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## **Law 19.913**

CREATES THE FINANCIAL ANALYSIS UNIT AND MODIFIES VARIOUS PROVISIONS  
REGARDING MONEY LAUNDERING

MINISTRY OF FINANCE

LAW NO. 19.913

CREATES THE FINANCIAL ANALYSIS UNIT AND MODIFIES VARIOUS PROVISIONS  
REGARDING MONEY LAUNDERING

Considering that the Honourable National Congress has approved the following Bill:

### **"TITLE I**

#### ***Financial Analysis Unit***

##### ***First Paragraph***

##### ***Nature, purpose and functions***

**Article 1.-** The Financial Analysis Unit (UAF) is created, with the purpose of preventing and deterring the use of the financial system and other sectors of economic activity for the commission of any of the offences described in Article 27 of this law, and in Article 8 of law No. 18.314.

The Financial Analysis Unit will be a decentralised public service, with its own legal personality and assets, which will be related to the President of the Republic through the Ministry of Finance. The senior head of the service will have the title of Director and will be governed by the rules contained in Title VI of law No. 19.882.

**Article 2.-** The Financial Analysis Unit will have the following powers and functions, which it may develop and exercise anywhere in the national territory:

a) Request, verify, examine, and archive the information referred to in Article 3 of this law.

b) Request from any of the natural or legal persons contemplated in Article 3 of this law, the background that, in case of review of a suspicious transaction previously reported to the Unit or detected by it in the exercise of its powers, are necessary and relevant to develop or complete the analysis of said operation and those that must be collected in accordance with letter g) of this article. The requested persons shall be obliged to provide the requested information within the specified timeframe.

If the information referred to in this clause is covered by secrecy or confidentiality, or should be requested from a person not covered in Article 3 of this law, the request must be previously authorised by the Minister of the Court of Appeals of Santiago, who shall resolve it, without a hearing or intervention of third parties, within a period of three days counted from its submission. It will be the responsibility of the President of this Court to designate, once a year and by draw, two of its members to carry out this task. If none of the ministers are in office, the authorization shall be granted by the President of the Court or to whoever substitutes him/her. Both the request for information covered by secrecy or confidentiality made by the Unit, and the resolution of the court, must be based on specific facts that justify them, which shall be expressly stated in both documents. If the request is rejected, the Financial Analysis Unit may appeal. The appeal shall be heard immediately and without further proceedings by the accounts chamber of the aforementioned Court, as soon as the information is received. The proceedings shall be conducted in secret and the file shall be returned in full to the Unit once the appeal has been decided.

The granting of the information requested in accordance with this clause shall be free of charge and exempt from any kind of fees and taxes.

The persons who are not obliged to disclose information for reasons of confidentiality shall not be subject to the provisions of this clause, solely insofar as it concerns confidentiality, in the terms specified in Article 303 of the Criminal Procedure Code.

c) Order expert examinations, which may be entrusted to public or private institutions.

d) Organise, maintain, and administer files, databases, and records, being able to integrate them, with due safeguard and protection, into national and international information networks for the proper performance of its functions.

e) Recommend measures to the public and private sectors to prevent the commission of the crimes referred to in Article 27 of this law.

f) Issue general application instructions to the persons listed in Article 3, first paragraph, and 4, first paragraph, for the proper fulfilment of the obligations established in Paragraph 2 of this Title, being able to verify their execution at any time. Nevertheless, the Financial Analysis Unit will be authorised to issue specific and proportional instructions for different types of obliged entities, considering the nature of the operations

they conduct and the actual risks to which these entities are exposed when used for the commission of the offences referred to in Article 27 or Article 8 of Law No. 18.314.

For the purposes of the provisions of the preceding paragraph, the Financial Analysis Unit may assess the enforcement of the law and applicable regulations by the persons described above, following a risk-based approach to money laundering and terrorist financing. Likewise, it will supervise the adequate management of said risks. To this end, the Financial Analysis Unit may request all the data and background in order to accomplish the task and approve general risk matrices for the economic sectors indicated in the first paragraph of Article 3 of this law. The information provided to the Financial Analysis Unit and the assessment of the background and its use during the inspection process, shall be considered confidential.

g) Provide the General Comptroller of the Republic with the information required to audit the timeliness, integrity, and accuracy of the content of the declaration of interests and assets, both regarding the heads of operational units and their spouses or civil partners, relatives established in article 4 of Law No. 19.863, and persons under guardianship or curatorship, for compliance with the provisions of the aforementioned law.

For this purpose, the Comptroller shall forward to the Financial Analysis Unit a list of the heads of operational units that require the use of reserved expenses for their operation.

h) Exchange information with foreign counterparts. For this purpose, the Unit must ensure that such information will not be used for different purposes and that the requesting entity will operate with reciprocity in case information is requested.

i) Analyse, at least once a year, the information referred to in Article 5 of this law.

j) Access, in the manner agreed upon with the superior head of the respective entity, the data and background existing in the databases of public bodies that, on the occasion of review of a suspicious operation previously reported to the Unit or detected by it in the exercise of its powers, are necessary and relevant to develop or complete the analysis of said operation and to those that must be collected in accordance with letter g) of this Article. In the event that any background is protected by secrecy or confidentiality, the provisions of the second paragraph of letter b) of this Article shall apply.

k) Impose the administrative sanctions established by this law.

