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Law No. 19,913

ESTABLISHMENT OF THE FINANCIAL ANALYSIS UNIT AND AMENDMENT OF
SEVERAL PROVISIONS ON MONEY LAUNDERING

Bearing in mind that the Hon. Congress has endorsed the below

BILL:

“TITLE I

Financial Analysis Unit

Paragraph 1

Nature, purpose and duties

Section 1.- The Financial Analysis Unit (UAF in Spanish) is hereby created to prevent the financial system and other economic sectors from being used for the commission of any of the offenses described in section 19 of this Law.

The Financial Analysis Unit shall be a decentralized public agency, with legal existence and its own net worth, which shall relate with the Chilean President through the Ministry of Finance.

The Head of said Section shall hold the title of Director and abide by the regulations contained in Title VI, Law No. 19,882.

Section 2.- The Financial Analysis Unit shall have the following powers and duties only, which it shall undertake throughout the Chilean territory:

- (a) To request, verify, examine and file the information referred to in section 3 of this Law;
- (b) To order that examinations be performed by experts, be them public or private agencies;

- (c) To organize, keep and manage files and databases, which can be incorporated – with due regard to protection – to the national and international information networks for faithful discharge of its duties.
- (d) To recommend adoption of measures to the private and public sector, in order to prevent offenses described in section 19 of this Law from being committed.
- (e) To give general instructions to the persons listed in sections 3, paragraph one, and 4, paragraph one, to faithfully discharge the duties in Paragraph 2 of this Title, it being empowered to verify fulfillment thereof at any time.
- (f) To exchange information with its counterparts abroad. To such effect, the Unit shall see to the information not being used for other purposes. The requesting entity shall act in reciprocity if any information is requested from it.
- (g) To analyze, at least once a year, the information referred to in section 5 of this Law.

In no case may the Financial Analysis Unit exercise powers having been exclusively vested in the Public Prosecutor's Office or the courts of justice. Additionally, the information received by the Unit may be used only for the purposes of this Law, the Unit being forbidden to disclose it or to provide it to any agency or service other than the Public Prosecutor's Office.

Where, after examining the information referred to in the foregoing letters, the Financial Analysis Unit Director finds that there are reasonable grounds to believe that any of the offenses in section 19 of this Law has been committed, he shall immediately remit it to the Public Prosecutor's Office. Additionally, the Public Prosecutor's Office may request the Unit to remit the information in its possession which may be required for money laundering investigations initiated *ex officio*, or upon denunciation or complaint, irrespective of the stage of the proceedings.

Paragraph 2

Duty to inform

Section 3.- The following individuals and legal entities shall be bound to inform any suspicious acts, transactions or operations they might become aware of in the discharge of

their duties: banks and financial institutions; factoring companies, leasing companies, securitization companies, general and investment funds managers, the Foreign Investments Committee, foreign exchange companies and any other entities empowered to receive foreign currencies; credit card issuing and managing companies; securities and money transfer and transportation companies; stock exchanges, stock brokers, over-the-counter securities brokers, insurance companies, mutual funds managers, futures and option market brokers, duty-free zones legal representatives, casinos, gambling places and racetracks; general customs agents; auction sale companies, real estate brokers and companies engaged in the real estate business, notaries public and registrars.

Suspicious operation shall mean any act, operation and transaction that, according to the usual practices of the business activity, is unusual or apparently lacks economic or legal justification, whether performed on a single occasion or repeatedly.

The Financial Analysis Unit shall be bound to inform the entities listed in this paragraph of any situation that may be deemed as a suspicious operation or transaction sign.

For the purposes of the duty in paragraph one of this section, the persons therein indicated shall appoint a liaison officer with the Financial Analysis Unit.

The legal, regulatory, contractual or any other provisions on the confidential or secret nature of certain operations or activities shall not hinder fulfillment of the duty to inform contained in this section. This is also applicable if the Unit requests the above persons to hand down or produce the information considered for an operation to be deemed as suspicious.

A person that, in good faith, provides information according to this Law shall be held harmless from any legal liability.

Section 4.- The duty to inform referred to in the foregoing section shall also bind any other person carrying or transporting cash or negotiable instruments into the country for an amount in excess of four hundred and fifty Unidades de Fomento or its equivalent in other currencies.

