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GLOBAL PROGRAMME AGAINST MONEY LAUNDERING

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# **MODEL LEGISLATION ON LAUNDERING, CONFISCATION AND INTERNATIONAL COOPERATION IN RELATION TO THE PROCEEDS OF CRIME**

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## Introduction to the model law

Money-laundering, according to the definition adopted by the International Criminal Police Organization (ICPO/Interpol), denotes any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources.<sup>1</sup>

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

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” (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 agencies.

Since many financial centres worldwide have now adopted measures to counter money-laundering, criminals are on the lookout for 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 for operating and developing their enterprises. Unless remedies are found, money-laundering can strike at the integrity 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 international efforts to establish free and competitive markets and hampers the development of national economies:

- It distorts the operation of the markets: transactions effected for the purpose of money-laundering may increase the demand for cash, render interest and exchange rates unstable, give rise to unfair competition and considerably exacerbate inflation in the countries where the criminals conduct their business dealings;
- It erodes 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.

Small countries are particularly vulnerable to money-laundering. The economic power acquired through illegal activities gives criminal organizations leverage over small economies. The lack of suitable control mechanisms, or the inability to apply them, furnishes criminals with de facto impunity. Laundering the proceeds

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<sup>1</sup>Definition adopted unanimously by the General Assembly of Interpol at its sixty-fourth session held in Beijing, China.

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 to the extent that such activities are developed and concentrated in the hands of a small group. Colossal amounts of cash generated by certain types of criminal activity, such as drug trafficking, leave trails which are more difficult to hide than the traces left by the crimes themselves. At the same time, laundering presupposes the existence of a structured criminal system capable of establishing elaborate mechanisms for the international recycling of capital.

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 the nefarious effects of the criminal economy on the cogs and wheels of the legal economy. The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the first international legal instrument to embody this new strategy, expresses in its preamble the recognition by States that *“illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels”* and affirms that the international community is henceforth *“determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing”*.

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,<sup>2</sup> States reaffirmed their resolve to defeat *“the social and economic power of criminal organizations and their ability to infiltrate 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 by organized transnational crime [...] in relation to measures and strategies to prevent and combat money-laundering and to control the use of the proceeds of crime”*.

The fight against money-laundering was at the centre of the deliberations 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.

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<sup>2</sup>United Nations General Assembly resolution 49/159.

Lastly, within other forums such as the Financial Action Task Force on Money Laundering (FATF),<sup>3</sup> the Basel Committee on Banking Regulations and Supervisory Practices,<sup>4</sup> the Council of Europe<sup>5</sup> or the European Union,<sup>6</sup> 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 the most relevant provisions developed by national legislation and amends, strengthens or supplements them in the light of actual practice by States in action to combat laundering. It also proposes innovative provisions aimed at improving the effectiveness of money-laundering preventive and punitive 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 of its legal system, and to supplement them with whatever measures it considers best designed to contribute towards effectively combatting laundering. The model nevertheless constitutes in itself a coherent legal whole. By incorporating these provisions into their national legal apparatus, States must take care to preserve the coherency of the text in order not to detract 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. 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 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 of the particular State.

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<sup>3</sup>FATF was established by the Summit of Heads of State or Government of the seven major industrialized countries (G-7) in 1989 to recommend measures to improve the effectiveness of the fight against laundering. In April 1990, FATF issued to the G-7 Heads of State a report setting out 40 recommendations for improving national legal systems, enhancing the role of the financial system and intensifying cooperation. FATF, which now has 28 members and a mandate extended to 2004 in order to ensure the implementation of the recommendations by the member countries, is undertaking a systematic evaluation of the measures introduced by member countries and their effectiveness in practice. The 40 recommendations, which have since been updated and extended, now constitute a benchmark in the field of international standards for combatting laundering.

<sup>4</sup>This Committee adopted a Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money-Laundering, known as the Basel Statement of Principles, which urges financial or banking institutions to put in place mechanisms for preventing even the involuntary implication of the banking system in criminal activities.

<sup>5</sup>The Council of Europe Convention of 8 November 1990 on laundering, search, seizure and confiscation of the proceeds from crime, European Treaties, ETS No. 141.

<sup>6</sup>Council Directive No. 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

The model law comprises five titles:

- Title I: “General”
- Title II: “Prevention of laundering”
- Title III: “Detection of laundering”
- Title IV: “Coercive 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, 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 to evade the legal consequences of his or her actions;
- (b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of 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.

