

联合国《与犯罪收益有关的洗钱、没收和国际合作示范法》(1999)

Model Legislation[1] on Laundering, Confiscation[2]and International Cooperation in Relation to the Proceeds[3] of Crime (1999)

背景：本示范法是由联合国禁毒与预防犯罪办公室于 1999 年制定的专门针对洗钱行为的法律规范，只适用于大陆法系的国家（2003 年联合国禁毒与犯罪办公室另行制定了一部适用于习惯法系国家的示范法，其名称为联合国《洗钱犯罪收益与恐怖融资示范法》（2003））。本示范法以总论、洗钱预防、洗钱侦查、强制措施及国际合作五个篇章对反洗钱做了系统规范，故全文摘录。

Introduction to the model law

Money-laundering,[4] according to the definition adopted by the International Criminal Police Organization (ICPO/Interpol),[5] denotes[6] any act or attempted act[7] to conceal or disguise the identity[8] of illegally obtained proceeds so that they appear to have originated from legitimate[9] sources.

The purpose of laundering is to disguise illegal profits without compromising[10] the criminals who wish to benefit from the proceeds of their activities. This is a three-stage process requiring, in the first place, severing[11] any direct association between the money and the crime generating it; secondly, obscuring[12] the money trail to foil[13] pursuit; and, thirdly, making the money available to the criminal again once the manner of its acquisition[14] and its geographical provenance[15] can no longer be traced.[16]

Criminals exploit economic globalization by swiftly transferring money from one country to another. Advances in information systems, technology and communications as applied to financial transactions have made it possible to transfer money to any point on the globe with speed and ease. So-called "megabyte money"[17] in the form of symbols on a computer screen circulates 24 hours a day, seven days a week, and can be moved on time and time again to prevent its detection by law enforcement[18] agencies.

Since many financial centres worldwide have now adopted measures to counter money-laundering, criminals are on the lookout for[19] States with either weak or non-existent control mechanisms.

The activities of powerful criminal organizations can have catastrophic social consequences. Laundered money provides drug traffickers, arms dealers and other criminals with the wherewithal[20] for operating and developing their enterprises. Unless remedies[21] are found, money-laundering can strike at the integrity[22] of a country's financial institutions. The very fact of billions of dollars being removed each year from normal economic activities constitutes a real threat at a time when the financial health of every country affects the stability of the global marketplace.

Money-laundering undermines[23] international efforts to establish free and competitive markets and hampers the development of national economies: (i) It distorts the operation of the markets: transactions effected for the purpose of money-laundering may increase the demand for cash, render[24] interest and exchange rates unstable, give rise to unfair competition and considerably exacerbate[25] inflation in the countries where the criminals conduct their business dealings; (ii) It erodes[26] the credibility and, hence, stability of financial markets: if a bank collapses as a result of organized crime, the entire financial system of the country or even the whole region can suffer through the contagion effect[27].

Small countries are particularly vulnerable[28] to money-laundering. The economic power acquired through illegal activities gives criminal organizations leverage[29] over small economies.[30] The lack of suitable control mechanisms, or the inability to apply them, furnishes criminals with defacto[31] impunity[32]. Laundering the proceeds of illicit activities in such States has one purpose only: to make use of structural weaknesses or to exploit the gaps and weak points in the institutional and law-enforcement machinery established by a particular State to counter money-laundering.

Money-laundering is an inevitable extension of organized crime and an essential aspect of any profit-generating criminal activity. The operations of criminal organizations, directed as they are towards the accumulation of illegal profits, create a need for laundering in direct proportion[33] to the extent that such activities are developed and concentrated in the hands of a small group. Colossal[34] amounts of cash generated by certain types of criminal activity, such as drug trafficking, leave trails which are more difficult to hide than the traces left by the crimes themselves. At the same time, laundering presupposes[35] the existence of a structured criminal system capable of establishing elaborate mechanisms for the international recycling of capital.[36]

Organized crime and laundering are therefore doubly bound together.

International efforts to curb money-laundering are the reflection of a strategy aimed at attacking the economic power of criminal organizations in order to weaken them by preventing their benefiting from the proceeds of their criminal activities and at forestalling[37] the nefarious[38] effects of the criminal economy on the cogs[39] and wheels of the legal economy.[40] The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the first international legal instrument to embody[41] this new strategy, expresses in its preamble[42] the recognition by States that "illicit traffic generates large financial profits and wealth enabling transnational[43] criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels" and affirms that the international community is henceforth[44] "determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing".

Soon afterwards, the international community sought to extend the scope of efforts to counter laundering to the proceeds of all offences related to organized crime. At the World Ministerial

Conference on Organized Transnational Crime, held at Naples from 21 to 23 November 1994, [45] States reaffirmed their resolve to defeat "the social and economic power of criminal organizations and their ability to infiltrate[46] legitimate economies, to launder their criminal proceeds and to use violence and terror" by strengthening and enhancing "the capability of States, as well as of the United Nations and other relevant global and regional organizations, to achieve more effective international cooperation against the threats posed[47] by organized transnational crime [...] in relation to measures and strategies to prevent and combat[48] money-laundering and to control the use of the proceeds of crime".

The fight against money-laundering was at the centre of the deliberations[49] of the special session of the United Nations General Assembly, held in New York in June 1998, which adopted specific measures as part of a global action plan for the coordinated implementation of this strategy by Member States. [50]

Lastly, within other forums such as the Financial Action Task Force on Money Laundering (FATF)[51], the Basel Committee on Banking Regulations and Supervisory Practices,[52] the Council of Europe[53] or the European Union[54], a number of measures have been laid down with a view to preventing the use of financial and banking systems for laundering criminal proceeds.

The proposed model law is based to a large extent on this set of international instruments.

It is a legislative tool designed to facilitate the drafting of specially adapted legislative provisions by countries wishing to have on their books a law against money-laundering or to modernize their legislation in that area. The model law incorporates[55] the most relevant provisions developed by national legislation and amends, strengthens or supplements them in the light of[56] actual practice by States in action to combat laundering. It also proposes innovative[57] provisions aimed at improving the effectiveness of money-laundering preventive and punitive[58] measures and offers States appropriate legal mechanisms related to international cooperation of great strategic and practical importance.

It will be up to each individual country to adapt the proposed provisions

in order to bring them, where necessary, into line with its constitutional principles and the fundamental premises[59] of its legal system[60], and to supplement them with whatever measures it considers best designed to contribute towards effectively combating laundering. The model nevertheless constitutes in itself a coherent legal whole. By incorporating these provisions into their national legal apparatus[61], States must take care to preserve the coherency of the text in order not to detract[62] from its scope. Some provisions that are dependent on the text in its entirety would not have the desired degree of effectiveness if they were adopted in isolation or out of context.[63] Something of the philosophy of the text would also be lost if certain provisions were removed from it.

In order to facilitate its adaptation to national legislation, the model law presents some of its

provisions in the form of variants or options. A variant allows for the adjustment of a provision which cannot conceivably^[64] be left out of legislation against money-laundering, whereas an option denotes a provision which is optional and which can therefore be included or not at the discretion^[65] of the particular State.^[66]

The model law comprises five titles:

Title I: "General"

Title II: "Prevention of laundering"

Title III: "Detection of laundering"

Title IV: "Coercive^[67] measures"

Title V: "International cooperation"

The provisions of this model law have been reviewed and finalized by an informal group of international experts which met at Vienna in March 1999. This group was composed of judicial officers specializing in financial crime, representatives of financial intelligence units,^[68] bankers and financial investigators.

TEXT OF THE MODEL LAW

Title I: General

Article 1.1.1 Definition of money-laundering

For the purposes of the present law, the following shall be regarded as money-laundering:

(a) The conversion or transfer of property for the purpose of concealing or disguising the illicit origin of such property or of assisting any person who is involved in the commission of the predicate offence^[69] to evade the legal consequences of his or her actions;

(b) The concealment or disguise of the true nature, source, location, disposition^[70], movement or ownership of property;

(c) The acquisition, possession or use of property, by any person who knows [variant: who

suspects] [variant: who should have known] that such property constitutes proceeds of crime as defined herein.

Knowledge, intent or purpose required as an element of the offence may be inferred from objective factual circumstances.[71]

Article 1.1.2 Use of terms

For the purposes of the present law:

(a) The term "proceeds of crime" means any property or economic advantage derived directly or indirectly

variant (i): from a crime [the country may choose whether to determine the seriousness on the basis of the penalty[72] imposed[73] or according to categories of offences].

variant (ii): from one or more of the following offences: ... [list of offences to be specified by the country].

Such advantage may consist of any property as defined in subparagraph (b) of this article.