Under no circumstances shall the Financial Analysis Unit exercise competencies inherent to the Public Prosecutor's Office or the Courts of Justice. Likewise, it may only use the information it receives for the purposes established in this law, and under no circumstances may it disclose

or provide it to agencies or services other than the Public Prosecutor's Office.

Should the Director of the Financial Analysis Unit deem from the examination of the background aforementioned in the preceding points there are indications that any of the offences contemplated in Article 27 of this law or Article 8 of Law No. 18.314 has been committed, they must order its immediate referral to the Public Prosecutor's Office. Likewise, the Public Prosecutor's Office may request the Unit to send their information necessary for the investigation of money laundering, whether initiated ex officio or by complaint, regardless of the stage they are in.

### ***Second Paragraph***

#### ***Duty to Report***

**Article 3.-** Natural and legal persons specified below shall be obliged to report suspicious operations they detect in the course of their activities: banks and financial institutions; factoring companies; financial leasing companies; securitization companies; general fund administrators and private investment fund managers; exchange offices and other entities authorised to receive foreign currency; credit card issuers or operators, prepaid card issuers, or any other similar payment system; money transfer and transportation companies; stock and commodity market, as well as any other subjected in the future to the supervision of the Superintendency of Securities and Insurance (SVS); stockbrokers; insurance companies; mutual fund administrators; futures and options market operators; free trade zone administrators and users; casinos, gaming halls, and racetracks; holders of permits for gambling operations on larger merchant vessels, with overnight accommodation on board, and whose functions include passenger transportation for tourist purposes; customs agents; auction houses; real estate brokers and property management companies; notaries; keepers of real property register; pension fund administrators; professional sports organisations governed by Law No. 20.019; savings and credit cooperatives; representations of foreign banks; automotive dealers and vendors of new or used vehicles; vehicle rental companies; individuals engaged in the manufacture or sale of firearms; shooting, hunting, and fishing clubs; natural or legal persons engaged in the buying and selling of purebred horses; precious metal traders; jewellery and gemstone traders; and securities deposit companies regulated by Law No. 18.876; individuals or legal entities registered in the Financial Services Providers Registry and in the Payment Initiation Services Providers Registry maintained by the Financial Market Commission, providing collective financing platform services, alternative transaction systems, custody of financial instruments, intermediation of such instruments, and payment initiation services. The same reporting obligation shall apply to other natural or legal persons who, by virtue of any of their activities, are subject to the supervision of the Financial Market Commission and who have voluntarily requested entry in the registry referred to in Article 40. The aforementioned voluntary registration cannot be revoked as long as the person has not lost the status of being supervised by that Commission.

Suspicious operation is understood to be any act, operation, or transaction that, according to the practices and customs of the relevant activity, is unusual or lacks apparent economic or legal justification or could constitute any of the behaviours contemplated in Article 8 of Law No. 18.314, or is conducted by a natural or legal person listed in any resolution of the United Nations Security Council, whether it is conducted in isolation or repeatedly.

It shall be the responsibility of the Financial Analysis Unit to indicate to the entities referred to in this article the situations that shall especially be considered as indicative of suspicious operations or transactions, in their respective cases.

For the purposes of the obligation set forth in the first paragraph of this article, the persons indicated therein shall designate an official responsible for interacting with the Financial Analysis Unit.

Legal, regulatory, contractual, or any other provisions regarding the secrecy or confidentiality of certain operations or activities shall not prevent compliance with the reporting obligation established in this article. The above shall also apply if the Unit requests the delivery or exhibition of the information that the obligated party took into consideration to report the suspicious operation.

The superintendencies and other services and public bodies referred to in the second paragraph of Article 1 of Constitutional Organic Law No. 18.575 relating to the General Bases of the Government Administration, shall be obliged to report suspicious operations they detect in the exercise of their functions. Notwithstanding the foregoing, these entities shall not be subject to the obligations contained in the fourth paragraph of this article and those set forth in Article 5 of this law, nor to the sanctions and procedure established in Title II of this law.

Information provided in good faith in accordance with this law shall exempt those who provide it from any legal liability.

**Article 4.-** The duty to report provided for in the preceding article shall also apply to anyone who carries or transports cash currency or bearer negotiable instruments to and from the country, in an amount exceeding ten thousand United States dollars or its equivalent in other currencies.

In these cases, the information shall be directly collected by the National Customs Service and forwarded by it to the Financial Analysis Unit.

**Article 5.-** Entities described in Article 3 shall also maintain special records for a minimum period of five years, and inform the Financial Analysis Unit when requested, of any cash transaction exceeding ten thousand United States dollars or its equivalent in Chilean pesos, according to the value of the dollar observed on the day the transaction was made.

**Article 6.-** Persons and institutions mentioned in Article 3, first and sixth paragraphs, and their employees, are prohibited from informing the

affected party or third parties about the fact that information has been requested or forwarded to the Financial Analysis Unit, as well as from providing any other information in this regard.

The same prohibition shall apply to those requested in accordance with letter b) of Article 2, and to persons providing services in any capacity to the persons and institutions mentioned in the previous paragraph, who have become aware of the fact that information has been requested or forwarded to the Financial Analysis Unit.

**Article 7.-** Violation of the provisions of Article 6 shall be punished by short-term imprisonment from medium to maximum range and a fine of one hundred to four hundred monthly tax units.

The same penalty shall apply to those who, being obliged under this law to provide information to the Unit, maliciously destroy, alter, or conceal the information or documents to be provided, or provide false information or documents.

