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# **Model legislation on money laundering and financing of terrorism**

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# **Introduction to the Model Law**

This model law on money laundering and the financing of terrorism is the outcome of a joint effort of the United Nations Office on Drugs and Crime (UNODC) and the International Monetary Fund (IMF). It contains a comprehensive set of legal measures that a domestic law should include in order to prevent, detect, and sanction effectively, money laundering and the financing of terrorism and to enable international cooperation against these crimes.

## 1. Impact of money laundering and the financing of terrorism

### a) Money laundering

Money laundering can be described as the process by which a person conceals or disguises the identity or the origin of illegally obtained proceeds so that they appear to have originated from legitimate sources.

Criminals exploit economic and financial globalization and the advances made in technology and communications with a view to concealing the origin of funds that they have gained through illegal activities. They make extensive use of a broad array of techniques, such as the rapid transfer of money from one country to another or the misuse of corporate vehicles to disguise the true owner of the funds.

The activities of powerful criminal organizations can have serious social consequences. Laundered money provides drug traffickers, organized criminal groups, arms dealers and other criminals with the wherewithal for operating and developing their enterprises. Without effective safeguards or preventive measures, money laundering can strike at the integrity of a country's financial institutions. The removal of billions of dollars from legitimate economic activities each year constitutes a real threat to the financial health of countries and affects the stability of the global marketplace.

Money laundering undermines international efforts to establish free and competitive markets and hampers the development of national economies. It distorts the operation of markets transactions, may increase the demand for cash, render interest and exchange rates unstable, give rise to unfair competition and considerably exacerbate inflation in the countries where the criminals conduct their business dealings.

Small countries are particularly vulnerable to money laundering. The gains from illegal activities can provide criminal organizations with potentially huge economic power which in turn can give them leverage over small economies.

In any country, the lack of suitable control mechanisms, or the inability to apply them, provides criminals with the opportunity to pursue their illegal activities. Laundering the proceeds of illicit activities in countries that do not have an effective anti-money laundering/combating the financing of terrorism (AML/CFT) system in place has one purpose only - to make use of structural weaknesses or to exploit the gaps in the

institutional and law-enforcement machinery in order to benefit from the proceeds of crime with impunity. Money laundering is an essential aspect of any profit-generating criminal activity and is an inevitable corollary of organized crime. The operations of criminal organizations, directed as they are towards the accumulation of illegal profits, create a need for laundering in direct proportion to the extent that such activities are developed and concentrated in the hands of a small group. Colossal amounts of cash generated by certain types of criminal activity, such as drug trafficking, leave trails, which are more difficult to hide than the traces left by the crimes themselves.

#### b) Terrorist Financing

The financing of terrorism can be described as the process by which a person tries to collect or provide funds with the intention that they should be used to carry out a terrorist act by a terrorist or a terrorist organization as defined in the International Convention for the Suppression of the Financing of Terrorism as well as in any one of the treaties listed in the annex to that Convention.

Like money launderers, those who finance terrorism misuse the financial system. In order to achieve their objectives, they have to obtain and channel funds in an apparently legitimate way. However, while the money involved in the money laundering process always stems from a crime and is therefore always “dirty”, funds channeled to terrorist groups or individuals may originate from crime and/or from legitimate sources. Terrorism may therefore be supported by either “dirty” and/or “clean” funds. Regardless of the origin of the funds, terrorists or terrorist organizations use the financial system in a similar way to criminal organizations in order to obscure both the source and the destination of their funds.

### 2. International response to money laundering and the financing of terrorism

International efforts to curb money laundering and the financing of terrorism are the reflection of a strategy aimed at, on the one hand, attacking the economic power of criminal or terrorist organizations and individuals in order to weaken them by preventing their benefiting from, or making use of, illicit proceeds and, on the other hand, at forestalling the nefarious effects of the criminal economy and of terrorism on the legal economy. The 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the first international legal instrument to embody the money laundering aspect of this new strategy, expresses in its preamble the recognition by States that *"illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels"* and affirms that the international community is henceforth *"determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing"*.

In September 2003 and December 2005, the UN Convention against Transnational Organized Crime and the UN Convention against Corruption respectively came into force. Both instruments widen the scope of the money laundering offence by

stating that it should not only apply to the proceeds of illicit drug trafficking but should also cover the proceeds of *all* serious crimes. Both Conventions urge States to create a comprehensive domestic supervisory and regulatory regime for banks and non-bank financial institutions, including natural and legal persons, as well as any entities particularly susceptible to being involved in a money laundering scheme. The Conventions also call for the establishment of financial intelligence units.

The International Convention for the Suppression of the Financing of Terrorism came into force in April 2002. It requires Member States to take measures to protect their financial systems from being misused by persons planning or engaged in terrorist activities.

Following the events of September 11, 2001, Member States and jurisdictions underlined the links between terrorism, transnational organized crime, the international drug trade and money laundering, and called on countries that had not done so to become parties to the relevant international conventions. In September 2001, the UN Security Council adopted resolution 1373 through which it imposed certain obligations on Member States, such as the prevention and the suppression of the financing of terrorist acts, the criminalization of terrorism-related activities and of the provision of assistance to carry out those acts, the denial of funding and safe haven to terrorists and the exchange of information to prevent the commission of terrorist acts. In the same resolution, the Council also established the Counter-Terrorism Committee (CTC) to monitor the implementation of the resolution.

In April 1990, the Financial Action Task Force on Money Laundering (FATF)<sup>1</sup> issued a set of 40 Recommendations for improving national legal systems, enhancing the role of the financial sector and intensifying cooperation in the fight against money laundering. These Recommendations were revised and updated in 1996 and in 2003 in order to reflect changes in money laundering techniques and trends. The 2003 Recommendations are considerably more detailed than the previous ones, in particular with regard to customer identification and due diligence requirements, suspicious transactions reporting requirements and seizing and freezing mechanisms. They also include measures to be taken in order to avoid the misuse of corporate vehicles and apply to several designated non-financial businesses and professions. These last measures were adopted in response to the increasingly sophisticated money laundering techniques, such as the use of legal persons to disguise the true ownership and control of illegal proceeds, and to the increased use of non-financial professionals to provide advice and assistance in money laundering schemes.

The FATF extended its mandate in October 2001 to cover the fight against terrorist financing and issued 8 Special Recommendations on combating the financing of terrorism. A 9<sup>th</sup> Special Recommendation was adopted in October 2004. These new standards recommend the criminalization of the financing of terrorism in accordance with the UN Convention for the Suppression of the Financing of Terrorism, address practices

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<sup>1</sup> The FATF was established by the Summit of Heads of State or Government of the seven major industrialized countries (G-7) in 1989 to recommend measures to improve the effectiveness of the fight against money laundering. FATF now has 33 members and several observer members.

used by terrorists to finance their activities (such as the misuse of wire transfers, alternative remittance systems and non-profit organizations) and call for the implementation of specific asset freezing, seizing and confiscation mechanisms.

Taken together, the FATF 40+9 Recommendations provide a comprehensive set of measures for an effective legal and institutional regime against money laundering and the financing of terrorism.

Other fora such as the Basel Committee on Banking Supervision (BCBS)<sup>2</sup> and regional bodies such as the Council of Europe<sup>3</sup> and the European Union<sup>4</sup> have adopted a number of measures and standards have been laid down with a view to preventing the use of financial, banking and non-banking systems as well as designated non-financial businesses and professions for laundering criminal proceeds and financing terrorism.

### 3. Using the Model Law

An initial model law on money laundering for civil law countries was issued by the UNODC in 1999 as part of its efforts to assist States and jurisdictions prepare, or upgrade, their own legislative framework in conformity with international standards and best practices in the implementation of anti-money laundering measures.

This updated model law replaces the initial one. It is based, to a large extent, on the relevant international instruments concerning money laundering and the financing of terrorism and incorporates the FATF 40+9 Recommendations.

It is a legislative tool designed to facilitate the drafting of specially adapted legislative provisions by countries intending to enact a law against money laundering and the financing of terrorism or to upgrade their legislation in those areas. The model law incorporates the requirements contained in the above-mentioned international instruments and the FATF 40+9 Recommendations in particular, and strengthens or supplements them in light of the actual practice of a number of countries. It also proposes innovative optional provisions aimed at strengthening the effectiveness of their AML/CFT regimes and offers States appropriate legal mechanisms to engage in international cooperation.

It will be up to each individual country to adapt the proposed provisions in order to bring them, where necessary, in line with the constitutional and fundamental principles of its legal system, and to supplement them with whatever measures it considers best

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<sup>2</sup> This Committee adopted in 1988 a Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering, which urges financial or banking institutions to put in place mechanisms for preventing even the involuntary implication of the banking system in criminal activities. Other relevant publications include the BCBS's 2001 paper on customer due diligence for banks and the joint initiatives to combat money laundering and the financing of terrorism which were conducted in 2003 and updated in 2005 by the BCBS, the International Organization of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS).

<sup>3</sup> The Council of Europe Convention of 16 May 2005 on laundering, search, seizure and confiscation of the proceeds from crime and the financing of terrorism.

<sup>4</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.



suites to contribute towards effectively combating money laundering and the financing of terrorism. However, the model law constitutes in itself a coherent legal whole. By incorporating these provisions into their legal apparatus, countries must ensure that all elements of this model are adopted. Some provisions are intrinsically linked and would not have the desired degree of effectiveness if they were adopted in isolation or out of context. The comprehensive scope of the model law would also be lost if paragraphs were removed. In order to facilitate its adaptation to national legislation, the model law presents some of its provisions in the form of variants or options. A variant allows for the adjustment of a provision which should not be left out of any legislation against money laundering and the financing of terrorism, whereas an option denotes a provision which is not deemed essential under the current standards but may improve the effectiveness of a given AML/CFT system and which can therefore be included or not at the discretion of a particular State.