(b) The term "property" means assets of every kind, whether corporeal[74] or incorporeal, movable or immovable, tangible[75] or intangible, and legal documents or instruments evidencing title to, or interest in, such assets; [76]

(c) The term "instrumentality[77]" means any property used or intended to be used in any manner, wholly or in part, to commit one or more criminal offences;

(d) The term "criminal organization" means, for the purposes of the present law, any structured association having the aim of committing crimes;

(e) The term "confiscation" means the permanent deprivation of property by order of a court or other competent[78] authority;

(f) The term "predicate offence" means any criminal offence, even if committed abroad, enabling its perpetrator[79] to obtain proceeds as defined herein;[80]

(g) The term "offender" means any person participating in an offence as the main perpetrator, a joint perpetrator or an accomplice.[81]

In order to be used as a basis for proceedings[82] in respect of laundering, a predicate offence committed abroad [variant 1: must have the nature of a criminal offence in the country where it was committed and in the domestic law of] [name of the country adopting the model law], unless specifically agreed otherwise] [variant 2: must have the nature of a criminal offence in the country

where it was committed].

Title II. Prevention of laundering

Chapter I. General provisions on prevention

Article 2.1.1 Trades and occupations subject to titles II and III of the present law

[variant 1: Titles II and III of the present law shall apply to any natural or legal persons[83] who, in connection with their trade or occupation, carry out, supervise or advise on operations entailing[84] deposits, exchange operations, investments, conversions or any other movements of capital, and in particular to credit and financial institutions and financial intermediaries[85].

Titles II and III of the present law shall also apply, in respect of their entire operations, to over-the-counter[86] exchange dealers, casinos and gambling establishments[87], and to persons who carry out, supervise or advise on real estate transactions.]

[variant 2: Titles II and III of the present law shall apply to the following trades and occupations [list of trades and occupations concerned (see commentary[88])].

Article 2.1.2 Limit on the use of cash and bearer securities[89]

Any payment in cash or by bearer securities of a sum greater in the aggregate[90] than ... [amount to be fixed by the State] shall be prohibited.

However, [a national law, decree[91], etc.] may specify those cases and circumstances where an exception to the preceding paragraph shall be allowed. In such eventuality[92], a report specifying the modalities[93] of the transaction and the identity of the parties shall be made to the financial intelligence unit established under article 3.1.1 of the present law. [94]

Article 2.1.3 Requirement to effect [international] transfers of funds via credit or financial institutions

Any transfer to or from foreign countries of monies or securities involving a sum greater than ... [amount to be fixed by the State] shall be effected by or through an authorized credit or financial institution.

Chapter II. Transparency in financial transactions

Article 2.2.1 General provisions

The State shall organize the legal regime in such a way as to guarantee the transparency of economic dealings, in particular by ensuring that company law and the legal mechanisms for the protection of property do not allow the establishment of front or dummy corporations[95].

Article 2.2.2 Identification of customers by credit and financial institutions

Credit and financial institutions shall be required to verify[96] their customers' identity and addresses before opening ordinary accounts or passbooks[97], taking stocks, bonds or other securities into safe custody[98], granting safe-deposit[99] facilities or engaging in any other business dealings.

A natural person's identity shall be verified by the presentation of an original official document that is unexpired[100] and bears a photograph; a copy thereof[101] shall be taken. The person's address shall be verified by the presentation of a document capable of providing proof thereof.

A legal person shall be identified by the production of its articles of association[102] and of any document establishing that it has been lawfully registered and that it is actually in existence at the time of the identification. A copy thereof shall be taken.

Directors, employees or agents delegated to enter into dealings on behalf of third parties shall produce the documents referred to in the second paragraph of this article and also documents authenticating[103] the identity and addresses of the beneficial owners.[104]

Article 2.2.3 Identification of casual customers[105]

Casual customers shall be identified, in the manner specified in article 2.2.2, in the case of any transaction involving a sum greater than ... [amount to be fixed by the State].

If the amount of the transaction is unknown at the time of the operation, the customer shall be identified as soon as the amount becomes known or the threshold[106] specified in the first paragraph of this article is reached[107].

Identification shall be required, even if the amount of the operation is below the threshold laid down[108], whenever the lawful origin of the money is uncertain.

Identification shall also be carried out in cases where separate operations repeated during a limited period involve an individual amount less than that specified in the first paragraph of this article.

Article 2.2.4 Identification of beneficial owners

If it is uncertain whether a customer is acting on his or her own behalf, the credit or financial institution shall seek information by any means as to the true identity of the principal[109] or party on whose behalf the customer is acting.

If, following verification, any doubt remains as to the true identity of the beneficial owner, the banking relationship shall be terminated[110], without prejudice[111], where applicable[112], to the requirement to report suspicions[113].

If the customer is a lawyer, a public or private accountant, a private individual with public powers of attorney[114] or an authorized agent, acting as a financial intermediary[115], the customer may not invoke[116] professional secrecy in order to refuse to disclose the true identity of the transacting party.

Article 2.2.5 Special monitoring[117] of certain transactions

Where a transaction involves a sum greater than ... [amount to be fixed by the State] and is conducted in conditions of unusual or unjustified complexity or appears to have no economic justification or lawful purpose, the credit or financial institution shall be required to seek information as to the origin and destination of the money, the purpose of the transaction and the identity of the transacting parties.

The credit or financial institution shall draw up a confidential[118] report, in writing, containing all relevant information on the modalities of the transaction and on the identity of the principal and, where applicable, of the transacting parties.

The report shall be maintained as specified in article 2.2.6.

Particular vigilance[119] shall be exercised with regard to operations originating from financial establishments or institutions that are not subject to sufficient obligations with regard to customer identification[120] or the monitoring of transactions. [121]

Article 2.2.6 Record-keeping[122] by credit and financial institutions

Credit and financial institutions shall maintain and shall hold at the disposal of[123] the authorities specified in article 2.2.7:

- (a) Records of customer identification, for at least ... years after the account has been closed or the relations with the customer have ended;
- (b) Records of transactions conducted by customers and the reports provided for in article 2.2.5, for at least ... years following execution of the transaction.

Article 2.2.7 Communication of information

The information and records referred to in articles 2.2.2 to 2.2.6 shall be communicated, at their request, to the judicial authorities, to officials responsible for the detection and suppression[124] of laundering offences acting under the court's authority, and to the financial intelligence unit

established under article 3.3.1, within the scope of its powers as defined in articles 3.1.1 to 3.1.7.

In no circumstances shall persons required to transmit the above-mentioned information and reports or any other individual having knowledge thereof communicate such information or reports to any natural or legal persons other than those specified in the first paragraph of this article, except where authorized by the aforesaid[125] authorities.

Article 2.2.8 Internal anti-laundering programmes at credit and financial institutions

Credit and financial institutions shall develop programmes for the prevention of money-laundering. Such programmes shall include the following:

- (a) Centralization of information on the identity of customers, principals, beneficiaries, proxies[126], authorized agents and beneficial owners, and on suspicious transactions[127];
- (b) Designation[128] of compliance[129] officers[130], at central management level, in each branch and at each agency or local office;
- (c) Ongoing training for officials or employees;
- (d) Internal audit arrangements to check compliance with and effectiveness of the measures taken to apply the present law.

Article 2.2.9 Over-the-counter exchange dealings

For the purposes of the present law, an over-the-counter exchange dealing shall be constituted by the immediate exchange of banknotes or coin in different currencies or the handing over of cash against settlement by a different means of payment in a different currency.[131]

Natural or legal persons whose regular occupation is that of over-the-counter exchange dealer shall be required:

- (a) Before commencing their operations, to submit a declaration of activity to ... [variants: the ministry of finance or the ministry of the interior or the central bank of the country or any other competent authority] for the purpose of obtaining a licence to set up and operate a business, as provided for under the national legislation in force, and, in that declaration, to furnish proof of the lawful origin of the capital required to set up the establishment;
- (b) To verify the identity of their customers, by requiring the presentation, prior to any transaction involving a sum greater than ... [amount to be fixed by the State] or in the case of any transaction conducted in conditions of unusual or unjustified complexity, of an official original document that is unexpired and bears a photograph, a copy of which shall be taken;
- (c) To record, in chronological order[132], all operations, their nature and amount, indicating the

customer's surname and forenames, and the number of the document submitted, in a register numbered and initialled by the competent administrative authority, and to retain such register for at least ... years after the last operation recorded.

Article 2.2.10 Casinos and gambling establishments

Casinos and gambling establishments shall be required:

(a) Before commencing their operations, to submit a declaration of activity to ... [variants: the ministry of finance or the ministry of the interior or the central bank of the country or any other competent authority] for the purpose of obtaining a license to set up and operate a business, as provided for under the national legislation in force, and, in that declaration, to furnish proof of the lawful origin of the capital required to set up the establishment;

(b) To keep regular accounts and maintain such accounts for at least ... years. The accounting principles laid down by the national legislation shall be applicable to casinos and gambling clubs;

(c) To verify, by requiring the presentation of an official original document that is unexpired and bears a photograph, a copy of which shall be taken, the identity of gamblers who buy, bring or exchange chips or tokens^[133] for a sum greater than ... [amount to be fixed by the State];

(d) To record, in chronological order, all operations referred to in subparagraph (c) of this article, their nature and amount, indicating the gamblers' surnames and forenames, and the number of the document submitted, in a register numbered and initialled by the competent administrative authority, and to retain such register for at least ... years [a period of not less than five years] after the last operation recorded;

(e) To record, in chronological order, all transfers of funds effected between such casinos and gambling clubs in a register numbered and initialled by the competent administrative authority, and to retain such register for at least ... years [a period of not less than five years] after the last operation recorded.

