**Unofficial and not binding translation**

Official title: STATE ORDINANCE of 19 May 2011 containing new rules for the identification and verification of customers and the reporting of unusual transactions to prevent and combat money laundering and terrorist financing when providing certain services

Short title: State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (*Landsverordening voorkoming en bestrijding witwassen en terrorismefinanciering*)

Source : AB 2011 No. 28 (entry into force AB 2011 No. 33)

Amendments: AB 2014 No. 11 (entry into force AB 2014 No. 12); AB 2016 No. 53 (entry into force AB 2016 No. 62); AB 2017 No. 45 (entry into force AB 2017 No. 55); AB 2019 No. 26 (entry into force AB 2019 No. 30), AB 2021 No. 143 (entry into force AB 2021 No. 147);

## CHAPTER 1

## Application and scope

### Article 1

1. In this State Ordinance and the provisions based on it, the terms below are defined as follows:

designated non-financial service provider:

1°. a natural person, legal person, corporation or partnership that acts as an attorney-at-law, a civil-law notary, junior civil-law notary, tax advisor or in the exercise of a similar legal profession or business;

2°. a natural person, legal person, corporation or partnership independently performing professional activities, including forensic accountancy, as an external registered accountant or an external accountant-administration consultant, or a natural person, legal person, corporation or partnership to the extent that they independently perform similar activities in a professional or commercial capacity;

3°. a natural person, legal person or corporation trading or acting as an intermediary in a professional or commercial capacity in the purchase and sale of real estate, vehicles, ships, aircraft, objects of arts, antiquities, and the rights governing these objects;

4°. a natural person, legal person, or corporation trading in precious metals, precious stones and/or jewels in a professional or commercial capacity;

5°. a casino as referred to in Article 1 (1), of the State Ordinance on Games of Hazard (*Landsverordening hazardspelen*) (AB 1990 No. GT 44);

6°. a trust office as referred to in Article 1 of the State Ordinance on the Supervision of Trust Service Providers (*Landsverordening toezicht trustkantoren*) (AB 2009 No. 13);

7°. a natural person, legal person or corporation involved in a professional or commercial capacity in the exchange of virtual currency or fiduciary currency;

8°. a natural person, legal person or corporation providing custodian wallets in a professional or commercial capacity;

custodian wallet provider : a provider of services to safeguard, on behalf of its customers, private cryptographic keys which hold, store and transfer crypto assets;

bank : a financial institution that is authorized pursuant to a license as referred to in Article 4 or Article 24 of the State Ordinance on the Supervision of the Credit System (*Landsverordening toezicht kredietwezen*) (AB 1998 No. 16) to perform one or more financial activities or operations of a financial service provider;

customer : the person with whom a business relationship is established, or who causes a transaction to be carried out;

customer due diligence : the due diligence referred to in Article 3;

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

service provider : a financial or designated non-financial service provider;

electronic money : electronic money as referred to in Article 1 of the State Ordinance on the Supervision of the Credit System;

fiduciary currency : coins or banknotes acknowledged as legal tender and electronic money accepted as means of exchange;

financial service provider : anyone who in a commercial capacity performs one or more of the following activities or operations for the benefit of a customer:

1°. accepting deposits and other repayable funds from the public;

2°. granting loans or acting as an intermediary in that respect;

3. financial leasing, with the exception of consumer-related leasing;

4. transferring or causing the transfer of money or money values;

5. issuing and managing means of payment other than money, at any rate including credit cards,

debit cards, checks, traveler's checks, bank drafts and money orders, and electronic money;

6. providing financial guarantees and commitments;
7. trading in money market instruments, foreign currency, shares, exchange, interest and index instruments, transferable securities, and futures market instruments;
8. participating in the issue of securities and providing financial services related to such issue;
9. managing individual and collective investment portfolios;
10. receiving for safekeeping and managing cash or liquid securities;
11. otherwise investing, administering, or managing funds or monies on behalf of third parties;
12. concluding, surrendering and paying, as well as acting as an intermediary in the conclusion, surrender and payment of a life insurance contract as referred to in Article 1 of the State Ordinance on the Supervision of the Insurance Business (*Landsverordening toezicht verzekeringsbedrijf*) (AB 2000 No. 82) and other investment-related insurance products;
13. exchanging coins or banknotes for other coins or banknotes or paying coins or banknotes on presentation of a credit card or debit card or on surrender of checks, traveler's checks, bills of exchange, or money orders;

