

# CRIMINAL CODE<sup>1</sup>

## Law 25.246

**Amendment. Concealment and laundering of proceeds of crime. Financial Information Unit. Duty to inform. Legally bound persons. Criminal Administrative Regime. Attorney General's Office. Abrogation of section 25 of Law 23.737 (Re-arranged text).**

**Enacted: April 13, 2000.**

**Promulgated: May 5, 2000.**

The Senate and the Chamber of Deputies of the Argentine Nation in Congress assembled, etc., enact with force of law:

### CHAPTER I

#### Amendment to the Criminal Code

SECTION 1 — The heading of Chapter XIII, Title XI of the Criminal Code is hereby replaced by the following one: "Chapter XIII: Concealment and Laundering of Proceeds of Crime."

SECTION 2 — Section 277 of the Criminal Code is hereby replaced by the following one: Section 277: 1) It is punishable with prison terms from six (6) months to three (3) years whoever, after the commission of a crime by another individual, in which he has not participated:

- a) helps someone to avoid investigations by the authority or to elude the latter's action.
- b) hides, alters or makes trails, evidence or instruments of the crime disappear or aids the perpetrator or participant to hide, alter or make them disappear.
- c) acquires, receives or hides money, things or effects arising from a crime.
- d) does not report the commission of a crime or does not identify the perpetrator or participant in a crime already known, where he would have been obliged to promote the criminal pursuit of such a crime.
- e) makes safe or helps the perpetrator or participant to make safe the product or benefit of the crime.

2) Both the minimum and maximum terms of punishment shall be doubled when:

- a) The illegal act were a particularly serious crime, such as that where the minimum penalty were higher than three (3) years of imprisonment.
- b) The wrongdoer had acted with a view of profit.
- c) The wrongdoer habitually commits concealment acts.

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<sup>1</sup> Translated by the Institutional Relations Directorate of the Financial Information Unit (UIF) of the Argentine Republic.

The increase in the amount of punishment provided for in this subsection shall be applied only once, even though more than one of the qualifying circumstances come together. In this case, the court may take into account the plurality of causes at the moment of applying the punishment.

3) The individual who had acted in favor of his/her spouse, or of a relative within the fourth degree of consanguinity or the second degree of affinity, or of a close friend or person to whom he/she owed special gratitude shall be exempt from criminal liability. The exemption shall not apply in the cases provided for in the preceding subsections 1 e) and 2 b).

SECTION 3 —Section 278 of the Criminal Code is replaced by the following one:

Section 278: 1) a) Whoever converts, transfers, manages, sells, encumbers or applies in any other way money or another kind of goods arising from a crime in which he has not participated, with the possible consequence that the original goods or the substitutes thereof appear to come from a lawful source, provided that their value be over fifty thousand pesos (\$ 50,000), whether through only one act or by the repetition of various interrelated acts, shall be punished with two to ten years' imprisonment and a fine of two to ten times the amount of the operations made;

b) The minimum punishment shall be five (5) years of imprisonment when the wrongdoer carries out the act on a regular basis or as a member of an association or gang organized with the aim of continuously committing acts of a similar nature;

c) If the value of the goods does not exceed the sum indicated in this subsection, letter a, the wrongdoer shall be punished, in such a case, according to the rules established by section 277;

2) The individual who receives money or other goods from a criminal source with the purpose of applying them to an operation making them appear to be from a lawful source shall be punished according to the provisions of section 277;

3) The goods referred to in subsections 1, 2 or 3 of this section may be confiscated.

SECTION 4° —Section 279 of the Criminal Code is replaced by the following one:

Section 279: 1. Should the scale of punishment established for the preceding crime be lower than that established in the provisions of this Chapter, the scale of punishment corresponding to the preceding crime shall be applicable to the case;

2. In the event the preceding crime were not punishable with imprisonment, its concealment shall be punished with a fine of one thousand pesos (\$ 1,000) to twenty thousand pesos (\$ 20,000) or the scale of punishment corresponding to the preceding crime, should the latter be lower;

3. When the party committing some of the acts described in section 277, subsections 1 or 2, or in section 278, subsection 1, were a public officer who had committed the act in the course of his duties, a special disqualification of three (3) to ten (10) years shall also be applied. The same penalty shall be applied to whoever had acted in the practice of a profession or trade requiring a special qualification;

4. The provisions of this Chapter shall govern even though the above-mentioned crime had been committed beyond the special scope of application of this Code, as long as the aforementioned act be punishable at the place where it was committed.

