

**E/NL.2001/41 LAW No. 365 of 1997**

Establishing provisions aimed at combating organized crime and enacting other provisions

**THE CONGRESS OF THE REPUBLIC****DECREES****Article 1**

**Article 42, paragraph 4, of the Criminal Code shall read as follows:**

4. Prohibition of the pursuit of an occupation, trade, craft, business or enterprise."

**Article 2**

**The Code of Criminal Procedure shall have an article 61A, reading as follows:**

**"ARTICLE 61A: Revocation of the legal personality of companies and organizations devoted to the pursuit of criminal activities or closure of their premises or establishments open to the public.**

At any stage in the course of proceedings, if the judicial officer deems it a proven fact that juridical persons, companies or organizations have been devoted entirely or partly to the pursuit of criminal activities, that officer shall order the competent authority, subject to the fulfilment of the relevant established legal requirements, to revoke the legal personality thereof or to close premises or establishments thereof that are open to the public."

**Article 3**

**Article 44 of the Criminal Code shall read as follows:**

**"ARTICLE 44: Length of sentence**

The maximum length of the sentence shall be as follows:

â€" Long-term imprisonment, up to sixty (60) years;

â€" Short-term imprisonment, up to eight (8) years;

â€" House arrest, up to five (5) years;

â€" Forfeiture of rights and disqualification from public office, up to ten (10) years;

â€" Prohibition of the pursuit of an occupation, trade, craft, business or enterprise, up to five (5) years;

â€" Loss of parental rights, up to fifteen (15) years."

**Article 4**

**Article 58 of the Criminal Code shall read as follows:**

**"ARTICLE 58: Prohibition of the pursuit of a business, enterprise, occupation, trade or craft**

In the case of an offence involving abuse of a function relating to pursuits of a business, enterprise, occupation, trade or craft, or violation of the obligations deriving from such pursuit, the judge, in awarding sentence, may disqualify the offender from continued pursuit of the business, enterprise, occupation, trade or craft in question for a period of up to five (5) years."

**Article 5**

**The Criminal Code shall have an article 63A, reading as follows:**

**"ARTICLE 63A: Aggravation of the offence through place of commission**

If the punishable act was directed or committed, entirely or in part, from within a place of imprisonment by an inmate, or entirely or in part outside the national territory, the sentence shall be increased by up to one half, provided that such circumstance does not constitute a separate punishable act or ingredient thereof."

**Article 6**

**Article 176 of the Criminal Code shall have an additional clause, reading as follows:**

**"ADDITIONAL CLAUSE:** If assistance is provided for the purpose of evading prosecution or interfering in the investigation of the punishable acts of extortion, illicit enrichment, kidnapping with extortion, or trafficking in narcotic drugs or toxic or psychotropic substances, the penalty imposed shall be a term of imprisonment of four (4) to twelve (12) years."

**Article 7**

**Article 177 of the Criminal Code shall read as follows:**

**"ARTICLE 177: Receiving stolen goods**

Any person who, without having taken part in the commission of an offence, acquires, possesses, converts or transfers movable or removable property derived directly or indirectly from an offence, or who performs some other act to disguise or conceal the illicit origin of such property, shall be liable to a term of imprisonment of one (1) to five (5) years and a fine of five (5) to five hundred (500) times the statutory minimum monthly wage, provided that the act does not constitute a separate, more serious, offence.

If the act in question relates to property with a value greater than one thousand (1,000) times the statutory minimum monthly wage, the custodial sentence shall be increased by a proportion of from one third to one half."

**Article 8**

**Article 186 of the Criminal Code shall read as follows:**

**"ARTICLE 186: Conspiracy to commit a crime**

When several persons conspire to commit a crime, each such person shall be liable, for this fact alone, to a term of imprisonment of three (3) to six (6) years.

Such an offence committed in an uninhabited area or with the use of weapons shall be punishable by a term of imprisonment of three (3) to nine (9) years.

