

Volume II: Money Laundering and Financial Crimes

Country Reports

Guatemala

Guatemala is a major transit country for illegal narcotics from Colombia and precursor chemicals from Europe. Those factors, combined with historically weak law enforcement and judicial regimes, corruption and increasing organized crime activity, lead authorities to suspect that significant money laundering occurs in Guatemala. According to law enforcement sources, narcotics trafficking is the primary source of money laundered in Guatemala; however, the laundering of proceeds from other illicit sources, such as human trafficking, contraband, kidnapping, tax evasion, vehicle theft and corruption, is substantial. Officials of the Government of Guatemala (GOG) believe that couriers, offshore accounts and wire transfers are used to launder funds, which are subsequently invested in real estate, capital goods, large commercial projects and shell companies, or are otherwise transferred through the financial system.

Guatemala is not considered a regional financial center, but it is an offshore center. Exchange controls have largely disappeared and dollar accounts are common, but some larger banks conduct significant business through their offshore subsidiaries. The Guatemalan financial services industry is comprised of 25 commercial banks, four of which exist in a state of permanent suspension with no commercial offices; ten offshore banks, all of which are affiliated, as required by law, with a domestic financial group; five licensed money exchangers; 14 money remitters, including wire remitters and remittance-targeting courier services; 18 insurance companies; 17 financial societies; 16 bonded warehouses; 308 savings and loans cooperatives; eight credit card issuers; seven leasing entities; 11 financial guarantors; and one check-clearing entity run by the Central Bank. It is also estimated that there are hundreds of unlicensed money exchangers that exist informally.

The Superintendence of Banks (SIB), which operates under the general direction of the Monetary Board, has oversight and inspection authority over the Central Bank (Bank of Guatemala), as well as over banks, credit institutions, financial enterprises, securities entities, insurance companies, currency exchange houses and other institutions as may be designated by the Bank of Guatemala Act. Guatemala's relatively small free trade zones target regional maquila (assembly line industry) and logistic center operations, and are not considered by GOG officials to be a money laundering concern, although proceeds from tax-related contraband are probably laundered through them.

The offshore financial sector initially offered a way to circumvent currency controls and other costly financial regulations. However, financial sector liberalization has largely removed many incentives for legitimate businesses to conduct offshore operations. All offshore institutions are subject to the same requirements as onshore institutions. In June 2002, Guatemala enacted the Banks and Financial Groups Law (No. 19-2002), which places offshore banks under the oversight of the SIB. The law requires offshore banks to be authorized by the Monetary Board and to maintain an affiliation with a domestic institution. It also prohibits an offshore bank that is authorized in Guatemala from doing business in another jurisdiction; however, banks authorized by other jurisdictions may do business in Guatemala under certain limited conditions.

In order to authorize an offshore bank, the financial group to which it belongs must first be authorized, under a 2003 resolution of the Monetary Board. By law, no offshore financial services businesses other than banks are allowed, but there is evidence that they exist in spite of that prohibition. In 2004, the SIB and Guatemala's financial intelligence unit (FIU), the Intendencia de Verificación Especial (IVE), concluded a process of reviewing and licensing all offshore entities, a process which resulted in the closure of two operations. No offshore trusts have been authorized, and offshore casinos and internet gaming sites are not regulated.

There is continuing concern over the volume of money passing informally through Guatemala. Much of the more than \$3.5 billion in remittance flows pass through informal channels, although sector reforms are leading to increasing use of banks and other formal means of transmission. Terrorist financing legislation passed in August 2005 requires remitters to maintain name and address information on senders (principally U. S. based) on transfers equal to or over an amount to be determined by implementing regulations. Increasing financial sector competition should continue to expand services and bring more people into the formal banking sector, isolating those who abuse informal channels.

The Financial Action Task Force (FATF) placed Guatemala on the list of Non-Cooperative Countries and Territories (NCCT) in the fight against money laundering in 2001. Guatemala was removed from the NCCT list at the FATF plenary in June 2004, after authorities implemented the necessary reforms to bring Guatemala into compliance with international standards.