### ***Third Paragraph***

#### ***Personnel***

**Article 8.-** The Director shall have the legal, judicial, and extrajudicial representation of the Financial Analysis Unit, being able to perform acts and enter into contracts necessary or convenient for the fulfilment of its purposes.

The Director may delegate some of their powers to the head of division or department heads.

**Article 9.-** In case actions are taken against the Director for acts performed in compliance with the functions conferred by this law, he/she is entitled to legal defence provided by the Unit.

This defence shall extend to all actions brought against him/her for the reasons indicated, even after his/her term in office.

**Article 10.-** To hold the position of Director of the Unit and other executive positions, a professional degree from a program of at least ten semesters in duration, granted by a state university or recognized by it, is required.

For the position of Director and Head of Division, in addition, professional experience of no less than five years must be demonstrated.

**Article 11.-** Permanent and temporary personnel of the Financial Analysis Unit shall be governed by the rules of the Administrative Statute, with the exceptions established by this same law.

All Unit personnel must, together with their declaration of interests, declare their assets, which they shall also do upon leaving their position.

The permanent executive personnel of the Unit shall be solely trusted by the Director. Consequently, the Director may appoint and remove them entirely independently of any other authority.

**Article 12.-** The status of executive officer of the Unit shall be incompatible with performing any other remunerated activity in the public or private sector.

Nevertheless, in accordance with the provisions of the Administrative Statute, these officers may perform teaching or academic activities.

**Article 13.-** Anyone providing services, in any capacity, to the Financial Analysis Unit must keep strictly confidential all information and any other data they become aware of in the exercise of their duties and that is directly or indirectly related to their functions and activities.

The provisions of the preceding paragraph do not preclude the Director's authority to disclose or provide global and non-personalize data, for exclusively statistical or management purposes.

Violation of this prohibition shall be punishable by short-term imprisonment from minimum to maximum range and a fine of forty to four hundred monthly tax units.

This prohibition shall remain indefinitely after ceasing to hold office, commission, or activity.

Notwithstanding the above, the Director of the Unit shall annually attend the Finance Commission of the Chamber of Deputies to report on general aspects of his management, in a closed session.

Information and data requested by the Prosecutor or the court handling the criminal proceedings for any of the offences referred to in Articles 27 and 28, as well as those serving as the basis and indicated in letter a) of Article 27, are exempted from the duty of secrecy.

**Article 14.-** The Financial Analysis Unit may be formed with officials on secondment from the following institutions: Superintendency of Banks and Financial Institutions; Tax Administration; State Defense Council; National Customs Service; Superintendency of Securities and Insurance; Carabineros Chile; Investigations Police, and Foreign Investment Committee. Such officials shall be appointed by the superior head of the respective service, at the request of the Director of the Unit. Also, at the request of said Director, officials of the Central Bank of Chile may be incorporated into the Financial Analysis Unit, who shall be subject to their own legal regulations regarding their appointment.

Officials on secondment in the Unit shall be subject to the restrictions and limitations applicable to their officials, regarding working hours, prohibitions, incompatibilities, and administrative responsibilities.

Secondment agreements of officers, who belong to any body of the State Administration and have completed the secondment in the Unit, shall not be subject to any of the limitations established in the statutory regimes applicable to such officers, nor in other legal and regulatory bodies that may affect them. In any case, these secondment agreements must be in accordance with the provisions of the first paragraph of Article 69 of Law No. 18.834.

**Article 15.-** It is strictly forbidden for personnel serving, in any capacity, in the Financial Analysis Unit to use or consume, in public or private places, any kind of narcotics or psychotropic substances referred to in Article 1 of Law No. 20.000, which sanctions illicit narcotics and psychotropic substances trafficking and the possession or use of such substances. Exceptions shall be made for those substances intended solely for medical treatment.

The unjustified use or consumption of such substances shall be grounds for dismissal from office or termination of the contract, as appropriate.

For these purposes, all Unit personnel must undergo drug tests, the procedure and frequency of which shall be determined by a regulation, to be issued within one hundred and eighty days following the publication of this law. The established procedures shall be random and must safeguard the dignity and privacy of the personnel undergoing tests.

**Article 16.-** The remuneration system for the Unit personnel shall correspond to that of supervisory institutions.

The provisions of Article 17 of Law No. 18.091, replaced by Article 10 of Law No. 19.301, and the performance incentive bonus for officers established in Article 5 of Law No. 19.528, shall also apply to permanent and temporary personnel of the Unit, which shall be determined in the manner provided for in those provisions. For these purposes, the Director shall annually inform the Ministry of Finance on the matter.

**Article 17.-** The Unit shall have the following permanent personnel structure:

Position	Inspectors Scale	No. of Positions
Executive Staff		
Director	1	1
Head of Division	3	1
Department Heads	4	3
Total Positions		5



Notwithstanding the personnel set forth in this article, the Director may hire subject to the maximum staffing levels and resources consulted annually for this purpose in its budget.

The maximum assimilation applicable to such contracts shall be position in range 4 for professionals; 14 for technicians; 16 for administrative staff, and 19 for assistants, all from the salary scale of supervisory institutions.

**Article 18.-** The assets of the Financial Analysis Unit shall consist of:

- a) Resources allocated to it annually in the Public Sector Budget Law and other laws;
- b) Movable and immovable property, corporeal and incorporeal, transferred or acquired for any reason. In the case of donations, only those from public institutions, national or foreign, and from international organisations, both bilateral and multilateral, shall be accepted;
- c) The proceeds, rents, and interests from its heritage assets and services.