When the conspiracy is aimed at the commission of offences of terrorism, drug trafficking, kidnapping with extortion, extortion or the formation of death squads, vigilante squads or bands of hired assassins, it shall be punishable by a term of imprisonment of ten (10) to fifteen (15) years and a fine of two thousand (2,000) to fifty thousand (50,000) times the statutory minimum monthly wage.

The aforementioned penalty shall be doubled to tripled for any person who organizes, encourages, promotes, directs, leads, forms or funds a conspiracy or association to commit a crime."

**Article 9**

**Book II, Title VII, of the Criminal Code shall have a Chapter Three entitled "Money-laundering", containing the following articles:**

**"ARTICLE 247 A: Money-laundering**

Any person who acquires, guards, invests, transports, processes, has in safe keeping or administers property deriving directly or indirectly from activities involving extortion, illicit enrichment, kidnapping with extortion or revolt, or related to trafficking in narcotic drugs or toxic or psychotropic substances and who gives to property deriving from such activities the appearance of legality or legalizes it or conceals or disguises the true nature, origin, location, purpose or movement of such property or of title thereto, or performs any other act to conceal or disguise its illicit origin shall be liable, for such act alone, to a term of imprisonment of six (6) to fifteen (15) years and a fine of five hundred (500) to fifty thousand (50,000) times the statutory minimum monthly wage.

The same penalty shall apply if the acts described in the preceding paragraph were performed in respect of property which, pursuant to the additional clause of article 340 of the Code of Criminal Procedure, has been declared to be of illicit origin.

**ADDITIONAL CLAUSE 1:** Money-laundering shall be a punishable offence even if the offence from which the property is derived or the acts punishable under the above-mentioned provisions were entirely or partly committed abroad.

**ADDITIONAL CLAUSE 2:** The penalties established in this article shall be increased by a proportion of from one third (1/3) to one half (1/2) if

the performance of the acts concerned involved exchange or foreign trade transactions or the importation of goods into national territory.

**ADDITIONAL CLAUSE 3:** The increase in penalty established in the preceding additional clause shall also apply in the case of the importation of smuggled goods into the national territory.

**ARTICLE 247 B: Failure to apply measures of control**

Any employee or executive manager of a financial institution or savings and loans cooperative who, with the aim of concealing or disguising the illicit origin of the money concerned, fails to apply any or all of the control mechanisms established by articles 103 and 104 of Decree No. 663 of 1993 for cash transactions shall be liable, for this act alone, to a term of imprisonment of two (2) to six (6) years and a fine of one hundred (100) to ten thousand (10,000) times the statutory

minimum monthly wage.

**ARTICLE 247 C: Specific aggravating circumstances**

The custodial sentences specified in article 247 A shall be increased by a proportion of from one third to one half if the conduct in question is performed by a person belonging to an entity which is a juridical person, company or organization devoted to money-laundering and by a proportion of from one half to three quarters if it is performed by the chiefs, administrators or executives of such an entity.

**ARTICLE 247 D: Imposition of accessory penalties**

If the acts envisaged in article 247 A and 247 B were performed by an employer in any line of business, an administrator, employee, executive manager or intermediary in the financial, stock exchange or insurance sector, as the case may be, or a public servant in the discharge of his or her duties, in addition to the corresponding penalty there shall also be imposed the penalty of disqualification from public office or official duties, or prohibition of the pursuit of that person's occupation, trade, craft, business or enterprise for a period of not less than three (3) and not more than five (5) years."

**Article 10**

**Article 369 A, paragraph (d), of the Code of Criminal Procedure shall read as follows:**

(d) Bringing of charges against the leaders of criminal organizations, accompanied by effective proofs of guilt."

**Article 11**

**Article 37 of the Code of Criminal Procedure shall read as follows:**

**"ARTICLE 37: Early sentence**

After a decision defining the legal situation has been made enforceable and pending termination of the investigation, the defendant may request pronouncement of an early sentence.