One of the reforms is Decree 67-2001, or the "Law Against Money and Asset Laundering." Individuals convicted of money or asset laundering are subject to a noncommutable prison term ranging from six to 20 years, and fines equal to the value of the assets, instruments or products resulting from the crime. Convicted foreigners will be expelled from Guatemala. Conspiracy and attempt to commit money laundering are also penalized. The law holds institutions and businesses responsible for failure to prevent money laundering or allowing money laundering to occur, regardless of the responsibility of owners, directors or other employees, and they may face cancellation of their banking licenses and/or criminal charges. The law also applies to the offshore entities that operate in Guatemala but are registered under the laws of another jurisdiction.

Decree 67-2001 also obligates individuals and legal entities to report to the competent authorities the cross-border movement of currency in excess of approximately \$10,000. At Guatemala City airport, a new special unit was formed in 2003 to enforce the use of customs declarations upon entry to and exit from Guatemala. Money seized at the airports-approximately \$167,400 in 2006-suggests that proceeds from illicit activity are regularly hand carried over Guatemalan borders. However, apart from a cursory check of a self-reporting customs form, there is little monitoring of compliance at the airport. Compliance is not regularly monitored at land borders.

In addition, the Guatemalan Monetary Board issued Resolution JM-191, approving the "Regulation to Prevent and Detect the Laundering of Assets" (RPDLA) submitted by the SIB. The RPDLA requires all financial institutions under the oversight and inspection of the SIB to establish anti-money laundering measures, and introduces requirements for transaction reporting and record keeping. The Guatemalan financial sector has largely complied with these requirements and has a generally cooperative relationship with the SIB.

Covered institutions are prohibited from maintaining anonymous accounts or accounts that appear under fictitious or inexact names. Nonbank financial institutions, however, **may issue bearer shares, and there is limited banking secrecy.** Obligated entities are required to keep a registry of their customers as well as of the transactions undertaken by them, such as the opening of new accounts or the leasing of safety deposit boxes. Financial institutions must also keep records of the execution of cash transactions exceeding \$10,000 or more per day, and report these transactions to Guatemala's FIU, the IVE. Under the law, obligated entities must maintain records of these registries and transactions for five years. Financial institutions are also required to report all suspicious transactions to the IVE.

Decree 67-2001 establishes the IVE within the Superintendence of Banks in order to supervise covered financial institutions and ensure their compliance with the law. The IVE began operations in 2002 and has a staff of 26. The IVE has the authority to obtain all information related to financial, commercial, or business transactions that may be connected to money laundering. The IVE conducts inspections on the covered entities' management, compliance officers, anti-money laundering training programs, "know-your-client" policies, and auditing programs. The IVE has imposed over \$100,000 in civil penalties to date for institutional failure to comply with anti-money laundering regulation.

Since its inception, the IVE has received approximately 1,600 suspicious transaction reports (STRs) from the 400 obligated entities in Guatemala. All STRs are received electronically, and the IVE has developed a system of prioritizing them for analysis. After determining that an STR is highly suspicious, the IVE gathers further information from public records and databases, other covered entities and foreign FIUs, and assembles a case. Bank secrecy can be lifted for the investigation of money laundering crimes. Once the IVE has determined a case warrants further investigation, the case must receive the approval of the SIB before being sent to the Anti-Money or Other Assets Laundering Unit (AML Unit) within the Public Ministry. Under current regulations, the IVE cannot directly share the information it provides to the AML Unit with any other special prosecutors (principally the anticorruption or counternarcotics units) in the Public Ministry. The IVE also assists the Public Ministry by providing information upon request for other cases the prosecutors are investigating.

In 2006, Guatemala created a money laundering task force. The money laundering task force is a joint unit comprised of individuals from the Guatemalan Tax Authority (SAT), the IVE, Public Ministry, Prosecutor's Office, Government Ministry, National Police and Drug Police. Together they work on investigating financial crimes, building evidence and bringing the cases to prosecution. They are currently working on four cases of suspected money laundering.

Other government agencies have become involved in combating money laundering. In addition to the SIB, the SAT has been working to improve its processes and personnel to better collect taxes and combat tax evasion. This indirectly assists anti-money laundering efforts by making it easier to detect suspicious activity through nonpayment of tax.

