Unofficial and not binding translation

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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 on the Prevention and Combating of Money Laundering and Terrorist Financing)

EXPLANATORY MEMORANDUM

General explanatory notes

§1. Introduction

Since 1993, Aruba has legislation aimed at combating money laundering. In that year, the State Ordinance on the Criminalization of Money Laundering ("AB" [*Official Bulletin*] 1993 No. 70) entered into force, which criminalized the acquisition, possession and transfer of money, valuable papers or claims obtained by crime as money laundering. This State Ordinance was the result of the Recommendations of the Financial Action Task Force (hereinafter referred to as: the FATF). This international organization, of which Aruba is a member through the Kingdom of the Netherlands, was established in 1989 with the aim of developing and promoting instruments to combat money laundering. To this end, 40 Recommendations were developed in 1990 to prevent and combat the laundering of money obtained by criminal means. Subsequently, as a result of certain events, these Recommendations were substantially amended a number of times. The terrorist attacks in the United States on September 11, 2001 are particularly worth mentioning. As a result

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of these attacks, the mandate of the FATF was extended to include the fight against terrorist financing, and 8 Special Recommendations on Terrorist Financing - and later 9 - were added to the original 40 Recommendations. In 2003, the 40 Recommendations themselves were revised as a result of new developments in the area of money laundering and terrorist financing. Currently, the so-called 40 + 9 FATF Recommendations and the corresponding Interpretative Notes and the Methodology 2004 are the preferred international standard for the prevention and combating of money laundering and terrorist financing and for the assessment in that context of the (legal) measures taken by countries and jurisdictions to prevent and combat money laundering and terrorist financing. Further in this Explanatory Memorandum, all measures and provisions to prevent and combat money laundering and terrorist financing will be referred to by the internationally accepted term "AML/CFT" (anti-money laundering/combating of the financing of terrorism).

In line with the approach adopted for the State Ordinance on the Criminalization of Money Laundering, the State Ordinance on Identification in the Provision of Services (AB 1995 No. 86; hereinafter referred to as: the "LID") and the State Ordinance on the Obligation to Report Unusual Transactions (AB 1996 No. 85; hereinafter referred to as: the "LMOT") were introduced on February 1, 1996. The LID provides for the mandatory identification of clients when certain services are provided by financial service providers and non-financial service providers mentioned in the LID. The LMOT provides for the mandatory reporting of unusual transactions by service providers when providing the financial and non-financial services defined in the LMOT. Together, these State Ordinances and the implementing regulations based thereon constitute the basis of the Aruban system for the prevention and combating of money laundering and terrorist financing. As a result of adjustments to the 40 + 9 FATF Recommendations and experience gained, these State Ordinances were amended several times. The last amendment took place when the State Ordinance amending the State Ordinance on Identification in the Provision of Financial Services (AB 1995 No. 86), the State Ordinance on the Obligation to Report Unusual Transactions (AB 1995 No. 85), the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16), the State Ordinance on the Supervision of the Insurance Industry (AB 2000 No. 82) and the State Ordinance on the Supervision of Money Transfer Companies (AB 2003 No. 60) (extension of the

identification and reporting obligation; strengthening supervision and enforcement of financial supervisory legislation; see AB 2009 No. 14) entered into force on February 5, 2009. By means of this amending ordinance, first of all the identification obligation and the reporting obligation were extended to include a number of so-called DNFBPs (Designated Non-Financial Businesses and Professions), namely lawyers, civil-law notaries, accountants, tax consultants and certain traders in high-value goods, such as real estate agents, jewelers and car dealers. Secondly, administrative sanctions were introduced in the LID and the LMOT in order to strengthen the enforcement of both State Ordinances and the implementing regulations based thereon. Both amendments were related to the FATF Recommendations prescribing the conduct of customer due diligence and the mandatory reporting of suspicious transactions by the DNFBPs, as well as the application of proportionate, effective and dissuasive sanctions.

Other areas of Aruban legislation and regulations were also amended, and new legislation and regulations were introduced to strengthen Aruba's AML/CFT framework. In this respect, the State Ordinance on the Obligation to Report the Importation and Exportation of Cash (AB 2000 No. 27), the State Ordinance on the Supervision of Money Transfer Companies (AB 2003 No. 60), the State Ordinance of August 12, 2004 (included in AB 2004 No. 51) amending the Criminal Code of Aruba (criminalization of terrorism and terrorist financing and related criminal offenses), the State Ordinance of April 19, 2006 (included in AB 2006 No. 11) amending the Criminal Code of Aruba (the combating of human trafficking and smuggling and the introduction of new criminalization provisions for money laundering), the Sanctions Ordinance 2006 (AB 2007 No. 24), the State Ordinance on the Supervision of Trust Offices (AB 2009 No. 13), the State Ordinance of February 19, 2010 (included in AB 2010 No. 6) amending the Criminal Code of Aruba (AB 1991 No. GT 50) and the State Ordinance on the Obligation to Report Unusual Transactions (AB 1995 No. 85) (revision criminalization terrorist financing; extension of the circle of supervisors FIU), the Sanctions Decree for the Combating of Terrorism and Terrorist Financing (AB 2010 No. 27) and the State Decree extending the Obligation to Report when Importing and Exporting Cash to Documents Payable to Bearer (AB 2010 No. 28) are worth mentioning.

§2. The background of this draft

An important part of the work of the FATF consists of the periodic evaluations of the AML/CFT systems of the FATF member states. During an evaluation, the AML/CFT system of the country in question is thoroughly tested against the 40 + 9 FATF Recommendations, using the Methodology 2004 and Interpretative Notes to a number of Recommendations. These - together with the 40 + 9 Recommendations - also form part of the assessment framework. The results are laid down in a so-called Mutual Evaluation Report (MER), in which the extent to which a country complies with each of the 40 + 9 Recommendations is indicated. For a detailed explanation of the evaluation process and the assessment framework used, please refer to the FATF website www.fatf-gafi.org.

Aruba was evaluated for the third time in the period as of the end of September 2008 until mid-October 2009. This resulted in the MER adopted at the FATF plenary meeting of October 14, 2009. The MER identified important shortcomings in Aruba's AML/CFT system. Insofar as the LID and the LMOT are concerned, the following shortcomings are worth mentioning:

- the lack of sufficient coherence between the LID and the LMOT, in particular as regards the different categories of financial service providers that fall under the scope of these State Ordinances;
- the fact that the LID does not apply to certain financial services mentioned by the FATF, due to which a number of financial service providers operating in Aruba, such as investment institutions and insurance brokers, fall beyond the scope of the LID;
- the absence of provisions in the LID concerning the identification and verification of the ultimate beneficial owner (UBO) when conducting transactions or maintaining business relationships;
- the absence of adequate provisions in the LID or elsewhere concerning the identification and verification of Aruban and foreign legal entities;
- the absence of adequate rules in the LID concerning the control and monitoring of existing business relationships;
- the absence of effective, proportionate and dissuasive sanctions for the enforcement of both the LID and the LMOT;

- the absence of indicators for the reporting of unusual transactions carried out by certain financial service providers, effectively excluding these service providers from the reporting obligation;
- the absence in the LMOT of civil-law and criminal-law immunity provisions that fully comply with the FATF Recommendations in question;
- the possible undermining of the confidentiality obligation laid down in Article 20 of the LMOT by the right of access for third parties laid in Article 23 of the LMOT;
- the possible undermining of the required independent position of the Financial Intelligence Unit (hereinafter referred to as: the FIU) due to the composition and duties of the monitoring committee referred to in Article 16, first paragraph, of the LMOT;
- the inefficient distribution of supervision between the FIU and the Bank;
- the lack of an adequate framework for exchanging information with foreign supervisors.

Addressing these shortcomings requires substantial amendments to the LID and the LMOT and to the various implementing regulations based thereon. Account should be taken of the fact that both the LID and the LMOT have already been amended a number of times. The most recent example of this is aforementioned amending ordinance, which provides for the extension of the identification and reporting obligation and the strengthening of supervision and enforcement of financial supervisory legislation. Despite their common objective, their divergent systems have been maintained, resulting in *inter alia* the existence of different circles of service providers to which the identification obligation and the reporting obligation apply. However, the current situation may also be a hindrance to a rapid understanding of the statutory provisions concerning the identification of clients and the reporting of unusual transactions (e.g. by the service providers to whom these provisions apply). To this end, two state ordinances must be consulted, which differ from each other as to design, as well as, depending on the type of service provider or the nature of the service, the State Ordinance on the Designation of Financial Services (implementing the LID and the LMOT; AB 2000 No. 23), the State Ordinance on Further Identification Requirements (implementing the LID; AB 1996 No. 46), the Regulations concerning the Identification Requirements for Legal Entities (implementing the LID; AB 1999 No. 4), the

Ministerial Order implementing number 7° of the definition of the term “service” in Article 1, first paragraph, of the LID (AB 1996 No. 57), the State Decree on the Register Regulations Financial Intelligence Unit (implementing the LMOT; AB 1999 No. 50) and the five indicator regulations for financial institutions, life insurance companies, casinos, independent professionals and traders in high-value goods (all implementing the LMOT; see AB 1999 No. 19, AB 2002 No. 29, AB 2002 No. 12, AB 2009 No. 18 and AB 2009 No. 19, respectively). In addition, the financial service providers supervised by the CBA are obligated to comply with the AML/CFT and customer due diligence (CDD) directives of the CBA applicable to them, in addition to the LID, when conducting CDD vis-à-vis their clients. This concerns the Customer Due Diligence Directive for Banks, the Directive for the Issue of Multipurpose Prepaid Money Cards, the Directive for Insurance Companies on Combating Money Laundering and Terrorist Financing and the Directive on Business Operations and the Combating of Money Laundering issued by the CBA pursuant to Articles 15, first paragraph, and 19a of the State Ordinance on the Supervision of the Credit System, Article 10, first paragraph, subparagraph c, of the State Ordinance on the Supervision of the Insurance Industry and Article 6, first paragraph, of the State Ordinance on the Supervision of Money Transfer Companies, respectively. It should be noted that the directives for credit institutions and insurance companies are based on state ordinances of which the primary objective is to guarantee the financial soundness of these companies, and which, in that context, provide the Bank with instruments for the exercise of prudential supervision. This is somewhat different for money transfer companies, as the main objective of the State Ordinance on the Supervision of Money Transfer Companies is to protect and promote the integrity of these companies in order to prevent and combat money laundering and terrorist financing. However, here too, the directives form part of a larger set of regulations for money transfer companies in the area of market access, supervision and enforcement.

As a result, the Government has decided not to address aforementioned shortcomings by means of amendments to aforementioned statutory regulations - which will in any case be substantial and extensive - but to introduce an entirely new state ordinance. This new state ordinance will cover both the identification and verification in the provision of services by financial service providers and DNFBPs - contained in the customer due diligence to

be discussed below - and the mandatory reporting of unusual transactions in the provision of those services. In connection with this, this new state ordinance will also contain provisions for the retention of data and the supervision and enforcement with regard to the application of customer due diligence and the reporting obligation. The Government is of the opinion that this draft will contribute significantly to strengthening the integrity and stability of (financial) institutions and will increase confidence in the financial system as a whole. After all, attempts by criminals and their accomplices either to conceal the proceeds of crime or to use lawfully or unlawfully obtained funds for terrorist purposes can seriously jeopardize this confidence.

§ 3. The starting points and main features of this draft

Therefore, the purpose of this draft is to replace the LID and the LMOT by a single state ordinance laying down rules on the customer due diligence to be conducted by financial enterprises and certain non-financial enterprises and professional groups and on the reporting by these service providers of unusual transactions to the FIU. The recommendations laid down in the MER and the experience gained with the LID and the LMOT were explicitly taken into account in the drafting hereof. To this end, this draft introduces the generic term “service provider”, which, in turn, can be distinguished into “financial service provider” and “designated non-financial service provider”. The starting point is that the provisions of this draft and of the implementing regulations to be based thereon will apply as equally as possible to both financial and designated non-financial service providers, in particular as regards the application of Chapter 2 that concerns customer due diligence. In this context, reference can be made to the FATF Recommendations concerning the measures to be taken by financial and non-financial enterprises and professional groups to prevent and combat money laundering and terrorist financing. These are:

- the conduct of CDD and the retention of data: Recommendations 4 through 12;
- the reporting of suspicious transactions and compliance with the reporting obligation: Recommendations 13 through 16;
- taking other measures to deter money laundering and terrorist financing, such as effective, proportionate and dissuasive criminal-law, civil-law and administrative-law sanctions and a

ban on maintaining business relationships with so-called shell banks: Recommendations 17 through 20;
- taking measures against countries that do not or insufficiently comply with the FATF Recommendations: Recommendations 21 and 22;
- regulating and supervising financial and designated non-financial service providers: Recommendations 23, 24 and 25.

In connection with the above, the term financial service provider means in the Methodology 2004: any person or entity who conducts as a business one or more of the following activities or operations for or on behalf of a client:

a. acceptance of deposits and other repayable funds from the public;
b. lending;
c. financial leasing (except for consumer-related leasing);
d. the transfer of money or valuables;
e. the issue and management of means of payment (e.g. credit cards, debit cards, checks, traveler's checks, money orders, banker's checks and electronic money);
f. the provision of guarantees and commitments.
g. trading in:
    - money market instruments (checks, bills, CDs, derivatives etc.);
    - foreign exchange;
    - exchange, interest rate and index instruments;
    - transferable securities;
    - commodities futures trading;
h. the participation in securities issues and the provision of financial services related to such issues;
i. individual and collective portfolio management;
j. the safekeeping and administration of cash or liquid securities for the benefit of third parties;
k. otherwise investing, administering or managing funds or money for the benefit of third parties;
l. underwriting and placement of life insurance and other investment-related insurance;
m. the exchange of money and currency.

As regards to the service mentioned above in subparagraph a, it should be noted that this also includes so-called "private banking", while lending also includes the provision of consumer credit, mortgage credit, factoring (with or without recourse) and the financing of commercial transactions (including forfaiting).

By means of Recommendation 12, CDD Recommendations 5, 6 and 8 through 11 are declared applicable mutatis mutandis to the DNFBPs (in this draft, they are referred to by the term “designated non-financial service providers”), if certain circumstances arise. Recommendation 16 does the same with regard to the obligation to report suspicious transactions. The Methodology 2004 considers the following persons and institutions to be designated non-financial service providers:

a. casinos (including internet casinos);
b. real estate agents.
c. dealers in precious metals;
d. dealers in precious stones;
e. lawyers, civil-law notaries, other independent legal professionals and accountants;
f. trust offices, which refers to all persons and companies that are not covered elsewhere under the FATF Recommendations, and which, as a business, provide any of the following services to third parties:
    - acting as an incorporator of legal entities;
    - acting as (or arranging for others to act as) a director or secretary of a company, a partner of a corporation or partnership or holding a similar position in another legal entity;
    - providing a registered office, business address or accommodation, correspondence or administrative address for a company, a corporation or partnership or any other legal entity or type of organization;
    - acting as (or arranging for others to act as) a trustee of an express trust;
    - acting (or arranging for others to act) on behalf of a shareholder.

As regards lawyers, civil-law notaries, other independent legal professionals and accountants, it must also be noted that this refers to independent professionals, partners and professionals employed by professional firms and not the professionals employed by other types of companies or professionals working for government agencies.

The above shows a clear difference between the scope of application of the definitions of “financial services provider” and

“DNFBP” used in the Methodology. As regards the financial service provider, the scope of application is open: it refers to anyone (“any person or entity”) providing one or more of the services mentioned therein. As a result of such a scope of application, the preventive measures set out in FATF Recommendations 4 through 25 are applicable to any potential financial service provider. This is related to the fact that the financial sector plays a key role in preventing and combating money laundering and terrorist financing, as all forms of money laundering and terrorist financing require the cooperation of the financial sector at any time. This applies to a lesser extent to the designated non-financial service providers, as the provision of financial services or services that have aspects in common with financial services is not part of their core activities. Only if they provide certain services having the characteristics of one or more financial services or that are related to them, or if they carry out financial transactions of a certain value for the benefit of a client, should the preventive measures applicable to financial service providers - under certain conditions - also apply to them.