FIU-Aruba : the organization referred to in Article 20 (1);

identify : to have someone state his identity;

life insurer : any party operating a life insurance business as referred to in Article 1 of the State Ordinance on the Supervision of the Insurance Business;

life insurance contract : a life insurance contract as referred to in Article 1 of the State Ordinance on the Supervision of the Insurance Business;

weapons of mass destruction : chemical, biological, and nuclear weapons;

report : a report as referred to in Article 26;

unusual transaction : a transaction designated as such pursuant to Article 25;

suspend : to cause a temporary interruption in the performance of a transaction;

Minister : the minister, in charge of finance;

politically exposed person : a person who holds or has held a prominent

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| | | public position, as well as direct family members and direct associates of such person; |
| proliferation financing | : | the criminal offense, referred to in Article 2:55a of the Criminal Code of Aruba (AB 2012 No. 24); |
| respondent bank | : | the bank established outside Aruba that has a permanent relationship with the correspondent bank; |
| shell bank | : | a financial service provider established outside Aruba that has no physical presence in the country of incorporation and is not affiliated with a financial services group that is subject to an effective form of consolidated supervision; |
| terrorist financing | : | the criminal offense, referred to in Article 2:55 of the Criminal Code of Aruba; |
| Supervisory Authority | : | 1°. the Centrale Bank van Aruba;<br>2°. a body established by state ordinance charged with the supervision of the activities of a category of non-financial service providers; |
| transaction | : | an act or a combination of acts by or on behalf of a customer in connection with the procurement or provision of services, or of which a service provider has taken note within the framework of its service provision to a customer; |
| trust | : | a trust within the meaning of the Convention on the Law Applicable to Trusts and on their Recognition (Trb. 1985, 141); |
| ultimate beneficial owner | : | the natural person who ultimately owns or exercises control over a customer, including the natural person who exercises effective control of a legal person or legal structure, or the natural person at whose expense a transaction or activity is carried out; |
| verify the identity | : | to establish that the identity stated corresponds with the real identity; |
| virtual currency | : | a digital representation of value that is not issued or guaranteed by a central bank or an authority, is not necessarily linked to a legal currency, and does not have the legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and can be electronically transmitted, stored, and traded; |
| money laundering | : | a criminal offense as referred to in Articles 2:404, 2:405, and 2:406 of the Criminal Code of Aruba; |
| business relationship | : | a business, professional or commercial relationship between a service provider on the one hand and a customer on the other, which is connected with activities performed by that service provider in a professional or commercial capacity, and which at the moment of making the |

contact is assumed to last some time.

2. By State Decree containing General Administrative Orders (*Landsbesluit, houdende algemene maatregelen*), other activities, operations, or other categories of financial service providers and designated non-financial service providers may be designated, to which the regulations laid down by or pursuant to this State Ordinance are applicable.

3. If required, the Minister will issue, if necessary per category of service providers, directives regarding the application of the definition of 'ultimate beneficial owner' as referred to in the first paragraph.

4. By or pursuant to the State Decree containing General Administrative Orders, further regulations may be laid down to prevent and combat proliferation financing.

Article 2

1. A Supervisory Authority is responsible for supervising, in a risk-based manner, compliance by the service providers with the provisions laid down by or pursuant to this State Ordinance by the service providers reporting to it, which supervision is aimed at preventing and combating money laundering, terrorist financing, and proliferation financing in accordance with the risks identified.

2. The regulations laid down by or pursuant to this State Ordinance are not applicable to the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority', unless provided otherwise in that definition.

3. The regulations of Chapters 2 and 3 are not applicable to activities of an attorney-at-law, a civil-law notary, or tax advisor relating to the legal position of a customer, his representation and defense in court, to giving advice before, during, and after legal proceedings, or giving advice on instituting or avoiding legal proceedings.