In response to such request, the prosecutor may, if he or she deems it necessary, extend the preliminary investigation and examine evidence during a

maximum period of eight (8) days. The counts of the indictment formulated by the prosecutor and their admission by the defendant shall be recorded in a record signed by all parties to such proceedings.

The judicial proceedings shall be transmitted to the competent judge who, within a period of ten (10) working days, shall pronounce a sentence on the basis of the accepted facts and circumstances, provided that no violation of fundamental guarantees has taken place.

The judge shall determine the appropriate penalty, reducing the amount of the penalty by a proportion of one third (1/3) if the defendant enters a guilty plea.

An early sentence may also be pronounced if, once the indictment order has been issued and before the date for a public hearing has been set, the defendant pleads guilty to all the charges listed therein. The penalty may then be reduced by one eighth (1/8)."

**Article 12**

**Article 37 B of the Code of Criminal Procedure shall read as follows:**

**"ARTICLE 37 B: Common provisions**

In the cases of articles 37 and 37 A of this Code the following provisions shall apply:

**1. Concurrent reductions of penalty**

The reduction of penalty established in article 299 of this Code may be accumulated with a reduction envisaged in article 37 or with the reduction indicated in article 37 A, but in no circumstances may the latter reductions be accumulated with each other.

**2. Equivalence to the indictment order**

The document containing the charges accepted by the defendant in the case of article 37 and the document containing the agreement referred to by article 37 A are equivalent to the indictment order.

**3. Rupture of the unity of proceedings**

Where the proceedings involve several defendants or offences, partial agreements of pleas of guilt may be filed, in which case the unity of proceedings shall be deemed broken.

**4. Interest in recourse**

A sentence is appealable by the prosecutor, the Department of Public Prosecutions, the defendant and the defendant's counsel, but by the latter two parties only in respect of the gravity of the sentence, the imposition of a conditional sentence or the extinction of ownership rights to property.

**5. Exclusion of a third party with civil liability and of the party to civil proceedings**

If an early sentence is awarded in the circumstances envisaged in articles 37 or 37 A of this Code, the court order in question shall not determine matters of civil liability."

**Article 13**

**Article 71 of the Code of Criminal Procedure shall contain a new paragraph as follows:**

6. Proceedings in respect of offences of conspiracy to commit a crime in the cases envisaged in article 186, paragraph 3, of the Criminal Code, as well as proceedings in respect of offences covered by articles 247 A and 247 B of the Criminal Code."

**Article 14**

**Article 340 of the Code of Criminal Procedure shall read as follows:**

**"ARTICLE 340: Extinction of ownership rights**

Ownership of property acquired by means of illicit enrichment or causing financial loss to the Treasury or serious damage to social moral standards shall be declared to be extinguished by judicial sentence. For such purposes, the offences established in the National Narcotics Statute and its amending and supplementing provisions, as well as the offences of kidnapping, kidnapping with extortion, extortion, money-laundering and engaging in dummy operations, crimes against the social economic order, crimes against natural resources, the manufacture of and trafficking in weapons and ammunition for the exclusive use of the military forces, misappropriation of public funds, bribery, influence peddling, rebellion, sedition and unlawful assembly are considered offences that cause serious damage to social moral standards. In all cases, the rights of third parties of good faith shall be safeguarded. Property and assets to which ownership rights have been extinguished shall, without exception, revert to the Fund for Rehabilitation, Social Investment and Organized Crime Control for allocation by the National Narcotics Board.

**ADDITIONAL CLAUSE:** In criminal investigations and proceedings in respect of offences of extortion, kidnapping with extortion, engaging in dummy operations, money-laundering, offences covered by the National Narcotics Statute and its amending or supplementing provisions, the illicit enrichment of public servants or private persons, embezzlement of public funds, illicit interest in the conclusion of contracts, the conclusion of contracts in breach of legal requirements, the illegal issuing of currency or of assets or securities with equivalent value to currency, illicit engaging in monopolistic activities or activities relating to revenue taxation, theft of assets or equipment intended for national security and defence, crimes against property affecting State assets, improper use of privileged information or use of confidential or classified information, the declaration that movable or immovable property is of illicit origin is independent from the criminal responsibility of the accused and the abatement of the action or extinction of the penalty. In such cases

extinction of ownership shall proceed in conformity with the provisions of the law governing such action *in rem*.