This system is also followed in this draft. This also rectifies another shortcoming of the LID, namely that the scope of this State Ordinance is too limited, since a number of financial service providers also active in Aruba fall outside its scope of application. As a result, an important number of financial services mentioned in the FATF Methodology 2004 are not covered by the LID and the State Decree designating Financial Services. Notable examples are the electronic stock exchanges, investment institutions and insurance brokers. This problem occurs to a lesser extent in the case of the LMOT, as, pursuant to its Article 11, first paragraph, this State Ordinance is addressed to anyone who provides a service in a professional or commercial capacity within the meaning of Article 1. However, the LMOT also contains an exhaustive list of financial services that is more limited than that of the FATF Methodology 2004. Contrary to the LID and the LMOT, this draft does not list the different financial service providers but contains a definition of the concept of financial service that corresponds to that of the Methodology 2004. Thus, any person or institution providing a financial service is brought under the scope of this draft and the rules arising therefrom. This applies regardless of whether that person or institution is otherwise regulated or subject to external supervision. However, as regards the designated non-financial service providers, a list of the different categories falling under the scope of this draft

is provided. This is related to the need outlined above to subject only those services of designated non-financial service providers that have important aspects in common with financial services to the reporting and customer due diligence obligations. As regards these services, the designated non-financial service providers will (in principle) be subject to the provisions of this draft on the same basis as the financial service providers. This will be further discussed below.

Based on the above, Chapter 1 of this draft contains the definitions necessary for its application and defines the scope of application with regard to certain designated non-financial service providers and the Bank. Chapter 2 provides for the CDD process that is translated into the so-called customer due diligence. In this context, the FATF Recommendations relating to CDD - i.e. 5 through 11 - will be taken into account as much as possible in this draft. After all, these are essential obligations that, depending on the circumstances, should be observed by each service provider, in principle. This draft therefore goes beyond the Methodology 2004, which only requires the regulation of certain elements of Recommendations 5 and 10 by state ordinance. However, the importance of a modern and adequate CDD framework justifies inserting as many of the CDD Recommendations as possible in the draft. Moreover, this has already been done in a large number of countries, including FATF member states. One example is the Dutch Money Laundering and Terrorist Financing (Prevention) Act (WWFT). In this context, it must be noted that the CDD obligations of this draft will be further elaborated in the so-called AML/CFT manuals that will be issued by the Bank for the various categories of service providers.

Chapter 3 provides for the obligation for service providers to report unusual transactions to the FIU, as well as related matters, such as the duties and powers of the FIU. Chapter 4 regulates the retention of the data and information obtained by the service providers as a result of the application of customer due diligence and the reporting obligation. Chapter 5 then provides for the monitoring of compliance by service providers with the provisions laid down by or pursuant to this draft. This supervision will be carried out exclusively by the Bank. Furthermore, this Chapter regulates a number of special administrative sanctions that may be imposed on service providers for the enforcement of the provisions laid down by or pursuant to this draft. These sanctions are the order subject to a

penalty, the administrative fine and the publication of the order subject to a penalty or administrative fine. The Bank will also be exclusively responsible for the enforcement of these sanctions.

Chapter 6 provides for the general procedures and measures that service providers must have in place for the adequate application of this draft. Chapters 7 and 8 successively provide for the remaining matters and the criminalization of the violation of the provisions laid down by or pursuant to this draft. Finally, Chapter 9 provides for the entry into force of this draft. This will take place by means of two separate state ordinances, in which the transitional law and the adjustment of the existing legislation and regulations will be regulated, respectively. The Government intends to have these state ordinances, together with this draft, enter into force in the first semester of 2011.

§ 4. Customer due diligence

The CDD requirements of this draft will replace the LID and aforementioned AML/CFT directives of the Bank. There are important differences compared to the current basic regulations - i.e. the LID. Where the LID is essentially limited to the identification of clients - according to the LID, this means the determination of the identity of the client - this draft will also explicitly focus on the verification of that identity. Verification means establishing that the identity stated corresponds to the real identity. The identification and verification of the identity of the client is one of the essential elements of customer due diligence. The other essential elements are:

- the identification of the ultimate beneficiary owner (UBO) and the verification of his identity;
- the determination of the purpose and intended nature of the business relationship;
- the conduct of ongoing due diligence with regard to the business relationship and the transactions carried out during the course of this relationship.

It should be noted that, as regards these three CDD elements, the LID does not contain any provisions or - measured by FATF standards - contains inadequate provisions.

The main rule for customer due diligence is that all clients should be subject to it by the service providers. Customer due diligence should be conducted before the business relationship is entered into or the transaction is carried out. However, in view of the practical

application of customer due diligence, this draft contains a number of special provisions and exceptional situations. These concern the time of conducting customer due diligence, the application of simplified due diligence in certain special cases and the application of enhanced due diligence in a number of other special cases.
Within certain limits, service providers are therefore given the possibility to make their own estimate of the risks that may be associated with a business relationship or individual transaction and to use a risk-based approach to this end when conducting customer due diligence. Within the FATF, this approach is generally referred to as Risk-Based Approach or RBA. This approach entails that institutions make their own estimate of the risks posed by certain clients or products. The effort and resources required for customer due diligence can be tailored to these risks. As a result, more attention can be paid in actual practice to forms of service provision and to clients who present an increased risk in the area of money laundering and terrorist financing. In the case of clients or products posing a smaller risk, for example a simple current account relationship with a private individual, less intensive customer due diligence may be sufficient. It must be noted that the Bank's role as a supervisor will be crucial to the successful application of the risk-based approach. The Bank will be able to assess for each institution whether the customer due diligence conducted meets the criteria of this draft. The Bank's role is also important in assessing the risk sensitivity of clients and products. After all, it is conceivable that institutions will make a different estimate of the risks of comparable products. Incidentally, there may be good reason to do so in actual practice. In view of this, the draft also provides for the possibility of monitoring compliance with this draft in a risk-oriented manner. This means that, when determining the frequency of supervision (such as the number of on-site investigations) and applying supervisory instruments, the Bank will mainly focus on service providers and situations that involve a higher risk of money laundering and terrorist financing. Some of these situations are provided for in Article 11 of this draft. Eventually, this should lead to effective supervision of service providers within the meaning of this draft.

§ 5. The obligation to report unusual transactions

Furthermore, by means of Chapter 3, this draft provides for the establishment, organization, duties and powers of the FIU, the reporting obligation, the recording, consultation and provision of the data and information obtained in the fulfillment of the reporting obligation, civil-law and criminal-law immunity when reporting, confidentiality and other related matters. They are based on the LMOT and Recommendations 13, 14, 16 and 26 and Special Recommendation IV and replace the LMOT. At the heart of them, lies the obligation for service providers to report unusual transactions to the FIU. This special official department was established based on Article 2 of the LMOT and will continue its work based on Article 23 of this draft.

Unusual transactions are transactions that have been identified as such based on objective and subjective indicators included in the law. Objective indicators describe situations in which it is always necessary to report, while subjective indicators create an obligation to report based on the service provider's own assessment of a certain situation. Reports received are investigated by the FIU, if necessary, using data obtained from other local or foreign sources. The result of such an investigation may be that a transaction is classified as suspicious and is consequently reported with other relevant data to authorities responsible for the investigation and prosecution of criminal offenses. A report will be forwarded, if the result of the investigation gives rise to a reasonable suspicion that a certain person is guilty of money laundering or terrorist financing, if, based on the result of the investigation, it can be reasonably suspected that it is of importance to the prevention or investigation of money laundering or terrorist financing or if it concerns crimes that constitute a serious violation of legal order. Thus, for example, reports of unusual transactions could lead to criminal investigations into money laundering or terrorist financing. However, forwarded unusual transaction reports may also provide insight into financial acts related to other crimes and thus contribute to the investigation of these crimes. In this context, it is also possible for investigative authorities to question the FIU as part of an ongoing criminal investigation into one or more serious crimes. It must be noted that with the unusual transaction system, Aruba, as well as the Netherlands, Curaçao and Sint Maarten, occupies a fairly unique position compared to other countries and jurisdictions. In general, a reporting system is used that requires the agencies obligated to report to report only suspicious transactions to the FIU. Recommendation

13 is therefore based on this. This means that the agency obligated to report should always report, if it suspects or has reasonable grounds to suspect that the funds involved in the transaction originate from criminal activities. It imposes an obligation on the agency obligated to report to investigate for itself whether and to what extent a transaction is related to criminal activities, in particular money laundering or terrorist financing. The Government is of the opinion that the current unusual transaction system can be maintained. After all, actual practice in Aruba and in the other parts of the Kingdom has shown that this system, including the objective indicators that form part thereof, can equally well generate valuable information for the investigation and prosecution of money laundering offenses. In addition, in light of the experience gained to date, the Government is of the opinion that the introduction of a reporting system based purely on the reporting of suspicious transactions will, as things stand, put too much pressure on the agencies and persons obligated to report. This will adversely affect both the number and quality of the reports.

It must also be noted that reporting systems based on the reporting of unusual transactions by the FATF are accepted on an equal footing with the more common reporting systems based on the reporting of suspicious transactions. Nevertheless, there will be some important changes compared to the current situation. Thus, for example, the number of objective indicators will be reduced. Emphasis will be placed on the transactions reported to the investigative authorities in connection with possible money laundering or terrorist financing, transactions that may be linked to persons and/or organizations involved in terrorism and terrorist financing, transactions with persons, legal entities or entities established in countries or areas presenting an unacceptably high risk of money laundering and terrorist financing by international standards and certain cash and non-cash transactions.

As regards the organization, duties and powers of the FIU, the Government proposes to continue the approach adopted in the LMOT, albeit with some differences here too. These are motivated by the experience gained with the FIU and the relevant recommendations from the MER. They concern *inter alia* the new, more limited composition and tasks of the monitoring committee, the removal of the obligation to conclude an agreement for the exchange of information with foreign FIUs and the improvement of the criminal-law and civil-law immunity.

§ 6. Supervision and enforcement

It has already been mentioned above that the Bank will be exclusively responsible for monitoring compliance with the provisions laid down by or pursuant to this draft. This is an important difference compared to the current situation, where the monitoring of compliance with the LID and the LMOT is divided between the Bank and the FIU depending on the nature of the service provider. This division means that the Bank is responsible for monitoring compliance by the financial service providers (including the "Volkskredietbank" of Aruba) with both the LID and the LMOT, while the FIU is responsible for monitoring compliance by the designated non-financial service providers with these state ordinances. This division has existed since July 1, 2010, when the current Articles 23, first paragraph, and 23a of the LMOT (see the amending ordinance included in AB 2010 No. 6) entered into force. These provisions make it possible for employees of the Bank to also be charged with monitoring compliance with the provisions laid down by or pursuant to the LMOT by the institutions placed under the supervision of the Bank and the "Volkskredietbank" of Aruba. After all, the Bank has extensive knowledge and experience of the prudential and integrity supervision of aforementioned financial service providers. In addition, the Bank has access to the business data of these service providers based on its existing statutory supervisory responsibility. It is also a fact that, in international practice, the majority of the FIUs limit themselves to receiving, analyzing and forwarding reports of suspicious transactions, while supervision is entrusted to financial supervisors and other bodies. Looked at in this way, the best way to ensure the effectiveness of supervision is to entrust it to the Bank. The above does not alter the fact that the FIU also needs certain powers for the performance of the duties assigned to it. Some of these powers are also usually granted to a supervisor. However, by granting these powers, the FIU does not itself become a supervisory body. This will be the Bank.

Insofar as enforcement is concerned, this draft will contain the following instruments:

- the written instruction;
- the order subject to a penalty;
- the administrative fine;

- the publication of an order subject to a penalty or administrative fine;
- criminal prosecution.

This list does not affect the possibility of applying other measures, such as an instructive conversation on compliance with standards and, in the case of certain DNFBPs, the filing of a complaint with the competent disciplinary authorities.

A written instruction is a special enforcement instrument aimed at ensuring that the service provider follows a course of action that enables it to comply with the provisions laid down by or pursuant to this draft. In concrete terms, an instruction may concern the internal organization and internal control of the service provider, the education and training of the staff concerned, the application of customer due diligence, the recording of data and information and the internal decision-making process for reporting purposes. The basis for this instruction can be found in Article 48, third paragraph, of this draft. The head of the FIU has also been given the power to issue instructions. This power is limited to those cases where a service provider has submitted a report that is not in accordance with Article 26, second paragraph, or where the service provider has not provided or not fully provided the data and information requested in accordance with Article 27, first paragraph. The basis for these instructions can be found in aforementioned Article 27. Incidentally, Article 13 of the LMOT already contains a similar provision.

Both the order subject to a penalty and the administrative fine return from the LID and the LMOT. In the case of an order subject to a penalty, an order is imposed on the violator of a certain standard, the purpose of which is to undo the violation or to prevent continuation of the violation. This instrument is remedial by nature and is ideally suited for continuous violations that are still taking place at the time of discovery, and the consequences of which can be undone by the reporter. The administrative fine, on the other hand, is purely repressive by nature and is more suitable for non-correctable violations. Both the order subject to a penalty and the administrative fine are intended for those cases where it is less appropriate to take criminal action. They involve the application of monetary incentives or sanctions to ensure compliance with the provisions laid down by or pursuant to this draft. Their advantage lies in the fact that they can be applied quickly and flexibly to ensure correct compliance. Therefore, criminal enforcement can be regarded as the final element of the principal administrative enforcement

mechanisms and strategies. It must also be noted that the maximum amount of the administrative fine has been considerably increased in order to bring it more into line with international standards, whereas a maximum amount no longer applies to the order subject to a penalty. It is also possible to impose administrative fines on the executives of a service provider. The absence of such a possibility in the LID and the LMOT is seen as a shortcoming.

The publication of an order subject to a penalty or an administrative fine is also a recurrent enforcement instrument of the LID and the LMOT (see Articles 14 and 28, respectively, of these state ordinances) that is intended as a so-called “name and shame” measure. It is an additional penalty that can be imposed in addition to the order subject to a penalty or the administrative fine itself.
The final element of the enforcement instruments is formed by criminal prosecution brought about by the Bank filing a report with the judicial authorities. This will notably apply in cases of intentional or systematic violations by the service provider concerned. When the FIU exercises its powers, it may also occur that enforcement action will ultimately have to be taken. Thus, for example, the head of the FIU may, as indicated above, give instructions in specific cases. If these instructions are not followed, it must also be possible to take corrective action. It has been decided that this should be done by means of criminal action, because the application of administrative sanctions is difficult for a small organization such as the FIU from an organizational point of view.

In actual practice, criminal enforcement can also take place quickly and efficiently by means of the promised cooperation of the Public Prosecution Service. In this context, the Public Prosecution Service can make use of its settlement powers and the possibility to dismiss under certain conditions. The new Criminal Code also extends these possibilities. In this way, rapid and adequate criminal enforcement is also provided for the benefit of the FIU.