If the gambling establishment is owned by a legal person possessing two or more subsidiaries^[134], the chips shall show the identity of the subsidiary by which they are issued. In no circumstances may chips issued by one subsidiary be cashed at any other subsidiary, including subsidiaries abroad.^[135]

Title III. Detection of laundering

Chapter I. Collaboration[136] with anti-laundering authorities

Section 1. Financial intelligence unit

Article 3.1.1 General provisions

A financial intelligence unit, organized under the terms laid down by decree[137], shall be responsible for receiving, analysing and processing reports required of the persons and organizations referred to in article 2.1.1. It shall also receive all relevant information, in particular that communicated by the judicial authorities. Its officials shall be required to keep confidential the information thus obtained, which may not be used for any purposes other than those provided for herein.

The composition and powers of the intelligence unit, the measures to safeguard or strengthen its independence, and the content and methods of transmission of the reports submitted to it shall be fixed by decree.

Article 3.1.2 Access to information

The intelligence unit may also, at its request, obtain from any public authority, or from any natural or legal person referred to in article 2.1.1, information and records, as specified in article 2.2.7, within the scope of investigations conducted following the report of a suspicion. It may further exchange information with the authorities responsible for imposing the disciplinary penalties provided for in article 4.2.4.

Option: It shall, upon request, be granted access to databases of the public authorities. In all cases, the use of information thus obtained shall be strictly limited to the purposes pursued hereunder.

Article 3.1.3 Relationships with financial intelligence units abroad

The financial intelligence unit may, subject to a reciprocal[138] arrangement, exchange information with foreign intelligence units responsible for receiving and processing reports of suspicions, provided that they are subject to similar requirements of confidentiality[139] and irrespective[140] of the nature of those units. It may, for that purpose, conclude cooperation agreements with such units.

Upon receipt of a request for information or transmission from a counterpart[141] foreign unit processing a report of a suspicion, it shall comply[142] with that request within the scope of the powers hereby conferred[143] upon it to deal with such reports.

Section 2. Reporting of suspicions

Article 3.1.4 Requirement to report suspicious transactions

Any natural or legal person [option 1: referred to in articles 2.1.1, 2.2.9 and 2.2.10] [option 2: and [chartered accountants, inspectors, auditors, etc.] shall be required to report to the financial intelligence unit transactions referred to in article 2.1.1 involving money which appears to be derived from the perpetration[144] of:

3 variants:

variant (a): a crime.

variant (b): an offence linked to organized crime.

variant (c): one or more of the following offences: [list of offences].

The persons referred to above shall be required to report the transactions carried out even if it was not feasible[145] to defer[146] their execution or if it became clear only after completion of a transaction that it involved suspect money.

They shall also be required to report without delay any information that might confirm or invalidate[147] the suspicion.

Article 3.1.5 Reporting to the financial intelligence unit

Reports of suspicions shall be transmitted to the financial intelligence unit by facsimile or, failing which, by any other written means. Reports communicated by telephone shall be confirmed by facsimile or any other written means within the shortest possible time. Such reports shall, as appropriate, indicate:

- (1) The reasons why the transaction has already been executed;
- (2) The time-limit within which the suspect transaction is to be executed.

The intelligence unit shall acknowledge receipt of the report upon receipt thereof.

Article 3.1.6 Stop notice on transactions

If, by reason of the seriousness or urgency of the case, the intelligence unit considers it necessary, it may have an order issued to stop the execution of a transaction prior to expiry[148] of the time-limit for execution, as stated by the reporting party. This stop notice shall be transmitted to the reporting party immediately, either by facsimile or by any other written means. The stop notice shall defer the execution of the transaction for a period not exceeding 48 hours.[149]

The presiding judge of the court of first instance having territorial jurisdiction to which the case is referred by the financial intelligence unit may order that the funds, accounts or securities be frozen for an additional period not exceeding eight days. [150]

Article 3.1.7 Further action on reports

Whenever strong evidence of an offence of laundering [option: the proceeds of an offence under article 3.1.4] comes to light[151], the intelligence unit shall immediately forward a report on the facts, together with its opinion, to the competent judicial authority [variant: to the investigating services], which shall decide upon further action. That report shall be accompanied by any relevant documents, other than the actual reports of suspicions. The identity of the reporting party shall not appear in the report.

Chapter II. Exemption[152] from liability[153]

Article 3.2.1 Exemption from liability for bona fide[154] reporting of suspicions

No proceedings for breach[155] of banking or professional secrecy may be instituted[156] against the persons or against directors or employees of the organizations referred to in article 2.1.1 who in good faith[157] transmit information or submit reports in accordance with the provisions of the present law.

No civil or criminal liability action may be brought nor any professional sanction taken against the persons or against directors or employees of the organizations referred to in article 2.1.1 who in good faith transmit information or submit reports in accordance with the provisions of the present law, even if the investigations or judicial decisions do not give rise to a conviction.[158]

No civil or criminal liability action may be brought against the persons or against directors or employees of the organizations referred to in article 2.1.1 by reason of any material and/or non-material loss resulting from the freezing of a transaction as provided for in article 3.1.6.

Option: In the event of loss directly resulting from the unfounded bona fide reporting of a suspicion, the State shall be liable[159] for the detriment[160] sustained[161], subject to the conditions and limits laid down in its national legislation.[162]

Article 3.2.2 Exemption from liability arising out of the execution of transactions

In cases where a suspect transaction has been carried out and unless there was fraudulent[163] conspiracy[164] with the perpetrator or perpetrators of the laundering offence, no criminal proceedings in respect of laundering may be brought against any of the persons referred to in article 2.1.1, or against their directors or employees, if the suspicion was reported in the manner specified in articles 3.1.4 to 3.1.6.

The foregoing shall apply if a person subject to the present law carries out a transaction at the request of the investigating services, acting in the manner specified in article 3.3.2.

Chapter III. Investigative techniques

Article 3.3.1 Special investigative techniques

For the purpose of obtaining evidence of the predicate offence and evidence of offences provided for under the present law, the judicial authorities may order for a specific period:

- (a) The monitoring of bank accounts and the like;
- (b) Access to computer systems, networks and servers;
- (c) The placing under surveillance^[165] or tapping of telephone lines, facsimile machines or electronic transmission or communication facilities;
- (d) The audio or video recording of acts and behaviour or conversations;
- (e) The communication of notarial^[166] and private deeds^[167], or of bank, financial and commercial records.

The judicial authorities may also order the seizure^[168] of the aforementioned documents.

However, these operations shall be possible only when there are strong grounds^[169] for suspecting that such accounts, telephone lines, computer systems and networks or documents are or may be used by persons suspected of participating in offences referred to in the first paragraph of this article.

Option:

Article 3.3.2 Undercover^[170] operations and controlled delivery

No punishment may be imposed on ... [officials competent to investigate the predicate and laundering offences] who, for the sole purpose of obtaining evidence relating to offences referred to in the present law, perform, in the manner specified in the following paragraph, acts which might be construed^[171] as elements constituting any of the offences referred to in articles 1.1.1, 4.2.2 and 4.2.5.

The authorization of the competent judicial authority shall be obtained prior to any operation as described in the preceding paragraph. A detailed report shall be transmitted to that authority upon completion of the operation. The authority may, by substantiated^[172] ruling^[173] issued at the request of the ... [the officials competent to investigate the predicate and laundering offences] carrying out such operation, delay the freezing or seizure of the money, or any other property or advantage, until the inquiries have been completed and, if necessary, order specific measures for the safe keeping thereof.

Chapter IV. Banking and professional secrecy

Article 3.4.1 Disallowance of bank secrecy

Banking or professional secrecy may not be invoked as a ground for refusal to provide information referred to in article 2.2.7 or required in connection with an investigation which relates to laundering and is ordered by, or carried out under the supervision of, a judicial authority.

Title IV. Coercive measures

Chapter I. Seizure and provisional[174] measures

Article 4.1.1 Seizure

The competent judicial authorities and officials responsible for the detection and suppression of laundering offences shall be empowered to seize property connected with the offence under investigation as well as any evidentiary[175] items that may make it possible to identify such property.

Article 4.1.2 Provisional measures

The judicial authority competent to order provisional measures may, *ex officio*[176] or at the request of the public prosecutor's[177] office or of a competent administration, order, at the expense of the State, the taking of such measures, including the freezing of capital and of financial transactions relating to property of whatsoever nature that is liable to seizure or confiscation.

The lifting of those measures may be ordered at any time at the request of the public prosecutor's office or, following consultation with the public prosecutor's office, at the request of the competent administration or of the owner.