## CHAPTER 2

## Customer due diligence

### §1. The scope of customer due diligence

Article 3

1. To prevent and combat money laundering, terrorist financing, and proliferation financing, service providers must perform customer due diligence, comprising at least the following:

a. identifying the customer and verifying his identity;
b. identifying the ultimate beneficial owner and taking reasonable measures to verify the identity of the ultimate beneficial owner in such manner that the service provider is convinced of the identity of that ultimate beneficial owner;
c. establishing the purpose and intended nature of the business relationship,
d. exercising ongoing monitoring of the business relationship and the transactions carried out during the course of this relationship in order to ensure that they correspond to the knowledge the service provider has of the customer and the ultimate beneficial owner and of their risk profile, including, where appropriate, investigating the source of the funds involved in the transaction or business relationship, and
e. exercising ongoing monitoring of the business relationship and the transactions carried out during the course of this relationship in order to ensure that they correspond to the

knowledge the service provider has of the customer and the ultimate beneficial owner, their business activities and their risk profile, including, where appropriate, investigating the source of the customer's and the ultimate beneficial owner's funds and the origin of the monies, securities, precious metals, or other values involved in the transaction.

2. If a service provider is a designated non-financial service provider as referred to under 3° of the definition of 'designated non-financial service provider', the customer due diligence will also extend to the other party of the service provider's customer.

Article 3a

1. If it concerns a life insurance contract, the customer due diligence will also extend to the identification of the beneficiary and the verification of his identity.

2. The life insurer is responsible for:

a. recording the name of the person, in the event that the beneficiary has been identified as a named natural person, legal person, or legal structure,

b. obtaining sufficient information regarding the beneficiary in order to make sure that the identity of the beneficiary can be established at the time of payment, in the event that the beneficiary is designated by characteristics or by category or otherwise, and

c. obtaining sufficient information regarding the beneficiary or the beneficiary's ultimate beneficial owner in order to make sure that at the time of payment the insurer is able to take reasonable measures to establish whether the beneficiary or the ultimate beneficial owner is a politically exposed person.

Article 3b

1. If a service provider has indications that a transaction or business relationship involves money laundering, terrorist financing, or proliferation financing, contrary to Article 3 it may in exceptional cases be allowed not to perform customer due diligence or to perform only part thereof insofar as performing full customer due diligence may seriously impede the discovery of money laundering, terrorist financing, or proliferation financing.

2. A service provider who, in reliance on the first paragraph, does not perform customer due diligence or performs only part thereof, must immediately submit a report as referred to in Article 26(1).

3. A service provider who, in reliance on the first paragraph, does not perform customer due diligence or performs only part thereof, must immediately inform the Supervisory Authority as referred to in Article 1(1) under 1º of the definition of 'Supervisory Authority', accompanied by:

a. data and information substantiating the indications that the relevant customer is involved in money laundering, terrorist financing, or proliferation financing; and

b. a written analysis reasonably demonstrating that performing full customer due diligence may seriously impede the discovery of money laundering, terrorist financing, or proliferation financing.

Article 4

A service provider must check whether the customer is acting for himself or for the benefit of a third party and will take reasonable measures to establish the identity of that third party and verify this identity.

Article 5

1. A service provider must check whether the natural person claiming to act on behalf of a customer is authorized to do so, must establish the identity of that natural person, must verify that identity before providing the service, and must record the information regarding the representation and, if applicable, the legal form of the customer.

2. With regard to a customer that is a legal person or legal structure, including a trust and a foundation, the service provider must take reasonable measures resulting in any case in the service provider acquiring an understanding of the ownership and the actual control structure of the customer.

3. The second paragraph applies equally to a customer who acts as a trustee of a trust or a person who holds a comparable position with another legal structure, or if a business relationship is established or a transaction is carried out in connection with the management of a trust or another legal structure, with the proviso that the reasonable measures result in the identity of the ultimate beneficial owners of the trust or other legal structure being established and verified.

Article 6

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

a. the establishment in or from Aruba of a business relationship;

b. the performance in or from Aruba for the benefit of a customer of a one-off transaction with a value of at least Afl. 25,000, or of two or more related transactions with a combined value of at least Afl. 25,000;

c. the performance in or from Aruba of a money transfer as referred to in Article 1 of the State Ordinance on the Supervision of Money Transfer Companies (*Landsverordening toezicht geldtransactiebedrijven*) (AB 2003 No. 60);

d. if there are indications that the customer is involved in money laundering, terrorist financing, or proliferation financing;

e. if it doubts the soundness or reliability of data previously obtained from the customer, or

f. if the risk of involvement of an existing customer in money laundering, terrorist financing, or proliferation financing gives reason to do so.