§ 7. The consequences for existing legislation and regulations

This draft has consequences for the service providers, the organizations responsible for its implementation, such as the Bank and the FIU, the resources provided and the general and individual decisions adopted based on the LID and LMOT. Examples hereof are the retention periods for recorded identification data, the establishment and duties of the FIU, the content and functionality of

the reporting register and the instructions given and made given by the FIU. Regulations of a transitional nature must be implemented for this. In addition, the introduction of this draft will be accompanied by amendments to other legislation and regulations that have aspects in common with the prevention and combating of money laundering and terrorist financing. First of all, these are, of course, editorial adjustments, such as the replacement of references to provisions of the LID and the LMOT with, where applicable, the corresponding provisions of this draft. Furthermore, drastic amendments of a substantive nature must be made. Consideration could notably be given to the Customer Due Diligence Directive for Banks, the Directive for Insurance Companies on Combating Money Laundering and Terrorist Financing and the Directive for Money Transfer Companies on Business Operations and the Combating of Money Laundering. These will be replaced by a general AML/CFT manual for all financial service providers and sectoral AML/CFT manuals for the various categories of financial service providers. These manuals will be issued by the Bank. The starting point is that the basic obligations for supervised institutions in the field of CDD will be included in this draft, while the manuals will contain additional obligations and recommendations ("guidance"). For the sake of clarity, it must be noted that compliance with the manuals will be enforced, if necessary, using the options provided for in this draft.

Advantage will be taken of the opportunity to introduce other AML/CFT-related amendments to existing legislation and regulations. The aim is to strengthen the overall framework for preventing and combating money laundering and terrorist financing, which will ultimately also benefit the application of this draft. This mainly concerns amendments to the LTK [*State Ordinance on the Supervision of the Credit System*], the LTV [*State Ordinance on the Supervision of the Insurance Industry*], the LTG [*State Ordinance on the Supervision of Money Transfer Companies*] and the State Ordinance on the Supervision of Trust Offices (LTT). Consideration could be given to the extension of the Bank's power to issue integrity directives to the service providers concerned and the revision of the provisions concerning the exchange of information with foreign supervisors.

Finally, some implementing regulations based on the LID and LMOT will also need to be adjusted or replaced. Because of the new and very broad definition of the term "financial service provider",

the State Decree designating Financial Services, which implements Article 1 of both the LID and the LMOT, and the Ministerial Order implementing number 7° of the definition of the term “service” in Article 1, first paragraph, of the LID do not have to be maintained. Therefore, these regulations can be repealed. The same applies to the State Decree on Further Identification Requirements and the Regulations concerning the Identification Requirements for Legal Entities. The various indicator regulations will all be replaced by possibly a single indicator regulation that will be subdivided into objective and subjective indicators for each category of service provider. Thus, only the State Decree on the Register Regulations Financial Intelligence Unit must continue to exist in an amended form as an implementing regulation for the implementation of this draft.

§ 8. The financial consequences of this draft

The introduction of this draft has financial consequences. After all, the institutions concerned must have adequate financial, technical and human resources. These institutions mainly are the Bank and the FIU, while the Public Prosecution Service and the Aruba Police Force also play a role in the investigation of forwarded reports and in the application of the criminal procedure when discovering violations of this draft. Since the Bank is an independent institution with its own legal personality and budget, it is not necessary to discuss the financial consequences for this institution in this Explanatory Memorandum, as they do not affect the Government. This is different with regard to the FIU. This government agency must have aforementioned resources at its disposal to implement the provisions of this draft. This will mainly concern the analysis of reports received, training of the staff of the FIU and informing those subject to the reporting obligation about their obligations (the so-called “awareness”). In view of this, it is first of all necessary that the staff of the FIU be reinforced with officers in the fields of research, general policy development and information. It must be noted that the FIU is already in the process of recruiting new staff for this work. It is expected that these people will enter the employment of the FIU in the course of this year. As a result, the associated costs will be paid from the budget of the Minister of Finance as of the budgetary year 2010. As regards the Aruba Police Force, the way in which the relevant units can be

reinforced is currently still being examined. It is currently not possible to say anything about the exact amount of the costs involved.

Explanatory notes on individual articles

Re Article 1

This Article contains the definitions necessary for the application of this draft. The term “service provider” includes both financial and designated non-financial service providers - the DNFBPs already discussed above - within the meaning of this draft and is necessary, now that the draft will apply equally to both categories of service providers, in principle. In this context, it is worth recalling Recommendation 12, which stipulates that the rules contained in Recommendations 5, 6, and 8 through 11 in the area of CDD requirements and data recording and retention should apply mutatis mutandis to DNFBPs under certain conditions. Furthermore, it is worth recalling Recommendation 16, which stipulates that the rules contained in Recommendations 13 through 15 and 21 - which refer to *inter alia* the reporting obligation - should apply mutatis mutandis to DNFBPs under certain conditions.

The concept of “financial service provider” is one of the key concepts of this draft. It is based on the definition of the term “financial institution” from the Glossary to the Methodology 2004. Unlike the LID, it does not list institutions that are considered to be financial service providers but lists a number of financial activities and operations that, insofar as one or more of these activities or operations are carried out on a commercial basis, lead to the person or institution in question being considered a financial service provider. In fact, this covers not only the financial service providers listed in the LID and the State Decree designating Financial Services, but also the non-regulated financial service providers. Examples of these last service providers are investment firms, stock exchanges (both in traditional and electronic form) and insurance brokers. By adopting the FATF concept of “financial institution”, the Government feels that a comprehensive definition in line with current international standards is provided. With regard to the definition itself, it must first be noted that it applies to anyone carrying out one or more of the activities and operations referred to therein. “Anyone” should be taken to mean any person or entity,

whether a natural person, a group or partnership of natural persons, a domestic or foreign legal entity or a similar entity (e.g. Anglo-Saxon trust), or parts of such natural persons, legal entities and similar entities. Thus, it also includes, for example, branch offices and branches. Moreover, the words “activities” and “operations” are used instead of, for example, the more obvious word “services” to indicate that the offer or intention of the person or entity in question does not have to be known in advance. In addition, it is not important whether the financial service provider is subject to external supervision under any legal title (for example, by the Bank). To the extent that the service is provided on a commercial basis, it falls under the scope of this draft. Examples include the non-regulated financial service providers mentioned above. A special institution that, because of its activities, should also be considered a financial service provider within the meaning of this draft is the “Volkskredietbank” of Aruba. This public-law organization was established based on the State Ordinance on the “Volkskredietbank” (AB 1993 No. GT 15), with the objective of meeting socially responsible public credit needs in Aruba in a socially and commercially correct manner. To this end, it provides *inter alia* small loans and mortgage loans to certain persons and enterprises with limited financial resources. Despite the social character of the “Volkskredietbank”, the Government sees no reason to exempt it from the scope of this draft. In order to ensure a level playing field for all financial institutions regulated in Aruba with regard to the application of the AML/CFT-oriented provisions, the Government does not wish to make a distinction between commercial financial institutions and the “Volkskredietbank” of Aruba, especially since this institution may also be vulnerable to money laundering and terrorist financing.

As regards the various financial activities and operations, it must first be noted that the acceptance of deposits and other repayable funds from the public also include so-called private banking (i.e. banking services and asset management on a personal basis to wealthy individuals). Furthermore, the concept of “granting loans” should be interpreted broadly: it covers *inter alia* consumer credit, such as personal loans and car loans, mortgage loans, factoring (with or without recourse) and the financing of commercial transactions (including forfaiting). “Financial leasing” does not mean financial leasing regulations relating to items leased by a natural person for consumer use. As regards “transferring or arranging for others to

transfer funds or monetary values", it must first be noted that this should also include crediting or debiting or arranging for others to credit or debit an account in which a balance can be held in cash or other values. In this context, reference is made to Article 1, first paragraph, of both the LID and the LMOT.

The services mentioned in 1º, 5º, 6º, 10º, 11º and 13º are common banking services that are also provided in Aruba, and that, with the exception of 13º, already fall under the scope of the LID and the LMOT. The services mentioned in 7º, 8º, 9º and 11º are usually offered by investment advisors, investment banks, stockbrokers and stock exchanges. They are not currently covered by either the LID or the LMOT. With regard to the service mentioned in 12º, it must be noted that it applies not only to life insurance companies themselves, but also, by means of the words "to act as an intermediary in the conclusion", to insurance intermediaries, such as agents and brokers.

The term "designated non-financial service providers" lists the so-called DNFBPs or designated non-financial service providers that, according to Recommendations 12 and 16, should also be subject to the CDD requirement and the obligation to report unusual transactions. These are the legal profession, the notarial profession, accountants, traders in precious metals and stones, casinos and trust offices. With a view to Recommendation 20, which suggests that countries should also apply the Recommendations to companies and professional groups, other than designated non-financial service providers, that pose a risk of money laundering or terrorist financing, tax consultants, real estate agents and certain traders and brokers in certain high-value items are also designated as non-financial service providers and are thus brought within the scope of this draft. It must also be noted that, since the last amendment of the LID and the LMOT of February 5, 2009 (see again the amending ordinance contained in AB 2009 No. 14), these service providers, with the exception of trust offices, are already subject to the identification and reporting obligation. As regards lawyers, civil-law notaries, tax consultants and similar professionals, it must be noted that a new definition has been chosen that better reflects the current practice of legal services in Aruba (in particular as regards legal advice) and the objectives of Recommendations 12 and 16. As regards lawyers, it must be noted in particular that Article 1, first paragraph, of the LMOT (the LID does not contain a definition of a lawyer but only refers to this professional as one of the service providers to which the LID applies) defines a lawyer as a person as referred to in

Articles 2, fourth paragraph, or 48 of the Lawyers Ordinance. In fact, these are the persons who, after having been found suitable, are entered in the register (see Article 2, fourth paragraph, of the Lawyers Ordinance) and are therefore subject to the disciplinary rules of the Lawyers Ordinance. However, persons and associations of persons who engage in legal advice - and, in that context, carry out the activities mentioned in Recommendations 12 and 16 - but who are not lawyers within the meaning of the Lawyers Ordinance, do not fall under the scope of the LID and the LMOT. In connection herewith, the description of the legal professionals in 1º of the term "designated non-financial service provider" has been formulated in such a broad way that it does not only include lawyers within the meaning of the Lawyers Ordinance and civil-law notaries within the meaning of the State Ordinance on the Notarial Profession but also those who exercise a similar legal profession. Incidentally, this also applies mutatis mutandis to civil-law notaries - who are understood to be public officials as referred to in the State Ordinance on the Notarial Profession - and tax consultants. This is particularly relevant for the legal consultancy practice that is known to be conducted in Aruba by others than lawyers, civil-law notaries and tax consultants, such as legal consultancies. With the new definition, this professional group is also brought under the scope of this draft. In accordance with existing practice, junior civil-law notaries are mentioned as a separate category. Insofar as tax consultants are concerned, it must be noted in particular that this category should first of all be taken to mean a person other than a lawyer as referred to in Article 45, first paragraph, of the Lawyers Ordinance, who gives tax advice in a professional capacity and acts as an attorney in tax matters. Secondly, this should be taken to mean any person, other than a person as referred to in Article 45, first paragraph, of the Lawyers Ordinance, who gives tax advice to third parties in a professional or commercial capacity. This also includes activities relating to the financial statements, keeping the accounts and so-called tax assurance.

In subparagraph 1º, account is also taken of partnerships of lawyers, civil-law notaries, tax consultants and similar professionals. Consideration could be given to law firms in which several lawyers work as partners (directly or through a corporation) or in salaried employment. In such cases, the requirement to conduct customer due diligence and to comply with the obligation to report within the

meaning of this draft will rest on the partnership and not on the individual lawyer.

As regards the other non-financial service providers, the following must be noted. An “external registered accountant” and an “external accounting consultant” are understood to be a registered accountant as referred to in Article 55, first paragraph, of the Dutch Registered Accountants Act and an accounting consultant as referred to in Article 38 of the Dutch Accounting Consultants Act, respectively, who are not employed by a service provider. As a result, the registered accountants and accounting consultants employed by the Government - for example by the Central Audit Office or the Tax Department - are excluded from the scope of this draft. As regards accountants practicing a profession equivalent to that of an external registered accountant or accounting consultant, it must be noted that these are persons who attended a training course for a profession comparable to that of a registered accountant or accounting consultant outside the Netherlands, and who are subject to an equivalent regime of rules of conduct, professional rules and disciplinary rules as apply to registered accountants and accounting consultants. A good example hereof is the American Certified Public Accountant (CPA).

Subparagraph 3º relates to so-called traders in high-value goods, such as real estate agents, car dealers, antique dealers and auction houses. These professional groups and sectors, which already fall under the scope of the LID and the LMOT, are not DNFBPs within the meaning of the FATF Glossary. Nevertheless, the Government considers it desirable that this draft also applies to these professional groups and sectors, because of the risk of money laundering or terrorist financing to which they are exposed. Moreover, the words “and the rights to which these objects are subject” refer to the limited rights that may be established on these objects and that may be transferred. In this respect, reference is made to Article 3.8 of the Civil Code of Aruba.

In view of the Aruban context, subparagraph 4º will mainly concern jewelers, although the definition leaves room to bring wholesalers and their activities under the scope of this draft as well.

In accordance with Recommendations 12 and 16, casinos are also mentioned as one of the designated non-financial service providers to which this draft will apply. In part, this is not a new fact: casinos have been covered by both the LID and the LMOT since the beginning of 2001. Casinos are understood to mean establishments

as referred to in Article 1 of the State Ordinance on Hazard Games (AB 1990 No. GT 44) and internet casinos. Although the latter are not currently active in Aruba, the Government considers it desirable, in order to ensure the fullest possible application of Recommendation 12, that they should also be subject to the provisions of this draft, should they enter the Aruban market.

Subparagraph 6º mentions trust offices as the last group of designated non-financial service providers that will fall under the scope of this draft. At present, these service providers do not fall under the scope of the LID and the LMOT. In view of their activities, which involve risks of money laundering and terrorist financing, the Government considers it desirable that they should also be brought under the scope of this draft.

A number of articles of this draft in the area of identification and verification relate specifically to certain banking activities. Articles 19 and 20 concerning the so-called correspondent banking relationships can be mentioned. In this context, reference can also be made to the concept of “correspondent banking relationship” and its definition, also included in this Article. The term “bank” has been chosen instead of the generic term “credit institution” used in the LTK, as, in actual practice, correspondent banking relationships are maintained by commercial banks and not by all credit institutions within the meaning of the LTK.

The term “life insurer” has been included, as this draft, like the LID and the LMOT, will also apply to these companies because of their vulnerability to abuse for money laundering and terrorist financing purposes. In this context, reference should also be made to subparagraph 12º of the definition of the term “financial service provider”. Since this vulnerability applies to all life insurers within the meaning of the LTV, it is not necessary, as in the case of banks, to refer to a particular category of life insurers in the definition. Perhaps superfluously, it should be noted that non-life insurers as referred to in Article 1 of the LTV (for the sake of completeness, also see Article 4 of the LTV) do not fall under the scope of this draft, as the AML/CFT risk in these institutions is limited. This was also the main reason for the FATF to exclude these institutions from the scope of the 40 + 9 Recommendations.

The definition of “client” differs in two main respects from that currently used in the LID and the LMOT. Firstly, it uses an open concept (“the person who”) rather than a fixed enumeration of different types of professions and institutions. In this way, all

possible persons and institutions and the legal forms they use can be covered. In addition to natural persons, legal entities and partnerships, these can also include foreign legal entities such as the Anglo-Saxon trust. Secondly, a link will no longer be sought with the provision of one or more services, since the concept of service of the LID and the LMOT does not return in this draft. Instead, reference is made to entering into a business relationship or having a transaction carried out. The wording “having a transaction carried out” refers both to the person carrying out a transaction for himself and to the person who is represented by a third party in a transaction.

The terms “customer due diligence”, “unusual transaction”, “report” and "the Financial Intelligence Unit” have already been discussed in the general explanatory notes and will again be discussed in the discussion of Articles 3, 24, first paragraph, 29 and 30, first paragraph, of this draft. “Identification” is understood to mean to have someone state his identity. The obligation to do so falls on the service provider: it must require the client to indicate who he is. This first step is followed by the verification of the stated identity. Verification of the identity is understood to mean establishing that the stated identity corresponds with the real identity. The verification thus implies an obligation to investigate for the service provider: the service provider must verify whether the client is actually the one he claims to be. To this end, the service provider must use reliable and independent source documents, data or information. This is where this draft essentially distinguishes itself from the LID, which limits itself to the identification of clients.