The model law comprises six titles:

Title I: "Definitions"

Title II: "Prevention of money laundering and financing of terrorism"

Title III: "Detection of money laundering and financing of terrorism"

Title IV: "Investigation and secrecy provisions"

Title V: "Penal and provisional measures"

Title VI: "International cooperation"

The provisions of this model law have been drafted, reviewed and finalized by an informal group of international experts, which met in Vienna in May 2004, in Brussels in June 2004, and in Washington in September 2004 and March 2005. This group consisted of AML and CFT experts including representatives from the UNODC, the IMF, the World Bank and the Organization of American States.

# TEXT OF THE MODEL LAW

# **Title I - Definitions**

## **Article 1.1 Money laundering**

Money laundering shall mean the offence as defined in article 5.2.1.

## **Article 1.2 Financing of terrorism**

Financing of terrorism shall mean the offence as defined in article 5.2.2.

## **Article 1.3 Definitions**

For the purposes of this law:

**A.** “Proceeds of crime” shall mean any funds or property derived from or obtained, directly or indirectly

**Variant 1:** from any offence.<sup>1</sup>

**Variant 2:** from an offence punishable by a maximum penalty of imprisonment for more than one year.<sup>2</sup>

**Variant 3:** from an offence punishable by a minimum penalty of imprisonment for more than six months.<sup>3 4</sup>

**Variant 4:** offences defined at Articles [*in specified legislation, e.g. Criminal Code*].<sup>5</sup>

Proceeds of crime shall include assets converted or transformed, in part or in full, into other property, and investment yields.

**B.** “Funds” or “property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, traveller’s cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, and any interest, dividends or other income on or value accruing from or generated by such assets.

**C.** “Predicate offence” shall mean any offence, which generates proceeds of crime.

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<sup>1</sup> Each country should at a minimum include a range of offences within each of the categories of offences referred to in Annex 1.

<sup>2</sup> Each country should at a minimum include a range of offences within each of the categories of offences referred to in Annex 1.

<sup>3</sup> *Intended for countries whose penalty systems prescribe a minimum threshold*

<sup>4</sup> Each country should at a minimum include a range of offences within each of the categories of offences referred to in Annex 1.

<sup>5</sup> Each country should at a minimum include a range of offences within each of the categories of offences referred to in Annex 1.

**D.** “Terrorist act” shall mean:

a) ***Variant 1:*** An act, which constitutes an offence within the scope of, and as defined in one of the treaties listed in the annex to the 1999 International Convention for the Suppression of the Financing of Terrorism; and

***Variant 2:*** An act which constitutes an offence within the scope of, and as defined in one of the following treaties: Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), International Convention against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1980), Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988), and the International Convention for the Suppression of Terrorist Bombings (1997); and

b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

**E:** “Terrorist” shall mean any natural person who:

a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;

b) participates as an accomplice in terrorist acts;

c) organizes or directs others to commit terrorist acts; or

d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

**F:** “Terrorist organization” shall mean any group of terrorists that:

a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;

b) participates as an accomplice in terrorist acts;

c) organizes or directs others to commit terrorist acts; or

d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

**G:** “Financial institution” shall mean:

**Variante 1:** any person or entity that conducts as a business one or more of the activities or operations listed below for or on behalf of a customer:

- a) acceptance of deposits and other repayable funds from the public;<sup>6</sup>
  - b) lending;<sup>7</sup>
  - c) financial leasing;<sup>8</sup>
  - d) transfer of money or value;<sup>9</sup>
  - e) issuance and management of means of payment;<sup>10</sup>
  - f) financial guarantees and commitments;
  - g) trading in:
    - money market instruments;<sup>11</sup>
    - foreign exchange;
    - exchange, interest rate and index instruments;
    - transferable securities;
    - commodity futures trading.
  - h) participation in securities issues and the provision of financial services related to such issues;
  - i) individual and collective portfolio management;
  - j) safekeeping and administration of cash or liquid securities on behalf of other persons;
  - k) otherwise investing, administering or managing funds or money on behalf of other persons;
  - l) underwriting and placement of life insurance and other investment related insurance<sup>12</sup>
  - m) money and currency changing; and
- [Option: n) any other activities or operations as determined by [Minister, competent authority].]**

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<sup>6</sup> including private banking

<sup>7</sup> including consumer credit, mortgage credit, factoring with or without recourse and finance of commercial transactions, including forfeiting

<sup>8</sup> except financial leasing arrangements in relation to consumer products

<sup>9</sup> This applies to financial activity in both the formal and the informal sector e.g. alternative remittance activity. It does not apply to any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds.

<sup>10</sup> [e.g., credit and debit cards, cheques, traveler’s cheques, money orders and bankers’ draft, electronic money]

<sup>11</sup> [such as cheques, bills, certificates of deposit and derivative products]

<sup>12</sup> by insurance firms or brokers

[*Competent authorities*] may decide that, if any of the above activities or operations is exercised by a natural or legal person on an occasional or very limited basis, having regard to quantitative and absolute criteria, such that the risk of money laundering or terrorism financing is low, the provisions of this law shall not apply, fully or partly, to that natural or legal person.

**Variant 2:** [*in the event the State provides a list of financial institutions recognized under its laws to which the activities listed in Variant 1 apply*]:

- a) credit institutions;
- b) life insurance and investment related insurance companies, and insurance agents and brokers;
- c) investment firms;<sup>13</sup>
- d) brokerage firms;
- e) mutual funds and collective investment funds;
- f) mortgage companies;
- g) consumer credit companies;
- h) persons or entities that issue or manage credit and debit cards;
- i) leasing and finance companies;
- j) any natural or legal person that engages in the purchase or sale or conversion of currency on a professional basis;
- k) any natural or legal person that engages in funds transfers on a professional basis;<sup>14</sup>
- l) any other natural or legal person engaged in the following activities or operations. [*referred to specifically in variant 1*]

**H.** “Designated non-financial businesses and professions” shall mean:

- a) Casinos, including internet casinos.
- b) Real estate agents [**Option:** *and real estate brokers*].
- c) Dealers in precious metals and dealers in precious stones [**Option:** *and other dealers in high value goods*].
- d) Lawyers<sup>15</sup>, notaries and other independent legal professionals when they prepare for, carry out or engage in transactions for their client concerning the following activities;
  - buying and selling of real estate,
  - managing of client money, securities or other assets,

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<sup>13</sup> investment services companies and asset management companies

<sup>14</sup> This applies to financial activity in both the formal and the informal sector but does not apply to any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds.

<sup>15</sup> Only independent lawyers

- management of bank, savings or securities accounts,
- organization of contributions for the creation, operation or management of companies, or
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

e) Independent accountants [**Option:** *and auditors and tax advisers*].

f) Trust and company service providers, that are not covered elsewhere in this law, providing the following services to third parties on a commercial basis;

[**Option:** *the State may exempt these entities unless they prepare or execute transactions for customers involving one of the activities specified below<sup>16</sup>*]:

- acting as a formation [**Option:** *and registration or management*] agent of legal persons;<sup>17</sup>
- acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as, or arranging for another person to act as, a trustee of an express trust;
- acting as, or arranging for another person to act as, a nominee shareholder for another person.

[**Option:** *g) such other businesses and professions as may be designated by the [Minister, competent authority] in a regulation.*]

**I.** “Politically exposed person” shall mean any person who is or has been entrusted with prominent public functions in a foreign country [**Option:** *in any country*], as well as members of such person’s family or those closely associated with him/her.

**J.** “Payable through account” shall mean correspondent accounts used directly by a third party to transact business on their own behalf.

**K.** “Money or value transfer service” shall mean carrying on the business of accepting cash, cheques or any other monetary instrument or other means of storing value, and paying a corresponding sum in cash or in other form to a beneficiary, by means of communication, message, transfer or through a clearing system to which the money or value transfer service belongs.

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<sup>16</sup> This is an option stemming from FATF Rec. 12e

<sup>17</sup> such as [*trust, fiducie, Anstalt, etc.*]

**L.** “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments and cash to pass within, out of, through or into the territory of [name of the country] with the knowledge and under the supervision of the competent authorities, with a view to the investigation of an offence and the identification of persons involved therein.<sup>18</sup>

*[Option: M. "Undercover operation" shall mean a method of investigation which involves a law enforcement agent who assumes a covert or fictitious identity or role on a temporary basis or an informant acting under the direction of a law enforcement agent, in each case as a means to obtain evidence or other information relating to a criminal offence.]*

**N.** “Freezing” shall mean prohibiting the transfer, conversion, disposition or movement of funds or other property on the basis of, and for the duration of the validity of, a decision of a judicial or other competent authority. The frozen funds or other property shall remain the property of the persons or entities that held an interest in the specified funds or other property at the time of the freezing, and may continue to be administered by the financial institution.

**O.** “Seizing” shall mean prohibiting the transfer, conversion, disposition or movement of funds or other property on the basis of, and for the duration of the validity of, a decision of a judicial or other competent authority. The seized funds or other property shall remain the property of the persons or entities that held an interest in the specified funds or other property at the time of the seizure, but shall be administered by the judicial or other competent authority.

**P.** “Confiscation” shall mean the permanent deprivation of property based on a decision order of a court.

**Q.** “Instrumentalities” shall mean any property used or intended to be used in any manner, wholly or in part, to commit one or more offences.

**R.** “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious offences, in order to obtain, directly or indirectly, a financial or other material benefit.

**S.** “Beneficial owner” shall mean the natural person who ultimately owns or controls a customer or an account, the person on whose behalf a transaction is being conducted, or the person who ultimately exercises effective control over a legal person or arrangement.

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<sup>18</sup> This refers to “illicit or suspect consignments and cash”. One of the objectives is to follow property that is suspected to be the proceeds of crime.



**T.** “Wire transfer” shall mean any transaction carried out on behalf of an originator person (both natural and legal) through a financial institution by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution.

# **Title II - Prevention of money laundering and financing of terrorism**

## **Chapter I - General preventive provisions concerning currency and bearer negotiable instruments**

### **Article 2.1.1 Obligation to declare or disclose physical cross-border transportation of currency and bearer negotiable instruments**

Any person who enters or leaves the territory of [*name of country adopting the law*] shall

**Variant 1:** declare currency or bearer negotiable instruments or e-money [**Option:** *or precious stones and precious metals*] in an amount equal to or above [*15 000 EUR/USD*].