Chapter II: Punishment of offences

Section I. Penalties applicable

Article 4.2.1 Money-laundering

The penalty of imprisonment[178] of ... to ... and a fine of ... to ... [option: and a fine of up to xxx times the amount of the laundered sums] shall be imposed on anyone who commits a laundering offence.

An attempt to commit a laundering offence or aiding, abetting[179], facilitating or counselling[180] the commission of any such offence shall be punishable as if the offence had

been completed [variant: shall be punishable by a penalty reduced by [fraction] in relation to the main penalty].

Article 4.2.2 Association or conspiracy to commit money-laundering

The same penalties shall apply to participation in an association or conspiracy to commit the offences referred to in article 4.2.1.

Article 4.2.3 Penalties applicable to corporate entities

Corporate entities, other than the State, on whose behalf or for whose benefit a subsequent offence has been committed by one of their agents or representatives shall be liable to a fine of an amount equal to five times the fines specified for natural persons, without prejudice to[181] the conviction[182] of those individuals as perpetrators of the offence or accessories to it.[183]

Corporate entities may additionally be:

- (a) Banned permanently or for a maximum period of five years from directly or indirectly carrying on certain business activities;
- (b) Ordered to close permanently or for a maximum period of five years their premises[184] which were used for the commission of the offence;
- (c) Wound up[185] if they had been established for the purpose of committing the offence in question;
- (d) Required to publicize the judgement in the press or by radio or television.

Article 4.2.4 Penalties imposed by disciplinary or supervisory authorities

Where, as a result of a serious failure to exercise vigilance or a deficiency[186] in the organization of internal anti-laundering procedures, a credit or financial institution or any other natural or legal person referred to in article 2.1.1 commits a breach of any of the obligations devolving[187] upon it under the present law, the disciplinary or supervisory authority may act ex officio in conformity[188] with the internal or administrative regulations.

Article 4.2.5 Penalties for other offences

1. The penalty of imprisonment of ... to ... and a fine of ... to ... shall be imposed on:

- (a) Persons and directors or employees of the organizations referred to in article 2.1.1 who [variant: intentionally] knowingly disclose, to the owner of the sums or to the principal of the transactions specified in that article, the report which they are required to make or the action taken on it;

(b) Anyone who [variant: intentionally] knowingly destroys or removes registers or records which, in accordance with articles 2.2.5, 2.2.6, 2.2.9 and 2.2.10, have to be maintained;

(c) Anyone who [variant: intentionally] under a false identity performs or attempts to perform any of the operations specified in articles 2.1.1 to 2.1.3, 2.2.2 to 2.2.5, 2.2.9 and 2.2.10;

(d) Anyone who [variant: intentionally], having learned, by reason of his trade or occupation, of an investigation into a case of laundering, knowingly discloses that fact, by any means, to the person or persons to whom the investigation relates;

(e) Anyone who [variant: intentionally] communicates deeds or records specified in article 3.3.1 (d) to the judicial authorities or to the officials competent to investigate the predicate and subsequent offences, knowing such deeds or records to contain errors or omissions, without informing them of that fact;

(f) Anyone who [variant: intentionally] communicates information or records to persons other than those specified in article 2.2.7;

(g) Anyone who [variant: intentionally] fails to report a suspicion, as provided for in article 3.1.4, in cases where the circumstances of the transaction admit the conclusion that the money could be derived from one of the offences referred to in that article.

2. The penalty of a fine of ... to ... shall be imposed on:

(a) Anyone who fails to report a suspicion, as provided for in article 3.1.4;

(b) Anyone who makes or accepts cash payments for a sum greater than the amount authorized by the regulations;

(c) Anyone who contravenes^[189] the provisions of article 2.1.3 concerning international transfers of funds;

(d) Directors and employees of over-the-counter exchange dealing establishments, casinos, gambling clubs and credit or financial institutions who contravene the provisions of articles 2.2.2 to 2.2.10.

3. Persons found guilty of any offence or offences set forth in paragraphs 1 and 2 above may also be banned permanently or for a maximum period of five years from pursuing the trade or occupation which provided the opportunity for the offence to be committed.

Article 4.2.6 Aggravating^[190] circumstances

Variant (a): The penalty imposed under articles 4.2.1 and 4.2.2 may be increased to imprisonment of ... to ... and a fine of ... to ... :

Variant (b): The penalty imposed under articles 4.2.1 and 4.2.2 may be increased by ... [one third or other proportion determined on the basis of the general punishment system in force]:

(a) If the predicate offence carries a penalty of deprivation of liberty for a term exceeding that specified in the foregoing articles relating to laundering;

(b) If the offence is perpetrated[191] in the pursuit[192] of a trade or occupation;

(c) If the offence is perpetrated as part of the activities of a criminal organization.

Option:

Article 4.2.7 Mitigating[193] circumstances

The general system of mitigating circumstances contained in the national legislation shall be applicable to the offences provided for under the present law.

Article 4.2.8 Predicate offence

The provisions of title IV shall apply even if the perpetrator of the predicate offence is not prosecuted or convicted or if any prerequisite[194] for the institution of legal proceedings following such offence is not met. The perpetrator of the predicate offence may also be prosecuted in respect of the laundering offence.

Section II. Confiscation

Article 4.2.9 Confiscation

In the event of a conviction for actual or attempted money-laundering, an order shall be issued for the confiscation:

1. Of the property forming the subject of the offence, including income and other benefits obtained therefrom, against any person to whom they may belong, unless their owner can establish that he acquired them by actually paying a fair price or in return for the provision of services corresponding to their value or on any other legitimate grounds and that he was unaware of their illicit origin;

2. Of property belonging directly or indirectly to a person convicted of a laundering offence [option: to his spouse[195], cohabitee[196] or children], unless the parties concerned can establish the lawful origin thereof.

Moreover, if, in cases where an offence is established by the court, the perpetrator or perpetrators thereof cannot be convicted, the court may nevertheless order the confiscation of the property to

which the offence related.

Two options are possible here, which may be combined:

1st option:

An order may additionally be issued for the confiscation of the property of the convicted offender to the amount of the enrichment^[197] obtained by him [1st variant: during a period of (x) years preceding his conviction] [2nd variant: from the date of the earliest of the acts forming the basis of his conviction], unless he can establish the absence of any connection between such enrichment and the offence.

2nd option:

An order may additionally be issued for the confiscation of property, wheresoever^[198] located, that has directly or indirectly become part of the assets of the convicted offender [option: of his spouse, cohabitee or children], [1st variant: during a period of (x) years preceding his conviction] [2nd variant: from the date of the earliest of the acts forming the basis of his conviction], unless the parties concerned can establish the lawful origin thereof.

Where property derived directly or indirectly from the offence has been intermingled^[199] with property acquired from legitimate sources, the confiscation of the latter property shall be ordered solely up to the value, as assessed^[200] by the court, of the proceeds and property referred to above [inapplicable if the first option is adopted].

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

If the property to be confiscated cannot be produced, confiscation may be ordered for its value.

Article 4.2.10 Confiscation orders

In cases where the facts cannot lead to the institution of legal proceedings, the public prosecutor's office may request the judge to have an order issued for the confiscation of the seized property.

The judge to whom the request is referred may issue a confiscation order:

(1) If evidence is adduced^[201] that the aforesaid property constitutes proceeds of crime as defined herein;

(2) If the perpetrators of the offence which generated the proceeds cannot be prosecuted, either because they are unknown or because there is a legal impediment^[202] to prosecution for that offence, except where the case is time-barred^[203].

Article 4.2.11 Confiscation of property of criminal organizations

Property of which a criminal organization has power of disposal shall be confiscated ...

variant (a): if there is a connection between that property and the offence.

variant (b): unless the lawful origin of the property is established.

Article 4.2.12 Avoidance^[204] of certain legal instruments

Any legal instrument, executed free of charge or for a valuable consideration inter vivos ^[205]or mortis causa^[206], the purpose of which is to safeguard property from confiscation, as provided for in articles 4.2.9 to 4.2.11, shall be void^[207].

In the case of avoidance of a contract involving payment, the buyer shall be reimbursed^[208] only for the amount actually paid.

Article 4.2.13 Disposal of confiscated property

Confiscated property and proceeds shall accrue^[209] to the State, which shall be empowered to allocate them to a fund for combating organized crime or drug trafficking. They shall remain encumbered^[210], up to their value, by any rights in rem ^[211]lawfully established in favour of third parties.

In cases where confiscation is ordered under a judgement by default^[212], the confiscated property shall accrue to the State and be realized in accordance with the relevant procedures laid down. However, if the court, ruling on an application to set aside^[213] such judgement, acquits^[214] the person prosecuted, it shall order restitution^[215] to the value of the confiscated property by the State, unless it is established that such property is the proceeds of crime.

Title V. International cooperation

Article 5.1.1 General provisions

The authorities of the State of ... [name of the country adopting the model law] undertake to afford the widest possible measure of cooperation to the authorities of other States for purposes of information exchange, investigations and court proceedings, in relation to provisional measures and orders for the confiscation of instrumentalities or proceeds connected with laundering, and for purposes of extradition^[216] and mutual technical assistance.