“Transaction” is understood to mean an act or a combination of acts by or on behalf of a client in connection with the purchase or provision of services, or of which a service provider has become aware within the framework of its provision of services to a client. It is based on the definition of the term “transaction” of the LID and the LMOT and, for the sake of completeness, has been extended to include the provision of services, which should in any case be understood to mean the activities and operations referred to in the definition of “financial service provider”, as well as the cases referred to in Article 6, second paragraph. The words “or of which a service provider has become aware within the framework of its provision of services to a client “ have been included with a view to recent Dutch case law in which a restrictive interpretation has been given of the current concept of “transaction” from the Dutch Unusual Transactions Disclosure Obligation Act, which is the same as that of

the LMOT. This interpretation implies that the unusual transaction to be reported must be directly related to the service provided. Therefore, the purpose of aforementioned wording is to make it clear that awareness of the unusual transaction within the framework of the service provision is sufficient to create the obligation to report. This means that, in principle, it is not relevant for the reporting obligation when that unusual transaction has taken place, as it is not intended to limit the reporting obligation to transactions that take place during or in connection with the activities of the party obligated to report. After all, for the application of the reporting obligation, the question whether or not the services provided by the institution play a facilitating role in money laundering or terrorist financing is irrelevant. The services provided must be such that the service provider is able to recognize cases of money laundering or terrorist financing.

"Unusual transaction" means a transaction identified as such by means of the indicators adopted pursuant to Article 25 of this draft. It has already been noted above that the choice has been made to continue applying the system of unusual transactions rather than the internationally more common system of suspicious transactions. This choice was motivated by the Government's desire to achieve a certain degree of objectification of the reporting obligation. Unusual transactions are reported to the FIU, which further investigates the potentially suspicious nature of the transaction.

As regards the definition of the term "business relationship", it must be noted that the words "which is connected to the commercial or professional activities" indicate that only business relationships that are related to the main activities of an institution (e.g. activities for which a license has been granted) are relationships in respect of which customer due diligence (including identification and verification) will have to be conducted. In addition, the relationship must have existed at least some time. This means that the definition of a business relationship does not include the performance of occasional transactions. In the event of an incidental transaction, customer due diligence must be conducted, pursuant to Article 6, first paragraph, subparagraph b, of this draft, if this transaction represents a value of Afl. 20,000.- or more. If a transaction of Afl. 20,000.- or more is carried out within a business relationship, there is obviously no need to re-identify because this has already taken place at the beginning of the relationship.

The term “correspondent banking relationship” has been included for the purposes of implementing Recommendations 7 and 18 by means of Articles 19 and 20 of this draft. These Articles provide for the maintenance of cross-border correspondent banking relationships and, in connection therewith, the prohibition on maintaining such relationships with so-called shell banks. The term “correspondent banking relationship” is defined as a permanent relationship between an Aruban bank and a bank established outside Aruba for the purpose of processing transactions or the execution of orders. In fact, it pertains to the provision of banking services by an Aruban bank (the so-called correspondent bank) to a bank established in another country (the so-called respondent bank). These respondent banks are provided with a wide range of services, including the management of cash (*inter alia* through interest-bearing accounts in various currencies), international transfers, the clearing of checks, the provision of so-called payable-through accounts (correspondent accounts that can be used directly by third parties for business transactions) and currency-related services. In line with international practice, the Government considers it desirable not to allow correspondent banking relationships with so-called shell banks. Articles 17 and 18 of this draft lay down rules for this purpose, while the Bank may issue further directives. To this end, this paragraph contains a definition of the term “shell bank” that corresponds to that used by the FATF.

The inclusion of the term “politically exposed person” and the corresponding definition is related to the implementation of Recommendation 6. This Recommendation concerns the application of enhanced CDD vis-à-vis so-called “politically exposed persons” (PEPs). The FATF has identified a particular risk of money laundering and terrorist financing for service providers, if they enter into a business relationship with a PEP from another country. In that case, enhanced CDD measures are necessary. These are set out in Article 11 of this draft. The Methodology 2004 defines PEPs as persons who are or have been entrusted with a prominent public function. These may include the functions of:

- heads of state, heads of government, ministers and state secretaries;
- members of parliament;
- members of supreme courts, constitutional courts and other high courts of justice that deliver judgements that are generally not subject to further appeal;

- members of courts of audit and of management boards of central banks;
- ambassadors and chargés d'affaires;
- senior army officers;
- members of the administrative, management or supervisory bodies of state enterprises.

This list also includes positions held at an international level, such as a representative at the United Nations.

Close family members and associates of PEPs are also considered as such, as they may be subject to the same reputational risks as politically exposed persons themselves. Close family members may include the spouse, a partner considered equivalent to a spouse under national law, the children and their spouses or partners and the parents. A close associate may include, first of all, a natural person who is known to be the joint beneficial owner of legal entities or legal constructs or has other close business relations with a person who holds or has held a prominent public function. Secondly, it may include a natural person who is the sole legal beneficiary of a legal entity or legal construct known to have been set up for the actual benefit of a person who holds or has held a prominent public function.

PEPs do not include persons working at middle and lower management level for the benefit of aforementioned persons.

In one respect, the definition of PEPs used in this draft deviates from Recommendation 6: it does not distinguish between foreign and local PEPs. Both categories therefore fall within the definition of PEPs and thus within the scope of this draft. Such a scope of application is also intended, for that matter. Internationally, an increasing trend can be observed towards the broadest possible fight against corruption. In this context, the Methodology 2004 recommends in criterion 6.5, in so many words, that the provisions of Recommendation 6 should also apply to local PEPs. Moreover, the FATF has identified corruption as one of the predicate offenses for money laundering. For the Government, this is a reason to have local PEPs also fall under the scope of this draft.

The general explanatory notes have already discussed the great importance of identifying and tracking the beneficial owners in transactions carried out by service providers within the meaning of this draft. For this purpose, this draft contains a definition of the concept of "beneficial owner". It is based on the definition of "beneficial owner" in Article 1, subparagraph f, of the WWFT and

on the definition of “beneficial owner” in the Methodology2004. It distinguishes two cases, namely:

1. a natural person who holds an interest of more than 25 percent of the capital interest, or who may exercise more than 25 percent of the voting rights of the shareholders’ meeting of a client, or who can exercise actual control over a client in any other way;
2. a natural person who is a beneficiary of 25% or more of the assets of a legal construct, or who can exercise actual control over that legal construct in any other way.

A legal construct is understood to mean in any case the foundation and the trust. However, other legal concepts - with or without legal personality - in which assets are separated for a specific purpose may also be considered to be legal constructs. Examples hereof are the “fiducie”, “Treuhand” and “fidei-commissio”.

The distinction described in paragraphs 1 and 2 is a consequence of the nature and purpose of the various legal entities and legal constructs that are active in (financial) transactions and behind which there may be a beneficial owner. It must be noted that the 25% limit has been included in order to keep the obligation to identify and verify the identity of the beneficial owner practical and feasible for the service providers. The definition of the concept of beneficial owner in the FATF Methodology 2004 does not contain a lower limit. After all, it defines the beneficial owner as the natural person(s) who ultimately or actually own(s) or control(s) a client and/or the person on whose behalf a transaction is carried out. This also includes the persons exercising ultimate actual control over a legal entity or legal construct. However, it has become clear that the FATF accepts the setting of a lower limit in the identification of the beneficial owner of legal entities, trusts and similar legal concepts, provided that this is done in a manner that does not undermine the scope of Recommendation 5 and related Recommendations. The most recent example is the FATF report on the Dutch system for the prevention and combating of money laundering and terrorist financing, in which the definition of the term “beneficial owner” in the WWFT was also assessed positively.

The words “can exercise actual control over a client in any other way” refer to the situation in which a natural person exercises control over a natural person, legal entity or similar entity for whose benefit - whether or not through the intermediary of the client - the transaction is carried out, or with whom the business relationship is entered into. In particular, the words “actual control” are related to

the fact that all kinds of constructs are used during money laundering and terrorist financing in order to conceal the true origin or purpose of funds. Not only natural persons (e.g. straw men) are used, but legal entities and similar legal entities and constructs as well. After all, the legal characteristics that make it possible for a legal entity to participate in legal transactions in a relatively simple manner - for example by acting under a trade name, the possibility of rapid changes in the management and the tradability of the share capital - can enable malicious persons to anonymously transfer the proceeds of crime to a legal entity. It has been established that criminals regularly try to conceal their assets by making use of a chain of legal entities that ends somewhere abroad. A classic example is the incorporation of an Aruban Exempt Company (AVV) as a subsidiary of a legal entity or company established abroad, which, in turn, is a subsidiary of a company established in another country. As a result, the question of who holds the shares of the company abroad, and who is the beneficial owner of the AVV can often not be answered. However, this answer may be of great importance to the conduct of criminal investigations into money laundering and/or terrorist financing. In order to prevent natural persons hiding behind a legal entity or a chain of legal entities from participating in financial and economic transactions in a completely anonymous manner, this draft imposes an obligation on service providers to identify the beneficial owner of a transaction and to verify this identity in addition to the identification of the client.

The term “trust” and the corresponding definition have been included, as it cannot be ruled out that natural persons or legal entities residing or established in Aruba are acting as a trustee of a trust and therefore participate in Aruban financial transactions.

The definition of “money laundering” refers to Articles 430b, 430c and 430d of the Criminal Code of Aruba. These describe and criminalize the three possible variants of money laundering (money laundering, habitual money laundering and culpable money laundering). For a detailed explanation of these Articles, reference is made to the Explanatory Memorandum and other background documents belonging to the State Ordinance of April 19, 2006 (AB 2006 No. 11) amending the Criminal Code of Aruba (AB 1991 No. GT 50), the State Ordinance on the Obligation to Report Unusual Transactions (AB 1995 No. 85), the State Ordinance on the Supervision of Money Transfer Companies (AB 2003 No. 60) and the

State Ordinance of June 20, 2000 containing the text of Titles 3.10 and 3.11 for a new Civil Code of Aruba (AB 2000 No. 63).

The definition of the term “terrorist financing” refers to the recently introduced Article 140a of the Criminal Code of Aruba, which has already been discussed above.

The terms “Bank” and “Minister” have been included in the context of the implementation of the provisions to be laid down by or pursuant to this draft and the responsibility to be assumed for them. They do not require any further explanation.

The second paragraph offers the possibility, if the need arises, to designate, by state decree containing general administrative orders, other activities and operations performed by financial service providers, which will also fall under the scope of the provisions laid down by or pursuant to this draft.

Re Article 2

This Article provides for a number of necessary exceptional situations as regards the scope of application of this draft. Thus, for example, the first paragraph provides that the provisions laid down by or pursuant to this draft do not apply to the Bank, unless they require otherwise. The reason for this is that a number of activities and operations carried out by financial service providers are also carried out by the Bank. Examples hereof are the acceptance of deposits and other repayable funds, the transfer of money or valuables and the exchange of money, including foreign currency. As a result, the Bank would also be subject to the obligations to conduct customer due diligence and to report unusual transactions. To the extent that such an identification or reporting obligation may actually turn out to be desirable, this can be provided for in, for example, an indicator regulation or a state decree containing general administrative orders, as referred to in Article 54 of this draft.

The second paragraph has in fact been taken over from Article 1, second paragraph, of the LMOT and is intended to safeguard the professional secrecy of lawyers and civil-law notaries in respect of their activities relating to the legal position of a client, his representation and defense in court, giving advice before, during and after legal proceedings or giving advice on instituting or avoiding legal proceedings. The obligation to report as laid down in Chapter 3 of this draft does not apply to these activities and the data and information obtained in connection therewith. This exceptional situation is related to Recommendation 16, which states that (*inter alia*) lawyers and civil-law notaries, acting as independent legal advisors, are not obligated to report their suspicions, if the information in question has been obtained in situations where professional secrecy or lawyer-client privilege apply.

Re Article 3

Article 3 provides for the customer due diligence to be conducted by all service providers in order to obtain a picture as complete as possible of the client when entering into a business relationship or carrying out an individual transaction. Thus, customer due diligence plays a crucial role in achieving the objective of this draft, namely, to prevent and combat money laundering and terrorist financing. The actions to be carried out by service providers within the framework

of customer due diligence are set out in subparagraphs a through d of this Article. For the sake of completeness, they are repeated here:

a. the identification of the client and the verification of his identity;
b. the identification of the beneficial owner and the taking of reasonable measures to verify the identity of the beneficial owner in such a way that the service provider is convinced of the identity of that beneficial owner;
c. the determination of the purpose and intended nature of the business relationship; and
d. the ongoing monitoring of the business relationship and the transactions carried out during the course of that relationship in order to ensure that they correspond to the knowledge the institution has of the client and the beneficial owner and of their risk profile, including, where appropriate, an investigation into the source of their assets.

It should be noted, perhaps superfluously, that subparagraphs c and d will only apply when entering into and continuing a business relationship.

The meaning of the terms “identification” and “verification of the identity” has already been discussed in the explanatory notes on Article 1. Furthermore, it can be noted that the identification and verification obligation in fact excludes the opening and holding of anonymous accounts or accounts held on fictitious names. This effect is also intended by the Government, as the use of such accounts poses unacceptable risks of money laundering and terrorist financing. Prohibiting such accounts is therefore one of the basic obligations of Recommendation 5.

The identification of the beneficial owner and the verification of his identity is the second act to be performed in the context of the application of customer due diligence. In doing so, a service provider should take reasonable measures to allow it to verify the identity of the beneficial owner in such a way that it is convinced of the identity of that beneficial owner. Such measures should be aimed at identifying the natural persons having a controlling interest or who are part of the actual management (“mind and management”) of the client. This will notably occur in the case of legal entities and similar entities.

The obligation to determine the purpose and intended nature of the business relationship is included in order to enable service providers to assess any risks involved in entering into such a relationship with a client. This implies an obligation for the service

providers to obtain information about the purpose and intended nature of the business relationship. Some of the necessary information will usually emerge during the contact preceding the business relationship. The purpose of the relationship will also be apparent from the services or products purchased by the client. Additional questions from the institution may focus on obtaining clarity about the user of the product or the purchaser of the service. Based on this information, it will already become clear in some cases who the ultimate beneficial owner is or to what extent further investigation is required to identify the ultimate beneficial owner. In actual practice, when entering into a business relationship, service providers will inquire about the purpose of the relationship themselves, because they want to have insight into this in order to provide good services and to reduce the business risk.

Subparagraph d relates to the ongoing due diligence of the business relationship and the transactions carried out during the course of this relationship. The purpose of this due diligence is to ensure that the data and information in possession of the service provider correspond to the knowledge that the service provider has of the client and his risk profile, including, where appropriate, an investigation into the source of the assets. This should be understood to mean not only the assets available at the service provider but also those available elsewhere.

The second paragraph provides for a special situation, namely the application of customer due diligence by a real estate agent. According to the FATF Methodology 2004, this due diligence should not only apply to the real estate agent's client (usually the seller of the real estate or the limited right established on it), but also to that client's other party (usually the buyer of the real estate or the limited established on it).

Re Article 4

Within the framework of customer due diligence, the service provider must verify whether the natural person appearing before it is acting for himself or for or on behalf of a third party and must take reasonable measures to identify and verify the identity of that third party. What is relevant as regards the third party will usually be the beneficial owner in the business relationship or transaction. "Reasonable measures" may include measures necessary under

normal circumstances to identify and verify the identity of the third party.

Re Article 5

The proposed Article 5 provides for the situation in which someone is acting on behalf of a client. The first paragraph relates to the natural person claiming to act on behalf of a client-legal entity or legal construct. In order to obtain a picture as complete as possible of the transaction or business relationship, the service provider must ascertain whether the natural person who claims to act on behalf of such a legal entity or legal construct is also authorized to do so. This can be done, for example, by requiring the submission of documents proving the authority to represent or by requesting information itself or conducting an investigation using public sources such as the trade register. Furthermore, the service provider must establish the identity of the natural person acting as representative and verify this identity before proceeding to provide the service requested. In this context, a service provider should also record the data regarding the legal form and representation of the client.