Unless the proceedings conclude by demonstrating non-existence of the offence, the declaration that movable or immovable property is of illicit origin shall be made in the restraining order, in the order of proscription of the investigation, in the writ of termination of proceedings or in the sentence. In the same order, and with a view to furthering the process of extinction of ownership, there shall be issued an order for the attachment and seizure of property declared to be of illicit origin."

**Article 15**

**Article 369 H of the Code of Criminal Procedure shall contain a paragraph as follows:**

**ADDITIONAL CLAUSE:** Any person convicted on charges of conspiracy to commit a crime aggravated by the circumstance of organizing, encouraging, promoting, directing, leading, forming or funding a conspiracy or association, in combination with a different offence, may have recourse to an early sentence or to a special hearing and may be eligible for a reduced sentence in return for entering a guilty plea or for effectively assisting the course of justice, but in no case may the penalty imposed be lower than that imposed without any reductions for the more serious offence."

**Article 16**

**Article 508, paragraph 4, of the Code of Criminal Procedure shall read as follows:**

4. In the case of a prohibition on the pursuit of an occupation, trade, craft, business or enterprise, an issue shall be ordered to annul the document permitting such pursuit and the issuing authority shall be duly notified."

**Article 17**

**Article 33 of Law No. 30 of 1986 shall read as follows:**

**ARTICLE 33:** Any person not in possession of a licence issued by a competent authority who, except as provided by law governing the permitted dosage for personal consumption, introduces into the country, in transit or otherwise, or exports from it, transports, carries, stores, conserves, manufactures, sells, offers, acquires, finances or supplies in any capacity addictive drugs shall be liable to a term of imprisonment of six (6) to twenty (20) years and a fine of one hundred (100) to fifty thousand (50,000) times the statutory minimum monthly wage.

If the quantity of drugs in question is not greater than one thousand (1,000) grams of marijuana, two hundred (200) grams of hashish, one hundred (100) grams of cocaine or narcotic substance based on cocaine or twenty (20) grams of opium derivative, or two hundred (200) grams of methaqualone or synthetic drug, the penalty shall be a term of imprisonment of one (1) to three (3) years and a fine of two (2) to one hundred (100) times the statutory minimum monthly wage.

If the quantity of drugs in question is greater than the maximum limits established in the preceding paragraph but not greater than ten thousand (10,000) grams of marijuana, three thousand (3,000) grams of hashish, two thousand (2,000) grams of cocaine or narcotic substance based on cocaine, or sixty (60) grams of opium derivative, or four thousand (4,000) grams of methaqualone or synthetic drug, the penalty shall be a term of imprisonment of four (4) to twelve (12) years and a fine of ten (10) to one hundred (100) times the statutory minimum monthly wage."

**Article 18**

**Article 34 of Law No. 30 of 1986 shall read as follows:**

**ARTICLE 34:** Any person who illicitly uses movable or immovable property for the purpose of manufacturing, storing or transporting, selling or utilizing any of the drugs referred to in article 32 above or who authorizes or tolerates such use by others shall be liable to term of imprisonment of four (4) to twelve (12) years and a fine of one thousand (1,000) to fifty thousand (50,000) times the statutory minimum monthly wage, without prejudice to the provisions of articles 124 and 125 of Decree-Law No. 522 of 1971 (article 208, paragraph 5, and 214, paragraph 3, of the National Police Code).

If the quantity of drugs in question is not greater than one thousand (1,000) grams of marijuana, three hundred (300) grams of hashish, one hundred (100) grams of cocaine or narcotic substance based on cocaine, twenty (20) grams of opium derivative or two hundred (200) grams of methaqualone or synthetic drug, the penalty shall be a term of imprisonment of one (1) to three (3) years and a fine of two (2) to one hundred (100) times the statutory minimum monthly wage.