Chapter I. Requests for mutual legal assistance

Article 5.2.1 Purpose of requests for mutual assistance

Upon application by a foreign State, requests for mutual assistance in connection with offences provided for in articles 1.1.1, 4.2.1, 4.2.2 and 4.2.5 of the present law shall be executed in accordance with the principles set out in this title. Mutual assistance may include in particular:

- Taking evidence or statements from persons;
- Assisting in making detained[217] persons or others available to the judicial authorities of the requesting State in order to give evidence or assist in investigations;
- Effecting service of judicial documents;
- Carrying out searches and seizures;
- Examining objects and sites;
- Providing information and evidentiary items;
- Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

Article 5.2.2 Refusal to execute requests

A request for mutual assistance may be refused only:

- (a) If it was not made by a competent authority according to the legislation of the requesting country or if it was not transmitted in the proper manner;
- (b) If its execution is likely to prejudice the law and order, sovereignty[218], security or fundamental principles of the law of ... [name of the country adopting the model law];
- (c) If the offence to which it relates is the subject of criminal proceedings or has already been the subject of a final judgement in the territory of ... [name of the country adopting the model law];

Option:

- (d) If the offence referred to in the request is not provided for under the legislation of ... [name of the country adopting the model law] or does not have features in common with an offence provided for under the legislation of ... [name of the country adopting the model law];
- (e) If the measures requested, or any other measures having similar effects, are not permitted by the legislation of ... [name of the country adopting the model law] or if, under the legislation of ...

[name of the country adopting the model law], they are not applicable to the offence referred to in the request;

(f) If the measures requested cannot be ordered or executed by reason of the time-barring of the laundering offence under the legislation of ... [name of the country adopting the model law] or the law of the requesting State;

(g) If the decision whose execution is being requested is not enforceable under the legislation of ... [name of the country adopting the model law];

(h) If the decision rendered abroad was delivered under conditions that did not afford sufficient guarantees as to the rights of the defence;

(i) If there are substantial^[219] grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic^[220] origin, political opinions, sex or status;

(j) If the request relates to an offence of a political nature or is motivated by political considerations;

(k) If the case is not sufficiently important to justify the measures requested or the enforcement of the decision rendered abroad.

Bank secrecy may not be invoked as a ground for refusal to comply with the request.

The public prosecutor's office may appeal against a court's decision to refuse compliance within [...] days following such decision.

The Government of ... [name of the country adopting the model law] shall promptly inform the foreign Government of the grounds for refusal to comply with its request.

Article 5.2.3 Requests for investigatory measures

Investigatory measures shall be undertaken in conformity with the legislation of ... [name of the country adopting the model law] unless the competent foreign authorities have requested that a specific procedure compatible^[221] with the legislation of ... [name of the country adopting the model law] be followed.

A judicial officer or public official appointed by the competent foreign authority may attend the execution of the measures, depending on whether they are carried out by a judicial officer or by a public official.

Article 5.2.4 Requests for provisional measures

The court to which a request from a competent foreign authority for the taking of provisional measures is referred shall order such requested measures in accordance with its own legislation. It may also take a measure whose effects correspond most closely to the measures sought. If the request is worded in general terms^[222], the court shall order the most appropriate measures provided for under the legislation.

Should it refuse to comply with measures not provided for under its legislation, the court to which a request for the execution of provisional measures ordered abroad is referred may replace them by measures which are provided for under that legislation and whose effects correspond most closely to the measures whose execution is being sought.

The provisions relating to the lifting of provisional measures as laid down in the second paragraph of article 4.1.2 of the present law shall be applicable.

Article 5.2.5 Requests for confiscation

In the case of a request for mutual legal assistance with a view to the making of a confiscation order, the court shall rule after referring the matter to the prosecuting authority. The confiscation order shall apply to property representing the proceeds or instrumentality of an offence and located in the territory of ... [name of the country adopting the model law] or shall consist in a requirement to pay a sum of money corresponding to the value of that property.

The court to which a request for the enforcement of a confiscation order issued abroad is referred shall be bound by the findings as to the facts on which the order is based, and it may refuse to grant the request solely on one of the grounds stated in article 5.2.2.

Article 5.2.6 Disposal of confiscated property

The State ... [name of the country adopting the model law] shall have power of disposal of property confiscated on its territory at the request of foreign authorities, unless otherwise decided under an agreement concluded with the requesting Government.

Chapter II. Extradition

Article 5.3.1 Obligation to extradite

Requests for the extradition of persons wanted for prosecution in a foreign State shall be executed in the case of the offences provided for in articles 1.1.1, 4.2.1, 4.2.2 and 4.2.5.1 of the present law or for the purpose of the enforcement of a sentence in respect of any such offence.

The procedures and principles laid down in the extradition treaty in force between the requesting State and ... [name of the country adopting the model law] shall be applied.

In the absence of any extradition treaty or legislative provisions, the extradition shall be carried

out in accordance with the procedure and in observance[223] of the principles set out in the Model Treaty on Extradition[224] adopted by the United Nations General Assembly in its resolution 45/116.

In all cases, the provisions of the present law [option: and those contained in the model law on extradition prepared by the Centre for International Crime Prevention (CICP)[225]] shall form the legal basis for extradition procedures relating to the offences referred to in articles 1.1.1, 4.2.1, 4.2.2 and 4.2.5.1 of the law.

Article 5.3.2 Double criminality[226]

Under the present law, extradition shall be carried out only if the offence giving rise to extradition or a similar offence is provided for under the legislation of the requesting State and of ... [name of the country adopting the model law].

Article 5.3.3 Mandatory[227] grounds for refusal

Extradition shall not be granted:

(a) If the offence for which extradition is requested is regarded by ... [name of the country adopting the model law] as an offence of a political nature or if the request is motivated by political considerations;

(b) If there are substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(c) If a final judgement has been rendered in ... [name of the country adopting the model law] in respect of the offence for which extradition is requested;

(d) If the person whose extradition is requested has, under the legislation of either country, become immune from prosecution or punishment for any reason, including lapse[228] of time or amnesty[229];

(e) If the person whose extradition is requested has been or would be subjected in the requesting State to torture[230] or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in article 14 of the International Covenant[231] on Civil and Political Rights; [232]

(f) If the judgement of the requesting State has been rendered in absentia[233], the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and has not had or will not have the opportunity to have the case retried in his or her presence.

Article 5.3.4 Optional grounds for refusal

Extradition may be refused:

- (a) If the competent authorities of ... [name of the country adopting the model law] have decided either not to institute or to terminate proceedings against the person concerned in respect of the offence for which extradition is requested;
- (b) If a prosecution in respect of the offence for which extradition is requested is pending^[234] in ... [name of the country adopting the model law] against the person whose extradition is requested;
- (c) If the offence for which extradition is requested has been committed outside the territory of either country and the legislation of ... [name of the country adopting the model law] does not provide for jurisdiction over offences committed outside its territory in comparable circumstances;
- (d) If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc^[235] court or tribunal^[236];
- (e) If ... [name of the country adopting the model law], while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of the person in question would be incompatible^[237] with humanitarian^[238] considerations in view of the age, health or other personal circumstances of that person.

Options:

- (f) If the offence for which extradition is requested is regarded under the legislation of ... [name of the country adopting the model law] as having been committed in whole or in part within its territory.
- (g) If the person whose extradition is requested is liable to the death penalty in respect of the crime of which that person is accused in the requesting country, unless that country gives sufficient assurances that the penalty will not be carried out.
- (h) If the person whose extradition is requested is a national of ... [name of the country adopting the model law].

Article 5.3.5 Aut dedere aut judicare^[239]

If ... [name of the country adopting the model law] refuses extradition on either of the grounds stated in paragraph (f) or (g) of article 5.3.4, it shall, at the request of the requesting State, refer the case to its competent authorities in order that proceedings may be instituted against the person concerned in respect of the offence which gave rise to the request.

Article 5.3.6 Surrender of property

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

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

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

Where the national legislation or the rights of third parties so require, any property so surrendered shall be returned to ... [name of the country adopting the model law] free of charge, after the completion of the proceedings, if ... [name of the country adopting the model law] so requests.

Chapter III. Provisions common to requests for mutual assistance and requests for extradition

Article 5.4.1 Political nature of offences

For the purposes of the present law, the offences referred to in articles 1.1.1, 4.2.1, 4.2.2 and 4.2.5.1 shall not be regarded as offences of a political nature.

Article 5.4.2 Transmission of requests

Requests sent by competent foreign authorities with a view to establishing laundering offences or to enforcing or ordering provisional measures or confiscations or for purposes of extradition shall be transmitted through diplomatic channels. In urgent cases, such requests may be sent through the International Criminal Police Organization (ICPO/Interpol) or directly by the foreign authorities to the judicial authorities of ... [name of the country adopting the model law], either by post or by any other, more rapid means of transmission leaving a written or materially equivalent record. In such cases, no action shall be taken on the request unless notice is given through diplomatic channels.

