

Unofficial and not binding translation

State Ordinance containing new rules for the identification and verification of clients and the reporting of unusual transactions to prevent and combat money laundering and terrorist financing when providing certain services (State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing)

IN THE NAME OF THE QUEEN!

THE GOVERNOR of Aruba,

Having considered:

that, for the improvement of the Aruban system for the prevention and combating of money laundering and terrorist financing, it is desirable to lay down new rules with regard to the identification and verification of clients and the reporting of unusual transaction when providing financial services and certain non-financial services;

Has, having heard the Advisory Council, in consultation with Parliament, adopted the following State Ordinance:

CHAPTER 1

Application and scope

Article 1

1. In this State Ordinance and the provisions based on it, the following words are defined as stated below:

service provider:	a financial or designated non-financial service provider;
financial service provider:	anyone who on a commercial basis conducts one or more of the following activities or operations to or for the benefit of a client:

1. to accept deposits and other repayable funds from the public;
2. to grant loans;
3. financial leasing, with the exception of consumer-related leasing;
4. to transfer or to cause the transfer of money or values;
5. to issue and manage means of payment other than money, at any rate including credit cards, debit cards, checks, traveler's checks, bank and money orders, and electronic money;
6. to provide financial guarantees and commitments;
7. to trade in money market instruments, foreign currency, payment instruments, shares, exchange, interest, and index instruments, transferable securities, and commodities futures trading;
8. to participate in the issue of securities and to provide financial services related to this issue;
9. to manage individual and collective investment portfolios;
10. to receive for safekeeping and manage cash or liquid securities on behalf of third parties;
11. to otherwise invest, administer, or manage funds or moneys on behalf of third parties;
12. to underwrite, redeem and pay, as well as to act as an intermediary, in the underwriting, redeeming and payment of a life insurance agreement as meant in Article 1 of the State Ordinance Supervision Insurance Business (AB 2000 No.

82), and other investment-related insurance products;

13. to exchange money and foreign currency;

- designated non-financial service provider:
1. a natural person, legal person, corporation or partnership that acts as a lawyer, civil notary, tax advisor or in the exercise of a similar legal profession or company;
 2. a natural person, legal person, corporation or partnership that acts as an external registered accountant, an external accountant-administration consultant or a similar profession;
 3. a natural person, legal person or corporation which on a commercial or professional basis trades on or acts as an intermediary in the purchase and sale of immobile objects, vehicles, ships, aircraft, objects of arts, antiquities, and the rights to which these objects can be subjected;
 4. a natural person, legal person, or corporation which trades in precious metals, precious stones and jewels on a commercial or professional basis;
 5. a casino as meant in Article 1, first section, of the State Ordinance Games of Hazard (AB 1990 No. GT 44), as well as an internet casino;
 6. a trust and company service provider as meant in Article 1 of the State Ordinance Supervision Trust and Company Service Providers (AB 2009 No. 13);

bank: a financial institution that is authorized pursuant to a license as meant in the articles 4 or 24 of the State Ordinance Supervision Credit System (AB 1998 No. 16) to conduct one or more financial activities or operations of a financial services provider;

life insurer: a life insurance company as meant in Article 1 of the State Ordinance Supervision Insurance Business;

client: he with whom a business relationship is entered into, or who causes a transaction to be carried out;

customer due diligence: the due diligence, meant in Article 3;

identification: to have someone state his identity;

verification of the identity: to establish that the identity stated corresponds with the real identity;

transaction: an act or a combination of acts by or on behalf of a client in connection with the procurement or provision of services, or of which a service provider has taken notice within the framework of his provision of service to a client;

unusual transaction: a transaction designated as such pursuant to Article 26;

business relationship: a business, professional, or commercial relationship between a service provider, on the one hand, and, on the other, a client, which is connected to the commercial or professional activities of the service provider, and which at the moment of making the contact is assumed to last some time;

report: a report as meant in Article 27, first section;

correspondent bank relationship: a permanent relationship between an Aruban bank and a bank established outside Aruba for the purpose of processing transactions or implementing orders;

shell bank:	a financial service provider established outside of Aruba that has no physical presence in the country of incorporation and is not affiliated with a financial services group that is subject to an effective form of consolidated supervision;
politically exposed person:	a person who holds or held a prominent public position, as well as direct family members and direct associates of such a person;
ultimate beneficiary:	a natural person: <ul style="list-style-type: none"> 1°. who holds an interest of more than 25% of the capital interest or can exercise more than 25% of the voting rights in the shareholders meeting of a customer, or can in another way exercise actual control over such a customer; 2°. who is beneficiary to 25% or more of the assets of a legal arrangement, including a foundation and a trust, or can exercise actual control over a such a legal arrangement.
trust:	a trust in the sense of the Treaty regarding the law that is applicable to trusts and regarding the recognition of trusts (Trb. 1985 no. 141);
money laundering:	a criminal offense as meant in Articles 430b, 430c, or 430d of the Penal Code of Aruba (AB 1991 No. GT 50);
terrorist financing:	the criminal offense, meant in Article 140a of the Criminal Code of Aruba;
Reporting Center:	the Reporting Center Unusual Transactions, meant in Article 20, first section;
Bank:	the Central Bank of Aruba;
Minister:	the minister, in charge of finance.

2. Other activities or operations may be designated by State Decree containing General Administrative Orders as also falling under the scope of the regulations laid down by or pursuant to this State Ordinance.

Article 2

1. This State Ordinance shall not apply to the Bank, unless stipulated otherwise.

2. The regulations of Chapters 2 and 3 shall not apply to activities of a lawyer, civil notary or tax advisor relating to the legal position of a client, his representation and defense in court, the giving of advice before, during, and after legal proceedings, or the giving of advice on instituting or avoiding legal proceedings.