If the quantity of drug in question is greater than the maximum limits established in the preceding paragraph but not greater than ten thousand (10,000) grams of marijuana, three thousand (3,000) grams of hashish, two thousand (2,000) grams of cocaine or narcotic substance based on cocaine, sixty (60) grams of opium derivative or four thousand (4,000) grams of methaqualone or synthetic drug, the penalty shall be a term of imprisonment of three (3) to eight (8) years and a fine of ten (10) to eight hundred (800) times the statutory minimum monthly wage."

**Article 19**

**Article 40 of Law No. 30 of 1986 shall read as follows:**

**ARTICLE 40:** In the order imposing a protective measure of custody in respect of any of the offences established in articles 33, 34 or 43 of this Law, the judicial officer shall decree the seizure and attachment of property belonging to the accused which has not already been confiscated in connection with the punishable act in an amount deemed sufficient to guarantee payment of the fine stipulated in those articles and shall appoint a depositary. Once seizure and attachment have been decreed, both their execution and the procedures for contesting such action and decision-taking on such recourse shall proceed in conformity with the relevant provisions of the Code of Civil Procedure.

The sentence delivered shall order the sale of any property seized and attached as part of proceedings, for which purpose regard shall be had to the procedures laid down in the Code of Civil Procedure."

**Article 20**

**Article 43 of Law No. 30 of 1986 shall read as follows:**

**ARTICLE 43:** Any person who illegally introduces into the country, or exports from it, transports or has in his possession elements which may be used for processing cocaine or any other addictive drug such as the following: ethyl ether, acetone, ammonium, potassium permanganate, carbonate light, hydrochloric acid, sulphuric acid, thinners, solvents and other substances which, according to pre-established criteria of the National Narcotics Board, are used for such purpose, shall be liable to a term of imprisonment of three (3) to ten (10) years and a fine of two thousand (2,000) to fifty thousand (50,000) times the statutory minimum monthly wage.

Except as provided by article 54 of Decree-Law No. 099 of 1991, adopted as permanent legislation under article 1 of Decree-Law No. 2271 of 1991, once such elements have been established by expert opinion as belonging to the aforementioned category, they shall be placed by a judicial officer at the disposal of the National Narcotics Office, which may order their immediate utilization by an official entity, their sale for duly verified licit purposes, or their destruction in cases where they present a serious risk to public health or safety.

In cases where the quantity of the substances concerned is not greater than triple those quantities indicated in the resolutions issued by the National Narcotics Office, the penalty shall be a term of imprisonment of two (2) to five (5) years and a fine of ten (10) to one hundred (100) times the statutory minimum monthly wage."

**Article 21**

**The following additional clause is hereby added to article 209 of the Organizational Statute of the Financial System:**

**ADDITIONAL CLAUSE:** In cases where the offending acts referred to in this article relate to provisions contained in Chapter XVI of the Third Part of the Organizational Statute of the Financial System, the fine imposable shall be up to fifty million pesos (\$50,000,000) payable to the National Treasury. This amount shall be readjustable in the manner indicated in the first paragraph of this article.

This fine may be renewable until such time as the requirement is met and shall be applied without prejudice to any penal sanctions imposed in respect of each offence committed.

In addition, the head of the Bank Supervisory Authority may demand immediate dismissal of the offender and transmit such decision to all entities under the supervision of that Authority."

**Article 22**

**The following paragraph is hereby added to article 211 of the Organizational Statute of the Financial System:**

3. Provisions on the prevention of criminal conduct

In cases where the offence referred to in the first paragraph of this article relates to the provisions contained in Chapter XVI of the Third Part of the Organizational Statute of the Financial System, the fine imposable shall be up to one thousand million pesos (\$1,000,000,000).