Requests and their annexes^[240] shall be accompanied by a translation in a language acceptable to ... [name of the country adopting the model law].

Article 5.4.3 Content of requests

Requests shall specify:

1. The authority requesting the measure;

2. The requested authority;
3. The purpose of the request and any relevant contextual remarks;
4. The facts in support of the request;
5. Any known details that may facilitate identification of the persons concerned, in particular marital status, nationality, address and occupation;
6. Any information necessary for identifying and tracing the persons, instrumentalities, proceeds or property in question;
7. The text of the statutory^[241] provision establishing the offence or, where applicable, a statement of the law applicable to the offence and an indication of the penalty that can be imposed for the offence.

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

1. In the case of requests for the taking of provisional measures: a description of the measures sought;
2. In the case of requests for the making of a confiscation order: a statement of the relevant facts and arguments to enable the judicial authorities to order the confiscation under domestic law;
3. In the case of requests for the enforcement of orders relating to provisional measures or confiscations:
 - (a) A certified true copy of the order, and a statement of the grounds on whose basis the order was made if they are not indicated in the order itself;
 - (b) A document certifying that the order is enforceable and not subject to ordinary means of appeal;
 - (c) An indication of the extent to which the order is to be enforced and, where applicable, the amount of the sum for which recovery is to be sought in the item or items of property;
 - (d) Where necessary and if possible, any information concerning third-party rights of claim on the instrumentalities, proceeds, property or other things in question;
4. In the case of requests for extradition, if the person has been convicted of an offence: the original or a certified true copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable and the extent to which the sentence remains to be served.

Article 5.4.4 Handling of requests

The minister of justice of ... [name of the country adopting the model law], after verifying that the request has been made in the proper manner, shall forward it to the public prosecutor's office at the place where the investigations are to be conducted or where the proceeds or property in question are situated or where the person whose extradition is being requested is located.

The public prosecutor's office shall refer the matter to the officials competent to deal with requests for investigation or to the court competent to deal with requests relating to provisional measures, confiscations or extradition.

A judicial officer or a public official appointed by the competent foreign authority may attend the execution of the measures, depending on whether they are carried out by a judicial officer or by a public official.

Article 5.4.5 Additional information

The ministry of justice or the public prosecutor's office shall, ex officio or at the request of the court to which the matter is referred, be entitled to request, through diplomatic channels or directly, the competent foreign authority to provide all additional information necessary for complying with the request or facilitating compliance therewith.

Article 5.4.6 Requirement of confidentiality

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

Article 5.4.7 Postponement

The public prosecutor's office may postpone referring the matter to the police authorities or to the court only if the measure or order sought could interfere with ongoing investigations or proceedings. It shall immediately inform the requesting authority accordingly by diplomatic channels or directly.

Article 5.4.8 Simplified extradition procedure

With regard to the offences provided for under the present law, ... [name of the country adopting the model law] may grant extradition after receipt of a request for provisional arrest, provided that the person whose extradition is requested explicitly^[242] consents^[243] thereto.

Article 5.4.9 Restriction on the use of evidence

The communication or use, for investigations or proceedings other than those specified in the

foreign request, of evidentiary facts contained therein shall be prohibited on pain of[244] invalidation[245] of such investigations or proceedings, except with the prior consent of the foreign Government.

Article 5.4.10 Costs

Costs incurred[246] in complying with requests provided for under the present title shall be borne by the State of ... [name of the country adopting the model law] unless otherwise agreed with the requesting country.

MODEL DECREE ON THE FINANCIAL INTELLIGENCE UNIT, ISSUED FOR PURPOSES OF APPLICATION OF ARTICLE 3.1.1 OF THE LAW

Organization

Article 1

A financial intelligence unit having legal personality shall be established under the authority of [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance[247]] [variant 4: the minister of ...]. It shall be subject to external supervision by [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...].

[Option: This intelligence unit shall have financial and budgetary autonomy and independent decision-making authority on matters coming within its sphere of responsibility.]

Article 2

The financial intelligence unit shall be headed by ... [a member of the judiciary, a senior official of the ministry of finance, etc.] appointed by [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...]. It shall be composed of experts specially empowered by [variant 1: the minister of ...] [variant 2: the minister of justice and the minister of finance] in consideration of their expertise, particularly in the fields of finance, banking, law, informatics[248], customs or police investigations [variant: and made available by the State administrations]. It shall also comprise liaison officers¹ responsible for cooperation with the other administrations. The intelligence unit shall be supported by a secretariat[249].

Article 3

The experts, liaison officers and other members of the secretariat shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation[250] of those duties within the intelligence unit. Such information may not be used for any purposes other than those provided for by the law of (date) on money-laundering, confiscation and international cooperation in relation to the proceeds of crime.

Article 4

The experts may not concurrently[251] perform duties in any of the organizations referred to in article 2.1.1 of the law of (date) on money-laundering, confiscation and international cooperation in relation to the proceeds of crime or hold or pursue any elective office, assignment or activity which might affect the independence of their position. Agents of the State appointed to posts in the financial intelligence unit shall cease to exercise any investigatory powers held by them in their former employment.

Operation

Article 5

The intelligence unit shall receive the reports transmitted by the persons referred to in article 3.1.4 of the aforementioned law. It shall analyse them on the basis of the information at its disposal and it shall gather, in particular from organizations and administrations involved in combating organized crime, any additional information that may help to establish the origin of the funds or the nature of the transactions forming the subject of the reports.

Article 6

The reports required of the persons referred to in article 3.1.4 of the law shall be sent to the intelligence unit by any rapid means of communication. They shall, where applicable, be confirmed in writing. They shall contain the identity and address of the reporting party, of the customer or the principal and, where applicable, of the beneficiary of the transaction; the type of account and particulars of the account holder; the nature[252], amount and type of the operation scheduled; and the period within which the operation is to be carried out or the reason why its execution cannot be deferred.

Article 7

The intelligence unit shall, in conformity with the laws and regulations on the protection of privacy and on computerized databases, operate a database containing all relevant information concerning reports of suspicions as provided for under the present law, the transactions carried out and the persons undertaking the operations, whether directly or through intermediaries. That information shall be updated and organized with a view to maximum effectiveness of the investigations to confirm or invalidate suspicions.

Article 8

An annual report shall be drawn up by the intelligence unit and submitted to the minister of justice, the ministry of finance and the judicial authorities. The report shall provide an overall analysis and evaluation of the reports received and of laundering trends.

Operating budget

Article 9

Each year, the intelligence unit shall establish its budget for the ensuing[253] year, subject to the limits fixed by [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...].

[Option: The costs of operating the intelligence unit shall be met out of a fixed contribution from [option: financial and banking] institutions subject to the money-laundering legislation.]

[1] legislation [7ledVis5leiFEEn] 立法; 法规

[2] confiscation [kEn5fiskeiFEEn] 没收

[3] proceeds [5prEJsi:dz] 收益, 所得

[4] Money-laundering: 关于洗钱的定义, 目前各国际组织和世界各国有着不尽相同的表述。最初, 洗钱主要指贩毒洗钱, 随着其外延的不断扩大, 目前倾向于包括所有主要犯罪行为的洗钱。

[5] International Criminal Police Organization: (ICPO/Interpol)国际刑警组织, 是世界性的警察合作机构, 一个非官方的组织, 负责进行预防犯罪研究, 传递犯罪信息, 协调各国打击跨国犯罪, 并对成员警方进行技术培训。截至 2000 年 3 月 22 日, 国际刑警组织共有成员 178 个。1984 年 9 月 5 日, 在卢森堡举行的 第 53 界国际刑警年会上, 中国被正式接纳为该组织成员国。同年 10 月, “国际刑警组织中国国家中心局” 在北京成立, 隶属于中华人民共和国公安部刑侦局, 担负着对外的联络工作和打击走私、贩毒、伪造国家货币、国际恐怖活动和国际诈骗等国际性犯罪的任务。

[6] denote [di5nEut] 表示

[7] attempted act: 企图的行为

[8] identity [ai5dentiti] 身份

[9] legitimate [l i5dVitimit] 合法的

[10] compromise [5kCmprEmaiz] 危及，危害

[11] sever [5sevE] 切断，断绝

[12] obscure [Eb5skjuE] 遮掩

[13] foil [fCi] 挫败

[14] acquisition [7Akwi5ziFEn] 获得

[15] provenance [5prCvinEns] 出处

[16] 洗钱通常要经过三个阶段。首先，切断资金与产生资金的犯罪之间的联系；其次，模糊资金的踪迹以防止追踪；最后，一旦资金的获得和地理来源不能被发现，资金再回到犯罪分子手中。也就是通常所说的洗钱的处置阶段，离析阶段和归并阶段。在洗钱过程中，三个阶段有时泾渭分明，有时则互相渗透融合，难以截然分开。一般情况下，处置阶段对洗钱而言是最困难的一步，对反洗钱机构来说，堵住黑钱流入银行系统的入口是反洗钱的第一步，也是关键一步。一旦犯罪收入进入离析阶段，黑钱往往会通过错综复杂的交易在不同地区乃至不同国家之间流转，由于各国反洗钱立场和法规的差异，反洗钱当局对洗钱的控制、识别和追查难度必然加大。