CHAPTER 2

Customer due diligence

§1. The scope of customer due diligence

Article 3

1. For the prevention and combating of money laundering and terrorist financing, service providers shall perform a customer due diligence, which comprises at least the following:

- a. the identification of the client and the verification of his identity;
- b. the identification of the ultimate beneficiary and the undertaking of reasonable measures to verify the identity of the ultimate beneficial owner in such manner that the service provider is convinced of the identity of that ultimate beneficial;
- c. the establishment of the purpose and intended nature of the business relationship;
- d. the exercise of ongoing monitoring of the business relationship and the transactions carried out during the course of this relationship in order to assure that they correspond with the knowledge the service provider has of the client and the ultimate beneficiary, and of their risk profile, including, where appropriate, an investigation into the source of funds involved with the transaction or business relation.

2. If a service provider is a designated non-financial service provider as meant in no. 3° of the definition of the term “designated non-financial service provider”, the customer due diligence shall also extend to the other party of the client of the service provider.

Article 4

A service provider shall determine whether the client is acting for himself or for the benefit of a third party and shall take reasonable measures in order to establish the identity of that third party and verify this identity.

Article 5

1. With regard to a client that is a legal person or a legal arrangement the service provider shall determine if the natural person purporting to act on behalf of this client is so authorized, shall establish the identity of that natural person and verify that identity before providing the service, and shall record information regarding the legal status and the provisions to representation of that client.

2. With regard to a client as meant in the first section, the service provider shall take reasonable measures which in any case must lead to the service provider acquiring an understanding of the ownership and the actual control structure of the client.

3. The second section is equally applicable with regard to a client who acts as a trustee of a trust or if the business relationship is entered into or if the transaction is performed in connection with the management of a trust, with the understanding that the reasonable measures shall lead to the identity of the settlor and the ultimate beneficiary to the assets of the trust being established and verified.

Article 6

1. A financial service provider shall perform customer due diligence in the following cases:

- a. the establishment in or from Aruba of a business relationship;
- b. the performance in or from Aruba of an incidental transaction for the benefit of the client of at least Afl. 25,000.-, or of two or more transactions related to each other with a combined value of at least Afl. 25,000.-;
- c. the performance in or from Aruba of a money transfer as meant in Article 1 of the State Ordinance Supervision Money Transfer Companies (AB 2003 No. 60);
- d. if there are indications that the client is involved in money laundering or terrorist financing;

- e. if it doubts the soundness or reliability of data obtained from the client previously, or
 - f. if the risk of involvement of an existing client in money laundering or terrorist financing gives reason to do so.
2. A designated non-financial service provider shall perform customer due diligence in the following cases:
- a. the establishment in or from Aruba of a business relationship;
 - b. if it concerns a designated non-financial services provider as meant in numbers 1° or 2° of the definition of “designated non-financial services provider”, the following activities performed in or from Aruba:
 - 1° the purchase and sale of register objects, as well as the rights to which these objects can be subjected;
 - 2° the management of money, securities, or other asset components;
 - 3° the management of bank, savings, or securities accounts;
 - 4° the organization of contributions for the creation, operation, or management of companies;
 - 5° the creation, operation, or management of legal persons or similar legal entities, and the purchase and sale of businesses;
 - c. if it concerns a designated non-financial services provider as meant in number 3° of the definition of “designated non-financial services provider”, the purchase and sale in or from Aruba of register objects, as well as the rights to which these objects can be subjected;
 - d. if it concerns a trust and company service provider, the performance in or from Aruba of the following activities:
 - 1° to act as a founder of legal persons;
 - 2° the provision of a domicile, business address or accommodation, postal or administrative address to a company, corporation, or partnership, or another legal person of arrangement;
 - 3° to act or have someone else act as manager or representative of a trust;
 - 4° to act or have someone else act in the name of a shareholder;
 - e. if it concerns a casino, the performance of cash transactions with a value of Afl. 5,000.- or more;
 - f. if it concerns a natural person, legal person or corporation trading in precious metals, precious stones, jewels, vehicles, vessels not being register objects, objects of art or antiquities on a professional or commercial capacity, the performance of cash transactions with a value of Afl. 25,000.- or more;
 - g. if a circumstance as meant in the second section, letters d, e, or f, presents itself.

3. A service provider shall tailor the customer due diligence to the risk-sensitiveness to money laundering or terrorist financing of the type of client, business relationship, product, or transaction. To that effect, he shall establish a risk profile of the client and the ultimate beneficiary.

4. By State Decree containing General Administrative Orders rules shall be set concerning the application by financial service providers of customer due diligence when carrying out funds transfers and the recording in this regard of data of the persons who have put money or value at the disposal of the financial service provider for the purpose of the funds transfer, and of the beneficiaries of the transaction.

Article 7

A service provider shall take care that the data collected pursuant to a customer due diligence process, in particular that which relate to clients, ultimate beneficiaries or business relationships that pose a higher risk of money laundering or terrorist financing, are kept relevant and up to date.

§2. The moment of performing the customer due diligence

Article 8

1. A service provider shall perform customer due diligence before the business relationship is entered into or an incidental transaction as meant in article 6, first section, letters b or c, or a transaction as meant in article 6, second section, letters b through f, is carried out.

2. In deviation of the first section:

- a. a service provider may verify the identity of the client and the ultimate beneficiary during the establishment of the business relationship, if this is necessary in order not to disrupt the service provision, and there is little risk of money laundering or terrorist financing; in this case, the service provider shall verify the identity as soon as possible after the first contact with the client;
- b. a service provider who is a life insurer can identify the beneficiary of a policy and verify the identity, after the business relationship has been entered into; in this case, the identification and the verification of the identity shall take place on or before the date of payment, or on or before the date on which the beneficiary wants to exercise his rights arising from the policy;

- c. a service provider who is a bank can open an account, before the identity of the client has been verified, provided it guarantees that this account cannot be used before verification has taken place;
- d. a designated non-financial service provider who is a civil notary can establish the identity of the client and verify the ultimate beneficial when identification is required pursuant to article 20, first section, of the State Ordinance on Civil Notaries (AB 1990 No. GT 69).