**Variant 2:** disclose currency or bearer negotiable instruments or e-money [**Option:** *or precious stones and precious metals*] upon request to [*customs authorities, competent authority*].

**Variant 1:** The financial intelligence unit shall have access to this information.

**Variant 2:** The information shall be transmitted to the financial intelligence unit.

The [*customs authority, competent authority*] shall seize or restrain part of or the whole amount of the [**Variant 1:** *non-disclosed*] [**Variant 2:** *non-declared*] currency or bearer negotiable instruments if there is suspicion of money laundering or financing of terrorism or when there has been a false declaration or disclosure or when there is a suspicion of money laundering or financing of terrorism.

### **[Option: Article 2.1.2 Limit on the use of currency and bearer negotiable instruments**

*Any payment in currency or by bearer negotiable instruments of a sum greater in the aggregate than [amount to be fixed by the State adopting the law] shall be prohibited.*

*The purchase price of an article whose total value is greater than or equal to [amount to be fixed by the State adopting the law] shall not be paid in cash.*

*[A national law, decree, etc.] may specify those cases and circumstances where an exception to the preceding paragraph shall be allowed. In such case, a report specifying the modalities of the transaction and the identity of the parties shall be made to the financial intelligence unit established pursuant to article 3.1.1 of this law.]*

## **Chapter II - Transparency in financial transactions**<sup>19</sup>

### **Article 2.2.1 General provisions**

(1) No bank may be established in the territory of *[name of country adopting the law]* if it maintains no physical presence within such territory and is not affiliated with a regulated financial group subject to effective consolidated supervision.

(2) Financial institutions shall not enter into or continue business relations with banks registered in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision.

(3) Financial institutions shall not enter into or continue business relations with respondent financial institutions in a foreign country if they permit their accounts to be used by banks registered in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision.

### **Article 2.2.2 Transparency of legal persons and arrangements**

*[Option: (1) Legal persons established in [name of country adopting the law] shall maintain adequate, accurate and current information on their beneficial ownership and control structure.]*

*[Option: (2) Adequate, accurate and current information on the beneficial ownership and control structure of legal persons established in [name of country adopting the law] shall be stored, maintained and updated by a central registration system.]*

*[Option: (3) Adequate, accurate and current information on the beneficial ownership and control of legal arrangements, in particular the settlor, the trustee and the beneficiary of express trusts established in [name of country adopting the law] shall be stored, maintained and updated by a central registration system.]*

(4) *[Judicial authorities, supervisory authorities, law enforcement and the financial intelligence unit, competent authorities]* shall have access to the information referred to in paragraphs (1) through (3) in a timely fashion.

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<sup>19</sup> Countries may by issuance of a decree/regulation/guideline take action with respect to business relationships and transactions with persons, including companies and financial institutions, from countries that do not or insufficiently apply the FATF Recommendations, see FATF Recommendation 21 and the examples of counter-measures listed under criteria 21.3 of the Methodology.

### **Article 2.2.3 Identification of customers by financial institutions and designated non-financial businesses and professions**

(1) Financial institutions and designated non-financial businesses and professions shall identify their customers and verify their identities by means of reliable independent source, documents, data or information, when:

- a) establishing business relations;
- b) carrying out occasional transactions, when the customer wishes to carry out
  - a transaction in an amount equal to or above [15 000 EUR/USD], whether conducted as a single transaction or several transactions that appears to be linked. If the amount of the transaction is unknown at the time of the operation, the identification shall be done as soon as the amount becomes known or the threshold is reached, or
  - a domestic or international transfer of funds;
- c) doubts exist about the veracity or adequacy of previously obtained customer identification data;
- d) there is a suspicion of money laundering or financing of terrorism.

*[Option: [The competent authority may establish by [decree, regulation] the circumstances in which the verification of identity can be completed at a later stage provided that the risk of money laundering or financing of terrorism is effectively managed and it is essential not to interrupt the normal conduct of business.]*

(2) Financial institutions and designated non-financial businesses and professions shall collect information regarding the anticipated purpose and intended nature of the business relationship.

Identification of natural persons and verification of their identity shall include the full name and address, date and place of birth. *[Option: the full name and national identification number.]*

Identification of legal persons shall include obtaining and verifying information concerning the corporate name, head office address, identities of directors, proof of incorporation or similar evidence of their legal status, legal form and provisions governing the authority to commit the legal person.

Identification of legal arrangements shall include obtaining and verifying the name of trustees, the settlor, and the beneficiary of express trusts.

(3) Financial institutions and designated non-financial businesses and professions shall identify the beneficial owner and take all reasonable measures to verify his identity.

(4) Financial institutions and designated non-financial businesses and professions shall exercise ongoing due diligence with respect to the business relationship and closely examine the transactions carried out in order to ensure that they are consistent with their knowledge of their customer, his commercial activities and risk profile and, where required, the source of his funds.

(5) Financial institutions and designated non-financial businesses and professions shall take specific and adequate measures to address the specific risk of money laundering and financing of terrorism, in the event they conduct business relationships or execute transactions with a customer that is not physically present for purposes of identification.

*[Option: These measures may include requiring additional documentary evidence, or supplementary measures to verify or certify the documents supplied, or confirmatory certification from financial institutions subject to this law or requiring that the first payment is carried out through an account opened in the customer's name with a financial institution subject to this law.]*

(6) Financial institutions and designated non-financial businesses and professions shall have appropriate risk management systems to determine if a customer or a beneficial owner is a politically exposed person, and, if so:

- obtain approval from senior management before establishing a business relationship with the customer;
- take all reasonable measures to identify the source of wealth and funds;
- provide increased and ongoing monitoring of the business relationship.

(7) With respect to cross-border correspondent banking relationships, financial institutions shall:

- identify and verify the identification of respondent institutions with which they conduct correspondent banking relationships;
- collect information on the nature of the respondent institution's activities;
- based on publicly available information, evaluate the respondent institution's reputation and the nature of supervision to which it is subject;
- obtain approval from senior management before establishing a correspondent banking relationship;
- evaluate the controls implemented by the respondent institution with respect to anti-money laundering and financing of terrorism; and
- in the case of a payable through account, ensure that the respondent institution has verified its customer's identity, has implemented mechanisms for ongoing monitoring with respect to its clients, and is capable of providing relevant identifying information on request.

(8) If financial institutions and designated non-financial businesses and professions cannot fulfil their obligation of due diligence described in (1) through (7), they shall not establish or maintain the business relationship. Where appropriate, they shall make a report to the financial intelligence unit in accordance with this law.

***[Option: Article 2.2.4 Reduced or simplified identification procedures***

*(1) Based on an assessment of the risks represented by type of client, business relationship or transactions, authorities [the relevant Ministries, law enforcement, supervisors and financial intelligence units] may determine by regulation, circumstances in which the obligations established in article 2.2.3 can be reduced or simplified with regard to the identification and verification of the identity of the customer or the beneficial owner.*

*(2) Insurance companies and agents and brokers engaged in life insurance activities shall identify their customers and verify the identity in accordance with Article 2.2.3 whenever the amount of premiums payable during one year exceeds [1 000 EUR/USD], if payment is made in the form of the single premium exceeding [2 500 EUR/USD], in the case of pension insurance contracts entered into in connection with an employment contract or professional activity of the insured, when such contracts contain a surrender clause and can be used as collateral for a loan.]*

***[Option: Article 2.2.5 Reliance on third parties identification***

*(1) [Financial institutions and designated non-financial businesses and professions] are authorized to rely on intermediaries or other third-parties to perform customer identifications as required by paragraphs (1) through (3) of Article 2.2.3 provided they are satisfied that:*

*- the third-party is able to provide without delay copies of identification data and other documents relating to the obligation of due diligence upon request, and*

*- the third-party is established in [the name of the country] or in another State whose legislation imposes obligations of due diligence equivalent to those provided in Articles 2.2.3 and 2.2.9 and is subject to adequate supervision, and*

*Notwithstanding the above the ultimate responsibility remains with the [financial institutions and designated non-financial businesses and professions] relying on the third party.*

*(2) [Financial institutions and designated non-financial businesses and professions] may be exempted from the customer identification obligations established pursuant to Article 2.2.3 if the customer is a financial institution established in [the name of the country] or in another State whose laws, regulations, decrees or enforceable circulars imposes obligations equivalent to those provided in Article 2.2.3.*

*(3) This Article and the thresholds in article 2.2.6 shall not apply whenever there is a suspicion of money laundering or financing of terrorism.]*

**Article 2.2.6 Special identification requirements**

*(1) Casinos, including internet casinos, shall identify and verify the identity of their customers in accordance with Article 2.2.3 [**Option:** either immediately on entry or] engage in financial transactions equal to or above [3 000 EURO/USD].*

(2) Dealers in precious metals and dealers in precious stones [*Option: and other dealers in high value goods*], shall identify their customers, in accordance with Article 2.2.3 whenever receiving payment in cash, and in amount of [15 000 EURO/USD] or more.

(3) Real estate agents shall identify the parties, in accordance with Article 2.2.3 when involved in transactions concerning the buying or selling of real estate.

#### **Article 2.2.7 Obligations regarding wire transfers**

(1) Financial institutions whose activities include wire transfers shall obtain and verify the full name, account number, and address, or in the absence of address the national identity number or date and place of birth, including, when necessary, the name of the financial institution, of the originator of such transfers. The information shall be included in the message or payment form accompanying the transfer. If there is no account number, a unique reference number shall accompany the transfer.

(2) The institutions referred to in paragraph (1) shall maintain all such information and transmit it when they act as intermediaries in a chain of payments.

(3) The [*competent authority*] may issue regulations regarding cross-border transfers executed as batch transfers and domestic transfers.