2. A designated non-financial service provider must perform customer due diligence in the following cases:

a. if it concerns a designated non-financial service provider as referred to under 1° or 2° of the definition of 'designated non-financial service provider, when giving advice or assistance in or from Aruba concerning:

1º. the purchase and sale of properties subject to registration, as well as the rights governing these properties;

2º. the management of money, securities, or other assets;

3º. the management of bank accounts, savings accounts, or securities accounts;

4º. the organization of contributions for the incorporation, operation, or management of businesses;

5º. the incorporation, operation, or management of legal persons or equivalent legal entities, and the purchase and sale of businesses;

b. if it concerns a designated non-financial services provider as referred to under 3º of the definition of ‘designated non-financial services provider', when trading or

acting as an intermediary in or from Aruba in the purchase and sale of the properties subject to registration referred to in that paragraph, as well as the rights governing these properties;

c. if it concerns a trust office, when performing one or more of the following activities in or from Aruba:
   1º. acting as an incorporator of legal persons;
   2°. acting in the name of or as director or manager of a legal person, corporation, partnership, or other legal structure;
   3°. providing a corporate domicile, business address or accommodation, an administrative or correspondence address, and other related services to a business, legal person, corporation, partnership, or other legal structure;
   4°. acting or having someone else act as trustee, manager or representative of a trust or other similar legal structure;
   5º. acting or having someone else act in the name of a shareholder.

d. if it concerns a casino, when performing cash transactions with a value of Afl. 5,000 or more;

e. if it concerns a natural person, legal person or corporation trading in a professional or commercial capacity in precious metals, precious stones, jewels, vehicles, vessels not being properties subject to registration, objects of art, or antiquities, when performing cash transactions with a value of Afl. 25,000 or more;

f. if it concerns a designated non-financial services provider as referred to under 7º of the definition of ‘designated non-financial services provider', when exchanging virtual currency and fiduciary currency and carrying out cash transactions with a value of Afl. 1,750 or more in or from Aruba;

g. if it concerns a designated non-financial service provider as referred to under 8º of the definition of ‘designated non-financial services provider', when providing custodian wallets in or from Aruba;

h. if a circumstance as referred to in the second paragraph, letters d, e, or f, presents itself.

3. A service provider must tailor the customer due diligence to the risk sensitivity to money laundering, terrorist financing, or proliferation financing of the type of customer, business relationship, product, or transaction. To that effect, he must establish a risk profile of the customer and the ultimate beneficial owner.

4. Rules will be set by State Decree containing General Administrative Orders concerning the transfer or funds and in particular the recording in this respect of data and information of the persons who have put money or money values at the disposal of the financial service provider for the purpose of the funds transfer, and of the beneficiaries of the transaction.

Article 7

A service provider must ensure that the data and information collected during customer due diligence, in particular data and information relating to customers, ultimate beneficial owners or business relationships that pose a higher risk of money laundering, terrorist financing, or proliferation financing, are recorded in writing or digitally in a proper manner, are relevant and are kept up to date.

§2. The moment of performing customer due diligence

Article 8

1. A service provider must perform customer due diligence before the business relationship is established or a one-off transaction as referred to in Article 6(1), letters b or c, or a transaction as referred to in Article 6(2), letters a through g is carried out.

2. Contrary to the first paragraph:

a. a service provider may verify the identity of the customer and the ultimate beneficial owner during the establishment of the business relationship, if this is necessary in order not to disrupt the service provision and there is little risk of money laundering, terrorist financing, or proliferation financing; in this case, the service provider must verify the identity as soon as possible after the first contact with the customer;

b. a service provider that is a life insurer may verify the identity of the beneficiary of a life insurance contract and take measures to establish whether the beneficiary or the beneficiary's ultimate beneficial owner is a politically exposed person after the business relationship has been established; in that case, the beneficiary's identity must be verified, and measures to establish whether the beneficiary or the beneficiary's ultimate beneficial owner is a politically exposed person must be taken on or before the date of payment, or on or before the date on which the beneficiary wishes to exercise his rights arising from the life insurance contract;

c. a service provider that is a bank may open an account before the customer's identity has been verified, provided it guarantees that this account cannot be used before verification has taken place;

d. a designated non-financial service provider who is a civil-law notary may establish the customer's identity and verify the ultimate beneficial owner's identity at the moment that identification is required pursuant to Article 20(1) of the State Ordinance on Civil-law Notaries (*Landsverordening op het notarisambt*) (AB 1990 No. GT 69).