Article 9

1. Without prejudice to article 8 a service provider is forbidden to enter into a business relationship or to carry out a transaction, if it has not performed customer due diligence, if it is not able to carry out the customer due diligence or if the customer due diligence did not lead to the result envisaged by articles 3, 4 and 5.

2. If after the establishment of a business relationship the service provider is no longer able to comply with Article 3, the service provider shall end the business relationship promptly.

§3. Special regulations regarding the scope of customer due diligence

Article 10

1. In deviation of Article 9, first section, service providers may decide to apply the requirements, set in or by the articles 3, 4 and 5, first or second section, in a reduced manner:

- a. when it concerns the following clients:
 - 1°. a service provider domiciled in Aruba, provided it is supervised by the Bank or another public legal person;
 - 2°. a financial service provider with domicile outside Aruba, provided it is subject to the internationally accepted standards for the prevention and combating of money laundering and terrorist financing, and it is supervised effectively with regard to the compliance with these standards;
 - 3°. public limited companies and comparable entities, which are subject to statutory disclosure requirements, and the shares of which are traded on recognized stock exchanges as designated by regulation of the Minister;
 - 4°. public limited companies of which all shares are held by the State;

- 5°. the State and other public legal persons established in Aruba;
 - 6°. public legal persons established and active in other parts of the Kingdom;
- b. when they carry out a transaction or enter into a business relationship related to:
- 1°. a life insurance agreement of which the annual premium does not exceed Afl. 1,500.-, or of which the amount of the single premium does not exceed Afl. 4,000.-;
 - 2°. a pension or a similar arrangement intended to provide an employee with a retirement benefit, in which the contributions for the benefit of the pension schemes are made through deductions from the salary of the employee, and the employee is not allowed to assign, pledge, or transfer as security his rights arising from the pension scheme to third parties;
 - 3°. ultimate beneficiaries to accounts kept with a designated non-financial service provider intended solely for the keeping of money for third parties, provided these service providers are subject to regulations for the prevention and combating of money laundering and terrorist financing that comply with the internationally accepted standards for the prevention and combating of money laundering and terrorist financing, and that they are effectively supervised with regard to the compliance with these standards;
2. A service provider shall collect sufficient data to be able to establish whether the first section applies to a client.
3. The first section shall not apply, if the client, business relationship or a transaction subsequently carries a higher risk for money laundering or terrorist financing of if there are indications that the client is involved with money laundering or terrorist financing.

Article 11

Service providers shall perform enhanced customer due diligence, if and when a business relationship or a transaction by its nature entails a higher risk of money laundering or terrorist financing. The enhanced customer due diligence shall be carried out both prior to the business relation or the transaction, as during the business relationship, in any case in the following situations:

- a. when a client is not a resident of Aruba, respectively not established in Aruba;
- b. when a client is not physically present for identification;

- c. when it concerns private banking;
- d. with legal persons, trusts and comparable entities that are intended as private assets holding vehicles;
- e. with limited liability corporations and comparable entities that have bearer shares or the shares are kept by nominee shareholders;
- f. with natural persons, legal persons, trusts and comparable entities that originate from countries or jurisdictions which do not or insufficiently apply the internationally accepted standards for the prevention and combating of money laundering and terrorist financing;
- g. with politically exposed persons;
- h. when entering into correspondent bank relations;
- i. other situations to be determined by regulation of the Minister.

Article 12

1. A service provider shall carry out an adequate policy and have risk-based procedures in order to establish whether a client, a potential client, or an ultimate beneficiary is a politically exposed person. A service provider shall also have procedures to determine the source of wealth of clients and ultimate beneficiaries that are considered politically exposed persons on the basis of the first sentence.

2. Without prejudice to the third section, a service provider who enters into a business relationship or carries out a transaction for a politically exposed person shall take care that:

- a. the decision to enter into the business relationship or the performance of the individual transaction shall be made or approved only by members of the senior management;
- b. they exercise ongoing monitoring of the business relationship.

3. If a client or an ultimate beneficiary is considered a politically exposed person after the commencement of the business relationship, the business relationship shall be continued only after having obtained the approval of the senior management.

4. A client, a potential client or an ultimate beneficiary shall be considered a politically exposed person up to five years after he has ceased to occupy the prominent public position. The first sentence shall apply equally to the direct family members and direct associates of such a person.

Article 13

1. Service providers shall pay special attention to:
 - a. business relationships and transactions with natural persons, legal persons and trusts originating from countries or jurisdictions that do not, or insufficiently comply with the internationally accepted standards for the prevention and combating of money laundering and terrorist financing;
 - b. all complex and unusually large transactions and to all unusual patterns of transactions that have no apparent economic or legal purpose.
2. If a service provider can reasonably suspect that a transaction with a natural person, legal person or trust originating from a country or jurisdiction as meant in the first section, does not have an apparent economic or legal purpose, or if a transaction meant in the first section, paragraph b, should arise, it shall investigate the background and the purpose of this transaction and record its findings in writing.
3. The findings, meant in the second section, shall be kept for at least ten years.

Article 14

Service providers shall carry out an adequate policy and have adequate procedures aimed at the prevention of misuse of new technological developments and instruments for money laundering and terrorist financing. The procedures, referred to in the first sentence, shall particularly relate to the risks arising from business relationships and transactions in which the client is not physically present.