(4) Paragraphs (1) and (2) shall not apply to transfers executed as a result of credit card or debit card transactions, provided that the credit card or debit card number accompanies the transfer resulting from the transaction, nor shall they apply to transfers between financial institutions where both the originator and the beneficiary are financial institutions acting on their own behalf.

(5) If the institutions referred to in paragraph (1) receive wire transfers that do not contain the complete originator information they shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary. Should they not obtain the missing information they shall

**Variant 1:** refuse acceptance of the transfer.

**Variant 2:** refuse acceptance of the transfer and report it to the financial intelligence unit.

### **Article 2.2.8 Special monitoring of certain transactions**

(1) Financial institutions and designated non-financial businesses and professions shall pay special attention to all complex, unusual large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

(2) Financial institutions and designated non-financial businesses and professions shall pay special attention to business relations and transactions with persons, including legal persons and arrangements, from or in countries that do not or insufficiently apply the relevant international standards to combat money laundering and financing of terrorism.

(3) Financial institutions and designated non-financial businesses and professions shall set forth in writing the specific information regarding transactions as referred to in paragraphs (1) and (2) and the identity of all parties involved. The report shall be maintained as specified in Article 2.2.9 and shall be made available if requested by the financial intelligence unit, a supervisory authority and other competent authorities.

### **Article 2.2.9 Record-keeping**

Financial institutions and designated non-financial businesses and professions shall maintain records of the following information and ensure that the records and underlying information are readily available to the financial intelligence unit and other competent authorities:

a) copies of documents evidencing the identities of customers, beneficial owners, obtained in accordance with the provisions in this chapter, account files and business correspondence for

*Variant 1:* at least five years,

*Variant 2:* for xx years,<sup>20</sup>

after the business relationship has ended, and

b) information obtained in accordance with the provisions in this chapter, to enable the reconstruction of transactions, attempted or executed by customers and the written reports established in accordance with Article 2.2.8 for at least five years following the attempt or execution of the transaction.

### **Article 2.2.10 Internal programs to combat money laundering and financing of terrorism in financial institutions and designated non-financial businesses and professions**

Financial institutions and designated non-financial businesses and professions shall develop and implement programs for the prevention of money laundering and financing of terrorism. Such programs shall include the following:

a) internal policies, procedures and controls, including appropriate compliance management arrangements and adequate screening procedures to ensure high standards when hiring employees;

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<sup>20</sup> Have to be in accordance of the countries' statute of limitation, but not less than five years.



b) ongoing training for officials and employees to assist them in recognizing transactions and actions that may be linked to money laundering or financing of terrorism and instruct them in the procedures to be followed in such cases;

c) internal audit arrangements to check conformity, compliance with and effectiveness of the measures taken to apply this law.

Financial institutions and designated non-financial businesses and professions shall designate a compliance officer at management level to be responsible for implementation of this law within the institution.

The [*Minister, competent authority*] may by regulation determine the type and extent of measures to be taken for each of the requirements in this Article by financial institutions and designated non-financial businesses and professions, having regard to the risk of money laundering and financing of terrorism and the size of the business.

#### **Article 2.2.11 Compliance with obligations by foreign subsidiaries and branches**

Financial institutions shall require their foreign majority owned subsidiaries and branches to implement the requirements of Articles 2.2.3 through 2.2.10 to the extent that local applicable laws and regulation so permit. If the laws of the country where the majority owned subsidiary or branch is situated prohibit compliance with these obligations, the financial institution shall so advise its supervisory authority.

### **Chapter III - Non-profit organizations**

#### **Article 2.3 Non-profit organizations**

Any non-profit organization [*Option: that collects, receives, grants or transfers funds as part of its charitable activity*] shall be subject to appropriate oversight by the [*competent authority in the country*]. [*The Minister, competent authority*] may prescribe regulations to ensure that non-profit organizations are not misused for the purpose of the financing of terrorism.

[*Option: Prior to recognition as a non-profit organization, the [competent authority in the country] [shall/may] require registration with [competent court/authority in the country] and stipulate by [regulation/decreed] minimum conditions of operation, such as regular auditing of the non-profit organization's budget and accounting system.*]

# **Title III - Detection of money laundering and financing of terrorism**

## **Chapter I - Financial intelligence unit**

### **Article 3.1.1 General provisions**

(1) A financial intelligence unit is hereby established that serves as a central, national agency responsible for receiving, requesting, analysing and disseminating information concerning suspected proceeds of crime and potential financing of terrorism, as provided for by this law.

(2) The head of the financial intelligence unit shall be appointed by [*the ministry, authority*]. The composition, organization, operation and resources of the financial intelligence unit shall be established by [*decree, regulation, other relevant legal instrument*].

### **Article 3.1.2 Confidentiality**

The staff of the financial intelligence unit shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation of those duties within the financial intelligence unit. Such information may only be used for the purposes provided for in accordance with the law.<sup>21</sup>

### **Article 3.1.3 Relations with foreign counterpart agency**

(1) The financial intelligence unit may, spontaneously or upon request, share information with any foreign counterpart agency that performs similar functions and is subject to similar secrecy obligations, regardless of the nature of the agency, subject to reciprocity. [*Option: on the basis of cooperation arrangements.*]

(2) For the purpose of paragraph (1) the financial intelligence unit may enter into an agreement or arrangement with a foreign counterpart agency that perform similar functions and is subject to similar secrecy obligations.

(3) The information provided shall be used only for the purposes of combating money laundering, predicate offences and financing of terrorism and only with the consent of the foreign counterpart agency.

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<sup>21</sup> Any breach of the obligation provided under this provision should be subject to penalties or sanctions.

#### **Article 3.1.4 Access to information**

(1) In relation to any information it has received in accordance with its functions, the financial intelligence unit has the authority to obtain from any entity or person subject to the reporting obligation in accordance with Article 3.2.1 any additional information it deems useful for the accomplishment of its functions. The information requested shall be provided within the time limits set and the form specified by the financial intelligence unit.

*[Option: (2) The financial intelligence unit has the authority to access and review information on-site that belongs to or is in the custody of financial institutions and designated non-financial businesses and professions, which is necessary to the fulfilment of its functions.]*

(3) Paragraphs (1) and (2) of this Article shall be applied subject to the restrictions (*or limits*) defined in Article 1.3 (H) (d) and 3.2.1 paragraph (3).

(4) The financial intelligence unit may request in relation to any report it has received, any additional information it deems useful for the accomplishment of its functions from:

- police departments;
- authorities responsible for the supervision of the entities and persons subject to this law;
- other administrative agencies of the State;
- *[Option: in accordance with applicable procedures, judicial authorities.]*

The information requested shall be provided within the time limits set by the financial intelligence unit.

(5) The financial intelligence unit may obtain the information referred to in paragraphs (1) through (4) pursuant to a request received from a foreign financial intelligence unit.

#### **Article 3.1.5 Disclosure to the supervisory authority**

Whenever the financial intelligence unit determines that a financial institution or designated non-financial business and profession is not complying or has not complied with the obligations set out in this law, it may apprise the relevant supervisory authority accordingly.

### **Chapter II - Reporting of suspicions**

#### **Article 3.2.1 Obligation to report suspicious activities**

(1) Financial institutions and, in accordance with paragraphs (3) through (5), designated non-financial businesses and professions, that suspect or have reasonable grounds to suspect that funds or property are the proceeds of crime, or are related or linked to, or are to be used for the financing of terrorism *[Option: or that have knowledge of a fact or an*

activity that may be an indication of money laundering or financing of terrorism,] are required to submit promptly and in accordance with Article 3.2.3 a report setting forth its suspicions to the financial intelligence unit. This obligation shall also apply to attempted transactions.

*[(2) **Option:** Lawyers, notaries and other independent legal professionals, [auditors, accountants and tax advisers] may submit reports of suspicions to the FIU through their respective self-regulatory organizations. Self-regulatory organizations shall pass on the information to the financial intelligence unit whenever the report is made in accordance with the conditions in paragraph (3).]*

(3) Lawyers, notaries and other independent legal professionals [**Option:** accountants, auditors and tax advisers <sup>22</sup>] have no obligation to report information they receive from or obtain on a client, in the course of determining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceeding, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

(4) Dealers in precious metals and dealers in precious stones [**Option:** and other dealers in high value goods] shall report suspicious transactions to the financial intelligence unit in accordance with paragraph (1) when they engage in any cash transaction equal or above [15 000 Euro/USD].

(5) Real estate agents shall report suspicious transactions in accordance with paragraph (1) to the financial intelligence unit when involved in transactions for their client concerning the buying or selling of real estate.

(6) [*The financial intelligence unit, competent authority*] shall issue regulation on the procedures and form in which the reports shall be submitted.

***[Option: Article 3.2.2 Cash transaction reporting***

*Financial institutions and designated non-financial businesses and professions shall report to the financial intelligence unit cash transactions in an amount equal to or above [15 000 EUR/USD], whether conducted as a single transaction or several transactions that appear to be linked.]*

**Article 3.2.3 Postponing of transactions**

(1) Financial institutions and designated non-financial businesses and professions shall refrain from carrying out transactions which they suspect to be related to money laundering or financing of terrorism until they have reported their suspicion to the financial intelligence unit.

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<sup>22</sup> This option is valid only when these professions represent a client before a court.

*[Option: (2) If, by reason of the seriousness or urgency of the case, the financial intelligence unit considers it necessary, it may order, or seek the suspension of a transaction for a period not to exceed*

*Variant 1: [72 hours].*

*Variant 2: [3 business days].]*

(3) Where refraining from the carrying out transaction in paragraph (1) is impossible or is likely to frustrate the efforts to investigate a suspected transaction, the financial institutions and designated non-financial businesses and professions can execute the transaction and shall report their suspicion to the financial intelligence unit immediately afterwards.

#### **Article 3.2.4 Prohibition of tipping-off**

Under no circumstance shall financial institutions and designated non-financial businesses and professions, their directors, officers and employees disclose to their customer or a third party that information was provided to the financial intelligence unit or that a report concerning suspected money laundering or financing of terrorism will be, is being or has been submitted to the financial intelligence unit or that a money laundering or financing of terrorism investigation is being or has been carried out. This shall not preclude disclosures or communications regarding suspicious money laundering or financing of terrorism between and among directors, officers and employees of the financial institutions and designated non-financial businesses and professions, legal counsel and appropriate competent authorities.