The second paragraph contains special provisions concerning represented legal entities or legal constructs. It is important that the service provider, by means of reasonable measures to be taken by it, gains insight into the ownership and actual control structure of such a legal entity or legal construct, enabling it to identify the natural person or persons who ultimately own or control the legal entity or legal construct. In this way, the service provider will be able to comply with its obligation pursuant to Article 3, first paragraph, subparagraph b, to identify and verify the identity of the beneficial owner.

The third paragraph concerns the representation of trusts. In this case, not only the trustee (the person who administers and disposes of the assets contributed to the trust) or the person who exercises decisive control over the trust, but also the settlor (the person who created the trust and transferred his assets to it) and the beneficiaries of the assets of the trust have to be identified and their identity has to be verified.

When applying this Article - in particular as regards the reasonable measures to be taken - the necessary data or information

may also be obtained from public sources, such as a public register, from the client or from other reliable sources.

Re Article 6

Article 6 provides for the cases in which financial and designated non-financial service providers should apply customer due diligence. The cases referred to in the first paragraph relate to financial service providers and have been derived from the Methodology 2004, in particular essential criterion 5.2, and need not be discussed further.

The second paragraph concerns the activities and operations carried out by the designated non-financial service providers as regards which customer due diligence should be applied. These have been derived from Recommendations 12 and 16. Subparagraph b describes the situations in which independent professionals (lawyers, civil-law notaries, tax consultants, accountants and professionals considered equivalent thereto) should apply customer due diligence. Particular attention should be paid to the words “the following activities or operations performed in or from Aruba". Incidentally, they also appear in the first paragraph and subparagraphs a and c of the second paragraph. In this way, it is explicitly laid down that activities or operations performed on behalf of clients established abroad also fall under the scope of this subparagraph. Subparagraph c is intended for real estate agents. For the sake of completeness, it is repeated that customer due diligence must be applied in respect of both the client and the client’s other party. Subparagraph d pertains to the activities and operations of trust offices; in this connection, reference is made to page 9 of this Explanatory Memorandum. As regards subparagraphs e and f, the following should also be noted. Both subparagraphs refer to cash transactions equal to or exceeding a certain threshold amount. Therefore, it is not necessary to apply customer due diligence to cash transactions representing a value below these thresholds amounts. For the record, it should be kept in mind that the term “transaction” also refers to a combination of transactions, i.e. several transactions that are or may be connected. This is to overcome so-called “smurfing”, which seeks to circumvent customer due diligence (and the obligation to report) by using transaction amounts below the threshold set. Furthermore, it must be noted that a casino should apply customer due diligence in such a way that the information obtained about a particular client can be related to the transactions carried out by that client in the casino.

Examples of transactions are the purchase or exchange into cash of chips or tokens, the opening of accounts, the execution of funds transfers and the exchange into or of foreign currency.

The third paragraph is related to the choice made in this draft for the risk-based approach (already mentioned above) in the application of customer due diligence. This approach means *inter alia* that service providers are free, within certain limits, to organize their customer due diligence as they see fit, as long as the intended result of the customer due diligence is achieved. In actual practice, this can lead to it that the way in which customer due diligence is conducted differs significantly per type of service provider. A large internationally operating financial company will use advanced software that will enable it to meet its obligations in the large number of transactions it processes. For a designated non-financial service provider with a limited area of activity, the use of such resources is less obvious. Within a certain professional group, there may also be differences caused by differences in the size of the institution, the client base and the services offered. It must also be noted that service providers are not obligated to identify and verify the identity of a particular client each time he requests the performance of a transaction. A service provider may rely on the result of customer due diligence already conducted in respect of that client, unless doubts subsequently arise as to the reliability of the data and information obtained. Examples include suspicions of money laundering or terrorist financing and conspicuous changes in the use of a client account that do not fit the service provider's profile of the client. Based on this, the third paragraph stipulates that a service provider must tailor its customer due diligence to the risk sensitivity to money laundering or terrorist financing of the type of client, business relationship, product or transaction. To this end, the service provider must draw up a risk profile of the client and the beneficial owner, in which a description is given of the client's sensitivity to money laundering and terrorist financing based on the applicable circumstances and the service provider's own observations.

The fourth paragraph has been included so that the requirements of Special Recommendation VII can be further specified by state decree containing general administrative orders. This Recommendation relates to wire transfers by financial service providers and stipulates first of all that countries should take measures to require financial service providers - including money transfer companies - to send accurate and meaningful information

about the person who has the wire transfer carried out (the so-called originator) along with the wire transfer and related messages. The information notably includes the name, address and account number of the person who has the wire transfer carried out. In this context, these service providers should also ensure that the information in question remains with the wire transfer or related messages throughout the transfer chain. Secondly, it should be ensured that the same financial service providers are particularly vigilant with regard to wire transfers where there is no or incomplete information available about the person who has the wire transfer carried out. The further implementation hereof requires specific and detailed rules provisions that can best be adopted at a lower level. The essential criteria for the application of Special Recommendation VII set out in the Methodology 2004 will serve as a guideline in this respect.

Re Article 7

Article 7 is actually a continuation of the obligation to apply ongoing due diligence of business relationships laid down in Article 3, subparagraph d. As regards data and information obtained in the course of customer due diligence, in particular those relating to clients, beneficial owners or business relationships posing a higher risk of money laundering or terrorist financing, it is desirable that they are up to date and relevant.

Re Article 8

The first paragraph of this Article maintains the starting point already laid down in the LID that identification must take place before the service is provided. For the purposes of this draft, this starting point is extended to the verification of the identity before entering into a business relationship or carrying out an individual transaction. The second paragraph qualifies this starting point with regard to a number of cases mentioned in subparagraphs a through d by allowing the identification and verification process to be completed after entering into the business relationship. The purpose thereof is to avoid unnecessary disruption of normal business services by the identification and verification process. However, two conditions must always be met, namely that it is only applied in low-risk situations, and that identification and verification is completed as soon as possible after the first contact. Examples of such

exceptional situations are telephone requests for services to legal professionals and the provision of advice by banks to clients before identification in respect of an opened bank account has been completed.

Re Article 9

Article 8 of the LID prohibits a service provider from providing a service, if the identity of the client has not been established in the manner prescribed by that State Ordinance. The first paragraph of this Article adopts this essential prohibition, albeit that it now has a broader scope of application, i.e. that no business relationship can be entered into or a transaction carried out, if the service provider has not conducted customer due diligence, if it is unable to conduct customer due diligence (e.g. due to a reluctant attitude of the client) or if the customer due diligence did not lead to the result intended by Articles 3, 4 and 5, i.e. to obtain a picture as complete as possible of the client and the beneficial owner in the context of preventing and combating money laundering and terrorist financing. Otherwise, there may be an unacceptable risk of money laundering or terrorist financing. An example could be a legal entity that is part of a structure of international companies that is difficult to understand.

As an extension of the first paragraph, the second paragraph instructs the service provider, who after entering into a business relationship is no longer able to comply with customer due diligence, to end this business relationship immediately. This will mainly be the case, if the requirement of ongoing due diligence, as referred to in Article 3, first paragraph, subparagraph d, can no longer be met.

Re Article 10

This Article offers the possibility of simplified due diligence for a number of cases referred to in the first paragraph, of which it is generally assumed that they present a lower risk of money laundering or terrorist financing. This lower risk is related to the nature of the client, the business relationship or the transaction. Thus, for example, the information about the client and the beneficial owner may be publicly available, or adequate mechanisms are in place elsewhere in national legislation and regulations to guarantee the identification and verification of the client and the beneficial owner. It is left to the service providers themselves to determine the extent of the reduced customer due diligence. To this end, the service provider should collect sufficient data and carry out periodic research. This is provided for in the second paragraph of this Article. An example could be the establishment of a business relationship or the performance of a transaction on behalf of the Government. In this case, it is not useful and therefore not necessary to establish the identity of the beneficial owner and subsequently verify this identity.

The cases mentioned in subparagraphs a, 1° through 6°, and b, 1° through 3°, are derived from essential criterion 5.9 of the Methodology 2004. 6° in fact relates to the State of the Netherlands, the Dutch administrative entities having legal personality, such as municipalities, provinces and the BES public entity, the public entities having legal personality established by Dutch law, as well as Land Curaçao and Land Sint Maarten and the public entities having legal personality established by law in Curaçao and in Sint Maarten.

For the record, it must be noted that the application of reduced due diligence is not permitted, if the client, business relationship or transaction involves a higher risk of money laundering or terrorist financing, or if there are indications that the client is involved in money laundering or terrorist financing. This is laid down in the third paragraph for the sake of clarity. In that case, Article 6, first paragraph, subparagraphs d and f, and the second paragraph, subparagraph g, respectively, must be applied in full.

Re Article 11

This Article provides for the opposite case of reduced due diligence, i.e. enhanced due diligence. This Article contains the general framework for the application of enhanced due diligence, while Articles 12 and 13 provide further details on special situations in which enhanced due diligence may be required. Furthermore, as regards the establishment of correspondent banking relationships by banks, reference can be made to Articles 17 and 18 of this draft.

Enhanced due diligence should always be conducted, if and when the nature of a business relationship or transaction entails a higher risk of money laundering or terrorist financing. It is important here that service providers take measures, which, first of all, enable them to obtain a picture as complete as possible of the higher risks and, secondly, to mitigate those risks. Enhanced due diligence should be conducted both prior to the business relationship or transaction and during the course of the business relationship. The cases mentioned in subparagraphs a through e have been derived from essential criterion 5.8 of the Methodology 2004, which, in turn, is based on the internationally authoritative Basel CDD Paper. Incidentally, this is a non-exhaustive list (see the words “in any case” in the second sentence of the opening lines): service providers may conduct enhanced due diligence to other situations as well. Subparagraphs f, g and h relate successively to countries and jurisdictions that do not or not sufficiently meet the FATF standards, PEPs and correspondent banking relationships. These will be explained in more detail below. As regards subparagraph f, it must be noted in particular that the words “internationally accepted standards for the prevention and combating of money laundering and terrorist financing” used therein refer to the 40 + 9 FATF Recommendations, the corresponding Interpretative Notes and the Methodology 2004. Given that these documents are constantly being updated in connection with, *inter alia*, international developments and events, the Government does not consider it advisable to include a literal reference to them in the Ordinance.

Re Article 12

Article 12 refers to business relationships with and transactions for the benefit of PEPs, close relatives of PEPs and associates of PEPs and implements Recommendation 6. Such relationships and transactions require additional measures, as they entail a higher chance of reputational damage and other risks for service providers. In addition, the provision of services to PEPs, their close relatives and associates requires special attention in the context of international efforts to combat corruption. A number of examples of PEPs have already been mentioned in the explanatory note on Article 1. It should also be kept in mind that, within the meaning of this draft, PEPs include not only foreigners but also local persons. Furthermore, immediate family members and associates of local and foreign PEPs are also considered to be such persons and should therefore also be subject to the additional CDD measures as described in this Article.

Thus, the first paragraph stipulates that a service provider should have risk-based procedures in place to determine whether a client, a potential client or a beneficial owner is a politically exposed person or a PEP. It also requires a service provider to have procedures in place to determine the source of wealth of clients and beneficial owners who have been identified as politically exposed persons based on the first sentence. Such procedures should enable a service provider to take additional measures in the context of enhanced due diligence when entering into business relationships or carrying out transactions with these PEPs. These measures should be applied in a risk-based manner by service providers. In addition to the rules set out in this draft, the service provider will have to consider the risks of a certain product purchased by the PEP in its internal procedures. In case a PEP purchases a risky product (such as private banking), the service provider will have to exercise stricter control over the PEP. In order to determine whether a particular client is a PEP, a service provider may consult certain sources (such as World-Check or generally accessible sources on the Internet) or obtain information from a fellow service provider in the country of origin of the PEP concerned. For the larger institutions with a significant (international) client base, it may be efficient to use lists offered by some commercial organizations. In line with the risk-based approach, it is also important with regard to PEPs that an institution makes reasonable efforts to recognize and identify a PEP. In addition, the

institution should have procedures in place to identify the source of wealth of clients and beneficial owners identified as PEPs. The source of wealth should be the total assets of the PEP. This includes assets offered to the service provider within the framework of (requested) services (source of funds). By means of (for example) questions to the PEP and the request for a statement of the property of the PEP, the service provider can determine the origin of the assets.

The second paragraph provides for the assessment of PEPs before the business relationship is entered into or the transaction is carried out. First, it prescribes that the decision to enter into the business relationship must be made or approved only by persons responsible for overall management of the service provider. Persons responsible for the overall management of the service provider may include the directors and those who determine or co-determine the day-to-day policy of the service providers. This is in line with the concept of "senior management" in Recommendation 6. Secondly, this paragraph stipulates that, in case of a business relationship with a PEP, service providers must carry out ongoing monitoring of this business relationship.

The third paragraph regulates the special situation in which a client or beneficial owner is designated as a PEP after commencement. In that case, the business relationship can only be continued after obtaining the approval of the persons responsible for the overall management of the service provider. This means that the service provider must review the business relationship by applying the procedures referred to in the first paragraph, which should result in a decision on the continuation of the business relationship in question.

The fourth paragraph stipulates that a client, potential client or beneficial owner who is a PEP, as well as their immediate family members and close associates will be considered a PEP for five years after the client, potential client or beneficial owner ceases to hold the prominent public office in question. The requirements of this Article and of Article 11 will therefore continue to apply to such a person during that period. In this way, transactions that build on a business relationship entered into during the period that the prominent public function was held, or that relate to assets acquired or increased during that period can be monitored more closely.

Re Article 13

The first paragraph of this Article requires service providers to pay special attention to two situations:

a. business relationships and transactions with natural persons, legal entities and trusts originating from countries or jurisdictions that do not or not sufficiently comply with internationally accepted standards for the prevention and combating of money laundering and terrorist financing;
b. all complex and unusually large transactions and all unusual characteristics of transactions that have no explicable economic or legal purpose.

The first situation is related to the implementation of Recommendation 21, the second to Recommendation 11.

Recommendation 21 requires financial institutions to pay special attention to business relationships and transactions with individuals, including companies and financial institutions, originating from countries that do not or not sufficiently comply with the FATF Recommendations. In this respect, both the Bank and the FIU are currently sending regular notifications to the service providers under their supervision, drawing special attention to business relationships with countries and jurisdictions identified by the FATF as posing a risk of money laundering and terrorist financing to the international financial system because of their inadequate AML/CFT systems. The notifications also state the measures to be taken by service providers to mitigate the higher risks of money laundering and terrorist financing arising from business relationships or transactions with persons or institutions from these countries. This system will be continued by the Bank based on the second paragraph.

Recommendation 11 relates to complex, unusually large transactions and all unusual characteristics of transactions with no apparent economic or obvious legal purpose. Examples of such transactions or characteristics of transactions are large transactions compared to the business relationship, transactions that exceed certain limits, a very frequent use of an account in relation to its balance, and transactions that do not fit in with the usual transaction pattern of the account.

The second paragraph is related to the special attention to be paid pursuant to the first paragraph. If a service provider can reasonably suspect that a transaction with a natural person, legal entity or trust originating from a country or jurisdiction referred to in the first paragraph has no explicable economic or legal purpose, or in case of

complex and unusually large transactions or transactions that have no explicable economic or legal purpose, the service provider must investigate the background and purpose of that transaction. In this way, the service provider can make a more thorough assessment of the risks associated with the business relationship or transaction and decide whether the business relationship can be continued or the transaction carried out, or whether Article 9 of this draft should be applied.
The findings of the investigation referred to above must be recorded in writing. In this way, they will be available to the competent authorities, such as the Bank and the Public Prosecution Service. In connection herewith, the third paragraph stipulates that these findings must be retained for at least ten years. This is equal to the general retention period for the data and information obtained pursuant to the application of customer due diligence and the reporting obligation.