### 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 imposed 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 or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- (c) The term “instrumentality” 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 authority;
- (f) The term “predicate offence” means any criminal offence, even if committed abroad, enabling its perpetrator to obtain proceeds as defined herein;
- (g) The term “offender” means any person participating in an offence as the main perpetrator, a joint perpetrator or an accomplice.

In order to be used as a basis for proceedings 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 who, in connection with their trade or occupation, carry out, supervise or advise on operations entailing deposits, exchange operations, investments, conversions or any other movements of capital, and in particular to credit and financial institutions and financial intermediaries.

Titles II and III of the present law shall also apply, in respect of their entire operations, to over-the-counter exchange dealers, casinos and gambling establishments, 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)].

#### **Article 2.1.2 Limit on the use of cash and bearer securities**

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

However, [*a national law, decree, etc.*] may specify those cases and circumstances where an exception to the preceding paragraph shall be allowed. In such eventuality, a report specifying the modalities 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.

#### **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.

#### **Article 2.2.2 Identification of customers by credit and financial institutions**

Credit and financial institutions shall be required to verify their customers' identity and addresses before opening ordinary accounts or passbooks, taking stocks, bonds or other securities into safe custody, granting safe-deposit 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 and bears a photograph; a copy thereof 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 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 the identity and addresses of the beneficial owners.

### **Article 2.2.3 Identification of casual customers**

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 specified in the first paragraph of this article is reached.

Identification shall be required, even if the amount of the operation is below the threshold laid down, 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 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, without prejudice, where applicable, to the requirement to report suspicions.

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

### **Article 2.2.5 Special monitoring 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 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 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 or the monitoring of transactions.

### **Article 2.2.6 Record-keeping by credit and financial institutions**

Credit and financial institutions shall maintain and shall hold at the disposal of 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 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 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, authorized agents and beneficial owners, and on suspicious transactions;
- (b) Designation of compliance officers, 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.

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, 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 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 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 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, 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.

### **Title III. Detection of laundering**

#### **Chapter I. Collaboration 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, 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 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 and irrespective 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 foreign unit processing a report of a suspicion, it shall comply with that request within the scope of the powers hereby conferred 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 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 to defer 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 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 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.

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.

### 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, 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 from liability

### Article 3.2.1 Exemption from liability for bona fide reporting of suspicions

No proceedings for breach of banking or professional secrecy may be instituted 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.

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.

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 for the detriment sustained, subject to the conditions and limits laid down in its national legislation.



### 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 conspiracy 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 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 and private deeds, or of bank, financial and commercial records.

The judicial authorities may also order the seizure of the aforementioned documents.

However, these operations shall be possible only when there are strong grounds 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 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 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 ruling 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 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 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 or at the request of the public prosecutor's 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 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, facilitating or counselling 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 the conviction of those individuals as perpetrators of the offence or accessories to it.

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 which were used for the commission of the offence;
- (c) Wound up 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 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 upon it under the present law, the disciplinary or supervisory authority may act ex officio in conformity 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 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 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 in the pursuit 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 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 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, cohabitee 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 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 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 with property acquired from legitimate sources, the confiscation of the latter property shall be ordered solely up to the value, as assessed 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 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 to prosecution for that offence, except where the case is time-barred.

#### **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 of certain legal instruments**

Any legal instrument, executed free of charge or for a valuable consideration *inter vivos* or *mortis causa*, 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.

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

#### **Article 4.2.13 Disposal of confiscated property**

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

In cases where confiscation is ordered under a judgement by default, 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 such judgement, acquits the person prosecuted, it shall order restitution to the value of the confiscated property by the State, unless it is established that such property is the proceeds of crime.

## **Title 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 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 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, 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 grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions, 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 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, 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 of the principles set out in the Model Treaty on Extradition 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)] 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

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 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 of time or amnesty;
- (e) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in article 14 of the International Covenant on Civil and Political Rights;
- (f) If the judgement of the requesting State has been rendered *in absentia*, 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 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 court or tribunal;
- (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 with humanitarian 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*

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 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 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 consents 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 invalidation of such investigations or proceedings, except with the prior consent of the foreign Government.

**Article 5.4.10 Costs**

Costs incurred in complying with requests provided for under the present title shall be borne by the State of ... [*name of the country adopting the 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] [*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, customs or police investigations [*variant*: and made available by the State administrations]. It shall also comprise liaison officers responsible for cooperation with the other administrations. The intelligence unit shall be supported by a secretariat.

#### 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 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 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, 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 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.]