## **TITLE II**

### ***Infractions and Sanctions***

**Article 19.-** Natural or legal persons who fail to comply with the obligations or duties contained in this law shall be sanctioned by the Director of the Unit, taking into special and strict consideration the economic capacity of the offender, as well as the seriousness and consequences of the act or omission committed, in accordance with the following rules:

- a) Failure to comply with the instructions issued by the Financial Analysis Unit under Article 2, letter f), of this law shall be considered minor infractions;
- b) Violations of Article 5 shall be considered less serious infractions;
- c) Failure to comply with the obligations contained in Articles 2, letter b), 3, and 41 of this law shall be considered a serious infraction.

The procedure regulated in this Title shall not apply to infractions under Article 4, which shall be sanctioned in accordance with the provisions of Article 39.

**Article 20.-** The commission of the infractions described in the preceding article shall be subject to the following sanctions, according to the seriousness and reiteration of the infraction committed:

1.- Penalties for minor infractions:

- a) Caution, and
- b) Fine for the benefit of the Treasury, up to an amount equivalent to 800 Unidades de Fomento.

To enforce this penalty, the Financial Analysis Unit must prove that the offender was aware of the obligation violated.

2.- Penalties for less serious infractions:

- a) Caution, and
- b) Fine for the benefit of the Treasury, up to an amount equivalent to 3,000 Unidades de Fomento.

3.- Penalties for serious infractions:

- a) Caution, and
- b) Fine for the benefit of the Treasury, not exceeding 5,000 Unidades de Fomento.

In the case of repeated infractions, regardless of their nature, a fine of up to three times the specified amount may be imposed. Reiteration shall be deemed to occur when two or more infractions of the same nature are committed within a period not exceeding twelve months.

**Article 21.-** If the infraction has been committed by a legal person, the sanctions indicated in the preceding article may also be applied to its directors or legal representatives who have consented to or participated in the commission of the offence.

**Article 22.-** Administrative procedures for the implementation of the administrative sanctions of this Title, shall be subject to the following rules:

1.- The procedure shall commence with a precise formulation of charges, indicating a description of the facts deemed to constitute an infraction and the date of their verification, the norm potentially violated, the provision establishing the infraction, the assigned penalty, and the deadline for submitting exculpatory arguments.

2.- The notice of the resolution initiating the administrative procedure described in this article shall be served personally, in accordance with the relevant provisions of the Code of Civil Procedure. A full copy shall be served to the alleged offender or their legal representative. Proof of notice may be served at the address registered with the Unit or where they practise their profession or business, at the address designated before the Customs Service when applicable, at the Unit's premises, or at any public access location.

Personal notice shall be deemed received by an officer of the Unit, appointed for this purpose by the Director of the Financial Analysis Unit, and shall have the character of an attestor.

3.- Other legal notices in the procedure shall be made in writing, by certified letter sent to the registered address of the required party with the Unit or where they practise their profession or business, or in the case of persons indicated in Article 4, to the address designated before the Customs Service. Notices shall be deemed received from the fifth day following their receipt at the corresponding post office.

4.- The required party shall have a period of ten business days, counted from the legal notice, to answer the charges.

5.- Upon receipt of the defences or after the deadline for submitting them has expired, an evidentiary period of eight days shall commence.

The Unit shall allow the evidence or proceedings requested by the required party in their defences, provided they are relevant and pertinent. Otherwise, they shall be rejected by reasoned resolution.

6.- The investigated facts and the responsibilities of the offenders may be proved by any means of evidence admissible in law, which shall be evaluated according to the rules of sound judgement.

7.- The resolution concluding the sanctioning procedure shall be reasoned and shall resolve all the issues raised in the file, ruling on each of the allegations and defences of the alleged offender, and shall contain the declaration of the sanction imposed or their acquittal. This resolution must be issued within ten days following the completion of the last procedure ordered in the file.

8.- The resolution imposing sanctions shall indicate the administrative and judicial remedies available against it in accordance with this law, the bodies to which they must be submitted, and the deadline for filing them.

**Article 22 bis.** - In the case of acts or omissions constituting minor infractions, the Financial Analysis Unit shall not be able to initiate an administrative procedure to apply the sanctions provided for in this Title once three years have elapsed since the commission of the infraction, a period that shall be interrupted by the notice of the formulation of charges regarding the acts or omissions constituting them.

In the case of acts or omissions constituting less serious and serious infractions, this period shall be five years, which will be interrupted by the notice of the respective formulation of charges.

**Article 23.**- Against resolutions of the Unit imposing sanctions, the motion of reconsideration established in Article 59 of Law No. 19.880 may be filed within five days from the notice of the sanction. The Unit shall have ten days to resolve.

The filing of this motion shall suspend the deadline for filing the claim of illegality referred to in the following article.



**Article 24.-** Those affected by resolutions of the Unit arising from the sanctioning procedure regulated in this law, who consider that they do not comply with the law, may file a claim against them within ten days from the notice of the act, before the Court of Appeals corresponding to the address of the sanctioned party.

Fines imposed may always be appealed and shall not be enforceable until the deadline for filing the appeal has expired, or it has been resolved.