#### **Article 3.2.5 Action taken on suspicious activity reports**

Whenever the financial intelligence unit has

*Variant 1: reasonable grounds to suspect*

*Variant 2: serious indications of*

money laundering or financing of terrorism, it shall forward the relevant information, to [prosecutor, investigative authority, judicial authority, etc.], which shall decide upon further action.

### **Chapter III - Exemption from liability**

#### **Article 3.3.1 Exemption from liability for good faith reporting of suspicions**

No criminal, civil, disciplinary or administrative proceedings for breach of banking or professional secrecy or contract may be instituted against financial institutions and designated non-financial businesses and professions or their directors, officers or employees who in good faith submit reports or provide information in accordance with the provisions of this law.

### **Article 3.3.2 Exemption from liability for executing transactions**

No criminal action for money laundering and financing of terrorism shall be brought against financial institutions, designated non-financial businesses and professions, or their directors, officers or employees in connection with the execution of a suspicious transaction where a report of suspicions was made in good faith in accordance with Articles 3.2.1 through 3.2.3.

## **Chapter IV - Supervisory authorities and their obligations in regard to combating money laundering and terrorist financing**

### **Article 3.4.1 General provision regarding authorities responsible for supervising financial institutions and designated non-financial businesses and professions**

(1) The [*supervisory or regulatory authority or the competent disciplinary authority, Financial Supervisory authority, Central Bank, Insurance Supervisory authority, Ministers of Justice, Ministry of Finance, Ministry of Commerce, Gambling Supervisory authority, etc.*] shall supervise compliance by financial institutions and designated non-financial businesses and professions with the requirements set forth in Title II of this law.

(2) In accordance with the law, the supervisory or regulatory authority or the self-regulatory organization, shall;<sup>23</sup>

- a) adopt the necessary measures to establish fit and proper criteria for owning, controlling, or participating, directly or indirectly, in the directorship, management or operation of a financial institution or a casino;
- b) regulate and supervise financial institutions and casinos for compliance with the obligations set out in Titles II and III of this law, including through on-site examinations;
- c) issue instructions, guidelines or recommendations to assist financial institutions and designated non-financial businesses and professions in complying with the obligations set out in Titles II and III of this law;
- d) cooperate and share information with other competent authorities, and provide assistance in investigations, prosecutions or proceedings relating to money laundering, predicate offences and financing of terrorism;
- e) develop [**Option:** *in cooperation with the financial intelligence unit, competent authority*] standards or criteria applicable to the reporting of suspicions that shall take into account other existing and future pertinent national and international standards;
- f) ensure that financial institutions and their foreign branches and majority owned subsidiaries adopt and enforce measures consistent with this law to the extent that local laws and regulations so permit;

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<sup>23</sup> The substance of this article may also be introduced in law through sector specific laws.

g) report promptly to the financial intelligence unit any information concerning suspicious transactions or facts that could be related to money laundering or the financing of terrorism;

h) provide prompt and effective cooperation to agencies performing similar functions in other States, including exchange of information;

i) maintain statistics concerning measures adopted and sanctions imposed in the context of enforcing this chapter.

#### **Article 3.4.2 Special provisions concerning money or value transfer services**

No person or entity may engage in the business of money or value transfer service without

**Variante 1:** registration with

**Variante 2:** a license issued by

*[the supervisory, regulatory authority].*

The *[the supervisory, regulatory authority]* shall stipulate by *[decree, regulation]* minimum conditions of operation. **[Option: in particular regular inspection of the money or value transfer services.]**

#### **Article 3.4.3 Licensing of casinos**

No one may operate a casino without previously obtaining a license issued by *[the competent authority]* in accordance with the specific terms provided by decree.

#### ***[Option: Article 3.4.4 Registration of other designated non-financial business and profession]***

*No one may operate as a designated non-financial business and profession without prior registration by [the competent authority] in accordance with the specific terms provided by decree, regulation.]*

### **Chapter V - Sanctions for failure to comply with the provisions of Titles II and III**

#### **Article 3.5.1 Powers of supervisory authorities and administrative violations**

(1) Any person subject to the obligations established under Titles II and III of this Law who intentionally or by gross negligence fails to comply with the said obligations commits an administrative violation.

(2) The *[supervisory, regulatory or disciplinary authority]* that discovers a violation of the obligations established under Titles II and III by a financial institution or a designated

non-financial business or profession it supervises may impose one or more of the following measures and sanctions:<sup>24</sup>

- (i) written warnings;
- (ii) order to comply with specific instructions;
- (iii) ordering regular reports from the financial institution and designated non-financial businesses and professions on the measures it is taking;
- (iv) fine in an amount no less than [*indicate amount*] and no greater than [*indicate amount*];
- (v) barring individuals from employment within the business sector or profession;
- (vi) replacing or restricting the powers of managers, directors or controlling owners, including the appointing of ad hoc administrator;
- (vii) imposing conservatorship or suspending, restricting or withdrawing the license and prohibiting the continuation of the business or profession; or
- (viii) other measures.

*[Option: (3) For purposes of informing the public, the [supervisory, regulatory or disciplinary authority] may publish information on the measures taken pursuant to paragraph (2) in the Official Gazette or in a newspaper or on the internet or in a suitable location of the business offices of the institution.]*

*[Option: (4) Measures that prohibit entirely or in part the managers of an institution from conducting business pursuant to paragraph 2 and any lifting of such prohibitions shall be communicated by the [supervisory, regulatory or disciplinary authority] to the registry court for the purpose of registration in the commercial register.]*

*[Option: (5) The [supervisory or regulatory authority or the self-regulatory organization] shall inform the financial intelligence unit as to the sanctions imposed.]*

### **Article 3.5.2 Ancillary money laundering offences**

(1) Anyone who intentionally or by gross negligence:

(a) fails to

**Variante 1:** declare currency or bearer negotiable instruments in an amount equal to or above [15 000 EUR/USD];

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<sup>24</sup> Legislation should ensure that the principle of due process is to be observed when imposing a measure or a sanction, including the possibility of challenging the designated authorities decision. In addition to the measures listed above there might be other sanctions that are set forth by other relevant laws.



**Variant 2:** disclose currency or bearer negotiable instruments upon request by [*customs authorities, competent authority*], when entering or leaving [*name of country adopting the law*];

(b) sets up a bank in [*name of country adopting the law*] that does not maintain physical presence and is not affiliated with a regulated financial group;

(c) enters into or continues business relations with

(i) banks registered in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision, or

(ii) respondent financial institutions in a foreign country if they permit their accounts to be used by shell banks;

(d) fails to maintain adequate, accurate and current information on the beneficial ownership and control structure of legal persons and arrangements as required pursuant to Article 2.2.2;

(e) fails to undertake the identification of customers and risk management measures as required pursuant to Article 2.2.3, Article 2.2.6 and Article 2.2.7;

(f) fails to undertake the monitoring measures as required pursuant to Article 2.2.8;

(g) fails to maintain the records as required pursuant to Article 2.2.9 or withholds, destroys or removes such records;

(h) fails to implement internal control programs as required pursuant to Article 2.2.10;

(i) fails to provide or fails to provide access to information or records in a timely fashion when so requested by the [*judicial authorities, supervisory authorities, law enforcement, the financial intelligence unit, competent authorities*] pursuant to Article 2.2.2, 2.2.9 and Article 3.1.4;

(j) fails to submit a report to the financial intelligence unit as required pursuant to Article 3.2.1;

[**Option (k)** fails to submit a report to the financial intelligence unit as required pursuant to Article 3.2.2.];

(l) does not refrain from carrying out a transaction when so required pursuant to Article 3.2.3;

(m) discloses to a customer or a third party such information as referred to in Article 3.2.4.

commits an offence and shall be punishable by a fine of ... to ... or imprisonment of ... to ... or either of these penalties.

(2) Persons found guilty of an ancillary offence set forth in paragraph 1 above may also be banned permanently or for a maximum period of [*indicate period*] from pursuing the business or profession which provided the opportunity for the offence to be committed.

(3) Penalties imposed for ancillary offences in accordance with paragraphs (1) and (2) above do not exclude the sanctions and measures that are available to the competent supervisory, regulatory or disciplinary authority pursuant to Article 3.5.1 for administrative violations.

# **Title IV - Investigation and secrecy provisions**

## **Chapter I - Investigation**

### **Article 4.1.1 Investigative techniques**

For the purpose of obtaining evidence of money laundering and terrorist financing and tracing proceeds of crime, the judicial authorities may order, for a specific period:

- a) the monitoring of bank accounts and other similar accounts;
- b) access to computer systems, networks and servers;
- c) the placing under surveillance or interception of communication;
- d) the audio or video recording or photographing of acts and behaviour or conversations;
- e) the interception and seizure of correspondence.

These techniques shall be subject to [*appropriate safeguards – to be clarified*] and only be used when there are serious indications that such accounts, telephone lines, computer systems and networks or documents are or may be used by persons suspected of participating in money laundering and financing of terrorism, and subject to compliance with the conditions and guarantees provided by articles [*identify articles in question*] of the [*name of code of criminal procedure*].

### **Article 4.1.2 Undercover operations and controlled delivery**

No punishment may be imposed on officials competent to investigate money laundering and financing of terrorism who, for the purpose of obtaining evidence relating to these offences or the tracing of proceeds of crime, perform acts which might be construed as elements of money laundering and financing of terrorism in connection with carrying out an undercover operation or a controlled delivery. The designated official shall not induce the suspect to commit any offences.

The authorization of [*name of the competent judicial authority*] shall be obtained prior to any operation as described in the preceding paragraph.