[17] megabyte [5me^Ebait] 兆字节

[18] enforcement [in5fC:smEnt] 执行

[19] on the lookout for: 寻找

[20] wherewithal [7(h)wZEwi:5TC:l] 必要的财力

[21] remedy [5remidi] 补救（法）

[22] integrity [in5te^riti] 完整

[23] undermine [7QndE5main] 破坏

[24] render [5rendE] 造成

- [25] exacerbate [eks5AsE(:)beit] 加剧
- [26] erode [i5rEud] 侵蚀
- [27] contagion [kEn5teidVEn] 传染
- [28] vulnerable[5vQlnErEb(E)l] 易受攻击的
- [29] leverage[5li:vEridV] 力量
- [30] The economic power …… leverage over small economies: 犯罪组织通过非法活动获得的经济实力使之对小型经济能产生较大的影响力。
- [31] defacto[di:5fAktEu] 事实上
- [32] impunity[im5pju:niti] 不受惩罚。
- [33] direct proportion: 正比
- [34] colossal[kE5lCs] 巨大的
- [35] presuppose[7pri:sE5pEuZ] 推测
- [36] At the time…capital. 同时, 洗钱预示着能够为资本的国际流通建立精密机制的结构化犯罪系统的存在。
- [37] forestall[fC:5stC:l] 抢在…的前面行动
- [38] nefarious[ni5fZEriEs] 极坏的
- [39] cog[kCg] (机)轮齿
- [40] International efforts…legal economy. 世界范围抑制洗钱的努力是打击犯罪组织经济实力这种策略的反映, 通过防止犯罪组织从犯罪所得中受益而使之被削弱, 从而预防其对合法经济秩序的极恶影响。
- [41] embody[im5bCdi] 使具体化
- [42] preamble[pri:5Ambl] (法规、条约等的)序言
- [43] transnational[trAns5nAFEnl] 跨国的
- [44] henceforth[hens5fC:W] 从今以后

[45] 参见联合国大会第 49/159 号决议。

[46] Infiltrate[in5filtreit] 渗入

[47] pose[pEuz] 造成, 形成, 引起,

[48] combat[5kCmbEt] 打击

[49] deliberation[di7libE5reiFE n] 考虑

[50] The fight against...by Member States: 反洗钱斗争是 1998 年 6 月在纽约举行的联合国大会特别会议审议的中心议题, 会议通过了作为成员国协调执行反洗钱策略的一项全球行动计划组成部分的具体措施。

[51] Financial Action Task Force on Money Laundering (FATF): 反洗钱金融行动特别工作组, 简称“FATF”。

[52] 参见本书中“巴塞尔银行监管委员会”部分的有关内容。

[53] 参见本书中“欧洲理事会”部分的有关内容。

[54] 参见本书中欧盟理事会 1991 年 6 月 10 日《关于防止利用金融系统洗钱的指令》(91/308/EEC) 的相关部分。

[55] incorporate[in5kC:pEreit] 收编

[56] in the light of: 根据

[57] innovative[inEJveitiv] 创新的

[58] punitive[5pju:nitiv] 惩罚性的

[59] premise[5premis] 前提

[60] constitutional principles and the fundamental premises of its legal system : 宪法原则和法律制度的基本原理

[61] apparatus[7ApE5reitEs] 机制

[62] detract[di5trAkt] 减损

[63] 作为整体依靠语境的某些规定如果孤立采用或者脱离语境将达不到预期的效果。

[64] conceivably[kEn5si:vEbli] 可想象地

[65] discretion[dis5kreFEEn] 斟酌决定的自由

[66] In order to …particular State. 为了便于各国将其运用到国内法律中，本法律范本的某些条款具有可变更性，某些条款具有可选择性。对于可变更性条款，各国可（根据本国情况）进行更改，但必须将其列入到本国反洗钱的立法条款中。可选择性条款则意味着各国可将其列入或不列入在国家的法律中。

[67] coercive[kEu5E:siv] 强制的

[68] Financial Intelligence Units: 金融情报中心。（简称 FIU）FIU 的国际组织埃格蒙特集团将 FIU 定义为“是一个为打击洗钱而成立的国家级信息中心。它负责接收（并在允许的范围內可要求报送）分析并向有关部门移送有关犯罪所得信息和按国家法律法规要求而披露的金融信息。

[69] predicate offence: 上游犯罪。所谓洗钱罪的上游犯罪就是在洗钱犯罪之前进行的获取非法收益的犯罪行为。正是因为有了前面的犯罪，获取了非法的收益，才有了将非法收益合法化的需求，才有了洗钱活动。

[70] disposition[dispE5ziFEEn] 处置

[71] Knowing…factual circumstances 作为洗钱犯罪要素的知情、故意或企图可通过客观实际情况来推知。

[72] penalty[5penlti] 处罚

[73] impose[im5pEuuz] 强制

[74] corporeal [kC:5pC:riEi] 物质的

[75] tangible [5tAndVEbl] 有形的

[76] The term…such assets: “财产”指任何形式的资产，不论物质的还是非物质的，可动的还是不可动的，有形的还是无形的，以及可以证明对此类资产拥有所有权或权益的法律文件或凭据。

[77] instrumentality[7instrumen5tAliti] 工具

[78] competent[[5kC:pitEnt] 有法定资格的

[79] perpetrator[5pE:pitreitE] 犯罪者

[80] The term…herein. “上游犯罪”指使得犯罪分子获得本示范法中所指的收益的任何犯罪

行为,包括发生在国外的犯罪行为。

[81] The term...an accomplice. “罪犯”指作为主犯、共犯或从犯参与犯罪的任何人。

[82] proceedings[prE5si:diNs] 诉讼

[83] natural person: 自然人,是指基于自然规律出生并具有民事权利能力的人。

legal person: 法人,是具有民事权利能力和民事行为能力,依法独立享有民事权利和承担民事义务的组织。

[84] entail [in5teil] 承担

[85] intermediary [7intE5mi:diEri] 中介

[86] over-the counter: 买卖双方直接交易的

[87] casinos and gambling establishments: 赌场和博彩业

[88] commentary [5kCmEntEri] 解说词

[89] bearer security: 不记名有价证券。

[90] in the aggregate: 合计

[91] decree [di5kri:] 法令

[92] eventuality [i7ventju5Aliti] 可能发生的事

[93] modality [mEu5dAliti] 方式

[94] 在可能发生这些事情的情况下,应向根据本法律 3.1.1 建立的金融情报机构发出一份详细说明交易特征和交易各方身份的报告。

[95] front or dummy corporation: 前台公司或虚假公司

[96] verify [5verifai] 核实

[97] passbook [5pB:s7buk] 存折

[98] custody [5kQstEdi] 保管

[99] safe-deposit: 保险仓库

[100] unexpired [5Qniks5paiEd] 未到期的

[101] thereof [TZEr5Cv, -5Cf] 它的

[102] article of association: 公司章程。在西方国家，指各种公司说明本公司组织的宗旨和业务范围的规范性文件。其中规定有公司的名称经营业务股份总额和每股金额，以及董事人数及任期等。公司章程须呈报政府主管机关。英文常简称 **the articles**。

[103] authenticate [C:5Wentikeit] 鉴别

[104] beneficial owner: 受益人。指最终拥有或控制一个客户及/或某项交易的被代理人，包括一个自然人或多个自然人。还包括那些对一个法人或法律协议享有最终有效控制权的人员。在反洗钱领域此词经常指相对于公司或财产实名拥有人而言的匿名拥有或控制空壳公司或以他人名义进行转移的财物的人。

[105] 临时客户身份鉴定

[106] threshold [5WreFhEuld] 限度

[107] the threshold specified in the first paragraph of this article is reached: 达到本条款第一段所明确规定的上线

[108] lay down: 规定

[109] principal [5sprinsEp(E)l, -sip-] (经纪人或代理人所代表的)委托人

[110] terminate [5tE:mineit] 终止，停止，结束

[111] prejudice [5predVudis] 损害

[112] applicable[5AplikEbl] 适宜的

[113] suspicion[sEs5piFEn] 怀疑

[114] attorney[E5tE:ni] 代理人

[115] intermediary[7intE5mi:diEri] 媒介

[116] invoke[in5vEuk] 援引

[117] monitor[5mCnitE] 监控

[118] confidential[kCnfi5denFEI] 机密的

[119] vigilance[5vidVilEns] 警惕, 警惕性

[120] customer identification: 识别客户身份(客户身份验证)。客户尽职调查 (customer due diligence) 措施的一种, 使用可靠的、独立来源的文件数据和信息识别核实客户身份, 不保留匿名账户或明显以假名开立的账户。

[121] Particular vigilance...the monitoring of transactions. 对于发生在不必充分履行客户识别或交易监测义务的金融公司或机构里的交易, 应予以特别的警觉。