Once admitted for processing, the Court of Appeals shall forward the claim to the Unit, granting it a period of ten days to make its observations, counted from the notice of the filed claim.

Once the observations have been received from the Unit or the deadline for making them has expired, the Court shall order the case to be joined for consideration, and it shall be added to the agenda of the next available hearing, following the draw of the Chamber.

The Court may, if deemed appropriate, open an evidentiary period not to exceed seven days, and must hear the arguments of the parties if one of them requests it.

The Court shall issue a judgement within fifteen days.

Appeals may be lodged against the decision of the Court of Appeals before the Supreme Court within ten days, which shall be heard in the manner provided for in the preceding paragraphs.

**Article 25.-** The Unit shall communicate the application of sanctions once they become final, to the General Treasury of the Republic and to the authority supervising the infringing entities, if any.

**Article 26.-** The administrative deadlines established in this Title are business days, with Saturdays, Sundays, and holidays being considered non-business days.

### ***TITLE III***

#### ***Miscellaneous Provisions***

**Article 27.-** The following shall be punished with long-term imprisonment from minimum to medium range and a fine of from two hundred to one thousand monthly tax units:

- a) Whoever, in any way, conceals or disguises the illicit origin of certain assets, knowing that they stem, directly or indirectly, from the perpetration of acts constituting any of the offences provided for in Law No. 20.000, punishing illicit narcotics and psychotropic substances trafficking; in Law No. 18.314, determining terrorist acts and setting their penalties; in Article 10 of Law No. 17.798, on Arms Control; in Title XI of Law No. 18.045, on the Stock Market; in the first paragraph of Article 39 and in Title XVII of Decree with the Force of Law No. 3,

of 1997, of the Ministry of Finance, General Banking Law; in Articles 168, regarding Article 178 numbers 2 and 3; 168 bis and 169, all of Decree with the Force of Law No. 30, of 2004, of the Ministry of Finance, approving the consolidated, coordinated and systematised text of Decree with the Force of Law No. 213, of 1953, of the Ministry of Finance, on Customs Regulations; in the second paragraph of Article 81 of Law No. 17.336, on Intellectual Property; in Articles 59 and 64 of Law No. 18.840, Constitutional Organic Law of the Central Bank of Chile; in Title I of Law 21.459, establishing rules on computer crimes, repealing Law No. 19.223 and amending other legal bodies in order to adapt them to the Budapest Convention; in the third paragraph of number 4 of Article 97 of the Tax Code and in numbers 8 and 9 of the same article regarding offences contemplated in Paragraphs 4 bis and IV ter of Title IX of Book II of the Penal Code; in Paragraphs 4, 5, 6, 9 and 9 bis of Title V and 10 of Title VI, all of Book II of the Penal Code; in Articles 141, 142, 367, 367 quater, 367 septies, 411 bis, 411 ter, 411 quáter, 411 quinquies, and in Articles 467 number 1 of the first paragraph and final paragraph, 468 and 470, numerals 1°, 8° and 11, regarding the aforementioned number 1 of the first paragraph and with its final paragraph of Article 467, all of the Penal Code; in letters f) and h) of Article 7 of Law No. 20.009; in Articles 305, 306, 307, 308 and 310, regarding numbers 2 and 5 of Article 305, all of the Penal Code; in Articles 139, 139 bis and 139 ter of Law No. 18.892, General Law of Fishing and Aquaculture; in Articles 30 and 31 of Law No. 19.473; in Article 21 of Decree No. 4,363, of 1931, of the Ministry of Lands and Colonisation, approving the definitive text of the Forestry Law; in Article 11 of Law No. 20,962, applying the Convention on International Trade in Endangered Species of Wild Fauna and Flora; or knowingly conceal or disguise these assets.

- b) Whoever acquires, possesses, holds, or uses the aforementioned assets, with the aim of profit, when at the time of receiving them they have known their illicit origin.

The same penalty shall apply to the conduct described in this article if the assets originate from an act committed abroad that is punishable in its place of commission and in Chile constitutes any of the offences referred to in letter a) preceding.

For the purposes of this article, assets are understood as objects of any kind appreciable in money, corporeal or incorporeal, movable or immovable, tangible or intangible, as well as documents or legal instruments accrediting ownership or other rights over them.

If the perpetrator of any of the conducts described in letters a) or b) did not know the source of the assets due to inexcusable negligence, the corresponding custodial sentence according to the first or final paragraph of this article will be reduced by two degrees.

The circumstance that the source of the aforementioned assets is a crime and unlawful act of those indicated in letter a) of the first paragraph shall

not require a prior custodial sentence, and may be established in the same process that is conducted to judge the offence criminalized in this article.

If the person who participated as the perpetrator or accomplice of the act that originated such assets also incurs the criminal offence contemplated in this article, they shall also be sanctioned in accordance with it.

In any instance, the custodial sentence applicable in cases of letters a) and b) shall not exceed the long-term imprisonment that the law assigns to the perpetrator of the crime or simple offence from which the assets object of the offence contemplated in this article originate, without prejudice to the fines and ancillary penalties corresponding in accordance with the law.

**Article 28.-** Those who associate or organise for the purpose of performing any of the conducts described in the previous article shall be sanctioned by this mere fact, according to the following rules:

1.- With long-term medium range imprisonment, to those who finance, have command, or plan the acts proposed, and

2.- With long-term minimum range imprisonment, to those who supply vehicles, weapons, ammunition, instruments, accommodation, hiding places, meeting places, or collaborate in any other way to achieve the organisation's purposes.