## **CHAPTER II**

### **Financial Information Unit**

SECTION 5 — A Financial Information Unit (FIU) which shall have functional autarchy under the jurisdiction of the Ministry of Justice and Human Rights of the Nation, and shall be ruled by the provisions of this law is hereby created.

SECTION 6 — The Financial Information Unit shall be in charge of the analysis, handling and transmission of information with the purpose of preventing the laundering of assets arising from:

- a) Crimes related to drug trafficking and trade (Law 23.737);
- b) Crimes related to gunrunning (Law 22.415);
- c) Crimes related to the activities of an aggravated unlawful association under the terms of section 210 bis of the Criminal Code;
- d) Illegal acts committed by unlawful associations (section 210 of the Criminal Code) organized to commit crimes for political or racial purposes;
- e) Crimes of fraud against the Public Administration (section 174 subsection 5 of the Criminal Code);
- f) Crimes against the Public Administration as established by Chapters VI, VII, IX and IX bis, Title XI, Book Two of the Criminal Code;
- g) Crimes related to the prostitution of minors and child pornography as established by sections 125, 125 bis, 127 bis and 128 of the Criminal Code.

SECTION 7 — The Financial Information Unit shall be domiciled in the Capital City of the Republic of Argentina and may establish regional agencies in the rest of the country.

SECTION 8 — The Financial Information Unit shall be made up by eleven (11) members, as follows:

- a) An officer from the Central Bank of the Republic of Argentina;
- b) An officer from the Federal Administration of Public Revenue;
- c) An officer from the National Securities Exchange Commission;
- d) An expert in matters related to the laundering of assets from the Secretariat of Programming for the Prevention of Drug Addiction and Fight against Drug Trafficking under the Presidency of the Nation;
- e) An officer from the Ministry of Justice and Human Rights of the Nation;
- f) An officer from the Ministry of Economy of the Nation;
- g) Five (5) experts in financial, criminal and other matters related to the purpose of this law.

The officers mentioned in subsections a), b), c), d), e) and f) shall be selected by means of an internal process at each agency. The result of the selection shall be referred to the National Executive Branch as a binding proposal for the purpose of the pertinent appointment.

The experts mentioned in subsection g) shall be selected through a public process involving competitive examinations and interviews by an ad-hoc commission which shall be made up as follows:

1. Two members from the Council of the Judiciary, selected by their peers, with a majority vote of two thirds;
2. Two officers from the Attorney General's Office selected by the General Attorney of the Nation;
3. One member of the Central Bank's Board, selected by his peers, with a majority vote of two thirds;
4. One member appointed by the Ministry of Justice and Human Rights;
5. One member appointed by the National Securities Exchange Commission;
6. One member appointed by the Ministry of Economy.

Once the public selection process of competitive examinations and interviews is completed, the result thereof shall be referred to the National Executive Branch as a binding proposal for the purpose of the pertinent appointment.

SECTION 9 — The selection of the above-mentioned experts shall comply with the following guidelines:

- a) The candidates shall be selected by means of a public process involving competitive examinations and interviews. The ad-hoc Commission shall call the contest by publishing the dates of examinations and general conditions thereof for five days in the Official Gazette, two newspapers circulated throughout the country and a newspaper circulated in each province;
- b) The evaluation criteria and mechanisms as well as the background to be taken in consideration shall be previously determined;
- c) The names of applicants who pass the examinations, which shall evaluate both theoretical and practical knowledge, shall be published for five days in the same media specified in subsection a). They shall remain subject to challenge by any citizen, group of citizens, intermediate entities or corporations for a term of sixty calendar days after the last publication.

The ad-hoc commission shall include the rules governing challenges in its public selection process regulations.

SECTION 10. — The members of the Financial Information Unit shall have a full-time commitment to their duties, and they shall be under the incompatibilities and/or obligations established by law for public officers, being precluded from engaging in the activities specified by the regulation in each case and/or from having any interest in them for two years after termination of duties.

They shall hold office for four years. This term may be renewed indefinitely.

They may be removed from their posts in case of bad performance of duties, gross negligence, commission of intentional crimes of any kind or due to a physical or moral disability occurring after their incorporation. The removal procedure shall be under the responsibility of a Prosecution Court created by this law.

Such Court shall be made up by three members, former judges, selected by random drawing by the Ministry of Justice and Human Rights. Participation in this Court shall be compulsory.

The procedure before this Court shall be governed by the regulation which shall comply with the due process of law and defense in trial principles.