[122] record-keeping: 保存记录。为了打击洗钱活动, 世界上多数国家都已制定了相应的法规, 要求相关的金融机构按规定的期限保存客户的账户资料和交易记录。有关中国政府对此方面的规定请见《金融机构反洗钱规定》的第十七条。

[123] at the disposal of sb. (at sb.' s disposal) 供某人之用

[124] suppression[sE5preFEn] 制止

[125] aforesaid[E5fC:sed] 上述的

[126] proxy[5prCksi] 代理人

[127] suspicious transactions: 可疑交易。指交易的金额、频率、来源、流向、用途、性质等有异常情形的交易。

Centralization... suspicious transactions; 将关于客户、委托人、受益人、代理人、授权机构和受益所有者身份及关于可疑交易的情报集中处理。

[128] designation[7dezi^5neiFEn] 任命

[129] compliance[kEm5plaEns] 依从

[130] compliance officer: 合规督察官。

[131] For the purposes...different currency. 基于本法的目的, 非柜台交易应建立不同国家钞票或硬币的直接交换, 或现金移交, 而不是不同货币的不同方式的支付结算。

[132] in chronological order: 按年代顺序排列

[133] chips or tokens: 筹码或代币

[134] subsidiary[sEb5sidjEri] 分公司

[135] 在任何情况下, 一个分支公司发售的筹码不得在另外一个分公司, 包括国外分公司, 兑换成现金。

- [136] collaboration[kE7lAbE5reiFEn] 协作
- [137] decree[dI5kri:] 法令, 政令
- [138] reciprocal[ri5sivrEkEl] 互惠的
- [139] confidentiality[kCnfiDenFi5Aliti] 保密性
- [140] irrespective[7iris5pektiv] 不顾的, 不考虑的
- [141] counterpart[5kauntEpB:t] 对手方相应的人或物
- [142] comply[kEm5plai] 应允
- [143] confer[kEn5fE:] 授予
- [144] perpetration[5pE:pitreiFEn] 做坏事, 犯罪
- [145] feasible[5fi:zEbl] 可能的
- [146] defer[di5fE:] 推迟
- [147] invalidate[in5vAlideit] 使无效
- [148] expiry[iks5paiEri] 期满
- [149] If, by reason…….not exceeding 48 hours. 如果金融情报中心根据案件的严重性或紧急性认为有必要, 那么可在报告方规定的交易完成时限之前发出止付令。止付令应立即以传真或其他书面方式送达给报告方。止付令可推迟交易不超过 48 小时。
- [150] The presiding judge……eight days. 对金融情报机构提及的案件初审法院审判长可对案件涉及在本辖区内的资金、账户及有价证券发出不超过 8 天的冻结令。
- [151] come to light: 暴露
- [152] exemption[i^5zempFEn] 豁免
- [153] liability[7laiE5biliti] 责任
- [154] bona fide[bEJnE 5faIdI] 真实地
- [155] breach[bri:tF] 违反

[156] institute[5ɪnstɪtju:t] 提起（诉讼）

[157] in good faith: 诚意地

[158] No civil……a conviction 对于条款 2.1.1 所指人或所指机构中的董事或雇员按照本法律规定真实披露情报或递交可疑报告的，不追究任何民事或刑事责任，或任何职业处罚，即使由此引起的调查或司法决定并不导致有罪判决。

[159] liable[5laɪEbl]: 有责任的

[160] detriment[5detrɪmEnt] 损害

[161] sustain[sEs5teɪn] 遭受

[162] In the event……national legislation. 根据国内法的条件和限制，在因没有理由真实报告可疑交易而导致的直接损失的情况下，国家应对造成的损害负有责任。

[163] fraudulent[5frɔ:dʒulEnt] 欺骗性的

[164] conspiracy[kEn5spɪrEsi] 阴谋

[165] surveillance[sE:5veɪlEns] 监视

[166] notarial[nEu5tZɛriEl] 公证的

[167] deed[di:d] 契约

[168] seizure[5si:VE] 查封

[169] ground[^rɑ:Jnd] 理由

[170] undercover[7QndE5kQvE, 5QndE7kQvE] 秘密的

[171] construe [kEn5stru:] 把……认作

[172] substantiate[sQbs5tʌnfɛɪt] 使成为现实

[173] ruling[5ru:liN] 裁决

[174] provisional[prE5viVEnl] 临时的

[175] evidentiary[7evi5denFEri] 证据的

[176] ex officio[eks E5ɒfɪʃi] 依职权

- [177] prosecutor[5prCsikju:tE] 起诉人
- [178] imprisonment [Im`prIzEnmEnt] 监禁
- [179] abet[E5bet] 教唆
- [180] counsel[5kaunsE] 建议
- [181] without prejudice to: 不违背
- [182] conviction[kEn5vikFE] 判决有罪
- [183] corporate entities……or access to it. 如果代表法人，国家除外，或为了法人利益，该机构的代理人或代表实施了犯罪，在不免除对这些实施犯罪的代理人的有罪判决的情况下，法人将被课以相当于对自然人 5 倍的罚金。
- [184] premise[5premis] 场所
- [185] wound up: 摧毁
- [186] deficiency [di5fiFE] 缺乏
- [187] devolve[di5vClv] 赋予
- [188] conformity[kEn5fC:miti] 遵从
- [189] contravene[7kCntrE5vi:n] 违反
- [190] aggravate[5A^rEveit] 加重
- [191] perpetrate[5pE:pitreit] 犯罪
- [192] pursuit[pE5sju:t] 工作
- [193] mitigate[5miti^eit] 减轻
- [194] prerequisite[5pri:5rekwizit] 先决条件
- [195] spouse [spauz] 配偶
- [196] cohabitee [kEu5hAbiti] (男女)同居者(尤指未婚而同居者)
- [197] enrichment [in5ritFmEnt] 不正当得利

- [198] wheresoever [9hweEsEJ`evE(r)] 何处；无论何处
- [199] intermingle [7intE(:)5miN^l] 混合，混入，掺杂
- [200] assess [E5ses] 估算
- [201] adduce[E5dju:s] 举出（证据）
- [202] impediment[im5pedimEnt] 妨碍，阻碍，障碍物
- [203] time-barred[`taImB:d] 超过时效的
- [204] avoidance[E5vCidEns] 无效
- [205] inter vivos [7intE(:)5vi:vEus] 当事人活着时有效的
- [206] mortis causa:
- [207] void[vCid] 无效的,旨在使财产免除条款4.2.9至4.2.11规定的没收或取得价值补偿的任何法律文书均无效。
- [208] reimburse[7ri:im5bE:s] 偿还
- [209] accrue[E5kru:] 由……得到
- [210] encumber[in5kQmbE] (财产)带有(抵押权)
- [211] in rem[in5rem] [律]对物(指判决的对象是物或财产)诉讼地(的)
- [212] default[di5fC:lt] 缺席
- [213] set aside: 驳回
- [214] acquit[E5kwit] 宣告无罪，脱卸义务和责任
- [215] restitution[7resti5tju:FEEn] 归还
- [216] extradition[9ekstrE`dIFEn] 引渡
- [217] detain[di5tein] 拘留
- [218] sovereignty[5sCvrinti] 主权

- [219] substantial[sEb5stAnFEI] 真实的
- [220] ethnic[5eWnik] 种族的
- [221] compatible[kEm5pAtEbI] 一致的
- [222] in general terms: 概括地
- [223] observance[Eb5zE:vEns] 遵守
- [224] the Model Treaty on Extradition: 引渡条约范本
- [225] CICP: 国际预防犯罪中心
- [226] double criminality: 双重犯罪
- [227] mandatory[5mAndEtEri] 强制的
- [228] lapse [lAps] 失效
- [229] amnesty[5Amnesti] 特赦
- [230] torture[5tC:tFE] 虐待
- [231] covenant[5kQvinEnt] 协议
- [232] International Covenant on Civil and Political Rights: 《公民政治权利国际公约》
- [233] in absentia: 缺席
- [234] pend[pend] 悬而未决
- [235] ad hoc: 特别
- [236] tribunal[tri5bju:nl, trai-] 法庭(常指特别法庭)
- [237] incompatible[7inkEm5pAtEbI] 矛盾的
- [238] humanitarian[hju(:)7mAni5tZErEn] 人道主义
- [239] Aut dedere aut judicare: 补偿措施
- [240] annexe[5Aneks] 附件

- [241] statutory[5stAtjut(E)ri] 法定的
- [242] explicitly[iks5plisitli] 明确地
- [243] consent[kEn5sent] 同意
- [244] on pain of: 违者以……论处
- [245] invalidation[in5vAlideiFEn] 无效
- [246] incur[in5kE:] 承受
-
- [248] informatics[7infE5mAtiks] 情报学
- 1 liaison officers: 联络官
- [249] secretariat[7sekrE5tZEriEt] 秘书处
- [250] cessation[sE5seiFEn] 停止
- [251] concurrently[kEn5kQrEntli] 同时地
- [252] nature [5neitFE] 类别
- [253] ensue[in5sju:] 继起