Re Article 14

Article 14 requires service providers to have adequate procedures in place aimed at preventing the misuse of new technological developments and instruments for the purposes of money laundering and terrorist financing. These procedures should focus in particular on the risks arising from business relationships and transactions in which the client is not physically present. Since this also falls under enhanced due diligence, Article 11, first paragraph, second sentence, applies. As a result, the procedures should cover both the establishment of the business relationship and the application of ongoing monitoring. Examples of business relationships and transactions falling under the scope of this Article are electronic banking via the Internet, the issue of so-called pre-paid value cards and the use of ATMs. The procedures required for this may relate to the authentication of the submitted identification documents, the submission of additional data and information in addition to those required under regular customer due diligence and contacting the client separately.

Re Article 15

Article 16 [*15…?/translator*] provides for the introduction of clients by financial service providers, lawyers and civil-law notaries established in Aruba. It is largely based on the text of Recommendation 9. Such a provision is important to, for example, the acceptance by a life insurance company of clients introduced by an insurance broker, in which case the insurance broker might already have conducted customer due diligence. Such clients may be accepted based on this Article, provided that the conditions referred to in subparagraphs a and b are met. As a starting point, the service provider to whom the client is introduced always remains ultimately responsible for the correctness of the data and information obtained from the introduced client pursuant to Article 3, subparagraphs a through c. For the sake of clarity, this is expressed in the opening lines of this Article. In fact, this means that a service provider cannot accept introduced clients, if this could lead to a situation as described in Article 9, first paragraph. Incidentally, the service provider is free to determine the manner in which it ascertains that the previous identification and verification have taken place. After all, it is important that the data and information concerning the identity and verification of the identity of the client can be imposed on [*provided to…/translator*] the service provider without delay, so that the service provider can fulfil its own responsibility towards that client.

For the rest, it is noted for the record that this Article, as well as the following Article, does not apply in two situations. The first situation concerns the conduct of customer due diligence by a third party on behalf of the service provider, for example based on an outsourcing agreement. After all, such customer due diligence can be regarded as customer due diligence by the service provider itself. The second situation concerns business relationships or transactions between financial service providers on behalf of their clients, as these are already covered by the provisions concerning the regular customer due diligence and correspondent banking relationship.

Re Article 16

This Article relates to the introduction of clients by service providers not established in Aruba. Such clients may be accepted, provided that they are introduced by service providers established in

a country or jurisdiction designated by ministerial order. Jurisdiction is understood to mean non-independent territories with their own legal systems, such as Curaçao, the British Virgin Islands and Bermuda. When designating the countries and jurisdictions, particular attention will be paid to the quality of their AML/CFT systems as assessed by the FATF, the World Bank, the IMF or the regional sister organizations of the FATF.

Re Article 17

Within the framework of their activities, banks may enter into correspondent banking relationships with foreign banks. A correspondent banking relationship is defined in Article 1, first paragraph, of this draft as a permanent relationship between an Aruban bank and a bank established outside Aruba for the purpose of processing transactions or executing orders. In a correspondent banking relationship, a bank actually acts as an agent for another bank by making payments or providing other services for a client of this correspondent bank. The executing bank itself often does not have a relationship with this client, as a result of which it does not conduct any customer due diligence with regard to this client. In order to prevent that an Aruban bank runs the risk of being misused for money laundering or terrorist financing through such transactions, subparagraphs a through c describe the acts that such a bank must perform before entering into a correspondent banking relationship. Because of the sensitive nature of this form of cooperation, the second paragraph provides that a correspondent banking relationship is only entered into after a decision to that effect has been made by the persons responsible for the overall management of the bank. The third paragraph contains special provisions concerning the use of payable-through accounts made available by local banks in the context of a correspondent banking relationship. Since this gives clients of the foreign bank direct access to the payable-through account, it is important that the local bank is able to obtain the client’s identity quickly and efficiently in order to manage the possible risks.

Re Article 18

This Article prohibits correspondent banking relationships with shell banks. After all, it has been established internationally that there are significant risks associated with establishing and maintaining correspondent banking relationships with shell banks. For this reason, Recommendation 18 provides that countries must not approve the establishment or continuation of shell banks, and that financial institutions should refuse the establishment or continuation of correspondent banking relationships with shell banks. This Recommendation further provides that financial service providers should ensure that no correspondent banking relationships are entered into with foreign financial institutions that allow their accounts to be used by shell banks. This Article reflects this. For the sake of completeness, it must be noted that the Government intends to extend the LTK with a provision that will explicitly prohibit the establishment of shell banks in Aruba. This will immediately formalize the policy already pursued by the Bank in this area.

Re Article 19

Article 19 provides for the documents, data and information to be used in the verification process. In the first through fifth paragraphs, the Article makes a distinction according to the nature of the client. The sixth paragraph makes it possible to lay down further rules by ministerial order with regard to the type and content of the documents, data and information.

The first paragraph provides that the identity of a client who is a natural person must be verified using documents, data or information from a reliable and independent source. Unlike the LID (see Article 3 thereof), no description is given of the documents required. For reasons of flexibility, it has been decided to include them in the ministerial order referred to in the sixth paragraph. This will make it possible to respond more quickly to international developments in this field.

Article 3, second paragraph, of the LID stipulates with regard to legal entities established in the Kingdom that a certified extract from the Trade Register or a notarial deed of incorporation must be used to identify such legal entities. This stipulation abandoned in the proposed second paragraph. This paragraph provides that the identity of legal entities under Aruban law that have their registered office

in Aruba (and, consequently, exercise their activities in Aruba) must be verified by means of documents, data, or information from a reliable and independent source. The same applies to foreign legal entities that are established in Aruba and therefore carry out their activities there. This has been decided now that, in actual practice, it has become apparent that the information contained in the extracts cannot always be relied on. This is particularly the case for extracts provided by the Aruban Trade Register. This is due to the fact that the Aruban Trade Register, because of its outdated structure and the absence of sanction possibilities, is not able to provide accurate and reliable information about legal entities under all circumstances. Furthermore, the Government no longer considers it necessary to describe in detail which information should be included in the notarial deed, as this already takes place in actual practice. Moreover, not all legal entities in Aruba need to be established by notarial deed. As regards the association with legal personality, its constitution or bylaws do not have to be laid down in a notarial deed; reference is made to Articles 1666 and 1667 of the Civil Code of Aruba. In addition, the Government intends to revise the law of legal entities drastically in the near future. This revision will take place by introducing Book 2 in the Civil Code of Aruba. It cannot be ruled out that this will also have consequences for the document in which the establishment of a legal entity is laid down.

With regard to foreign legal entities that are not established in Aruba (in other words, that do not operate in Aruba), the requirement of identification by means of an authentic deed or entry in a trade register will be abandoned. It will be replaced by verification by means of reliable documents, data or information customary in international relations or by means of documents, data or information recognized by law as a valid means of identification in the state of origin of the client; see the third paragraph. This is because in some countries there is no official trade register and obtaining an authentic deed (including a notarial deed) is not always possible or only with great difficulty. In order to deal with these difficulties, the second paragraph adopts a flexible approach allowing the service provider to verify by means of documents customary in international relations. A service provider will have to be able to prove to the supervisor that it was justified to rely on certain documents. In principle, service providers can be considered to be able to make such judgments, as they themselves will also want to know who the client is for the purpose of hedging the business risk.

The fourth paragraph declared the third paragraph applicable mutatis mutandis to a trustee and the person otherwise exercising effective control, the settlor of the trust and the beneficial owners of the assets of the trust.

The fifth paragraph provides for the verification of the beneficial owner. Its wording is consistent with that of the preceding Article. Due to the nature of the beneficial owner phenomenon, it is complemented by an obligation to investigate on the part of the service provider when verifying the identity of the beneficial owner. This verification must be such that the service provider is convinced of the identity of the party concerned. Although the focus is on the verification of foreign beneficial owners, this Article also applies to domestic beneficial owners. In that case, verification may take place by means of the documents referred to in the first paragraph. The obligation to investigate referred to above will also apply in this case.

Re Article 20

This Article provides for the establishment, duties and staff of the FIU, as well as the assignment of works, services and supplies to this special government agency. It continues the approached adopted in the LMOT in 1995, which has since been refined by means of various amendments to that State Ordinance. Compared to the current situation, however, it contains some, partly important, changes. Thus, for example, subparagraph b of the first paragraph stipulates that the FIU may not only provide certain information in accordance with the provisions by or pursuant to this draft, but also in accordance with the provisions by or pursuant to other state ordinances in the field of preventing and combating money laundering and terrorist financing. An example is the information obtained by the FIU as a result of the application of Article 8 of the Sanctions Decree on Combating Terrorism and Terrorist Financing (AB 2010 No. 27). In addition, the issue of recommendations to the relevant business sectors on the introduction of appropriate internal control and communication procedures and other measures to be taken to prevent the use of those business sectors for money laundering and terrorist financing has been deleted. After all, this task will be transferred to the Bank; reference is made to Article 48. Instead, subparagraph e contains the provision of information about the manifestations and the prevention and combating of money

laundering and terrorist financing. In addition, an explicit task has been included to maintain contacts with foreign agencies that have a task similar to that of the FIU and to exchange information about the reporting behavior of service providers with such agencies. This task has been included in connection with the greatly increased importance of international cooperation - including in the manner described in Recommendation 40 - between the FIUs. Subparagraph g has been included to support the Bank's supervision of those obligated to report and to make it effective.

To emphasize the independent position of the FIU within the administrative organization, the second paragraph stipulates that it is a separate and independent part of the Ministry of the Minister. To that extent, the current situation provided for in Article 2 of the LMOT and Article 6 of the State Ordinance on the Establishment of Ministries (AB 2002 No. 33) will be continued. These Articles stipulate that the FIU is accountable to the Minister, and that the Minister is responsible for (*inter alia*) the FIU, respectively. However, the Minister responsible for judicial affairs will no longer play a role with regard to the staffing and budgetary matters of the FIU. From the point of view of efficiency and in view of the practice that has existed for some years now, the Government considers it desirable that only the Minister should be responsible for these matters.

The third paragraph entrusts the management of the FIU to a head. It also stipulates that the appointment, suspension and dismissal of the head and other staff will take place after having heard the monitoring committee to be discussed below. This obligation for the Minister to hear the monitoring committee has been included to guarantee the independent performance of the FIU.

The fourth paragraph has been taken over from Article 3, second paragraph, of the LMOT and stipulates that the procurement rules of the Public Finance Accountability Ordinance 1989 (AB 1989 No. 72) do not apply to the assignment of works, supplies and services for the benefit of the FIU. It was included in the LMOT at the time, because the FIU, like, for example, the Aruba Security Service (see for this purpose Article 32, first paragraph, of the State Ordinance on the Aruba Security Service), because of the nature of its work, must have specific equipment and support that is only available from a select group of suppliers.

Re Article 21

Article 25 [*21…?/translator*] sets up the monitoring committee for the FIU. This body advises and supports the FIU and the Minister. It consists of representatives of the public sector actors that are most active in the area of AML/CFT. Thus, the monitoring committee from the LMOT also returns in this draft, albeit with more limited responsibilities and composition. Compared to the LMOT, the monitoring committee will not play a role in determining the budget and staffing of the FIU. Furthermore, the business sectors concerned will no longer be represented in the monitoring committee. This avoids the appearance of undesirable influence on the functioning of the FIU by the private sector - one of the points of criticism of the MER on the Aruban reporting system.

The first paragraph reflects the above. It describes the duties of the monitoring committee as making its knowledge and expertise available to the FIU and advising the Minister, when requested or on its own initiative, on the setup and implementation of the obligation to report and on the adoption of the indicators referred to in Article 26. Apart from ending the representation of the private sector as mentioned above, the composition of the monitoring committee will undergo two changes. Firstly, the Minister responsible for judicial affairs will no longer be represented, as the Minister will be fully responsible for the implementation of this draft. Secondly, the Bank is explicitly mentioned as a member of the monitoring committee instead of the supervisory authorities for the business sectors and professional groups subject to the obligation to report. After all, after the entry into force of this draft, the Bank will be the only authority responsible for supervising compliance with the obligation to report. However, it will remain possible to appoint representatives of other supervisory authorities for service providers. Consideration could be given to the future supervisory body for casinos. The third and fourth paragraphs correspond to the current Article 17, second and third paragraphs, of the LMOT and do not require further discussion. The fifth paragraph, first sentence, sets the frequency of meetings of the monitoring committee at twice a year with the possibility of additional meetings (by means of the words “at least”), if circumstances so require. To emphasize the independent position of the monitoring committee, the second sentence stipulates that the monitoring committee determines its own working method.

Finally, the sixth paragraph gives the monitoring committee the power to request data and information from the FIU for the proper

performance of its duties. The FIU is obligated to provide these data and information. In order to protect the confidential nature of the reporting data, the third sentence in fact stipulates that personal data relating to the application of the obligation to report will be provided in anonymized form.

Re Article 22

In the context of the application of Article 21, first paragraph, subparagraph a, of this draft, the FIU obtains data and information that must be processed with a view to the objective of the reporting system, which is to receive, analyze and, if necessary, forward reports received for the purpose of preventing and combating money laundering and terrorist financing. To this end, the first paragraph sets up the so-called reporting register, which will be kept by the FIU. Article 4 of the LMOT also provides for the existence of a reporting register kept by the FIU but managed by the Minister. Pursuant to Article 7 of the LMOT, data from this register can be provided to agencies inside and outside the Kingdom designated by state decree and having a task similar to that of the FIU. The conditions applicable to this data provision have been laid down in the State Decree on the Register Regulations for the Financial Intelligence Unit since 1999. It is proposed to maintain the reporting register, albeit with some adjustments relating to the knowledge acquired since 1999. These can be found in the first paragraph of this Article, which sets up the reporting register and entrusts the ownership thereof to the FIU. As a result, the Minister’s management responsibility for this register will cease to exist. In the opinion of the Government, such a responsibility is of no practical use and, moreover, creates the unnecessary appearance of policy interference with the content of and exchange of information from the reporting register.

Due to the special nature of the data included in the reporting register, the second paragraph limits the provision thereof to cases for which rules have been laid down by or pursuant to state ordinance. An example of such a case is the exchange of data with foreign counterparts of the FIU. The basis for this is provided by the third paragraph of this Article. This provision has already been mentioned above and prescribes that, by state decree containing general administrative orders, rules are laid down regarding the provision of data from the reporting register to authorities inside or

outside the Kingdom that have a task similar to that of the FIU, as well regarding the conditions under which the provision of data takes place. In fact, this maintains Article 7, first paragraph, of the LMOT, without, however, the requirement that the agencies to which data can be provided must be designated by state decree. This requirement was used to designate the jurisdictions that have FIUs that are members of the Egmont Group. In view of the experience gained in the meantime, such a requirement is no longer necessary, all the more so since the State Decree on the Register Regulations for the Financial Intelligence Unit contains sufficient safeguards for a careful exchange of information between the FIU and similar institutions abroad. For the same reason, the second paragraph of Article 7 of the LMOT, which prescribes that the FIU must conclude agreements with similar foreign institutions before it can provide data to these institutions, has not been adopted either.

Re Article 23

This Article corresponds almost entirely to Article 5 of the LMOT and is intended to allow the FIU to properly perform its analysis duties as referred to in Article 20, first paragraph, subparagraph a, of this draft. This is done by giving the FIU access to the registers and other sources of information of investigative authorities and officials and of supervisory bodies. The concept of “other sources of information” is the only novelty in relation to Article 5 of the LMOT and relates to files, reports and so-called “soft” information. After all, information contained therein may also be of importance to the analysis of reports received.