§4. The introduction of clients

Article 15

With prejudice to their own responsibility under article 3, first sections, paragraphs a, b and c, a service providers may, in deviation of article 9, first section, with respect to a client which is being introduced by a financial service provider established in Aruba or by a designated non-financial service provider as meant in numbers 1° or 2° of the definition of “designated non-financial services provider”, rely on the customer due diligence performed by that service provider in so far this

due diligence entails the elements described in article 3, first section, paragraphs a, b and c, provided that:

- a. the service provider has ensured that copies of all data and information regarding the customer due diligence performed by the third party can be made available promptly by the third party upon request of the service provider;
- b. the service provider has ensured that the third party has procedures and measures in place that enable the third party to perform customer due diligence and keep the data and information collected as a consequence of the customer due diligence in the manner described in article 33, first section, beginning, first and section full sentence.

Article 16

Article 15 shall apply equally to customers who are introduced by service providers established outside Aruba in country or jurisdiction mentioned in a list determined by regulation of the Minister.

§5. The maintaining of correspondent bank relationships by banks

Article 17

1. A bank that intends to enter into a correspondent bank relationship shall take care that:

- a. it collects sufficient information about the bank in question in order to gain a complete understanding of the nature of its business activities and to establish the reputation of the correspondent bank and the quality of the supervision exercised over this bank, including information about any investigations regarding money laundering and terrorist financing or supervisory measures taken;
- b. it assesses the procedures and measures for the prevention of money laundering and terrorist financing of the correspondent bank and ascertains that they are adequate and effective;
- c. the responsibilities of both banks in the area of the prevention and combating of money laundering and terrorist financing are recorded in writing.

2. A bank shall only enter into a new correspondent bank relationship after a decision made to this effect by members of the senior management. The bank shall inform the Bank of such decision.

3. If a correspondent bank relationship entails the use of payable-through accounts, the bank shall ascertain that the bank in question has identified its clients who have direct access to these payable-through accounts, and that it has verified their identity in accordance with the internationally accepted standards for identification and identity verification. The bank shall also ascertain that the bank in question is able upon request to provide the bank with all relevant identity data of a client, if so requested. For the purposes of the first full sentence, a payable-through account shall mean an account kept by a bank with a bank in question, to which third parties have direct access for carrying out transactions for their own benefit.

Article 18

1. It is forbidden for a bank to enter into or maintain a correspondent bank relationship with a shell bank.

2. Banks must ascertain that the financial service providers domiciled outside Aruba, with which they enter into or maintain a correspondent bank relationship, do not cause their accounts to be used by shell banks. If a situation as meant in the first sentence presents itself, the bank in question shall promptly end the correspondent bank relationship.

§6. The documents required for identification and verification

Article 19

1. If a client is a natural person, his identity shall be verified using documents, data or information from a reliable and independent source.

2. If a client is an Aruban legal person and has its domicile in Aruba or is a foreign legal person domiciled in Aruba, its identity shall be verified based on documents, data or information from a reliable and independent source.

3. If a client is a foreign legal person which is not domiciled in Aruba, its identity shall be verified based on reliable and internationally accepted documents, data, or information, or on the basis of documents, data, or information that have been recognized by law in the state of origin of the client as a valid means of identification.

4. The third section is equally applicable to a trustee and the person who otherwise exercises effective control, the settlor of the trust and the ultimate beneficiary of the assets of the trust.

5. The service provider shall verify the identity of the ultimate beneficiary using reliable and internationally accepted documents, data, or information or on the basis of documents, data, or information that have been recognized by law in the state of origin of the ultimate beneficiary as a valid means of identification, in such manner that it is convinced of the identity of the ultimate beneficiary.

6. The Minister may set rules with regard to the sort and content of the documents, data and information, meant in the first through the fifth section, as well as with regard to the verification of the identity of the clients that do not fall under first through the fifth section.

CHAPTER 3

The reporting of unusual transactions

§1. The Reporting Center

Article 20

1. There shall be a Reporting Center Unusual Transactions that shall be charged with the following duties in connection with the combating and detection of money laundering and terrorist financing:

- a. to collect, register, process, and analyze the data it obtains, in order to assess whether these data can be important for the prevention and detection of criminal offenses;
- b. to provide data in accordance with the provisions laid down by or pursuant to this State Ordinance or another state ordinance regarding the prevention and combating of money laundering and terrorist financing;
- c. to inform the person who filed a report in accordance with article 26 regarding the completion of the report, if data have been provided in accordance with paragraph b;
- d. to investigate developments in the area of money laundering and terrorist financing and the improvement of the methods to prevent and detect money laundering and terrorist financing;
- e. to give information about the types and the prevention and combat of money laundering and terrorist financing;
- f. to maintain contact and exchange data with foreign agencies which have a task that is similar to that of the Reporting Center;
- g. to provide information to the Bank regarding the reporting behavior of service providers;

i. to issue an annual report to the Minister on its activities and its intentions for the following year.

2. The Reporting Center shall be a separate and independent part of the Ministry of the Minister.

3. The Reporting Center shall be managed by a head. The appointment, suspension and dismissal of the head and other staff members shall take place after having heard the advisory committee referred to in article 21.

4. Articles 25 and 26 of the Government Accounts Ordinance 1989 (AB 1989 No. 72) shall not apply to the allocation of work, supplies, and services for the benefit of the Reporting Center.

Article 21

1. There shall be an advisory committee for the Reporting Center, which shall be charged with:

- a. making available its knowledge and expertise to the Reporting Center;
- b. advising the Minister, when requested or on its own initiative, on the setup and implementation of the reporting obligation, as well as on the adoption of the indicators referred to in article 25.

2. The advisory committee shall consist of no more than 7 persons who shall come from the following agencies:

- a. the Ministry of the Minister;
- b. the Bank;
- c. other supervisory authorities;
- d. the Public Prosecutor's Office;
- e. the Police Force Aruba.

The advisory committee may invite representatives of the business and professions categories subject to the reporting obligation to advise the advisory committee on the execution of the task, meant in the first section, in so far it concerns topics that are relevant to these the business and professions categories.

3. The members of the advisory committee shall be appointed and dismissed by the Minister on the recommendation of the agencies mentioned in the second section.