In such a case, the information shall be directly collected by the Chilean Customs

Service and then remitted to the Financial Analysis Unit.

Section 5.- Entities described in section 3 shall also maintain special records for at least five years and, on request, inform the Financial Analysis Unit of any cash transaction for an amount in excess of four hundred and fifty Unidades de Fomento or its equivalent in other currencies.

Section 6.- The persons and entities in section 3, paragraph one, and their workers, shall be forbidden to inform the person affected or any third party of the request for information made by the Financial Analysis Unit, and provide them with any other information on the matter.

Section 7.- Any infringement of the provisions in section 6 shall be punished with short-term rigorous imprisonment, medium to maximum degree, and a fine ranging from one hundred to four hundred monthly tax units.

Paragraph 3

Staff

Section 8.- The Director shall be vested with the power to represent the Financial Analysis Unit in legal matters, in and out of court, him being able to perform any acts and execute any contracts that may be necessary or advisable for the fulfillment of its duties.

The Director may delegate any of his powers to the Head of Division or Head of Section.

Section 9.- In the case that actions be filed against the Director for acts having been performed in the discharge of his duties under this Law, he shall be entitled to have his legal defense paid by the Unit.

This defense shall also be applicable to any actions filed against him for the above reasons, even after he has vacated his office.

Section 10.- In order to hold the position of Unit Director and any other senior position, the candidate shall have been awarded a professional degree – upon successfully following at least a 10 term-duration program – by a State University or else an accredited university.

To discharge the position of Director and any Division Head, candidates shall also

have a proven experience of at least five years.

Section 11.- The staff and contractual personnel of the Financial Analysis Unit shall be governed by the rules contained in the Administrative Regulations, save for the exceptions referred to herein.

The Unit's staff shall, concurrently with the net worth statement, declare their interests, which statements shall be updated at the time of vacating their office.

The Unit's senior officers shall be appointed or removed at the discretion of the Director. Accordingly, he may appoint and remove the same without seeking the consent of any other authority.

Section 12.- Senior officers may not discharge any other gainful activity, either at the public or private sector.

However, in accordance with the Administrative Regulations, said officers may hold teaching or academic positions.

Section 13.- Any person rendering services, by any way, to the Financial Analysis Unit shall hold strictly confidential the information becoming available to him in the discharge of his duties, which is directly or indirectly related to his duties and activities.

Infringement of this provision shall be punished with short-term rigorous imprisonment, minimum to maximum degrees, and a fine ranging from forty to four hundred monthly tax units.

This prohibition shall be valid even after the person has vacated his office or after termination of his services.

Without prejudice to the above provisions, the Unit's Director may annually appear before the Finance Committee of the Lower Chamber, at a confidential hearing, to inform it of general aspects of his mandate.

The duty to keep information confidential shall not apply to information required by a prosecutor of the Public Prosecutor's Office or a court hearing a criminal action for any of the offenses in sections 19 and 20.

Section 14.- The Financial Analysis Unit may be formed by officials having been seconded

from the following institutions: Commission of Banks and Financial Institutions; Internal Revenue Service; State Defense Council; Chilean Customs Service; Commission of Securities and Insurance; "Carabineros de Chile"; Investigations Police and Foreign Investments Committee. Said officials shall be appointed by the highest authority within each entity, at the request of the Unit's Director. Also at the request of the Director, the Unit may be formed by officials from the Chilean Central Bank, who shall be governed by the Bank's legal regulations on appointments.

Officials seconded to the Unit shall be subject to the restrictions and limitations applicable to the Unit's officials as to work schedule, prohibitions, incompatibilities and administrative responsibilities.

Officials working at any State agency who are seconded to the Unit shall be subject to none of the restrictions contained in the regulations applicable to the Unit's staff or any other legal or statutory regulations which may govern them. However, these secondments shall be governed by the provisions in Law No. 18,834, section 69, paragraph one.

Section 15.- The officials providing services – by any way - to the Financial Analysis Unit are strictly forbidden from using or consuming, in public or private premises, any kind of narcotic or psychotropic substances referred to in section 1, Law No. 19,366 - which punishes the illicit traffic in narcotic drugs and psychotropic substances and the holding and possession thereof – save for drugs and substances used exclusively for medical treatment.

