analysis Unit information obtained from the Persons or Entities Subject to Law 72-02 under its supervision regarding policies of prevention and detection of asset laundering, and inform within 24 hours of any suspicious transaction reported by any of the entities under its supervision;

f) Issue recommendations and instructions that help the Persons or Entities Subject to Law 72-02 under its supervision to detect suspicious conduct of their clients;

g) Cooperate with the Financial Analysis Units with its investigations.

XII. INTERNATIONAL COOPERATION

With the purpose of helping in the investigations of the infractions sanctioned under Law 72-02, the local competent authority may request and/or give assistance to other foreign authorities, always in accordance to local law, international agreements, and the reciprocity principle present in all international relations, in order to (i) receive testimonies; (ii) present judicial documents; (iii) perform inspections of places or assets or confiscations; (iv) submit proof or information on the case; (v) deliver authentic

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Contact our experts:



Luis R. Pellerano
Partner
l.pellerano@phlaw.com
809-541-5200 Ext. 4005



Lucy Objio
Partner
l.objio@phlaw.com
809-541-5200 Ext. 5309



Pellerano & Herrera
Attorneys at law

Av. John F. Kennedy No. 10
Santo Domingo, Dominican Republic
Tel. (809) 541-5200 Fax (809) 567-0773

www.phlaw.com
ph@phlaw.com

Mailing Address P.O. Box 25522
EPS A-303, Miami, FL 33102 USA