4. The representative of the Ministry of the Minister shall act as chairman of the advisory committee.

5. The advisory committee shall meet at least twice per year. For the rest, the advisory committee shall establish its own working method.

6. In the interest of a good execution of its tasks, the advisory committee may request data and information of statistical nature from the Reporting Center. The Reporting Center is obliged to supply this data and information.

§2. The processing, consultation, and provision of data
by the Reporting Center

Article 22

1. The Reporting Center shall keep a register for processing the data obtained pursuant to the application of this state ordinance.

2. No data from the register shall be provided to third parties, unless this has been provided for by rules laid down by or pursuant to this State Ordinance.

3. By State Decree containing General Administrative Orders, rules shall be laid down regarding the provision of data from the register to agencies in or outside the Kingdom, which have a task similar to that of the Reporting Center, as well as regarding the conditions under which the data are provided.

Article 23

1. For the proper performance of its duties, the Reporting Center shall be authorized to consult the registers and other sources of information of the supervisory agencies, and civil servants charged with the implementation of laws and regulations or the detection and prosecution of punishable offenses.

2. The agencies and civil servants referred to in the first section are obligated to allow the consultation by the Reporting Center as meant in the first section.

3. For the purposes of adequate consultation, referred to in the first section, the head of the Reporting Center may enter into a consultation covenant with the agencies or civil servants meant in that section, which shall be submitted for approval to the Minister and the minister most concerned in advance.

Article 24

When requested or on its own initiative, the Reporting Center shall provide the following data to the agencies and civil servants charged with the detection and prosecution of criminal offenses:

- a. data from which a reasonable suspicion arises that a certain person is guilty of money laundering or terrorist financing, or both criminal offenses;
- b. data of which it can be reasonably suspected that they are of relevance to the prevention or detection of money laundering or terrorist financing;
- c. data of which it can be reasonably suspected that they are of relevance to the prevention or detection of criminal offenses, which, given their purpose or the relation in which they have been or can be committed, constitute a serious breach of the legal order.

§3. The obligation to report

Article 25

The Minister shall, after consulting with the Reporting Center and, if necessary, per groups of service provider or categories of transactions to be distinguished, adopt indicators based on which it shall be assessed whether a transaction is considered an unusual transaction.

Article 26

1. A service provider shall report a carried out or intended unusual transaction without delay after the unusual nature of the transaction has become known to it to the Reporting Center.

2. Together with a report as meant in the first section, the service provider concerned shall provide as much as possible the following data:

- a. the identity of the client;
- b. the nature and number of the identity document of the client;
- c. the nature, time, and place of the transaction;
- d. the amount and designated use and origin of the money, securities, precious metals, or other values involved in a transaction;
- e. the circumstances based on which the transaction is considered unusual;
- f. if it concerns a transaction regarding a high value object, a description of the object in question;

g. the indicator or indicators pursuant to which the transaction has been designated as unusual.

3. By State Decree containing General Administrative Measures, other data may be stated to be provided together with a report as mentioned in the first section.

Article 27

1. With a view on the execution of the tasks, mentioned in article 20, first section, the Reporting Center may request the provision of further data or information from a service provider.

2. The person who has been requested in accordance with the first section to provide further data or information, shall provide these in writing, and, in urgent cases determined as such by the Reporting Center, orally to the Reporting Center, within the period set by the Reporting Center.

3. Without prejudice to article 48, third section, the head of the Reporting Center may with regard to a service provider:

- a. who has made a report which is not in accordance with article 26, second section,
- b. who has not or has insufficiently provided the data and information pursuant to the first section,

issue a direction in order to accomplish that, within a period set by the head of the Reporting Center, the report does still comply with article 26, second section, respectively that the data and information requested pursuant to the first section is provided as indicated.

4. With regard to a service provider who has not or has insufficiently given effect to an indication as meant in the third section, paragraph b, the head of the Reporting Center and the civil servants employed at the Reporting Center who are designated by State Decree, are authorized, only to the extent reasonably required for the collection of data and information, meant in the first section, to:

- a. to demand inspection of all business books, documents, and other data carriers and to make transcripts or copies thereof;
- b. to enter all places, except for dwellings without the express permission of the resident.

The third section, second full sentence, and article 35, fourth up to and including the seventh section, are equally applicable.

Article 28

1. The head of the Reporting Center shall determine the manner in which reports shall be filed, and the data and information, asked pursuant to article 27, first section, shall be provided.

2. A service provider shall always comply with a regulation issued by virtue of the first section.

§4. Indemnity against civil and criminal liability

Article 29

1. Data or information provided in accordance with articles 26 or 27, second section, may not be used as a basis for, or for the benefit of a criminal investigation or prosecution on suspicion of, or as evidence regarding a charge of money laundering or terrorist financing by the service provider that provided these data or information.

2. Data or information provided on the reasonable supposition that articles 26 or 27, second section, are implemented, may not be used as a basis for, or for the benefit of a criminal investigation or prosecution on suspicion of, or as evidence regarding a charge of violation of articles 285 or 286 of the Penal Code of Aruba.

3. The first and second section shall apply equally to the persons employed by the service provider that provided data or information in accordance with articles 26 or 27 and cooperated therein.

Article 30

1. A service provider that has filed a report in good faith pursuant to article 26 or that has provided data or information to the Reporting Center pursuant to article 27, second section, shall not be liable for any damage suffered by a third party in consequence thereof.

2. The first section shall apply equally to the persons employed by the service provider that provided data or information in accordance with articles 26 or 27, second section, and cooperated therein.

§5. Confidentiality and administrative information obligation

Article 31

1. The person who files a report pursuant to article 26, or who provides further data or information pursuant to article 27, second section, is obligated to observe confidentiality, except if the necessity to disclose arises from the purpose of this State Ordinance.

2. The person who obtains data or information pursuant to article 20, first section, paragraph c, is obligated to maintain confidentiality with regard to these data or information.