When the association has been formed through a legal person, the dissolution or cancellation of legal personality shall also be imposed as an ancillary consequence of the penalty sentenced on the individual offenders.

**Article 29.-** Add, at the end of the second paragraph of Article 66 of the Constitutional Organic Law of the Central Bank of Chile, contained in Article 1 of Law No. 18.840, after the period (.), the following sentence: "Nor shall the obligation to maintain confidentiality regarding the information requested by the Financial Analysis Unit or the Public Prosecutor's Office apply, in the case of suspicious operations or offences contemplated in the law that creates said Unit."

**Article 30.-** Add, in Article 14 of the General Banking Law, whose merged, harmonized and systematized text was established by Decree with the Force of Law No. 3, of 1997, of the Ministry of Finance, the following new final paragraph:

"The Superintendency shall permanently maintain a list of bank depositors, indicating their single tax identification number (RUT)."

**Article 31.-** The investigation of the offences referred to in Articles 27 and 28 of this law shall always be secret for third parties unrelated to the proceedings and also for third parties affected by a preliminary investigation by the Prosecutor. Regarding the accused and other interveners, the investigation shall be secret when so ordered by the Prosecutor, for a

maximum period of six months, renewable with the authorization of the supervising judge, once only and for the same term.

Only once the investigation for the offences of Articles 27 and 28 of this law has been formalised, may the accused request the supervising judge to limit the secrecy as to the pieces or proceedings covered by it.

These investigations shall not be subject to the provisions of Article 186 of the Criminal Procedure Code, to the extent that their secrecy has been ordered under the terms indicated in the preceding paragraph.

Anyone who discloses or disseminates information of any kind about the background of the investigation shall incur a sentence of short-term imprisonment from medium to maximum range. This prohibition and sanction shall extend to officials who have participated in the investigation and to anyone who, in any way, informs, disseminates, or discloses information relating to an investigation, even to the fact that such an investigation is taking place.

**Article 32.-** In the investigation of the offences contemplated in Articles 27 and 28 of this law, the Public Prosecutor's Office may request the supervising judge to decree any real precautionary measure necessary to prevent the use, exploitation, benefit, or destination of any kind of assets, securities, or money derived from the offences subject to the process. For these purposes, and without prejudice to the other powers conferred by law, the judge may decree, among others, the prohibition of certain acts and contracts and their registration in all kinds of records; retain in banks or financial institutions deposits of any nature; prevent transactions of shares, bonds, or debentures; and, in general, whatever leads to preventing the conversion of illicit proceeds into activities that conceal or disguise their criminal source.

**Article 33.-** Without prejudice to the provisions of this law, all the provisions of Law No. 20.000, on illicit narcotics and psychotropic substances trafficking, and those contained in any other law that replaces or modifies it, shall apply to the offences established in Articles 27 and 28, referring to the following matters:

- a) Investigation: this includes, especially, the collaboration of State agencies, the authority of the Public Prosecutor's Office to conduct actions outside the national territory or without prior knowledge of the affected party, and international cooperation in general; lifting of banking secrecy; free provision of information requested during the investigation; special investigation techniques, such as delivery or controlled operation, the use of undercover agents and informants, interception of communications and other technical means; protection of persons who have collaborated with the investigation, including safeguarding their identity and image, changing identity, secrecy of certain actions, records or documents as a protective measure when there is a risk to their safety, sanctions in case of infractions, and possibility of providing testimony in advance;

- b) Ineligibility of lawyers, only when the investigation for money laundering is related to a predicated and unlawful offence punished in laws No. 20.000 or 18.314, or in Article 10 of Law No. 17.798, or in Articles 141, 142, 411 bis, 411 ter, 411 quater, and 411 quinquies of the Penal Code.
- c) Precautionary measures and seizures: possibility of ordering precautionary measures without prior communication to the affected party, objects subject to seizure and forfeiture, and destination of seized property or the proceeds thereof; and
- d) Trial and enforcement of the sentence: modifying circumstances of criminal responsibility, such as special aggravating circumstances, inadmissibility of the mitigating circumstance of Article 11, No. 7, of the Penal Code, admissibility of effective cooperation as a mitigating circumstance; rules on the consummation of the offence and punishment of conspiracy; inadmissibility of nocturnal imprisonment and supervised release; substitution of the fine by a custodial sentence; determination of recidivism; admissibility of forfeiture, scope thereof, and destination of seized assets; extradition in the absence of reciprocity or treaty and enforcement of sentence in the country of nationality of the convicted person.

**Article 33 bis.-** Without prejudice to what is established in Article 32, when in the investigation of the offences contemplated in Articles 27 and 28 of this law, the delivery of information or copies of documents subject to secrecy or confidentiality takes place and there is no background that would allow the development of activities conducive to the clarification of the facts, notwithstanding the provisions of Article 167 of the Criminal Procedure Code, the Prosecutor may provisionally archive the investigation until better and new evidence appears.

**Article 34.-** Articles 12 and 17 of Law No. 19.366 are hereby repealed.

However, Articles 12 and 22 of Law No. 19.366, regarding illicit association for money laundering, shall remain in force for the purposes of sanctioning offences therein contemplated and committed prior to the publication of this law, in which case the penalty shall also be regulated according to the provisions of Article 18 of the Penal Code.