Unwarranted use or consumption of said substances shall be grounds for dismissal or termination of contract, as appropriate.

For these purposes, any official of the Financial Analysis Unit shall be subject to consumption controls, the procedures and frequency of which shall be determined by a set of regulations to be enacted within one hundred and eighty days following the publication of this law. The procedures described shall be applied at random and shall safeguard the dignity and privacy of the staff undergoing the relevant examinations.

Section 16.- Compensation of the Unit's staff shall conform to the compensation payable at controlling agencies.

The Unit's staff and contractual personnel shall also receive the allowance in section 17, Law No. 18,091, replaced with section 10, Law No. 19,301, and the bonus in section 5, Law No. 19,528, the amount of which shall be determined as set forth in said provisions. For these purposes, the Director shall annually inform the Ministry of Finance.

Section 17.- The Unit shall have the following staff:

Position	Controlling officers scale	No. of positions
Senior officers		
Director	1	1
Head of Division	3	1
Head of Section	4	3
TOTAL VACANCIES		5

Without prejudice to the staff in this section, the Director may hire additional workers subject to the maximum strength and resources annually determined according to the budget.

Compensation to be earned by workers hired shall be equated to compensation payable under the scale applicable to controlling agencies, i.e. degree 4 for professionals; degree 14 for technicians; degree 16 for administrative officers and degree 19 for junior service.

Section 18.- The assets of the Financial Analysis Unit shall include:

- (a) The resources annually allocated under the Public Sector Budgetary Law and other laws;
- (b) The movable and immovable property, tangible and intangible, to be transferred to it or acquired by it, at any title. In the case of donations, only those coming from public agencies, either domestic or foreign, and international agencies, both bilateral and multilateral, shall be admitted; and
- (c) The proceeds, income and interests obtained from its assets and services.

TITLE II

Miscellaneous

Section 19.- A sentence of long-term rigorous imprisonment, minimum to medium degree,

and a fine ranging from two hundred to one thousand monthly tax units, shall be imposed on those who:

(a) In any way, conceal or disguise the illicit origin of certain property, although knowing that they are, directly or indirectly, the proceeds of criminal acts described in Law No. 19,366, which punishes the illicit traffic in narcotic drugs and psychotropic substances; Law No. 18,314, which sets forth terrorist acts and their sanction; section 10, Law No. 17,798, on arms control; Title XI, Law No. 18,045 on securities market; title XVII, Statutory Decree No. 3 of 1997, issued by the Ministry of Finance, General Banking Law; paragraphs 4, 5, 6 and 9, Title V, Book II, Criminal Code, and sections 141, 142, 366 quater, 367 and 367 bis, Criminal Code; or else those who, being aware of said origin, conceals or disguises said property.

(b) Acquire, own, hold or use the said property, for profit, if, at the time of receipt, they had been aware of their illicit origin.

The same penalty shall apply to any of the criminal acts described in this section if the assets are the proceeds of an act perpetrated abroad, which is punishable in the place of perpetration and which in Chile amounts to any of the crimes referred to in the foregoing letter (a).

For the purposes of this section, "property" shall mean objects of any kind assessable in economic terms, both tangible and intangible, movable or immovable, as well as any legal documents or instruments attesting to the ownership or other rights over the same.

If the perpetrator of any of the acts described in letter (a) is unaware of the origin of the property as a result of inexcusable negligence, the penalty in paragraph one shall be reduced by two degrees.

No sentence need to have been rendered establishing that the property is the proceeds of a criminal act referred to in letter (a), paragraph one, as the said fact may be established during the action filed to prosecute the criminal act referred to above.

If the person having participated as principal or accomplice in the conducts from

which said proceeds derive also perpetrates the criminal act described in this paragraph he shall be also imposed the sanction applicable thereto.

Section 20.- Those who join or organize a criminal association in order to perform any of the conducts described in the foregoing paragraph shall be imposed, for this mere fact, the following punishments:

1.- Long-term rigorous imprisonment, medium degree, in the case of those financing, leading or planning the criminal acts carried out, and

2.- Long-term rigorous imprisonment, minimum degree, in the case of those providing vehicles, weapons, ammunition, instrumentalities, accommodation, harboring, meeting places or cooperating, in any other way, with the association to fulfill its objectives.