3. The first and second section shall apply mutatis mutandis to anybody who acquires knowledge of a report, of the fact that a report may give rise to a further investigation or of the provision of additional data or information as meant in article 27, second section, and knows or should reasonably suspect that a confidentiality obligation as meant in the first or second section rests on the service provider.

Article 32

If the persons charged with the legal supervision of financial markets or designated non-service providers discover facts in the performance of their duties, which may point to money laundering or terrorist financing, they shall inform the Reporting Center, if necessary in deviation of the applicable statutory confidentiality provisions.

CHAPTER 4

The keeping of data by service providers obtained pursuant to this State Ordinance

Article 33

1. A service provider shall keep the data and information acquired pursuant to Chapter 2 in an accessible way for a period of at least ten years after the date of termination of the business relationship, or until at least ten years after carrying out the transaction in question. The keeping of records, referred to in the first full sentence, shall take place in such manner that separate transactions can be reconstructed at all times and be submitted to the competent authorities on first demand. Part of the data, meant in the first full sentence, are in any case:

a. of natural persons:

- 1° the surname, given names, date and place of birth, address, and domicile and/or place of business of the client and the ultimate beneficiary and of the person acting on behalf of this natural person, or a copy of the document containing a number identifying a person, and based on which identification took place;
 - 2° the nature, number, and date and place of issue of the document used to verify the identity;
 - 3° the nature and date of the transaction;
 - 4° the type and quantity of the currency involved in the transaction;
 - 5° the type and number of the account used during the transaction;
 - 6° all account files and business correspondence;
- b. of legal persons incorporated under Aruban law:
- 1° the legal form, name under the Articles of Incorporation, the trade name, address, and, if the legal person is listed with the Chamber of Commerce and Industry, the registration number of the Chamber of Commerce and Industry, and the manner in which the identity has been verified;
 - 2° of the persons acting on behalf of the legal person and of the ultimate beneficiary, the surname, given names, and date of birth;
 - 3° the data referred to in paragraph a, under 3 through 6;
- c. of foreign legal persons and comparable entities:
- 1° the documents used to verify the identity;
 - 2° of the persons acting on behalf of the legal person and of the ultimate beneficiary, the family name, given names, and date of birth;
 - 3° the data referred to in paragraph a, under 3 through 6;
- d. of trusts:
- 1° the documents used to verify the identity of the trustee or the person exercising effective control of the trust, the settlor and of the beneficiary of the assets of the trust;
 - 2° the data, meant in paragraph a, under 3 through 6.
2. As regards special cases, the Bank may determine that the record keeping, meant in the first section, shall take place for a longer period to be determined by it.

Article 34

A service provider shall keep the data, referred to in article 26, second section, in an accessible manner for a period of at least ten years

after the date of filing the report. Article 33, first section, second full sentence, and second section, shall apply by analogy.

CHAPTER 5
Supervision and administrative enforcement

§1. Supervision

Article 35

1. The persons employed by the Bank and designated for this purpose by state decree shall be charged with supervising compliance with the provisions laid down by or pursuant to this State Ordinance. Such state decree shall be published in the Official Paper of Aruba.

2. The persons designated pursuant to the first section may exercise the supervision in a risk-oriented manner. They shall report on the exercise of the powers mentioned in the third section to the President of the Bank, or to the executives within the Bank to be designated in writing by the President.

3. Only to the extent reasonably required for the performance of their duties, the persons designated pursuant to the first section shall be authorized:

- a. to request all information;
- b. to demand inspection of all business books, documents, and other data carriers and to make transcripts or copies thereof;
- c. to enter all places, except for dwellings without the express permission of the resident.

4. If necessary, access to a place as referred to in the third section, letter d, shall be gained with the aid of the police.

5. The State Decree General Provisions Exercise of Supervision (AB 1998 No. 70) or the state decree replacing it shall apply to the manner in which the persons designated pursuant to the first section perform their duties.

6. Each person is obligated to grant the persons designated pursuant to the first paragraph all cooperation demanded pursuant to the third section.

7. If a service provider is an attorney, civil notary, tax consultant, or an accountant, he cannot invoke professional secrecy or a professional right of non-disclosure laid down by law or otherwise with regard to the application of the powers, mentioned in the third paragraph, in so far it concerns one or more of the circumstances, described in Article 6,

second section, paragraphs a, b or g. Before applying the powers, meant in the third section, paragraphs b and c, the persons designated pursuant to the first section shall inform the Dean of the Bar Association respectively a representative of the relevant professional organization. Upon request of the attorney, civil notary, tax consultant, or accountant in question the Dean of the Bar Association respectively a representative of the relevant professional organization may be present in situ at the application of the powers, meant in the third section, paragraphs b and c.

Article 36

1. The Bank shall be authorized to exchange data and information obtained as a result of performing the duty referred to in article 35, first section, with agencies designated by the public authorities in foreign countries:

- a. which are charged with supervising the compliance with laws and regulations regarding the prevention and combating of money laundering and terrorist financing;
- b. which are charged with supervising persons and entities active on the financial markets.

2. At the request of an agency as referred to in the first section, the Bank may request a service provider to provide data and information or to conduct an investigation or cause same to be conducted at a service provider, or at everyone as regards whom it can be reasonably suspected that he disposes of data and information that may reasonably be of importance to the requesting agency.

3. The person who has been requested to provide data or information as referred to in the second section shall provide these data or information within a reasonable period to be set by the Bank.

4. The person who is subject to an investigation as referred to in the second section shall grant all cooperation necessary for the proper conduct of this investigation. Article 35, third and fourth section, shall apply *mutatis mutandis*.

5. The Bank may allow an official of an agency as referred to in the first section to participate in the implementation of a request as referred to in that section. The official meant in the first sentence shall observe the instructions of the Bank's employee charged with implementing the request. The requirement, referred to in the fourth section, shall also apply to the official mentioned in the first sentence.