Article 9

1. Without prejudice to Article 8(2), a service provider is prohibited from establishing a business relationship or carrying out a transaction if it has not performed or is not able to perform customer due diligence, or if customer due diligence has not led to the result envisaged by Articles 3, 3a, 4, and 5.

2. If, after the establishment of a business relationship, a service provider is no longer able to comply with Articles 3, 3a, 4, and 5, the service provider must end the business relationship immediately.

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

Article 10

1. Contrary to Article 9(1), service providers may decide with respect to the requirements set by Articles 3, 4, and 5 to apply simplified customer due diligence:

a. when it concerns the following customers:

1°. a financial service provider established in Aruba and supervised by the Supervisory Authority as referred to in Article 1(1) under 1º of the definition of 'Supervisory

Authority' or by another legal person governed by public law;

2º. a financial service provider established outside Aruba that is subject to the internationally accepted standards for the prevention and combating of money laundering, terrorist financing, and proliferation financing, and is supervised effectively with regard to compliance with these standards;

3º. public limited companies and comparable entities that are subject to statutory disclosure requirements as to financial reporting, and the shares of which are traded on recognized stock exchanges as designated by regulation of the Minister;

4º. public corporations of which all shares are held by the State;

5º. the State and other legal persons governed by public law established in Aruba;

6º. legal persons governed by public law established and active outside Aruba in other parts of the Kingdom;

b. when they carry out a transaction or establish a business relationship concerning:

1º. a life insurance contract of which the annual premium does not exceed Afl. 1,500, or of which the amount of the single premium does not exceed Afl. 4,000;

2º. a pension or a similar arrangement intended to provide an employee with a retirement benefit, where the contributions for the benefit of the pension schemes are made through deductions from the employee's salary, and where the employee is not permitted to assign, pledge, or transfer as security his rights arising from the pension scheme to third parties;

3º. ultimate beneficial owners of accounts held by a designated non-financial service provider that are intended solely to retain money for third parties, provided these service providers are subject to regulations for the prevention and combating of money laundering, terrorist financing, and proliferation financing that comply with the internationally accepted standards for the prevention and combating of money laundering, terrorist financing, and proliferation financing, and that they are effectively supervised with regard to compliance with these standards;

2. A service provider must collect sufficient data and carry out regular investigations to be able to establish whether the first paragraph applies to a customer and must set out the results of these investigations in writing.

3. The first paragraph will not apply if the customer, business relationship, or transaction carries a higher risk of money laundering, terrorist financing, or proliferation financing or if there are indications that the customer is involved in money laundering, terrorist financing, or proliferation financing.

Article 11

1. Service providers must perform enhanced customer due diligence, if and when a business relationship or a transaction by its nature carries a higher risk of money laundering, terrorist financing, or proliferation financing. In any case in the following situations the enhanced customer due diligence must be carried out both prior to the business relationship being established or the transaction being carried out, and during the business relationship:

a. except in the cases referred to in Article 10, when a customer or ultimate beneficial owner is not a resident of Aruba or is not established in Aruba;

b. when a customer is not physically present for identity verification purposes;

c. when it concerns private banking for high-net-worth individuals;

d. with legal persons, trusts and comparable legal structures that are intended for holding private assets;

e. with corporations and other legal structures the shares of which are converted

into bearer shares or the registered shares of which are held by nominee shareholders;

f. with natural persons, legal persons, trusts and other legal structures that originate from countries or jurisdictions which do not or insufficiently comply with the internationally accepted standards for the prevention and combating of money laundering, terrorist financing, or proliferation financing;

g. with politically exposed persons;

h. when establishing correspondent bank relationships;

i. in other situations to be determined by regulation of the Minister.

2. A service provider must involve the beneficiary of a life insurance contract in its assessment whether there is an increased risk of money laundering, terrorist financing, or proliferation financing and enhanced customer due diligence must be performed. If a service provider reaches the conclusion that a legal person, trust or other legal structure that is the beneficiary of a life insurance contract poses an increased risk, the service provider must perform enhanced customer due diligence, which in any case includes taking reasonable measures to identify the beneficiary's ultimate beneficial owner and verify his identity.