SECTION 11. — The following requirements shall be complied with in order to be a member of the Financial Information Unit:

1. To have a university degree, preferably in Law or in disciplines related to the Economic Sciences or to the Computer Sciences.
2. To have technical and professional background related to the subject matter of this law;
3. Not to be engaged or to have been engaged in the year immediately preceding that of the appointment or to have any interest in the activities established in each case by the regulation.

SECTION 12. — The Financial Information Unit shall have the support of liaison officers appointed by the holders of the Ministry of Justice and Human Rights and of Foreign Affairs, International Commerce and Worship, the Secretariat of Programming for the Prevention of Drug Addiction and Fight against Drug Trafficking, the Central Bank of the Republic of Argentina, the Federal Administration of Public Revenue, the Public Registries of Commerce or similar entities in the Provinces, the National Securities Exchange Commission, and the Superintendency of Insurance Underwriters of the Nation.

The Financial Information Unit may request other members of the National or Provincial Public Administration for the appointment of liaison officers when it deems it appropriate.

The duty of these liaison officers shall be the consultation and coordination of the activities carried out by the Financial Information Unit with those of the agencies where they come from.

SECTION 13. — The Financial Information Unit shall:

1. receive, request and file the information referred to in section 21 hereof;
2. arrange and conduct the analysis of acts, activities and operations that according to the provisions of this law may amount to legalization of assets from unlawful acts as

established by section 6 hereof and, if pertinent, shall put the elements of conviction obtained at the disposal of the Attorney General's Office for its pertinent actions;

3. collaborate with the judicial organs and the Attorney General's Office (for the pertinent actions) in the criminal prosecution of the crimes punished by this law;
4. issue its internal regulation for which purpose the vote of two thirds of the totality of members shall be required.

SECTION 14. — The Financial Information Unit shall be empowered to:

1. request for reports, documents, background information and any other element it considers useful for the fulfillment of its duties, from any public agency, whether national, provincial or local, and from natural or artificial persons, whether public or private, all of whom shall have the obligation to deliver them within the term established, under warning of penalty.

In the cases where the Financial Information Unit were imposed provisions establishing the confidentiality of the information requested, it may in each case require authorization by the competent judge of the place where the information must be supplied or of the domicile of the Financial Information Unit at the latter's option;

2. receive voluntary declarations;

3. require the collaboration of all the information services of the State, which shall be bound to render it under the terms of sections 398 and 399 of the Code of Civil and Commercial Procedure of the Nation;

4. act at any place of the Republic of Argentina in compliance with the duties established hereby;

5. request from the Attorney General's Office to ask the competent judge to resolve on the suspension, for the term he determines, of the performance of any operation or act previously informed according to subsection b) of section 21 or any other act linked to it, before its performance, when suspicious activities are investigated and there are serious indications that they are related to the laundering of proceeds from any of the crimes provided for in section 6 of this law. The appeal of this measure shall only be granted with no stay of decision.

6. ask the Attorney General's Office to request from the competent judge the search of public or private places, the personal search and the seizure of documentation or elements useful for the investigation. To ask the Attorney General's Office to provide the necessary legal means to obtain information from any source or origin;

7. arrange the implementation of internal control systems for the persons referred to in section 20, in the cases and ways determined by the regulation;

8. apply the penalties established by Chapter IV hereof, guaranteeing the due process of law;

9. organize and administer files and information related to the activity of the Financial Information Unit itself or data obtained in the exercise of its duties for the retrieval of information linked to its mission, being able to enter into agreements and contracts with national, international, and foreign agencies in order to become a part of information networks of such nature, on condition of a necessary and effective reciprocity;

10. issue guidelines and instructions to be complied with and implemented by the persons bound by this law, after consultation with the specific control agencies.

SECTION 15. — The Financial Information Unit shall be subject to the following obligations:

1. To submit an annual report of its activities to the Honorable Congress of the Nation.

2. To appear before the committees of the Honorable Congress of the Nation every time they so require and issue the reports, opinions and advice requested by them.

3. To create the Sole Registry of Information with the databases of the agencies bound to provide them and with the information received on account of its activity.

SECTION 16. — The Financial Information Unit shall hold full meetings at least four times a month in the way established by the internal regulation. The quorum to hold meetings shall be of six members, who shall adopt the decisions by absolute majority of members present, except in the cases where this law requires a special majority.

SECTION 17. — The Financial Information Unit shall receive information and shall not disclose the identity of the persons compelled to inform. The obligation to keep their identity undisclosed shall cease when a report is filed before the Attorney General's Office.