21.- At the end of paragraph two, section 66, of the Organic Law of the Chilean Central Bank, contained in section one of Law No. 18,840, after the period, the following sentence is inserted: “The duty to keep the information requested by the Financial Analysis Unit or the Public Prosecutor confidential shall not apply to suspicious transactions or crimes under the law establishing the said Unit”.

Section 22.- In section 14, General Banking Law – which restated, systematized and annotated text was set by Statutory Decree No. 3 of 1997 of the Ministry of Finance – the following final paragraph is inserted:

“The Commission shall permanently keep a list of depositors, indicating their Taxpayer Identification Card (RUT in Spanish).”

Section 23.- The investigation of the crimes referred to in sections 19 and 20 of this Law shall always be confidential for third parties strange to the proceedings and third parties affected by a preliminary investigation by the prosecutor. As for the accused and any other perpetrators, the investigation shall be confidential if so decreed by the prosecutor, for a maximum term of six months, renewable upon authorization of the “guarantee judge”, only once and for the same period of time.

The provisions in section 186 of the New Criminal Procedure Code shall not be applicable to said investigations, to the extent that the secrecy has been decreed in the terms

referred to in the foregoing section. Those providing or disseminating information, of any nature, on the investigation shall be imposed the penalty of short-term rigorous imprisonment, medium to maximum degree. This prohibition and sanction shall extend to officials having taken part in the investigation and any other person that, in any way, disseminates, discloses or provides information on the investigation, even on the existence thereof.

Section 24.- In the investigation of the offenses described in sections 19 and 20 of this Law, the Prosecutor's Office may request the guarantee judge to decree any precautionary measure to prevent the use, exploitation or other application of any kind of goods, securities or monies deriving from the crimes referred to herein. For these purposes, without prejudice to any other powers conferred by law, the judge may decree, inter alia, a prohibition to enter into any acts and contracts and to have them recorded with any kind of Registries; to retain in banks and financial institutions deposits of any kind; to prevent transactions with shares, bonds or debentures; and generally to take such steps as may be required to prevent illicit proceeds from being used in activities concealing or disguising their criminal origin.

Section 25.- Without prejudice to the provisions in this Law, all the regulations in law No. 19,366 – on illicit traffic in narcotic drugs and psychotropic substances – and any law superseding or amending it on the below matters shall apply to crimes in sections 19 and 20:

(a) Investigation: it includes, particularly, the cooperation by State agencies, the power of the Public Prosecutor to take steps without the Chilean territory or without the consent of the affected party, as well as international cooperation in general; lifting of the banking secrecy; cost-free provision of information required during the investigation; special investigative techniques, as surveilled deliveries or operations, use of covert agents and informants, tapping of telephone and other communication systems; protection of persons having cooperated with the investigation, including the protection of their identity and image, change of identity, secrecy of certain acts, records or documents as a protection measure in case of a security threat, sanctions in case of infringement and the possibility of making a deposition in advance;

- (b) Attorney's disqualification;
- (c) Precautionary measures and seizures: possibility of ordering that precautionary measures be taken without prior notice to the person affected, seizure and attachment of objects and use of seized property or the proceeds thereof;
- (d) Prosecution and sentence enforcement: circumstances modifying criminal liability, such as special aggravating circumstances, inapplicability of mitigating circumstances in section 11, No. 7, of the Criminal Code; applicability of plea bargaining as a mitigating circumstance; rules on consummation of the criminal act and punishment of the conspiracy to commit a criminal act; non-appropriateness of night incarceration and conditional release; replacement of fines with a custodial sentence; determination of recidivism; applicability of seizure, its scope and use of property seized; extradition in the absence of reciprocity or a treaty and service of a sentence in the country of origin of the convict.

Section 26.- Sections 12 and 17 of Law No. 19,366 are abrogated.

All in all, sections 12 and 22 of Law No. 19,366 shall – as regards the illicit association to launder money - continue to be effective for the purpose of punishing crimes described therein and perpetrated before the publication of this law, in which case the penalty to be imposed shall abide also by the provisions in section 18 of the Criminal Code.