§2. Administrative enforcement

Article 37

1. For a violation of the regulations laid down by or pursuant to articles 3 through 6, first, second or fourth section, 7, 8, first section, 9, 10, second or third section, 11 through 19, 26, 27, 31, 33, 34, 35, sixth section, 36, fourth section, 45 through 47, 48, second and third section, second full sentence, 50, first, second and fourth section and 54, the Bank may impose a penalty charge order.

2. For the violations referred to in the first section, the Bank may also impose an administrative fine not exceeding Afl. 1,000,000.- per separate violation.

3. Violations can be committed by natural persons and legal entities. Article 53, second and third section, of the Penal Code of Aruba shall apply *mutatis mutandis*.

4. The Bank shall adopt guidelines for the exercise of the powers, referred to in the first and second section, and shall record them in a policy document. The policy document shall at any rate contain a description of the procedures to be followed when exercising the powers, referred to in the first and second section, as well as the bases for determining the amount of the penalty order and the administrative penalty per violation or categories of violations. The policy document, referred to in the first sentence, and all amendments introduced to same afterwards shall be published in a manner to be determined by the Bank.

5. By State Decree containing General Administrative Measures rules shall be set with regard to the basis for the determination of the penalty charge order and administrative fine per violation. The violations shall be arranged in categories in order of the severity of the violation with the corresponding base amounts, minimum amounts and maximum amounts.

6. Forfeited penalty charge orders and administrative fines shall accrue to the Bank.

Article 38

1. If on the moment of the commission of a violation five years have not yet lapsed since an administrative fine was imposed on the violator for the same violation, the amount of the administrative fine, referred to in article 37, second section, shall be doubled for each separate violation.

2. Notwithstanding article 37, second section, the Bank may set the amount of the administrative fine at twice the amount of the gain the violator obtained as a result of the violation, if this gain exceeds Afl. 1,000,000.-.

Article 38a

1. If the Bank has the intention to impose an administrative fine, he shall inform the service provider in question of this under mention of the grounds upon which this intention rest.

2. The Bank shall allow the service provider in question the opportunity to present his view orally or in writing within a reasonable period, before the administrative fine is imposed by written decision.

3. If after that the service provider in question has presented his view the Bank decides that it will not impose an administrative fine, the Bank shall inform the service provider in question in writing.

Article 39

Anyone in respect of whom the Bank has performed an act from which he can reasonably infer that an administrative fine will be imposed on him for a violation, is not obligated to make any statement in respect thereof. He shall be notified hereof before being requested to provide information.

Article 40

1. The administrative fine shall be due within six weeks of the date of the decision by which it was imposed.

2. The administrative fine shall be augmented by the statutory interest as of the day on which six weeks have expired since the communication of the decision.

Article 41

1. The authority to impose an administrative fine will lapse:
 - a. if prosecution has been initiated on account of the violation, and the examination in court has commenced, or the right to prosecute has lapsed pursuant to Article 76 of the Penal Code of Aruba;
 - b. three years after the day on which the non-compliance with the regulation was established.

2. The period, referred to in the first section, paragraph b, will be interrupted by a communication of the decision by which the administrative fine was imposed.

3. The right to prosecute shall lapse, if the person concerned has already been imposed an administrative fine for the same offense.

Article 42

1. The Bank may upon request of the violator cancel a penalty charge order, suspend its effective period for a certain period or reduce the penalty charge order in case of definitive or temporary whole or partial inability of the violator to comply with his obligations

2. The Bank may also cancel a penalty charge order upon request of a violator if the decision has been in force for year without the penalty charge having been forfeited.

Article 43

The Bank shall record the acts performed within the framework of an investigation, prior to imposing an administrative fine, stating the persons who performed these acts.

Article 44

1. If a forfeited penalty charge order or an administrative fine has not been paid within the period set by the Bank, the violator shall be demanded in writing to pay the penalty charge order or the administrative fine as yet within twee weeks, augmented by the costs of the demand.

2. In the absence of payment, the amount and the costs, referred to in the first paragraph, shall be augmented by the collection costs, collected by the Bank by writ of execution.

3. The writ of execution shall be served trough a writ as meant in the Code of Civil Procedure of Aruba and shall constitute grounds for execution, which may be carried out under application of the provisions of this Code.

4. The writ of execution shall in any case mention:

- a. at the beginning the words “writ of execution”;
- b. the amount of the collectible head sum, augmented with the statutory interest;

- c. the decision or the legal provision upon which the indebted amount is grounded;
- d. the costs of the demand and of the writ of execution
- e. that the writ can be executed at the expense of the violator.

4. For a period of six weeks after the date of service, the writ of execution may be objected to. Objection is made against the Bank at the court of first instance and in the manner prescribed for the filing of demands. The objection, if done in time and in the prescribed manner shall suspend the enforcement of the writ of execution.

CHAPTER 6

Procedures and measures for the prevention and combat of money laundering and terrorist financing

Article 45

1. A service provider who has a branch or subsidiary outside the Aruba shall take care that the branch or subsidiary applies as much as possible the provisions set by or by virtue of this state ordinance and the internationally accepted standards for the prevention and combat of money laundering and terrorist financing.

2. The first section shall apply in particular with regard to branches and subsidiaries in countries and jurisdictions that do not or insufficiently apply the internationally accepted standards for the prevention and combat of money laundering and terrorist financing.

3. If the legal system of the country or jurisdiction in question does not allow the application of the first section, the service provider shall inform the Bank of this and shall take, if necessary in consultation with the Bank, measures to counter the risks of money laundering and terrorist financing.

Article 46

1. Service providers shall carry out an adequate policy and have in writing procedures and measures, in particular for the application of the Chapters 2, 3 and 4 of this state ordinance, which are aimed at the prevention and combat of money laundering and terrorist financing.