**Article 35.-** Any reference made in any law or regulation to the criminal offences contained in Articles 12 and 22 of Law No. 19.366, regarding illicit association for money laundering, shall be understood as referring to the behaviours described in Articles 27 and 28 of this law, as appropriate.

**Article 36.-** Assets seized or the proceeds from forfeitures in investigations for money laundering may be allocated, in the terms established by Articles 40 and 46 of Law No. 20.000, in whole or in part, to the pursuit of said offence.



**Article 37.-** During the investigation of offences contemplated in Articles 27 and 28 of this law, in cases where, as a consequence of acts or omissions of the accused, the seizure or any real precautionary measure over the assets that are the object or product thereof cannot be decreed, the competent criminal court may decree, at the request of the Prosecutor and by reasoned resolution, the seizure or any of the real precautionary measures established by law, over other assets owned by the accused for an amount equivalent to that related to the offences, except for those declare exempt from garnishment by Article 445 of the Civil Procedure Code.

Likewise, upon a request from a competent foreign authority, made pursuant to a request for international legal assistance for any of the offences indicated in the preceding paragraph, seizure or real precautionary measures of assets for an amount equivalent to those related to the investigated offence may be decreed, under the same terms expressed in the preceding paragraph.

In the event of a convicting sentence being issued, and assets related to the offence have not been seized or precautionarily secured but only those of equivalent value, the competent criminal court may, in the same sentence, decree the forfeiture of those seized or secured assets in accordance with the first paragraph.

**Article 38.-** Natural and legal persons mentioned in Article 3 of this law shall be obliged to inform the Financial Analysis Unit of all acts, transactions, or operations carried out or attempted by any of the natural or legal persons identified in the lists drawn up by the Committees established in resolutions numbers 1267 of 1999; 1333 of 2000; 1373 of 2001; 1390 of 2002; 1718 of 2006; 1737 of 2006; 1747 of 2007; 1803 of 2008; 1929 of 2010; 1988 of 2011; 1989 of 2011; 2253 of 2015; 2356 of 2017, and 2371 of 2017, of the United Nations Security Council and its subsequent resolutions or any other that adds to or replaces them, and contained in supreme decrees published in the Official Gazette.

Likewise, they shall be obliged to inform about all acts, transactions, or operations carried out or attempted by any natural or legal person who has committed, is committing, or intends to commit acts of terrorism or participate in them or facilitate their achievement.

Within twenty-four hours following the receipt of the background substantiating that the natural or legal persons identified in the lists referred to in the first paragraph intend to conduct a financial act, transaction, or operation, the Financial Analysis Unit shall request a judge of the Court of Appeals of Santiago to adopt one or more measures necessary to prevent the use, exploitation, benefit, or destination of any kind of assets, securities, or money subject to the act, transaction, or operation, without prior notice to the affected party and for a determined period. The validity of the measures decreed by the Court of Appeal's Judge shall not exceed thirty days, a period that may be extended, by reasoned resolution, by him/her or by the competent court. The request shall be decided summarily

by said judge, without hearing or intervention of third parties and in the shortest possible time, not exceeding twenty-four hours.

For these purposes, the President of said Court shall designate by lottery two of its members, for a period of one year, and the request shall be submitted to either of them. If none of the judges are in office, the authorization shall be granted by the President of the Court or his/her substitute.

Among the measures that may be ordered, the prohibition of transfer, conversion, disposition, or movement of funds or other assets during the term of validity of the measure shall be understood to be included.

Once the request is submitted to the Court, and within twenty-four hours following, the Unit shall confidentially deliver all the background to the General Prosecutor, so that the National Prosecutor's Office deals with the judicial proceedings.

Once the period indicated in the third paragraph has expired, the effects of the measure decreed by the Judge of the Court of Appeals shall immediately cease, without the need for a resolution that declared it.

The Financial Analysis Unit, within the maximum period of twenty-four hours counted from the acceptance of the request indicated in the third paragraph, shall communicate its content to the natural or legal person who reported the financial acts, transactions, or operations so that they immediately adopt the measures decreed by the respective Judge of the Court of Appeals of Santiago. Likewise, within a maximum period of seventy-two hours following the decree of such measures, it shall inform the affected party or parties of said resolution. This notice shall be sent to the address that the affected party or parties have registered with the entity that reported the operation or to the email address listed in such records. It shall include all the background indicated in the third paragraph.

While this measure is in force, those affected by it may appeal to the Court of Appeals of Santiago to obtain its revocation. The Court of Appeals shall resolve the appeal as soon as possible, after receiving the report from the Financial Analysis Unit, for which it may open, ex officio or at the request of a party, a special evidentiary term, which shall not exceed three days.

If by judicial resolution the measures indicated in the third and fifth paragraphs are revoked, or the term for which they were decreed has expired, the Financial Analysis Unit shall communicate this situation to the natural or legal person who reported the financial acts, transactions, or operations conducted, which motivated the respective investigation.

For the purposes of the provisions of this article, the Financial Analysis Unit shall periodically make available to all persons indicated in Article 3 of this law, the lists drawn up by the Committee established by the United Nations Security Council, and which originate from the resolutions

mentioned in the first paragraph of this article. Likewise, the Financial Analysis Unit shall inform the Ministry of Foreign Affairs of the background collected that relates to the natural or legal persons recorded in said lists, for the purpose of informing the United Nations Organization.