Section 27.- Any reference in any law or regulation to the crimes described in sections 12 and 22 of Law No. 19,366 – criminal association to launder money – shall be understood as a reference to any of the crimes described in sections 19 and 20 of this Law, as appropriate.

TRANSITORY SECTIONS

Section 1.- In such regions where the New Criminal Procedure Code set in Law No. 19,696 has not become effective at the time of expiry of the term referred to in transitory section No. 6, the duties of the Financial Analysis Unit towards the Public Prosecutor's Office, as mentioned in the final paragraphs of section 2, shall be discharged by the State Defense Council while the said Code has not become effective.

Section 2.- Without prejudice to the provisions in section 18 of the Criminal Code, offenses

in sections 12 and 22, Law No. 19,366 which had been perpetrated prior to this Law becoming effective shall be investigated and prosecuted in accordance with the regulations prevailing at the time of perpetration.

Section 3.- Without prejudice to the provisions in the foregoing sections, as regards the regions where Law 19,696 has already become effective, the State Defense Council shall remit to the Public Prosecutor's Office the information collected by administrative investigations on money laundering and criminal associations performed by said entity on acts perpetrated in those same regions, unless the information is directly connected with pending investigations or proceedings. The Council is also bound to remit it once the investigations and proceedings have been completed.

In any case, the secrecy duty in section 17 of Law No. 19,366 applicable to administrative investigations of money laundering by the State Defense Council shall not hinder access by the said Office to the same, in the terms of section 19 of the Criminal Procedure Code.

Section 4.- Any increase in fiscal expenses derived from the implementation of this law shall be financed out of item 50-01-03-25-33.104 of the Public Treasury.

Section 5.- The Chilean President, through an Executive Decree issued by the Ministry of Finance, shall create the relevant Financial Analysis Unit's income and expense budgetary heading.

Section 6.- The staff of the Financial Analysis Unit for the first fiscal year shall not be in excess of 15.

Section 7.- The provisions in paragraph 2, Title I, shall become effective one hundred and fifty days after the publication of this Law in the Official Gazette."

The provisions in section 82, No. 1, of the Chilean Political Constitution having been complied with and this bill having been sanctioned, I hereby decree that it is enacted as a Chilean law.

Santiago, December 12, 2003.- RICARDO LAGOS ESCOBAR, Chilean President.- María Eugenia Wagner Brizzi, Deputy Minister of Finance.- José Miguel Insulza

Salinas, Ministry of the Interior.- Jaime Arellano Quintana, Deputy Minister of Justice.

Transcribed for your knowledge.

Respectfully yours,

María Eugenia Wagner Brizzi, Undersecretary of Finance.

CONSTITUTIONAL COURT

Bill establishing the Financial Analysis Unit and amending the Criminal Code in money
laundering matters.

The undersigned Constitutional Court Clerk does hereby certify that the Hon. Lower Chamber submitted the bill referred to above – endorsed by the National Congress – for this Court to see to the legality under the Constitution of section 1, paragraph three; letter (b), paragraph one, section 2; and sections 8 and 22 of the same. By decision dated October 28, 2003, it has been decreed as follows:

- 1.- The legal provisions contained in No. 8, section 1, of the bill sent to this Court, which incorporates a new section 24 to Law No. 19,913, conform to the Constitution.
- 2.- The legal provisions contained in sections 2, paragraph one, letter (b), and 8, of the bill are unconstitutional and therefore must be deleted.
- 3.- Likewise, the following provisions are unconstitutional and must be deleted:
 - (a) Letter (g), paragraph one, section 2, which reads as follows:

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“(g) Gain access, without limitation and as agreed with the senior executives of the respective entities, to the background information existing at databases maintained by public agencies. If they request that said information be secret or confidential, the provisions in letter (b), paragraph three, of this section shall be applied.”

(b) Letter (j), paragraph one, section 2, which reads as follows:

“(j) Impose such administrative sanctions as may be established by law.”

(c) The phrase in section 6, which reads as follows: “2, paragraph one, letter (b), and” and the phrase in section 7, which reads as follows:

“and the provision of false information, referred to in letter (b), paragraph one, section 2, of this Law or the destruction or concealment thereof”.

Santiago, October 29, 2003.- Rafael Larraín Cruz, Clerk.

DONE AT Santiago, Chile, on this 5th day of December, 2006.

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