Re Article 24

Article 24 concerns the data that the FIU must provide to the investigative authorities on its own initiative or on request. This includes the forwarded reports of the FIU concerning unusual transactions investigated and declared suspicious by it. The data referred to in this Article also correspond to the data currently to be provided pursuant to Article 6 of the LMOT.

Re Article 25

This Article instructs the Minister to adopt indicators for assessing whether a transaction is considered to be an unusual transaction. Indicators are adopted by ministerial order after consultation with the FIU. The indicator regulations can be related to different service providers or categories of transactions. This continues the system as laid down in Article 10 of the LMOT. The central theme when reporting transactions is the unusual nature of the transaction. This distinguishes the Aruban reporting system from systems in which the suspicious nature of a transaction is paramount. The reasons for this have already been explained in the general explanatory notes.

As explained above in the general explanatory notes, the indicators have been subdivided into objective and subjective indicators. The objective indicators describe a situation in which a transaction must always be reported, while the subjective indicators relate to personal facts and circumstances of the client. Compared to the LMOT, it is intended to place more emphasis on the use of subjective indicators to report unusual transactions. This will increase the responsibility of service providers for their reporting behavior. They should consider more often whether a transaction should be reported because of possible money laundering or terrorist financing. In general, the indicators are established per sector. There is less need to use objective indicators for institutions that, because of their knowledge and experience, or the way in which they have organized their transactions, are able to make a good assessment of the degree of probability that a transaction is related to money laundering or terrorist financing.

Re Article 26

Pursuant to the first paragraph, unusual transactions must be reported immediately after the unusual nature of the transaction has become known to the service provider. This takes account of the situation in which the service provider only discovers the unusual nature of a transaction after some time. After all, it is conceivable that it is only after a second or third transaction of a client that the service provider comes to the conclusion that the behavior of that client may be related to money laundering or terrorist financing. In that case, the transaction carried out earlier may also be viewed in a different light, which means that it must be reported within the period referred to above. For the record, it must be stated this does

not apply to transactions that should have been reported based on an objective indicator. After all, even the fact that the transaction falls within the situation outlined in the indicator immediately gives rise to reporting.

The second paragraph mentions the information that should be provided as much as possible together with a report and that will make it possible to further investigate the transactions. This includes the identity of the client and, insofar as possible, also the identity of the person for whom the transaction is carried out, the nature and number of the identity document of the client, the nature, time and place of the transaction, the amount and designated use and origin of the money, securities, precious metals or other values involved in a transaction, the circumstances based on which the transaction is considered unusual and, in case of a transaction relating to an item of high value, a description of the item concerned. It should be noted that this information will already be available to the service providers obligated to report based on the application of customer due diligence.

The third paragraph offers the possibility, if so desired, to stipulate by state decree containing general administrative orders that other information must be included in the report.

Re Article 27

Article 27 has been taken over from Article 12 of the LMOT. The first paragraph provides for the power of the FIU to request further data or information in connection with a report received. The FIU can request these data or information from the person making the report. The words “the person” indicate, in accordance with existing practice, that the FIU will initially address the person within the organization of the service provider who is responsible for making the reports (the person referred to in Article 47, second paragraph), even though the reporting obligation as such rests with the service provider. Following that line, the FIU has the power to request these data from another service provider (or the person working for it, referred to in Article 47, second paragraph) who is involved in the transaction. This may be the case, for example, if an account in which a balance in cash, securities, precious metals or other values can be held has been credited or debited through another financial institution. Another example of a situation in which the report does not originate from the service provider from whom information is

requested is the case in which further questions are asked based on a report of a transaction carried out abroad. A request from a foreign FIU may give rise to a request pursuant to the first paragraph, if an Aruban service provider is involved in the transactions about which information has been obtained by the foreign FIU.

Pursuant to the second paragraph, the service provider is obligated to provide the FIU with the information requested pursuant to the first paragraph within the period set by the FIU, or orally if there is an urgent case.

The third and fourth paragraphs grant the FIU special powers for the purpose of investigating reports and carrying out searches. In order to maximize the effectiveness of the reporting system, the Government considers it desirable that the FIU itself is able to take certain measures in these special cases. For the sake of clarity, it must be noted that this does not prejudice the position of the Bank as the sole supervisory body with regard to compliance with the provisions laid down by or pursuant to this draft. After all, these are powers that are exclusively intended to ensure that the reports are made correctly by service providers, referred to in Article 26, or that the further data and information requested, as referred to in the first paragraph of this Article, are properly provided, so that the FIU can adequately fulfil its task of receiving and analyzing reports. For this reason, both the third paragraph and the fourth paragraph stipulate that the FIU must inform the Bank of the application of the powers laid down therein, so that the latter institution can take these into account when exercising its supervisory task. The third paragraph thus grants the head of the FIU the power to issue instructions to service providers that are obligated to report in two special cases. Firstly, it concerns reports that have not been made in accordance with Article 26, second paragraph. Examples hereof are incomplete reports and reports with obvious errors, such as the use of incorrect personal data. Secondly, it concerns incomplete or refused provision of further data and information requested in accordance with the first paragraph. In both cases, the purpose of the instruction is to ensure that the reporting requirements or a request for a search are (correctly) met after all. For the sake of clarity, this paragraph also stipulates that this power to give instructions does not imply a limitation of the Bank's power to give instructions as referred to in Article 48, second paragraph, of this Article [*of this draft…?/translator*]. This last power to give instructions is mostly intended to remedy shortcomings of a more far-reaching nature on

the part of an individual service provider, e.g. if there is a defective management organization as a result of which adequate reporting behavior is hindered.
The fourth paragraph grants the head of the FIU and the officials of the FIU to be designated for this purpose by state decree the power to demand inspection of business documents and to make copies thereof and to enter all places, with the exception of dwellings, if an instruction to provide the data and information requested pursuant to the first paragraph is not complied with.
The purpose hereof is to enable the FIU to retrieve the requested data and information from a service provider who is persisting in its reluctant behavior. This power will be applied if it is reasonably necessary to do so. In order to ensure optimal application of this special investigative power, the last sentence of Article 35, fourth through seventh paragraphs, regarding possible police assistance, the corresponding validity of the State Decree containing General Provisions concerning the Exercise of Supervision, the duty to assist of service providers and the overriding of the duty of confidentiality and lawyer-client privilege of independent professionals will apply mutatis mutandis.

Re Article 28

The first paragraph of this Article grants the head of the FIU the power to lay down rules of a practical nature concerning the way in which a report must be made, for example the format of the reports (electronic or in writing) or the use of automated systems (online reporting). In this way, the FIU can provide a practical framework for the implementation of the reporting obligation, which is necessary for the proper processing of the reports. In connection herewith, the second paragraph stipulates that service providers are obligated to comply with the rules given pursuant to the first paragraph. Non-compliance can be addressed by means of the enforcement instruments provided for in this draft.

Incidentally, this Article does not prevent the application of Article 48.

Re Article 29

This Article provides for the immunity from criminal prosecution of reporters and their staff for money laundering and/or terrorist

financing with regards to the reports made by them. Such immunity is necessary as reporters are guilty of money laundering and terrorist financing, in principle, as a result of their involvement in carrying out an unusual transaction. Pursuant to the first paragraph, the data and information provided by the reporter in the report cannot be used for the purposes of an investigation or criminal prosecution of the reporter for money laundering or terrorist financing, provided that these data and information have been provided in accordance with Articles 26 or 27. The criminal immunity also applies, if the reporter does not have precise knowledge of the underlying criminal offense and regardless of whether the criminal offense actually took place.

The second paragraph provides special criminal immunity in the event that a report would lead to a breach of the professional duty of confidentiality or business secrecy. The first is criminalized in Article 285 of the Criminal Code of Aruba, the second in Article 286 of the same Code. Examples include lawyers and civil-law notaries who, by virtue of their profession or office, have an obligation of secrecy with regard to the data and information obtained by them from their clients, and employees of financial institutions who are usually subject to a duty of confidentiality with regard to the business data they have obtained in or based on their employment contract with the institution obligated to report. The second paragraph is therefore intended to prevent any conflict between the implementation of the reporting obligation and the criminalization of the breach of the professional duty of confidentiality or business secrecy. This concerns not so much the case in which a report was made pursuant to the statutory obligation, but the exceptional case in which, in retrospect, a report did not have to be made. Consideration could be given to a misconception about what is meant by a certain indicator. If there is a reasonable assumption on the part of the party obligated to report as to what the reporting obligation requires, it cannot be prosecuted for violation of Articles 285 or 286 of the Criminal Code of Aruba.

The third paragraph extends the criminal immunity referred to in the first and second paragraphs to those who took care of the report on behalf of the institution obligated to report, or who cooperated in preparing the report. This in fact includes the staff of the institution obligated to report.

Re Article 30

Article 30 contains the civil-law counterpart of the criminal-law immunity provision laid down in the preceding Article. The first paragraph grants a reporter immunity from civil liability, if it made a report in good faith pursuant to Article 26 or provided data or information to the FIU pursuant to Article 27, second paragraph. This may include claims for compensation filed in civil-law proceedings for breach of contract, if a service provider refuses to carry out the requested transaction and instead reports this transaction to the FIU. Another example is the institution of proceedings based on an unlawful act for damage suffered as a result of a report. For the sake of completeness, it must be noted that the words “third party” in this paragraph refer both to the client and/or beneficial owner and to other (non-contractual) parties who have suffered damage as a result of the report.

Compared to the current Article 15, first paragraph, of the LMOT, this paragraph differs insofar as the knowledge of the reporter is concerned. Where Article 15, first paragraph, of the LMOT does not apply civil-law immunity if it is demonstrated that, in view of all facts and circumstances, the report should not reasonably have been made, this paragraph links the application of civil-law immunity to the good faith of the reporter. In this context, good faith is understood to mean good faith within the meaning of Article 3.11 of the Civil Code of Aruba. As a result, the reporter is protected, unless it was aware of the relevant facts or, in view of the given circumstances, should have been aware of these facts. In this respect, as with the criminal immunity, the reporter is not required to have precise knowledge of the underlying facts, and it is not important that such facts actually took place. Only in case of gross negligence or intent on the part of the reporter will it be unable to invoke good faith and will civil immunity not apply. This paragraph thus offers a higher degree of protection to the reporter than the current criterion of reasonableness, which links the application of immunity to the duty of due care on the part of the party obligated to report in complying with reporting obligation.

The second paragraph also declares the civil-law immunity referred to in the first paragraph applicable to the persons who work for the service provider, and who have provided data or information in accordance with Articles 26 or 27, second paragraph, or who have cooperated in the provision thereof. As in the case of criminal immunity, this includes the staff of the institution obligated to report.

Re Article 31

This Article provides for the prohibition of so-called tipping-off. This prohibition means that reporters may not disclose (for example to the subjects or other interested parties involved in the report) that an unusual transaction or the related information has been reported to the FIU, or that the FIU has forwarded an unusual transaction report to the investigative authorities after investigation. Such disclosures can seriously undermine the purpose and application of the reporting system. The tipping-off prohibition further safeguards the confidential nature of reported unusual transactions. The tipping-off prohibition is not absolute: pursuant to the first paragraph, it may be deviated from insofar as the objective of this draft - namely the prevention and combating of money laundering and terrorist financing - makes this necessary. Consideration could be given to existing warning systems between service providers (such as the interbank warning system), which can help to prevent and combat money laundering and terrorist financing.

Re Article 32

The proposed Article 32 instructs persons charged with the supervision of persons and institutions in the financial markets or of designated non-financial service providers to inform the FIU of facts they discover in the performance of their duties, which may point to money laundering or terrorist financing. If necessary, the applicable statutory confidentiality provisions must be deviated from. After all, the FIU's familiarity with such facts may be important to the performance of its duties as described in Article 20, first paragraph, subparagraphs a and b. Consideration could be given to unusual transactions that should have been reported. As regards the persons charged with the supervision of persons and institutions in the financial markets, the Bank's employees responsible for monitoring compliance with the LTK, the LTV and the LTG may be considered in particular. As regards the supervisors of designated non-financial service providers, the Bank's employees responsible for monitoring compliance with the LTT and the staff of future supervisory bodies, such as the body that will supervise casinos, could be considered.

Re Article 33

Recommendation 10 stipulates that financial institutions are required to retain all necessary data on both domestic and international transactions for at least five years in order to enable them to comply swiftly with information requests from competent authorities - in this case notably the Bank, the FIU and the investigative authorities. Such data must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved) so as to provide, if necessary, evidence for the prosecution of criminal offenses. In addition, identification data obtained through applying CDD measures (such as copies or other evidence of identification documents like passports, identity cards, driver's licenses and similar documents), as well as accounts statements and business correspondence should be retained for at least five years after the business relationship is ended. Finally, this Recommendation stipulates that identification data and transaction records should be available to local competent authorities. This Article reflects the above. The only difference with Recommendation 10 is the duration of the retention period, which, in line with the retention period referred to in Articles 14, second paragraph, 15, third paragraph, and 39, is set at a minimum of 10 years. This is also in line with the general civil-law retention period for professional and business records (see Article 3.15a of the Civil Code of Aruba) and the fiscal retention period for persons required to keep records within the meaning of Article 48, sixth paragraph, of the General State Ordinance on Taxes (AB 2004 No. 10). Both are set at 10 years. For the sake of completeness, it must be noted that this Article does not only apply to financial service providers, but also to non-financial service providers. Such a broad application is also prescribed by the opening lines of Recommendation 12, which provides for the application of CDD measures by designated non-financial service providers.

The second paragraph grants the Bank the power to determine that, in special cases, the retention referred to in the first paragraph will be for a longer period be determined by the Bank. Use may be made of this power, if, for example, on the expiration of the retention period, it becomes apparent that the data must be retained for a longer period in connection with an ongoing criminal investigation.

Re Article 34

For reasons similar to those set out in Article 33, this Article provides that a service provider must retain the data provided in an unusual transaction report in an accessible manner for at least 10 years after the date on which the report was made.

Re Article 35

Article 35 provides for the designation and powers of the persons who will be responsible for supervising compliance with the provisions laid down by or pursuant to this draft. It is based on the so-called standard supervision provision that has been used in Aruban legislation for some time now. The supervision will be entrusted to employees of the Bank and will not only focus on the institutions already under legal supervision of the Bank but also on non-regulated (financial) institutions and designated non-financial service providers.

The second paragraph provides, firstly, that the persons designated pursuant to the first paragraph may exercise the supervision in a risk-oriented manner. The application of the risk-oriented approach means that more attention is paid to service providers and products that entail a higher risk of money laundering or terrorist financing and less to service providers and products that entail a lower risk. For a number of situations, this draft already contains instructions regarding the determination of the risk. Furthermore, the second paragraph stipulates that the Bank's staff designated pursuant to the first paragraph will report on the exercise of the powers referred to in the third paragraph to the President of the Bank and to the executives within the Bank to be designated by him in writing. This special reporting obligation is taken over from Article 23a, first paragraph, of the LMOT and is related to the special position of the Bank and the desired effectiveness of supervision. In the Government's opinion, these aspects make it necessary for the Bank's supervisory staff to report directly to the executives concerned of this institution instead of to the Minister.

The seventh paragraph has been taken over from Article 9, sixth paragraph, of the LID and Article 23, sixth paragraph, of the LMOT. For the sixth paragraph stipulates that everyone is obligated to grant the Bank's supervisory staff all cooperation required pursuant to the third paragraph. The application of these powers may conflict with the obligation of professional secrecy or lawyer-client privilege that is granted to lawyers, civil-law notaries and accountants by law or

case law. After all, it cannot be ruled out that, when exercising the powers referred to in the third paragraph, a professional as referred to above invokes his professional secrecy or lawyer-client privilege, as a result of which the supervision of compliance with this draft could in fact be frustrated. To prevent this, the seventh paragraph stipulates that a lawyer, civil-law notary or accountant may not invoke an obligation of professional secrecy or lawyer-client privilege provided for by law or otherwise with regard to the exercise of the powers referred to in the third paragraph. This overriding of the obligation of professional secrecy and lawyer-client privilege is subject to the condition that it can only take place insofar as one or more of the circumstances referred to in Article 6, second paragraph, subparagraphs a, b or g occur(s). In other cases, the obligation of professional secrecy and lawyer-client privilege may continue to apply.