Those persons alien to the public sector and not subject to the obligation to inform provided for in section 20 hereof may file reports before the Financial Information Unit.

SECTION 18. — The compliance in good faith with the obligation to inform shall give rise to no civil, commercial, labor, criminal, administrative or any other kind of liability whatsoever.

SECTION 19. — Where from the information given or the analysis made by the Financial Information Unit sufficient elements of conviction exist to suspect that one of the crimes defined in this law has been committed, the Attorney General's Office shall be immediately informed of the situation so that it may bring the pertinent criminal prosecution.

### **CHAPTER III**

### **Duty to inform. Legally bound persons**

SECTION 20. — The following persons and entities have the obligation to inform the Financial Information Unit under the terms of section 21 hereof:

1. Financial entities under the terms of Law 21.526, as amended; and pension and retirement fund administrators;
2. Entities under the terms of Law 18.924, as amended, and natural and artificial persons authorized by the Central Bank to operate in the purchase and sale of currency in the form of cash money or cheques drawn in foreign currency, or by means of credit or debit cards or in the transfer of funds within the national territory and abroad;
3. Natural or artificial persons whose habitual activity be games of chance;
4. Stock exchange agents and companies, companies managing mutual investment funds, over-the-counter market agents, and all those stock brokers engaged in the purchase, lease or borrowing of securities operating in the field of stock exchanges with or without markets attached to them;
5. Stock brokers registered with futures and options markets whichever their purpose may be;
6. Public Registries of Commerce, representative agencies for the Surveillance and Control of Corporations, Real Estate Registries, Registries of Motor Vehicles and Registries of Chattel Mortgages;
7. Natural and artificial persons devoted to the purchase and sale of works of art, antiques or other sumptuary assets, philatelic or numismatic investments, or to the export, import, manufacturing or industrialization of jewels or assets made with precious metals or stones;
8. Insurance companies;
9. Companies issuing traveler's cheques or operating with credit or debit cards;
10. Companies devoted to the transportation of monies or other valuable assets;
11. Companies or concessionaires rendering postal services carrying out money draft operations or transportation of different types of currency or notes;
12. Notaries Public;
13. Entities included in section 9 of Law 22.315;
14. Natural or artificial persons registered with the registries established in section 23 subsection t) of the Customs Code (Law 22.415, as amended).

15. Public Administration agencies and decentralized and/or autarchic entities exercising regulatory, control, supervisory and/or superintendency functions over economic activities and/or legal transactions and/or over holders of rights, whether individual or collective: the Central Bank of the Republic of Argentina, the Federal Administration of Public Revenue, the Superintendency of Underwriters of the Nation, the National Securities Exchange Commission and the General Superintendency of Corporations;

16. Producers, insurance advisors, agents, brokers, experts and insurance adjusters whose activities are governed by Laws 20.091 and 22.400, as amended, and their concordant and supplementary rules;

17. Licensed professionals whose activities are regulated by the Professional Councils of Economic Sciences, except when they act in defense in trial;

18. Also all artificial persons who receive donations or contributions by third parties have the duty to inform.

Legal provisions regarding banking, tax or professional secrecy, or confidentiality commitments established by law or by contract shall not be applicable or invoked by those persons who have the duty to inform under this law, when the requirement to inform be formulated by a competent judge at the place where the information must be provided or at the domicile of the Financial Information Unit, at the latter's option, or by any competent court with foundation on this law.

SECTION 21. — Those persons mentioned in the preceding section shall be subject to the following obligations:

a. To obtain from clients, requiring parties or contributors, documents irrefutably evidencing their identity, legal status, domicile and other data to be specified in each case in order to carry out any type of activity included in their purpose. However, such obligation may be omitted when the amounts be lower than the minimum established in the pertinent circular letter.

When clients, requiring parties or contributors act on behalf of third parties, the necessary steps shall be taken in order to identify their principals.

Every information shall be filed for the term and according to the guidelines established by the Financial Information Unit;

b. To inform of any suspicious event or operation independently of the amount thereof. For the purposes of this law, suspicious operations are those transactions that, according to uses and customs related to the field involved, as well as to the experience and competence of the persons who have the duty to inform, are unusual, have no economic or legal justification or are unusually or unjustifiably complex, whether performed on a single occasion or repeatedly. The Financial Information Unit shall establish, by means of objective guidelines, the ways, occasions and limits to the fulfillment of this obligation for each category of obligor and type of activity;

c. To abstain from revealing to clients or to third parties the proceedings which are being carried out in fulfillment of this law.