2. The procedures and measures, meant in the first section, shall in any case regard the internal organization and internal control of the service provider, the recruitment, background, education, guidance and ongoing training of the relevant staff, the application of the customer

due diligence, the recording of data and information, the internal decision making process for the reporting of unusual transactions, as well as the periodical evaluation of the effectiveness of those procedures and measures.

3. Service providers shall carry out periodical evaluations in order to assess if and to what extent they are vulnerable to money laundering and terrorist financing because of their activities and operations.

4. The findings of the periodical evaluations, meant in the second and the third section, shall be recorded in writing.

5. If the limited size of the service provider gives reason to that effect, the activities, meant in the first and third section, may be outsourced. Such an outsourcing shall be recorded.

Article 47

1. Service providers shall have for the benefit of their organization a person in charge with the care for the compliance with the laws and regulations in the area of the prevention and combat of money laundering and terrorist financing.

2. Services providers shall have at least one person in their employment in charge with the internal receipt and assessment of potential unusual transactions reports and the reporting of unusual transactions to the Reporting Center.

3. A service provider shall inform the Reporting Center and the Bank of the appointment of the persons, meant in the first and second section, within a month after such an appointment.

Article 48

1. If necessary per category of service providers, the Bank may issue directives and shall provide information regarding the application of Chapters 2, 3, 4, and 6 of this state ordinance. A directive may also pertain to the application of other legal provisions, in so far this is necessary for the realization of the objectives of this state ordinance. If a directive is related to the application of Chapter 3 the Bank shall have prior consultation with the Reporting Center.

2. Service providers shall observe a directive or individual instruction as referred to in the first section.

3. The Bank may issue instructions to an individual service provider for it to follow a certain behavior with respect to certain topics to be mentioned explicitly, in order to accomplish that the service provider

will comply with the provisions of this state ordinance within the timeframe to be determined by the Bank. The second full sentence of the first section shall equally apply.

4. In deviation of article 3 of the State Ordinance Official Languages (AB 2003 no. 38), the directives and instructions, meant in the first and third section, may be issued in English only.

CHAPTER 7 Other provisions

Article 49

Anyone who performs or performed any duty arising from the application of this State Ordinance or from decisions made pursuant to this State Ordinance shall be prohibited from making further or other use of, or making known further or otherwise data or information provided or received pursuant to this State Ordinance, other than required for the performance of his duties or pursuant to a state ordinance.

Article 50

1. Financial service providers which are not supervised by the Bank, and designated non-financial services providers, who conduct activities as described in Articles 1, first section, and 6, second section, paragraphs b through f respectively, shall report to the Bank.

2. The report, referred to in the first section, shall be accompanied by data and information regarding the identity, trade name and address of the persons who manage the service provider, and decide on its policy.

3. The Bank shall establish the model for the reporting, meant in the first section. The Bank shall take care that a copy of a report is sent to the Reporting Center.

4. The service provider whom it may concern shall inform the Bank if a change arises in the information and data, meant in the second section.

5. The Bank shall keep a register of the service providers who have reported to it pursuant to the first section. The Bank shall determine the format of the register, meant in the first full sentence, and shall publish its contents in a digital way.

Article 51

1. By or by virtue of a State Decree Containing General Administrative Orders, rules shall be set regarding the coverage of expenses by service providers, not being service providers under legal supervision of the Bank, as compensation for the coverage of the expenses incurred by the Bank in the course of its activities based on this state ordinance regarding these service providers.

2. When determining the amount of the coverage consideration shall also be given to the costs related to the supervision of the provisions set by or by virtue of this State Ordinance with regard to these service providers.

3. The amount, meant in the first section, shall be paid within no more than three months after the calendar year to which it is related, has passed.

4. Article 44 shall equally apply.

Article 52

The Bank shall report yearly before July 1 to the Minister on the activities it has carried out within the framework of this state ordinance in the previous calendar year. The Minister shall send a copy of the report, meant in the first full sentence, promptly to Parliament.

Article 53

The amounts mentioned in articles 6, second section, paragraph b, and second section, paragraphs e and f, and 10, first section, paragraph b, number 1, may be changed by State Decree Containing General Administrative Orders.

Article 54

By State Decree containing general administrative orders, more detailed rules can be set for the implementation of this state ordinance.

Article 55

The Minister shall send within a year after the enactment of this state ordinance, and then subsequently each four years, a report to Parliament on the effects and effectiveness of this state ordinance.

CHAPTER 8
Penal provision

Article 56

1. Violation of the regulations laid down by or pursuant to Articles 3 through 6, first, second or fourth section, 7, 8, first section, 9, 10, second or third section, 11 through 19, 26, 27, 31, 33, 34, 35, sixth section, 36, fourth section, 45 through 47, 48, second and third section, second full sentence, 50, first, second and fourth section and 54, if committed intentionally, shall be punished either with imprisonment not exceeding six years, or with a fine not exceeding Afl. 2,500,000.-, or with both punishments.

2. Violation of the regulations set forth by or pursuant to Articles 3 through 6, first, second or fourth section, 7, 8, first section, 9, 10, second or third section, 11 through 19, 26, 27, 31, 33, 34, 35, sixth section, 37, fourth section, 45 through 47, 48, second and third section, second full sentence, 50, first, second and fourth section and 54, if not committed intentionally, shall be punished either with imprisonment not exceeding one year, or with a fine not exceeding Afl. 1,000,000.-, or with both punishments.

3. The offenses referred to in the first section are criminal offenses; the offenses referred to in the second section are summary offenses.

CHAPTER 9
Entry into effect and official title

Article 55

1. This State Ordinance shall enter into effect on a date to be determined by or pursuant to a state ordinance.

2. It may be cited as State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing.

Given in Oranjestad,

The Minister of Finance, Communication, Public Utilities

and Energy,

The Minister of Justice and Education,

The Minister of General Affairs,

The Minister of Economic Affairs, Social Affairs
and Culture,