Re Article 36

The first paragraph stipulates that the Bank is authorized to exchange supervisory information as referred to in article 35, first paragraph, with the agencies designated by the public authorities in foreign countries, which are charged with the supervision of:

a. compliance with legislation and regulations regarding the prevention and combating of money laundering and terrorist financing;
b. persons and institutions active in the financial markets.

Such an authority is currently lacking in the LID and the LMOT. This does not only complicate local supervision, but also puts Aruba at a disadvantage from an international point of view, all the more so since, in the context of the international prevention and combating of money laundering and terrorist financing, countries are expected to ensure that their competent authorities grant the widest possible international cooperation to their foreign counterparts. To this end, there should be clear and effective channels to facilitate the direct, prompt and constructive exchange between counterparts, either on their own initiative or on request, of information relating to both money laundering and the underlying crimes. Exchange should be permitted without unnecessarily restrictive conditions. Reference is made to Recommendation 40.

Legislation and regulations concerning the prevention and combating of money laundering and terrorist financing (see subparagraph a of the first paragraph) can mainly be considered to have the same content and scope as this draft. Subparagraph b of the first paragraph relates to statutory supervisory regulations comparable to the LTK, LTV and LTG. This is important now that AML/CFT is part of the integrity management to be conducted by financial institutions.

Building on the first paragraph, the second through fifth paragraphs successively provide for the Bank's authority to request data and information from a service provider on behalf of a foreign counterpart or to conduct or arrange for others to conduct an investigation (therefore using third parties), the obligation of the service providers in question to cooperate in an information request or an investigation and the Bank's authority to allow officials of the requesting counterpart to participate in an on-site investigation at the service provider.

Re Article 37

The administrative enforcement instruments consisting of the order subject to a penalty and the administrative fine were already discussed in the general explanatory notes. These are provided for in this Article and Articles 38 through 44. The similar provisions of the LID and the LMOT and the supervisory regulations have served as examples. In a sense, they are therefore standard provisions that have been in force for some time. The first paragraph of this Article declares the Bank authorized to impose an order subject to a penalty for non-compliance with the provisions laid down by or pursuant to this draft, while the second paragraph does the same in respect of the administrative fine. With regard to the order subject to a penalty, it may be noted that the nature of this measure entails that it is only applied in situations where the undesirable situation can be remedied by the enterprise in question, and another measure - such as criminal prosecution - may be considered less appropriate. The imposition of the order subject to a penalty - like the imposition of all administrative sanctions - is subject to the general principles of good governance.

A penalty or fine can always be imposed for an individual fact; insofar as the administrative fine is concerned, this is explicitly laid down because of its punitive nature. In this context, in order to answer the question whether it concerns a single or multiple facts, it

should always be considered whether the body of facts based on which the fine is imposed constitutes a violation of provisions that are completely different as to purport or not. In this way, harmonization is sought with the doctrine on the application of the ne bis in idem principle. This avoids the possibility that facts that have been prosecuted could be punished again within the meaning of this draft.

For the sake of legal certainty, the maximum amount of the administrative fine has been included in the second paragraph. This is four times the amount included in the LID, LMOT, etc. This is a consequence of the criticism in the MER that the current maximum amount is too low in comparison with other countries. No maximum amount is mentioned for the order subject to a penalty, as the use of this instrument depends on the nature of the violation.

The third paragraph, second sentence, ensures that the order subject to a penalty and the administrative fine can also be imposed on executives of service providers. This is done by declaring Article 53, second and third paragraphs, of the Criminal Code of Aruba applicable mutatis mutandis. Pursuant to these provisions, if criminal offenses are committed by legal entities, criminal proceedings may be instituted and such punishments and measures as prescribed by (criminal) law may be imposed on the legal entities or those who have ordered or actually directed the criminal offense and on both categories together. In this special case, the term “legal entity” also includes unincorporated companies, partnerships and special-purpose assets.

The fourth paragraph instructs the Bank to adopt guidelines for the application of the order subject to a penalty and the administrative fine and to lay these down in a policy document. This policy document must in any case contain a description of the procedures to be followed when applying the order subject to a penalty and the administrative fine and of the principles for determining the amount of the order subject to a penalty and the administrative fine per violation or categories of violations. From the perspective of good governance, the policy document, as well as any subsequent amendments to it must be announced in advance by the Bank in a manner to be determined by the Bank, such as publication on the website of the Bank.

The fifth paragraph stipulates, in accordance with the existing practice, that the penalty and the administrative fine will accrue to the Bank.

Re Article 38

The first paragraph doubles the amount of the administrative fine in case of a repeated violation within five years for the same violation. The second paragraph authorizes the Bank to double the amount of the administrative fine if the benefits obtained by the violator exceed Afl. 1 million. The words “Notwithstanding Article 37, second paragraph” indicate that the fine to be imposed in such a case may exceed Afl. 1 million.

Re Article 39

In order to guarantee the (legal) protection of the person as regards whom the imposition of an administrative fine is being prepared, the proposed Article 43 [*…39?/translator*] establishes a right to remain silent for the person concerned. This implies an obligation to caution on the part of the Bank. This is necessary, as the administrative fine is by its nature a punishment, which makes Article 14 of the United Nations Convention on Civil and Political Rights and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms applicable to the imposition thereof. For the sake of clarity, it must be noted that the right to remain silent does not apply - nor does the obligation to caution - when exercising regular supervisory powers, even if the person against whom they are exercised thereby runs the risk of exposing himself to discovery of a violation of the provisions of this draft. The right to remain silent only exists if a supervisor decides to make use of the penalty instrument. According to aforementioned Conventions, this right to remain silent arises when there is a so-called criminal charge, which, according to established case law, means the moment at which a person has reasonably been able to deduce from an act that a fine will be imposed on him. It arises from the nature of the case that this moment will depend on the circumstances of the individual case. For the sake of clarity, it must also be noted that an existing right to remain silent in an ongoing penalty procedure does not imply that this right to remain silent can also be invoked in the event of a simultaneous, lawful exercise of supervisory powers.

Re Article 40

Article 40 contains some of the usual provisions concerning the obligation to pay and the collection of the fine.

Re Article 41

The proposed Article 41 is first and foremost an elaboration of the principle that double jeopardy is unthinkable. After all, the ne bis in idem principle excludes the possibility of cumulative punishment for the same violation. Subparagraph a of the first paragraph is an elaboration of this. Furthermore, as in the case of criminal prosecution, an administrative limitation period should be provided for in the interests of legal certainty. In the first paragraph, subparagraph b, this is set at three years as of the date of the violation. The criminal prosecution period is of course not affected by any administrative limitation period.

The fourth and fifth paragraphs have been included to provide the violator with certainty about the duration of an order subject to a penalty, in particular that an order subject to a penalty will be lifted again at some time. Reference can also be made to Article 5.34 of the Dutch General Administrative Law Act.

Re Article 42

In addition to the order subject to a penalty and the administrative fine, it has been decided to include a related sanction in the proposed Article 42, namely the public announcement of the violation for which an order subject to a penalty or an administrative fine was imposed. This sanction constitutes a kind of additional penalty, which can always be imposed together with other sanctions. For the purposes of this draft, the application of this sanction is linked to the objective of protecting the financial system and combating money laundering and terrorist financing.

Re Article 43

This Article is proposed in order to make it possible, after the imposition of the fine, to ascertain at all times whether all principles governing the imposition of the fine have been taken into account.

Re Article 44

Article 44 contains provisions for the enforced recovery of administrative fines and penalties in the event that a service provider persists in refusing to pay the fine or penalty. Since both the fine and the order subject to a penalty are imposed by the Bank and accrue to this agency, it has been decided to seek harmonization with the enforcement provisions of the Code of Civil Procedure of Aruba (AB 2005 No. 34).

Re article 45

The purpose of the proposed Article is to ensure as much as possible that branch offices and subsidiaries of Aruban service providers established and operating outside Aruba are also subject to statutory provisions in the area of AML/CFT equivalent to those laid down in this draft and the FATF standards. The obligation to do so has been laid down in the first paragraph. The second paragraph requires this in particular in respect of branch offices and subsidiaries in countries that do not meet or insufficiently meet the FATF standards.

The third paragraph provides for the case in which the laws of the country or jurisdiction concerned do not permit the application by the Aruban service provider of the provisions and standards referred to in the first paragraph to its branch office or subsidiary. Examples of such obstacles are legal banking secrecy and the exclusion or very restrictive application of information exchange with other AML/CFT supervisors. In that case, the service provider concerned must inform the Bank hereof and, if necessary in consultation with the Bank, take measures to counter the risk of money laundering and terrorist financing. Such measures may range from limiting the provision of services to termination of the presence in the country or jurisdiction.

Re Article 46

In order for service providers to be able to implement the risk-oriented approach contained in the draft, it is necessary that they have procedures and measures in place to prevent and combat money laundering and terrorist financing. In particular, the application of Chapters 2, 3 and 4 of this draft could be considered. This is provided for in the first paragraph. In order to enable the Bank to assess these

procedures and measures, this paragraph also stipulates that they must be laid down in writing.

Based on the above, the second paragraph stipulates that the procedures and measures must be related to the following:

- the internal organization and internal control of the service provider;
- the staff, in particular employment, change of position, background, education, information and continuous training;
- the application of customer due diligence (including both simplified and enhanced variants);
- the internal decision-making process for reporting;
- the recording of data and information obtained in the context of the application of customer due diligence and the reporting obligation;
- the conduct of periodic evaluations of the effectiveness of those procedures and measures.

The third paragraph instructs service providers to conduct their own periodic evaluations to assess whether and to what extent they are vulnerable to money laundering and terrorist financing as a result of their activities and operations. This should include the application of the procedures and measures referred to above in order to assess their effectiveness. In principle, the service provider itself will be able to determine the period during which the evaluation will take place. This does not affect the fact that the Bank, using the power to give instructions laid down in Article 48, second paragraph, may instruct a service provider to carry out the evaluations within a period to be determined by the Bank.

Pursuant to the fourth paragraph, the result of a periodic evaluation must always be recorded in writing. In this way, the persons involved within the organization of the service provider and the Bank may take note of this.

Re Article 47

The first paragraph of the proposed Article 47 instructs service providers to have a person in their organization responsible for ensuring compliance by service providers with legislation and regulations in the area of the prevention and combating of money laundering and terrorist financing. This person is usually referred to as the compliance officer. Currently, the financial service providers and casinos operating in Aruba already have such an officer to

implement the provisions of the LMOT, the LID and the AML/CFT directives of the Bank. As regards these service providers, the first paragraph therefore prolongs an already existing practice. Incidentally, the AML/CFT manual for financial service providers will stipulate that this officer must be part of the senior management of those service providers.

The second paragraph stipulates that service providers must have at least one person within their organization who is responsible for the internal receipt and assessment of potential reports and for making reports to the FIU on behalf of the service provider. This officer is usually referred to in other countries and jurisdictions as the money laundering reporting officer and is new to the Aruban reporting system, in which reports of possible unusual transactions are received internally, assessed and, if necessary, reported to the FIU by the compliance officer. Whereas the compliance officer has a general responsibility for preventing and combating money laundering and terrorist financing under the proposed system, the money laundering reporting officer has a specific responsibility for the service provider's compliance with its reporting obligation as laid down in Chapter 3 of this draft. The wording of the second paragraph in combination with that of the first paragraph does not preclude the positions of money laundering reporting officer and compliance officer from being held by the same person. This will particularly occur in case of smaller service providers with limited activities. For the rest, it must be noted that the words "at least one person within their organization" have been included to ensure (e.g. by means of observers) that there is always a person present within the organization to perform the duties associated with the position of money laundering reporting officer and thus to safeguard the continuity of the reports as much as possible.

The third paragraph enables the Bank and the FIU to give adequate substance to the provisions of this draft.

Re Article 48

This first paragraph of this Article stipulates that the Bank is authorized to issue directives to different categories of service providers for the application of CDD, the reporting obligation and data retention provisions of this draft. As indicated above, this authority will be used to issue AML/CFT manuals to the financial service providers under the supervision of the Bank. If a directive

relates to the application of Chapter 3, the Bank must consult with the FIU in advance due to the special nature of the provisions contained in that Chapter. Compliance with a directive (and therefore an AML/CFT manual) is mandatory and can be enforced by means of the instruments provided for in this draft.

The second paragraph provides for the Bank's power to issue instructions to individual service providers to follow a specified course of conduct with regard to subjects to be mentioned explicitly. This power to issue instructions, which can also be found in the financial supervision ordinances, enables the Bank to remedy shortcomings or to fill gaps in *inter alia* the management organization. It is also mandatory to comply with an instruction.

Re Article 49

The proposed Article 49 contains a general duty of confidentiality with regard to the data or information provided or received pursuant to this State Ordinance. The qualification in the last clause has been included to enable service providers to communicate with each other about the background of clients within the framework of customer due diligence.

Re Article 50

This Article is in fact a continuation of Article 15a of the LMOT. Its purpose is to provide the Bank with a reliable overview of the persons and institutions falling under the scope of this draft. An exception is made for those service providers already subject to legal supervision (i.e. credit institutions, (life) insurers, money transfer companies and trust offices), as the Bank already has a proper registration of these service providers. With a view to the correct implementation of the reporting provisions, the second sentence of the third paragraph imposes a duty of care on the Bank to send copies of reports to the FIU.

Re Article 51

The implementation of the provisions laid down by or pursuant to this draft - in particular those relating to supervision - will entail costs for the Bank. In connection herewith, this Article provides for an obligation for service providers to pay to the Bank an annual amount to be determined by state decree containing general administrative orders as compensation for the implementation costs incurred by it. Again, an exception is made for service providers under the supervision of the Bank. This is related to the fact that these service providers are already obligated to pay the Bank a fixed amount for the full or partial coverage of the supervision costs incurred by this institution pursuant to the supervision ordinances applicable to them, which, after all, also relate to integrity monitoring and promotion.

Pursuant to the third paragraph, failure to pay or late payment of this amount may be dealt with by the Bank using the enforced recovery procedure described in Article 44 of this draft.

Re Article 52

In order for the Minister to [*comply with…?/translator*] the application of the provisions laid down by or pursuant to this draft, the proposed Article imposes an annual reporting obligation on the Bank. A similar provision already appears in Articles 50 of the LTK, 28 of the LTV, 30 of the LTG and 29 of the LTT.

Re Article 53

In order to be able to respond quickly to international developments, the proposed Article 52 grants the Government to the power to change the threshold amounts mentioned in Articles 2, second paragraph, 6, first paragraph, subparagraph b, and second paragraph, subparagraphs e and f, and 9, first paragraph, subparagraph g, in a relatively quick manner.

Re Article 54

This Article contains a general power of delegation to provide for matters of a general nature.

Re Article 55

Article 55 provides for the criminalization of the violation of the provisions laid down by or pursuant to this draft. As with the administrative sanctions, the sanctions included herein have also been increased in comparison with the LID and the LMOT. The Government is of the opinion that the importance of consistency with international standards in this area justifies the maximum penalties proposed in this Article.

Re Article 56

It has already been indicated above that this draft will enter into force at the same time as an implementing ordinance that will provide for the transitional law and the necessary adjustments to the existing legislation and regulations. The first paragraph provides the basis for this. The second paragraph contains the short title, which does not require further discussion.

The Minister of Finance, Communication, Utilities and Energy,

The Minister of Justice and Education,

The Minister of General Affairs,

The Minister of Economic Affairs, Social Affairs and Culture,