Thirty-nine cases have been referred by the IVE to the AML Unit, four of which stem from public corruption. In several cases, assets have been frozen. Thirteen money laundering prosecutions have been concluded, twelve of which resulted in convictions. Eleven of those cases have been sentenced, with the remaining two cases awaiting the completion of appeals. Additional cases have been developed from cooperation between the Public Ministry and the IVE. The Public Ministry's AML Unit had initiated 46 cases as of January 2006. In addition, four cases have been transferred to other offices for investigation and prosecution (such as the anticorruption unit) due to the nature of their particular predicate offenses. The other 46 cases are either still under investigation or in initial trial stages. Several high profile cases of laundering proceeds from major corruption scandals involving officials of the previous government are currently under investigation and have resulted in arrests and substantial seizures of funds and assets. These seizures have been supported by the cooperating financial institutions along with the vast majority of public and political interests.

In 2006, Guatemala passed an organized crime control law. This new legislation permits the use of undercover operations, controlled deliveries and wire taps to investigate many forms of organized crime activity, including money laundering crimes.

Under current legislation, any assets linked to money laundering can be seized. The IVE, the National Civil Police, and the Public Ministry have the authority to trace assets; the Public Ministry can seize assets temporarily or in urgent cases, and the Courts of Justice have the authority to permanently seize assets. In 2003, the Guatemalan Congress approved reforms to enable seized money to be shared among several GOG agencies, including police and the IVE. Nevertheless, the Constitutional Court ruled that forfeited currency remains under the jurisdiction of the Supreme Court of Justice.

An additional problem is that the courts do not allow seized currency to benefit enforcement agencies while cases remain open. For money laundering and narcotics cases, any seized money is deposited in a bank safe and all material evidence is sent to the warehouse of the Public Ministry. There is no central tracking system for seized assets, and it is currently impossible for the GOG to provide an accurate listing of the seized assets in custody. In 2005, Guatemalan authorities seized more than U.S. \$6.5 million in bulk currency, significantly less than the \$20 million seized in 2003 (although one case alone in 2003 accounted for more than \$14 million). The lack of access to the resources of seized assets outside of the judiciary has made sustaining seizure levels difficult for the resource-strapped enforcement agencies.

In June 2005, the Guatemalan Congress passed legislation criminalizing terrorist financing. Implementing regulations were submitted to the Monetary Board in December 2005. According to the GOG, Article 391 of the penal code already sanctioned all preparatory acts leading up to a crime, and financing would likely be considered a preparatory act. Technically, both judges and prosecutors could have issued a freeze order on terrorist assets, but no test case ever validated these procedures. The new counterterrorism financing legislation removed potential uncertainty regarding the legality of freezing assets when no predicate offense had been legally established but the assets have been determined destined to terrorists or to support terrorist acts. The GOG has been very cooperative in looking for terrorist financing funds. The new legislation brings Guatemala into greater compliance with FATF Special Recommendations on Terrorist Financing and the United Nations Security Council Resolution 1373 Against Terrorism.

Guatemala is a party to the UN Drug Convention, the UN International Convention for the Suppression of the Financing of Terrorism, and the UN Convention against Transnational Organized Crime. On March 1, 2006, the GOG ratified the Inter-American Convention against Terrorism, and on November 3, 2006, the GOG ratified the UN Convention against Corruption. Guatemala is also a party to the Central American Convention for the Prevention of Money Laundering and Related Crimes. The GOG is a member of the OAS Inter-American Drug Abuse Control Commission (OAS/CICAD) Experts Group to Control Money Laundering and the Caribbean Financial Action Task Force (CFATF). In 2003, the IVE became a member of the Egmont Group.

Corruption and organized crime remain strong forces in Guatemala and may prove to be the biggest hurdles facing the Government of Guatemala in the long term. Guatemala has made efforts to comply with international standards and improve its anti-money laundering regime; however, Guatemala should take steps to immobilize bearer shares, and to identify and regulate offshore financial services and gaming establishments. The GOG should also continue efforts to improve enforcement and implementation of needed reforms. Cooperation between the IVE and the Public

Ministry has improved since the new administration took office in January 2004, and several investigations have led to prosecutions. However, Guatemala should continue to focus its efforts on boosting its ability to successfully investigate and successfully prosecute money laundering cases, and distributing seized assets to law enforcement agencies to assist in the fight against money laundering and other financial crime.