In addition, the head of the Bank Supervisory Authority may order the establishment awarded such fine to allocate an amount of up to one thousand million pesos (\$1,000,000,000) for the implementation of internal reforms to be agreed with that supervisory body.

The aforementioned amounts shall be readjustable in the manner indicated in the first paragraph of this article."

**Article 23**

**Cooperatives which engage in savings and credit activities**

In addition to high-level cooperatives [>entidades Cooperativas de Grado Superior] which fall within the responsibility of the Bank Supervisory Authority, all cooperatives which engage in savings and credit activities shall also be governed by the provisions of articles 102 to 107 of the Organizational Statute of the Financial System.

In the case of entities not supervised by the Bank Supervisory Authority, the National Administrative Department for Cooperatives (Dancoop) shall determine the lower threshold amounts for the reporting requirement for cash transactions.

Furthermore, Dancoop shall prescribe rules governing, and shall collect, periodical reports on the number of cash transactions referred to in article 104 of the Organizational Statute of the Financial System, as well as monthly reports on the registration of multiple cash transactions referred to in article 103, paragraph 2, of that Statute undertaken by cooperative entities not supervised by the Bank Supervisory Authority.

The obligations set out in this article shall enter into effect on the date specified by the National Government."

**Article 24**

**Article 103, paragraph 1(a), of the Organizational Statute of the Financial System is hereby amended to read as follows:**

(a) The identity, signature and address of the person who physically performs the transaction. In cases where registration is performed electronically, no signature shall be required."

**Article 25**

**Article 104 of the Organizational Statute of the Financial System shall read as follows:**

**"ARTICLE 104: Periodic reporting**

All financial institutions shall report periodically to the Bank Supervisory Authority the number of cash transactions referred to in the preceding article and their geographical location, in accordance with the instructions issued by that Authority for such purpose."

**Article 26**

**Entry into effect**

This Law shall enter into effect on the date of its publication and repeals any provisions which may run counter to it, in particular article 369 A (e) (f) and (h), article 369 B and the additional clause of article 369 E of the Code of Criminal Procedure; articles 10, 11, 12 and 13 of Law No. 104 of 1993, article 2 of Law No. 241 of 1995; paragraph 2 of article 28 of the Criminal Code, as amended by article 31 of Law No. 40 of 1993 and article 41 of Law No. 30 of 1986.

The following provisions are hereby superseded: article 44 of Law No. 30 of 1986, article 7 of Decree No. 180 of 1988, adopted as permanent legislation under article 4 of Extraordinary Decree No. 2266 of 1991, article 1 of Decree-Law No. 1194 of 1989, adopted as permanent legislation under article 6 of Decree No. 2266 of 1991, article 5 of Law No. 40 of 1993 and article 32, paragraph 4, of Law No. 40 of 1993 amending article 355 of the Criminal Code of 1980.

**ADDITIONAL CLAUSE:** From the time that this Law enters into effect, the benefits to be obtained by assisting the cause of justice, as established in Law No. 81 of 1993, may only be granted under the terms amended by this Law.

Any person who, at the time of entry into effect of this Law, has already requested the competent judicial authorities to grant any of the benefits conferred under other laws shall, provided that the requirements for application thereof have been fulfilled, remain subject to the operation of such laws for the purposes of the regulation of such benefits.

The President of the Honourable Senate of the Republic

*Luis Fernando Londoño Capurro*

The Secretary General of the Honourable Senate of the Republic

*Pedro Pumarejo Vega*

The President of the Honourable House of Representatives

*Giovanni Lamboglia Mazzilli*

The Secretary of the Honourable House of Representatives

*Diego Vivas Tafur*

**REPUBLIC OF COLOMBIA**

**NATIONAL GOVERNMENT**  
MAY IT BE PUBLISHED AND EXECUTED

DONE at Santa Fé de Bogotá, D.C. on the 21st day of February 1997.

ERNESTO SAMPER PIZANO

Minister of Justice and Legal Affairs

*Carlos Eduardo Medellín Becerra*