SECTION 22. — Officers and employees at the Financial Information Unit shall be bound to keep in secret all the information received due to their position, as well as the tasks of intelligence developed as a consequence thereof. The same duty of confidentiality is valid for the persons or entities bound by this law to provide data to the Financial Information Unit.

The officer or employee at the Financial Information Unit, as well as those persons who by themselves or on behalf of another reveal the confidential information outside the purview of the Financial Information Unit, shall be punished with six months to three years of imprisonment.

## **CHAPTER IV**

### **Criminal Administrative Regime**

SECTION 23. —

1. Any corporation the organ or executive body of which had applied assets from a criminal source with the possible consequence of making them appear from a lawful source, in the sense of section 278, subsection 1) of the Criminal Code, shall be punished with a fine of two (2) to 10 (ten) times the value of the assets which are the subject matter of the crime. The crime shall be configured when the limit value established by such provision is exceeded, even though the different particular facts, linked among them, exceeding as a whole such limit, had been committed by different natural persons, with no prior agreement among them, and that for such reason, cannot be subject to criminal prosecution;

2. Where the same fact had been committed with recklessness or gross negligence by the organ or executive body of a corporation or by several organs or executive bodies thereof, the fine to be applied to the corporation shall be twenty per cent (20%) to sixty per cent (60%) of the value of the assets involved in the crime;

3. When the organ or executive body of a corporation had in such capacity committed the crime referred to in section 22 hereof, the corporation shall be fined in an amount from ten thousand pesos (\$ 10,000) to one hundred thousand pesos (\$ 100,000).

SECTION 24. —

1. The organ or executive body of a corporation or the natural person who does not comply with the duty to inform to the Financial Information Unit created by this law shall be punished with a fine of one to ten times the total value of the assets or operation to which the violation is related, provided that the act does not constitute a more serious crime.

2. The same punishment shall be applied to the corporation where the offender works.

3. When the actual value of the assets cannot be established, the fine will be from ten thousand pesos (\$ 10,000) to one hundred thousand pesos (\$ 100,000).

SECTION 25. — The resolutions of the Financial Information Unit provided for in this chapter may be appealed before the Courts of Claims, the provisions of Law 19549 on Administrative Procedure being applicable.

SECTION 26. — The relations between the resolution in the criminal case and the proceedings in the administrative procedure derived from the infringement of this law shall be governed by sections 1101 et seq. and 3982 bis of the Civil Code, the term “civil action” being understood as “criminal administrative action.”

SECTION 27. — The corresponding budgetary allocation shall be provided for the functioning of the Financial Information Unit.

In all cases, the proceeds of the sale or administration of assets or instruments from the crimes defined in this law and from the confiscation ordered as a consequence thereof, as well as the profits unlawfully obtained and the proceeds of the fines accordingly imposed shall be appropriated to a special account of the National Treasury. Such funds shall be used to finance the operation of the Financial Information Unit, the programs provided for by section 39 of Law 23.737, as amended by Law 24.424, and the health and work training programs, as established by the pertinent regulation.

Money and other assets or resources confiscated by court order on account of the commission of the crimes herein defined shall be delivered by the court to a special fund to be created by the Executive Branch of the Nation.

Such fund may administer assets and dispose of money according to the above provisions, being responsible for their return to whom it may concern upon final judicial decision.

## **CHAPTER V**

### **The Attorney General's Office**

SECTION 28. — The Attorney General appointed by the Attorney General's Office of the Nation shall receive the reports on the possible commission of crimes against public order as established by this law for their prosecution in accordance with procedural rules and the regulations of the Attorney General's Office.

The members of the Attorney General's Office shall investigate the activities reported or shall require the pertinent jurisdictional activity in accordance with the provisions of the Code of Criminal Practice of the Nation and the Organic Law of the Attorney General's Office.

SECTION 29. —Section 25 of Law 23.737 (rearranged text) is hereby abrogated.

SECTION 30. — Be it communicated to the Executive Branch. GIVEN IN THE ROOM OF SESSIONS OF THE ARGENTINE CONGRESS, IN BUENOS AIRES, ON THE THIRTEENTH DAY OF THE MONTH OF APRIL IN THE YEAR TWO THOUSAND.

—RECORDED UNDER NUMBER 25.246—

JUAN PABLO CAFIERO. — CARLOS ALVAREZ. — Jorge H. Zabaley. — Mario L. Pontaquarto.