**Article 39.-** The infringement of the provisions of Article 4 shall be subject to the control and supervision of the National Customs Service and to what is established in Article 168 bis of the Customs Regulations and other relevant norms.

**Article 40.-** All natural or legal persons indicated in the first paragraph of Article 3, whether or not supervised by any superintendency, and without prejudice to their obligation to designate a responsible official before the Financial Analysis Unit, must be listed in a registry that the Unit will maintain in accordance with the provisions of letter d) of Article 2 of this law, and which must be implemented within a period of ninety business days from the publication of this law in the Official Gazette. Once registered, the persons indicated in the preceding paragraph must inform the Financial Analysis Unit of any relevant changes in their legal situation, in the terms indicated by the general instructions that the Unit will issue for these purposes.

The Financial Analysis Unit may publicly disclose the name and tax identification number of the natural and legal persons mentioned in Article 3 of this law and that register in accordance with this article.

**Article 41.-** The public official who, by virtue of his position, becomes aware of any of the offences contemplated in Articles 6, 7, 13, and 31 of this law and fails to report it to the Public Prosecutor's Office, to the officials of the Carabineros of Chile or the Investigations Police, or to any court with criminal jurisdiction, shall be punished with short-term imprisonment from medium to maximum range, and a fine of forty to four hundred monthly tax units.

#### **PROVISIONAL ARTICLES**

**Article 1.-** In those regions where the Criminal Procedure Code established by Law No. 19.696 has not come into force upon the expiration of the period indicated in Provisional Article 6, the obligations established by the final paragraphs of Article 2 for the Financial Analysis Unit regarding the Public Prosecutor's Office shall apply to the State Defense Council until said Code comes into force.

**Article 2.-** Notwithstanding the provisions of Article 18 of the Penal Code, the offences contemplated in Articles 12 and 22 of Law No. 19.366 that were committed prior to the effective date of this law shall be investigated and judged according to the rules in force at the time of their commission.

**Article 3.-** Without prejudice to the provisions of the preceding articles, regarding the regions where Law No. 19.696 applies, the State Defense Council must submit to the Public Prosecutor's Office the accumulated

information regarding the administrative investigations of money laundering and illicit associations that have been under its responsibility, concerning facts that occurred in those same regions, except for those directly linked to investigations or trials that are still ongoing. The Council shall also be obligated to comply with this obligation once said investigations and trials are concluded.

In any case, the secrecy obligation established by Article 17 of Law No. 19.366, regarding administrative investigations of money laundering carried out by the State Defense Council, shall not prevent the Public Prosecutor's Office from accessing them, under the terms provided in Article 19 of the Criminal Procedure Code.

**Article 4.-** The increased fiscal expenditure resulting from the application of this law shall be financed from item 50-01-03-25-33.104, of the Public Treasury budget.

**Article 5.-** The President of the Republic, by supreme decree issued through the Ministry of Finance, shall create the respective chapter of income and expenses of the budget of the Financial Analysis Unit.

**Article 6.-** The maximum staff allocation of the Financial Analysis Unit for the first budgetary year shall be 15 positions.

**Article 7.-** The provisions of Paragraph 2 of Title I shall enter into force one hundred fifty days after the publication of this law in the Official Gazette.

Having complied with the provisions of No. 1 of Article 82 of the Political Constitution of the Republic, and as I have seen fit to approve and sanction it; therefore, let it be promulgated and put into effect as a Law of the Republic.

Santiago, December 12, 2003.- RICARDO LAGOS ESCOBAR, President of the Republic.- María Eugenia Wagner Brizzi, Minister of Finance.- José Miguel Insulza Salinas, Minister of Interior.- Jaime Arellano Quintana, Minister of Justice.

What I transcribe to you for your knowledge.- Yours sincerely, María Eugenia Wagner Brizzi, Undersecretary of Finance.

#### **Constitutional Court**

Bill creating the Financial Analysis Unit and amending the Penal Code regarding money laundering.

The Secretary of the Constitutional Court, who signs, certifies that the Honourable Chamber of Deputies sent the bill referred to in the heading, approved by the National Congress, so that this Court would exercise constitutional control over the third paragraph of Article 1; letter b), of the first paragraph of Article 2; Article 8, and Article 22, thereof, and by judgement of October 28, 2003, declared:

1. That the provisions included in Articles 1, third paragraph, and 22, of the sent bill, are constitutional.

2. That the provisions contained in Articles 2, first paragraph, letter b), and 8, of the sent bill are unconstitutional and must be removed from its text.

3. Likewise, the following provisions of the bill are unconstitutional and must be removed from its text:

a) letter g) of the first paragraph of Article 2, which states: "g) Access without limitation to the databases of public bodies in the manner agreed upon with the superior head of the respective entity. If they invoke secrecy or confidentiality, they shall proceed in accordance with the provisions of the third paragraph of letter b) of this article.";

b) letter j) of the first paragraph of Article 2, which indicates: "Impose the administrative sanctions established by this law."

c) the phrase of Article 6, which prescribes: "2nd, first paragraph, letter b) and", and the sentence of Article 7 which states: "and the delivery of false information, referred to in letter b) of the first paragraph of Article 2 of this law, or the destruction or concealment of the same." Santiago, October 29, 2003.- Rafael Larraín Cruz, Secretary.

**Credits:**

We would like to acknowledge the support of the United Nation Volunteer (UNV) Program, and specially to the volunteer Sofia Jiménez Elekhina how translated the law.