### **Article 4.1.3 Anonymous testimony and witness protection**

Either at its own initiative or at the request of a witness, defendant or aggrieved private party, a [*name of competent judicial authority*] may determine that

- a) certain identifying information shall not be included in the hearing transcript if there is a reasonable presumption that the witness could suffer serious injury following the disclosure of certain information;
- b) a witness's identity is kept secret if the competent authority concludes that the witness, a member of his family or one of his associates could reasonably be endangered by

reason of the testimony. The witness's identity shall be kept secret only if the investigation of the offence so requires and other investigative methods appear inadequate to uncover the truth. The witness whose identity is kept secret shall not be summoned to testify at a hearing without his consent. Anonymous testimony shall not serve as the sole basis for or a determining factor in any conviction.

## **Chapter II - Professional secrecy or privilege**

### **Article 4.2.1 Prohibition on invoking professional secrecy or privilege**

Professional secrecy or privilege shall not be invoked as a ground not to comply with the obligations under this law when the information is requested, or the production of a related document is ordered in accordance with this law, except in the cases specified in Article 3.2.1 (3).

# **Title V - Penal and provisional measures**

## **Chapter I - Provisional measures, freezing and seizure of assets and instrumentalities**

### **Article 5.1.1 Provisional measures**

(1) [*Name of judicial authority, law enforcement authorized to take provisional measures*] may, either at its own initiative or at the request of the public prosecutor's office, impose provisional measures including freezing or seizing, intended to preserve availability of funds, property and instrumentalities that may be subject to confiscation in accordance with Article 5.3.1.

(2) This provision shall apply without prejudice to the rights of third parties acting in good faith.

(3) Such measures may be lifted at any time by [*judicial authority, law enforcement or public prosecutor*] that ordered the provisional measure on its own initiative or at the request of the public prosecutor's office, suspects or persons claiming rights to the property.

### **Article 5.1.2 Freezing of funds associated with financing of terrorism**

(1) The funds of terrorists, those who finance terrorism and terrorist organizations, designated by the United Nations Security Council acting pursuant to Chapter VII of the United Nations Charter, shall be frozen by [**Option:** *ministerial decree or other administrative decision*]. [*Such decree or decision*] shall define the terms, conditions and time limits applicable to the freezing, and shall be published in the [*name of official journal*]. The financial institutions and designated non-financial business and profession holding such funds shall immediately freeze them.

(2) The financial institutions and designated non-financial business and profession shall report without delay to [*the financial intelligence unit or other competent authority*] the existence of funds linked to terrorists, terrorist organizations or individuals or entities associated with or that belong to such individuals or organizations in accordance with lists established by the United Nations Security Council.

(3) Failure to comply with the provisions of paragraphs (1) and (2) by a financial institution or a designated non-financial business and profession holding such funds shall be punishable by

**Variant 1:** an administrative fine ranging from [...] to [...]

**Variant 2:** a fine ranging from [...] to [...]

**Variant 3:** other criminal sanctions.

## **Chapter II - Criminal offences**

### **Article 5.2.1 Criminal offence of money laundering**

(1) For the purposes of this law, money laundering shall be defined as follows:

a) The conversion or transfer of property,

***Variant 1:*** by any person who knows or should have known

***Variant 2:*** by any person who knows or suspects

***Variant 3:*** by any person who knows, should have known or suspects

that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of such property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;

b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property

***Variant 1:*** by any person who knows or should have known

***Variant 2:*** by any person who knows or suspects

***Variant 3:*** by any person who knows, should have known or suspects

that such property is the proceeds of crime;

c) The acquisition, possession or use of property

***Variant 1:*** by any person who knows or should have known

***Variant 2:*** by any person who knows or suspects

***Variant 3:*** by any person who knows, should have known or suspects

***[Option: at the time of receipt]***

that such property is the proceeds of crime.

d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the elements of the offence mentioned in the foregoing subsections.

(2) Knowledge, intent or purpose required as constituent elements of the offence may be inferred from objective factual circumstances. In order to prove the illicit origin of the proceeds it shall not be required to obtain the conviction of the predicate offence.

(3) The predicate offence also includes offences committed outside the national territory if they constitute offences in the State where they were committed and would have

constituted an offence if committed within the territory of [*name of country adopting the law*].

[*Option: The predicate offence also includes actions committed outside national territory if they would have constituted offences if they had been committed within the territory of [name of country adopting the law].*]

(4) **Variant 1:** The offence of money laundering shall also apply to persons who have committed the predicate offence.

**Variant 2:** The offence of money laundering shall not apply to persons who have committed the predicate offence.

(5) Money laundering shall be punishable by a fine of [...] to [...] or imprisonment of [...] to [...] or either of these penalties.

[*Option: and a fine of up to \_\_\_\_\_ times the amount of the laundered sums.*]

(6) An attempt to commit money laundering or aiding, abetting, facilitating or counselling the commission of any such offence shall be punished as if the offence had been completed.

[*Option: is punished by a penalty reduced by [fraction] in relation to the main penalty.*]

#### **Article 5.2.2 Criminal offence of financing of terrorism**

(1) For the purposes of this law, financing of terrorism shall be defined as follows:

An act by any person who by any means, directly or indirectly, wilfully, provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in full or in part:

- a) to carry out a terrorist act, or
- b) by a terrorist, or
- c) by a terrorist organization.

(2) The offence is committed irrespective of any occurrence of a terrorist act referred to in paragraph (1), or whether the funds have actually been used to commit such act.

(3) It shall also be an offence to:

- a) participate as an accomplice in an offence within the meaning of paragraph (1) of this Article;
- b) organize or direct others to commit an offence within the meaning of paragraph (1) of this Article.

(4) Financing of terrorism shall be punishable by a fine of ... to ... or imprisonment of ... to ... or either of these penalties.

(5) An attempt to commit the offence of financing of terrorism or aiding, abetting, facilitating or counselling the commission of any such offence shall be punished as if the offence had been completed.

[*Option: is punished by a penalty reduced by [fraction] in relation to the main penalty.*]

### **Article 5.2.3 Association or conspiracy to commit money laundering**

Participation in, association with or conspiracy to commit the offences referred to in Article 5.2.1 shall be punishable by the same penalties.

### **Article 5.2.4 Association or conspiracy to commit financing of terrorism**

Participation in, association with or conspiracy to commit the offence identified in Article 5.2.2 shall be punishable by the same penalties.

### **Article 5.2.5 Penalties applicable to legal persons**

(1) Any legal person other than the State on whose behalf or for whose benefit money laundering and financing of terrorism has been committed by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on a power of representation of the legal person, an authority to take decisions on behalf of the legal person, or an authority to exercise control within the legal person, acting in such capacity, shall be punished by a fine of an amount equal to [*indicate multiplier*] times the fines specified for natural persons, irrespective of the conviction of those individuals as perpetrators of or accomplices to the offence.

The liability of the legal person does not preclude that of the natural person.

(2) In addition to the cases already provided for in paragraph (1) of this article, a legal person may also be held liable where the lack of supervision or control over a natural person referred to in paragraph (1) has made possible the commission of money laundering or financing of terrorism for the benefit of that legal person by a natural person acting under its authority.

Legal persons may additionally be:

- a) barred permanently or for a maximum period of [*indicate number*] years from directly or indirectly carrying on certain business activities;
- b) placed under court supervision;
- c) ordered to close permanently or for a period of [*indicate number*] years their premises which were used for the commission of the offence;
- d) wound up;
- e) ordered to publicize the judgment.



***[Option: Article 5.2.6 Aggravating circumstances for money laundering***

***Variant 1:*** The penalties imposed under Articles 5.2.1 and 5.2.3 may be increased to imprisonment of ... to ... and a fine of ... to ...or either of these penalties:

***Variant 2:*** The penalties imposed under Articles 5.2.1 and 5.2.3 may be increased by ... [one third or other proportion determined on the basis of the general punishment system in force]:

- a) if the predicate offence carries a penalty of deprivation of liberty for a term exceeding that specified in the foregoing articles relating to money laundering;
- b) if the offence is perpetrated in the pursuit of a trade or occupation;
- c) if the offence is perpetrated as part of the activities of an organized criminal group;
- d) if the amount of property laundered is more than ...;
- e) if the purpose is to make profit;
- f) if the purpose is promoting the carrying on of further criminal activity.

***[Option: Article 5.2.7 Aggravating circumstances for financing of terrorism***

***Variant 1:*** The penalties imposed under Articles 5.2.2 and 5.2.4 may be increased to imprisonment of ... to ... and a fine of ... to ...or either of these penalties:

***Variant 2:*** The penalties imposed under Articles 5.2.2 and 5.2.4 may be increased by ... [one third or other proportion determined on the basis of the general punishment system in force]:

- a) If the offence is perpetrated in the pursuit of a trade or occupation;
- b) If the offence is perpetrated as part of the activities of an organized criminal group.]

***[Option: Article 5.2.8 Mitigating circumstances***

(1) The provisions of national law relating to mitigating circumstances in general shall apply to the offences established under this law.

(2) The penalties provided in Articles 5.2.1 - 5.2.2 may be reduced if the perpetrator of the offence provides the judicial authorities with information they would not have otherwise obtained so as to assist them in:

- a) preventing or limiting the effects of the offence;
- b) identifying or prosecuting other perpetrators of the offence;
- c) obtaining evidence;
- d) preventing the commission of other money laundering or terrorist financing offences;  
or
- e) depriving organized criminal groups of their resources or the proceeds of crime.]

## **Chapter III - Confiscation**

### **Article 5.3.1 Confiscation**

(1) In the event of a conviction for money laundering or a predicate offence and financing of terrorism, or an attempt to commit such an offence, an order shall be issued by the competent court for the confiscation of:

- a) funds and property constituting the proceeds of crime, including property intermingled with such proceeds or derived from or exchanged for such proceeds, or property the value of which corresponds to that of such proceeds;
- b) funds and property forming the object of the offence;
- c) funds and property constituting income and other benefits obtained from such funds or property, or proceeds of crime;
- d) the instrumentalities;
- e) funds and property referred to in paragraphs a) - d) above that has been transferred to any party, unless [the owner of such property can establish that he paid] [the court finds that the owner of such property acquired it by paying] a fair price or in return for the provision of services corresponding to their value or on any other legitimate grounds, and that he was unaware of its illicit origin.

*[Option: (2) The court may also order confiscation of the funds and property referred to in paragraph (1) and belonging directly or indirectly to a person convicted of money laundering<sup>25</sup> or a predicate offence and the financing of terrorism, which were acquired during a period of [indicate number of years] prior to being charged with the offence, if there are reasonable grounds indicating that such funds and property are the result of the offence of which the person was convicted or similarly serious criminal activity<sup>26</sup>, and the person failed to prove that the property was obtained legally.*

*(3) If, in cases where an offence is established by the court, the perpetrator thereof cannot be convicted because he is unknown, he absconded or died, the court may nevertheless order the confiscation of the seized funds or property if sufficient evidence is adduced that the aforesaid property constitutes proceeds of crime as defined in this law.]*

(4) The confiscation order shall specify the property concerned and contain the necessary details to identify and locate it.

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<sup>25</sup> The country adopting this law should make sure that it has corresponding powers for serious offences for the purpose of this special type of confiscation.

<sup>26</sup> Countries should define what is organized crime or similar criminal activity.

### **Article 5.3.2 Invalidation of certain legal instruments**

(1) The court may invalidate any legal instrument, the purpose of which is to avoid the confiscation of the property pursuant to Article 5.3.1.

(2) If the invalidated contract was entered into for value the acquiring party acting in good faith shall be reimbursed only for the amount actually paid.

### **Article 5.3.3 Disposal of confiscated property**

Unless otherwise provided for in this law, confiscated funds and property shall accrue to [the name of the country adopting this law] [*Option: that may allocate them to a fund for law enforcement or similar public purposes*]. Such funds and property shall remain encumbered, up to their value, by any rights lawfully established in favour of third parties acting in good faith.<sup>27</sup>

### **[Option: Chapter IV - Establishment of a central seizure and confiscation authority]**

#### **Article 5.4.1 Establishment of a central authority for seizure and confiscation**

*A central authority for seizure and confiscation shall be established. It shall be responsible for assisting the [competent law enforcement or judicial authorities investigating and prosecuting offences] in identifying and tracing funds and property that may be subject to seizure and confiscation. It shall collect and maintain all data associated with its mission in accordance with the law [cite the law governing data processing and privacy]. It shall manage seized assets in cooperation with the prosecutor's office or the judge overseeing investigations.*

#### **Article 5.4.2 Management of seized funds and property**

*(1) The central authority for seizure and confiscation [or another competent authority] shall be responsible for the administration or management of seized assets in accordance with the feasible means available to it, with a view to returning or confiscating such assets in a condition reasonably comparable to their condition at the time of the seizure. The prosecutor's office or the judge overseeing investigations may authorize the sale of funds or property likely to incur significant depreciation as the result of management or for which the cost of preservation is unreasonably disproportional to its value. In such case, the value of the sale shall remain subject to the seizure.*

*(2) The central authority for seizure and confiscation [or another competent authority] shall manage the sums of money seized unless they were already entrusted to a financial institution or private manager or were seized or blocked there.]*

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<sup>27</sup> In cases where confiscation is ordered under a judgment by default, countries should consider a provision to the effect that the court, ruling on an application to set aside such judgment, may order restitution to the value of the confiscated property by the State, unless it is established that such property is the proceeds of crime.

# **Title VI - International cooperation**

## **Chapter I - General provision**

### **Article 6.1.1 General provisions**

(1) The competent authorities shall provide the widest possible range of cooperation to the competent authorities of other States for purposes of extradition and mutual legal assistance in connection with criminal investigations and proceedings related to money laundering and financing of terrorism.

(2) Dual criminality shall be deemed fulfilled irrespective of whether the laws of the requesting State places the offence within the same category of offence or denominate the offence by the same terminology as in [*name of the country adopting the model law*], provided the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of the States concerned.

## **Chapter II - Requests for mutual legal assistance**

### **Article 6.2.1 Purpose of requests for mutual legal assistance**

Upon application by a foreign State, requests for mutual legal assistance in connection with money laundering or terrorist financing shall be executed in accordance with the principles set out in this title. Mutual legal assistance may include in particular:

- taking evidence or statements from persons;
- assisting in making detained persons, voluntary witnesses or others available to the judicial authorities of the requesting State in order to give evidence or assist in investigations;
- effecting service of judicial documents;
- executing searches and seizures;
- examining objects and sites;
- providing information, evidentiary items and expert evaluations;
- providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- identifying or tracing the proceeds of crime, funds or property or instrumentalities or other things for evidentiary or confiscation purposes;
- confiscation of assets;
- executing freezing and other provisional measures;
- any other form of mutual legal assistance not contrary to the domestic laws of [*name of country adopting law*].

### **Article 6.2.2 Refusal to execute requests**

(1) A request for mutual legal assistance may be refused only if:

- a) it was not made by a competent authority according to the legislation of the requesting country, if it was not transmitted in accordance with applicable laws or its contents are in substantial non-conformity with Article 6.4.3;
- b) its execution is likely to prejudice the law and order, sovereignty, security, ordre public or other essential interests of [*name of the country adopting the law*];
- c) the offence to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in the territory of [*name of the country adopting the law*];
- d) there are substantial grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions, gender or status;
- e) If the offence referred to in the request is not provided for under the legislation of [*name of the country adopting the law*] or does not have features in common with an offence provided for under the legislation of [*name of the country adopting the law*]; however, assistance shall be granted if it does not entail coercive measures;
- [Option: f) If, under the legislation of [*name of the country adopting the law*], the measures requested, or any other measures having similar effects, are not permitted or if they may not be used with respect to the offence referred to in the request;*
- g) If the measures requested cannot be ordered or executed by reason of the statute of limitations applicable to money laundering or financing of terrorism under the legislation of [*name of the country adopting the law*] or the law of the requesting State;*
- h) If the decision whose execution is being requested is not enforceable under the legislation of [*name of the country adopting the law*];*
- i) If the decision rendered abroad was issued under conditions that did not afford sufficient protections with respect to the rights of the defendant.]*

(2) No request for mutual legal assistance shall be refused on the basis of, or made subject to, unduly restrictive conditions.

(3) Secrecy or confidentiality provisions binding banks and other financial institutions cannot be invoked as a ground for refusal to comply with the request.

(4) Assistance shall not be refused on the sole ground that the offence is also considered to involve fiscal matters.

(5) A decision of a court in relation to a request for mutual legal assistance may be subject to appeal.<sup>28</sup>

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<sup>28</sup> The country should specify types of decisions that are subject to appeal.

(6) The competent authority of [*name of the country adopting the law*] shall promptly inform the foreign competent authority of the grounds for refusal to execute the request.

#### **Article 6.2.3 Requests for investigative measures**

Investigative measures shall be undertaken in conformity with the procedural rules of [*name of the country adopting the law*] unless the competent foreign authority has requested a specific procedure not contrary to such rules.

A public official authorized by the competent foreign authority may attend the execution of the measures.

#### **Article 6.2.4 Requests for provisional measures**

Provisional measures requested by a State shall be undertaken in accordance with [*Code of Criminal Procedure or other applicable legislation*]. If the request is worded in general terms, the most appropriate measures provided by law shall be used.

Should the [*Code of Criminal Procedure or other applicable legislation*] not provide for the measures requested, the competent authority may substitute those measures provided for in the law whose effects correspond most closely to the requested measures.

The provisions relating to the lifting of provisional measures as laid down in paragraph (3) of Article 5.1.1 of this law shall be applicable. Before lifting the provisional measures applied the requesting country should be informed thereof.

#### **Article 6.2.5 Requests for confiscation**

(1) In the case of a request for mutual legal assistance seeking a confiscation order, the competent authorities shall either recognize and enforce the confiscation order made by a court of the requesting State or submit the request to their prosecuting authority for the purpose of obtaining a [*domestic*] confiscation order and, if such order is granted, enforce it. The confiscation order shall apply to the funds or property referred to in Article 5.3.1, and situated in the territory of [*name of the country adopting the law*].

(2) Where the competent authorities recognize and enforce a confiscation order issued abroad, they shall be bound by the findings of fact on which the order is based.

#### **Article 6.2.6 Disposal of confiscated property**

The State [*name of the country adopting the law*] shall have power of disposal of property confiscated on its territory at the request of foreign authorities unless provided otherwise under an agreement concluded with the requesting State, without prejudice to the return of the assets to their legitimate owner in good faith.

### **Article 6.2.7 Joint investigations**

[*The competent authorities of the country adopting the law*] may enter into bilateral or multilateral agreements or arrangements, in relation to matters that are the subject of investigations or proceedings in one or more States, to set up joint investigative teams and conduct joint investigations. In the absence of such agreement or arrangement joint investigations may be undertaken on a case by case basis.

## **Chapter III - Extradition**

### **Article 6.3.1 Extradition requests**

(1) Money laundering and financing of terrorism shall be extraditable offences.

(2) Execution of extradition requests related to money laundering and financing of terrorism offences shall be subject to the procedures and principles set forth in the applicable extradition treaties. In the absence of such treaties or for matters not regulated in such treaties the procedures and principles in [*name applicable domestic law on extradition*] shall be applied.<sup>29</sup>

### **Article 6.3.2 Dual criminality**

Extradition based upon this law shall be carried out only if the offence giving rise to the request for extradition or a similar offence is provided for under the legislation of the requesting State and of [*name of the country adopting the law*].

### **Article 6.3.3 Mandatory grounds for refusal**

Extradition shall not be granted:

- a) If there are substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons;
- b) If a final judgment has been rendered in [*name of the country adopting the law*] in respect of the offence for which extradition is requested;
- c) If the person whose extradition is requested has, under the legislation of either country, become immune from prosecution or punishment for any reason, including statute of limitations or amnesty;
- d) If there are substantial grounds to conclude the person whose extradition is requested has been or would be subjected to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 14 of the International Covenant on Civil and Political Rights.

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<sup>29</sup> In the absence of any extradition treaty or legislative provisions, the extradition shall be carried out in accordance with the procedures and in observance of the principles set out in the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption and the United Nations Convention for the Suppression of Financing of Terrorism.

Extradition shall not be refused on the sole ground that the offence is considered also to entail fiscal matters.

#### **Article 6.3.4 Discretionary grounds for refusal**

Extradition may be refused if:

- a) a prosecution in respect of the offence for which extradition is requested is pending in [*name of the country adopting the law*] against the person whose extradition is requested;
- b) the offence for which extradition is requested has been committed outside the territory of either country and the legislation of [*name of the country adopting the law*] does not provide for jurisdiction over offences committed outside its territory in comparable circumstances;
- c) the person whose extradition is requested has been sentenced for the conduct which gives rise to the request or would be liable to be tried or sentenced in the requesting State by an irregular or fundamentally unfair extraordinary or ad hoc court or tribunal;
- d) [*Name of the country adopting the law*], while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of the person in question would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of that person;
- e) the extradition is requested pursuant to a final judgment rendered in the absence of the convicted person who, for reasons beyond his or her control, has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he or she has not had or will not have the opportunity to have the case retried in his or her presence;
- f) [*Name of the country adopting the law*] has assumed jurisdiction over the offence;
- g) the person whose extradition is requested would be subject to the death penalty in respect of the crime of which that person is accused in the requesting country, unless that country gives sufficient assurances that the penalty will not be carried out;
- h) the person whose extradition is requested is a national of [*name of the country adopting the law*].

#### **Article 6.3.5 The duty to extradite or prosecute under international law**

If extradition is refused on either of the grounds stated in Article 6.3.3 paragraphs c) or d) or Article 6.3.4 paragraphs c), [*Option: e*], g) or h) the case shall be referred to the competent authorities in order that proceedings may be instituted against the person concerned in respect of the offence which gave rise to the request.



### **Article 6.3.6 Simplified extradition procedure**

With regard to money laundering and financing of terrorism, [name of the country adopting the law] may grant extradition after receipt of a request for provisional arrest, provided that the person whose extradition is requested explicitly consents before a competent authority.

### **[Option: Article 6.3.7 Surrender of property]**

*Within the limits authorized under the national legislation and subject to the rights of third parties,<sup>30</sup> all property found in the territory of [name of the country adopting the law] that has been acquired as a result of the offence committed or that may be required as evidence shall, if the requesting State so requests, be surrendered to the requesting State if extradition is granted.*

*The property in question may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.*

*Should that property be liable to seizure or confiscation in the territory of [name of the country adopting the law], the State may temporarily retain it or hand it over.]*

## **Chapter IV - Provisions common to requests for mutual legal assistance and requests for extradition**

### **Article 6.4.1 Political nature of offences**

For the purposes of this law, money laundering and financing of terrorism shall not be regarded as political offences, or offences connected with a political offence, or offences inspired by political motives.

### **Article 6.4.2 Transmission and processing of requests**

(1) [Name of the competent authority in the country adopting the law] has the responsibility and power to receive mutual legal assistance or extradition requests sent by competent foreign authorities with respect to money laundering and financing of terrorism, and it shall either execute them or transmit them to the competent authorities for execution. It shall ensure speedy and proper execution or transmissions of the request received or, if forwarded for execution, encourage speedy execution by competent authorities. In urgent cases, such requests may be sent through the International Criminal Police Organization (ICPO/Interpol) or directly by the foreign authorities to the judicial authorities of [name of the country adopting the law]. In such cases the authority receiving the request shall notify [name of the competent authority in country adopting the law].

(2) Requests and answers shall be transmitted either by post or by other more rapid means of transmission that provides a written or materially equivalent record under conditions allowing [name of the country adopting the law] to establish authenticity.

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<sup>30</sup> A requested country may surrender the property on condition that it should be returned back free of charge, after the completion of the proceedings.

(3) Requests and their annexes shall be accompanied by a translation in a language acceptable to [*name of the country adopting the law*].

#### **Article 6.4.3 Content of requests**

(1) Requests shall specify:

- a) the identity of the authority requesting the measure;
- b) the name and function of the authority conducting the investigation, prosecution or proceedings;
- c) the requested authority;
- d) the purpose of the request and any relevant contextual remarks;
- e) the facts in support of the request;
- f) any known details that may facilitate identification of the persons concerned, in particular name, marital status, nationality, address and location and occupation;
- g) any information necessary for identifying and tracing the persons, instrumentalities, funds or property in question;
- h) the text of the statutory provision establishing the offence or, where applicable, a statement of the law applicable to the offence and an indication of the penalty that can be imposed for the offence;
- i) a description of the assistance required and details of any specific procedures that the requesting State wishes to be applied.

(2) In addition, requests shall include the following particulars in certain specific cases:

- a) in the case of requests for provisional measures: a description of the measures sought;
- b) in the case of requests for the issuance of a confiscation order: a statement of the relevant facts and arguments to enable the judicial authorities to order the confiscation under domestic law;
- c) in the case of requests for the enforcement of orders relating to provisional measures or confiscations:
  - i) a certified copy of the order, and a statement of the grounds for issuing the order if they are not indicated in the order itself;
  - ii) a document certifying that the order is enforceable and not subject to ordinary means of appeal;
  - iii) an indication of the extent to which the order is to be enforced and, where applicable, the amount for which recovery is to be sought in the item or items of property;
  - iv) where necessary and if possible, any information concerning third-party rights of claim on the instrumentalities, proceeds, property or other things in question;
- d) In the case of requests for extradition, if the person has been convicted of an offence, the original or a certified copy of the judgment or any other document setting out the

conviction and the sentence imposed, the fact that the sentence is enforceable and the extent to which the sentence remains to be served.

**Article 6.4.4 Additional information**

The [*name of the competent authority in country adopting the law*] or the competent authority handling the matter shall, either on their own initiative or at the request of the [*name of the competent authority in country adopting the law*], may request additional information from the competent foreign authority if it appears necessary to execute or facilitate the execution of the request.

**Article 6.4.5 Requirement of confidentiality**

Where a request requires that its existence and substance be kept confidential, such requirement shall be observed. If that is not possible, the requesting authorities shall be promptly informed thereof.

**Article 6.4.6 Delay in complying with request**

The [*name of the competent authority in country adopting the law*] may delay the referral of requests to the competent authorities responsible for the execution of the request if the measure or order sought is likely to substantially interfere with an ongoing investigation or proceeding. It shall immediately so advise the requesting authority.

**Article 6.4.7 Costs**

Costs incurred in complying with requests provided for under the present title shall be borne by the State of [*name of the country adopting the law*] unless otherwise agreed with the requesting State.

**MODEL [DECREE, REGULATION] ON THE FINANCIAL INTELLIGENCE UNIT, ISSUED FOR PURPOSES OF APPLICATION OF ARTICLE 3.1.1 OF [THE MODEL LAW ON MONEY LAUNDERING AND FINANCING OF TERRORISM]**

**Organization**

**Article 1**

The financial intelligence unit, established under Article 3.1.1 of the [*Model law on money laundering and financing of terrorism*], shall have [**Option:** *autonomy over the use of its budget and*] independent decision-making authority over matters within its responsibility.

**Article 2**

The financial intelligence unit shall be composed of suitably qualified staff [**Option:** *with expertise particularly in the fields of finance, banking, law, information processing, customs or police investigations*] and may be made available by Government agencies. It may also comprise liaison officers responsible for cooperation with the other administrations. The financial intelligence unit shall be supported by a secretariat.

**Article 3**

The head, experts, liaison officers and other staff of the financial intelligence unit may not concurrently hold a position in any of the financial institutions and designated non-financial businesses and professions referred to in the law of [*date*] on money laundering and financing of terrorism. They shall not hold any kind of office, or undertake an assignment or perform an activity that might affect the independence of their position. [**Option:** *Law enforcement officers appointed to posts in the financial intelligence unit shall cease to exercise any investigatory powers held by them in their former employment.*]

**Operation**

**Article 4**

The reports required of the financial institutions and designated non-financial businesses and professions shall be sent to the financial intelligence unit by any rapid means of communication. They shall, where applicable, be confirmed in writing and contain the identity and address of the reporting party, the customer or the beneficial owner and, where applicable, the beneficiary of the transaction and other persons involved in the transaction or events, and shall indicate the nature and description of the transaction or events/activity and, in the case of a transaction, the amount, transaction date and time, the account numbers and other financial institutions and designated non-financial businesses and professions involved, [**Option:** *if applicable,*] the time within which the operation is to be carried out or the reason why its execution cannot be deferred.

## **Article 5**

The financial intelligence unit shall, in conformity with the laws and regulations on the protection of privacy and on computerized databases, operate a database containing all relevant information concerning suspicion transaction reports and other information as provided for under the aforementioned law and by this [*decree, regulation*] the transactions carried out and the persons undertaking the operations, whether directly or through intermediaries.

## **Article 6**

An annual report shall be drawn up by the financial intelligence unit and submitted to

***Variant 1:*** the Government

***Variant 2:*** the Parliament

***Variant 3:*** the Minister of Justice, the Minister of Finance and other competent authorities.

The report shall provide an overall analysis and evaluation of the reports received and of money laundering and financing of terrorism trends.

***[Option: Operating budget***

## **Article 7**

*Each year, the financial intelligence unit shall establish its budget for the following year, subject to the limits fixed by [name of competent minister].]*

## Annex 1

- participation in an organized criminal group and racketeering;
- terrorism, including terrorist financing;
- trafficking in human beings and migrant smuggling;
- sexual exploitation, including sexual exploitation of children;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit arms trafficking;
- illicit trafficking in stolen and other goods;
- corruption and bribery;
- fraud;
- counterfeiting currency;
- counterfeiting and piracy of products;
- environmental crime;
- murder, grievous bodily injury;
- kidnapping, illegal restraint and hostage-taking;
- robbery or theft;
- smuggling;
- extortion;
- forgery;
- piracy; and
- insider trading and market manipulation.