Article 12

1. A service provider must have adequate policies and risk-identifying procedures in place designed to determine whether a customer, potential customer, ultimate beneficial owner, beneficiary of a life insurance contract, or a beneficiary's ultimate beneficial owner is a politically exposed person. A service provider must also have procedures in place to determine the source of wealth of customers and ultimate beneficial owners who are considered politically exposed persons on the basis of the first sentence, and the source of the monies, securities, precious metals, or other values involved in a transaction.

2. Without prejudice to the fourth paragraph, a service provider who establishes a business relationship with or carries out a transaction for a politically exposed person must ensure that:

a. the decision to establish the business relationship or perform the individual transaction will be made or approved only by the persons in charge of the service provider's overall management,

b. and that they continuously monitor the business relationship.

3. If a beneficiary of a life insurance contract or that beneficiary's ultimate beneficial owner is a politically exposed person, the service provider must ensure that:

a. the persons in charge of the service provider's overall management are informed prior to the payment under the life insurance contract,

b. enhanced customer due diligence is performed with respect to the entire business relationship, and

c. submitting a report as referred to in Article 26(1) will be considered.

4. If a customer, potential customer, beneficiary, or an ultimate beneficial owner is considered a politically exposed person after the business relationship has been established, the business relationship will be continued only after it has been approved by the persons in charge of the service provider's overall management.

5. A customer, potential customer, beneficiary, or an ultimate beneficial owner will be considered a politically exposed person up to five years after he has ceased to hold the prominent public position. The first sentence will apply equally to the direct family members and direct associates of such a person.

Article 13

1. A service provider must perform enhanced customer due diligence, in proportion to the risk, in the case of:
   a. business relationships and transactions with natural persons, legal persons, corporations, trusts or other legal structures originating from countries or jurisdictions that do not or insufficiently comply with the internationally accepted standards for the prevention and combating of money laundering, terrorist financing, and proliferation financing;
   b. complex and unusually large transactions and unusual transaction features that have no apparent economic or legal purpose.
2. If a service provider may reasonably suspect that a transaction with a natural person, legal person, corporation, trust or other legal structure originating from a country or jurisdiction as referred to in the first paragraph does not have an apparent economic or legal purpose, or if a transaction referred to in the first paragraph, letter b, should occur, it must investigate the background and the purpose of this transaction and record its findings in writing.
3. The findings, referred to in the second paragraph, must be stored for at least ten years.

Article 14
(repealed)

§4. Introduction of customers

Article 15

Without prejudice to its own responsibility pursuant to Article 3(1), letters a through d and contrary to that stated in Article 9(1), with respect to a customer introduced by a financial service provider established in Aruba or by a designated non-financial service provider as referred to under 1º or 2º of the definition of 'designated non-financial service provider', a service provider may rely on the customer due diligence performed by that service provider insofar as this due diligence contains the elements described in Article 3(1), letters a through d, provided that:
   a. the third party immediately makes the data received pursuant to Article 3(1), letters a through d, available to the service provider;
   b. the service provider has ensured that copies of all data and information regarding the customer due diligence performed by the third party can be made available by the third party to the service provider immediately at the latter’s request;
   c. the service provider has ensured that the third party has procedures and measures in place that enable the third party to perform customer due diligence and store the data and information collected as a consequence of the customer due diligence in the manner described in Article 33(1), preamble, first and second sentences.

Article 16

Article 15 will apply equally to customers who are introduced by service providers established outside Aruba in a country or jurisdiction appearing on a list to be drawn up by regulation of the Minister. When determining whether a country or jurisdiction is placed on the list referred to in the first sentence, the information available on the risk of the country or jurisdiction will be taken into account in a risk-based and effective manner.

## §5. Maintaining correspondent bank relationships by banks

### Article 17

1. A bank that intends to establish a correspondent bank relationship or other comparable relationship must ensure that:

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

2. A bank will only establish a new correspondent bank relationship or other comparable relationship after a decision made to this effect by the persons in charge of the bank's overall management.

3. If a correspondent bank relationship or other comparable relationship entails the use of transit accounts, the bank must ascertain that the bank concerned has identified its customers who have direct access to these transit accounts, and that it has verified their identity in accordance with the internationally accepted standards for identification and identity verification. The bank must also ascertain that the bank concerned is able to provide the bank with all relevant identity data of a customer, if requested to do so. For the purpose of the first sentence, a transit account is taken to mean an account held with a bank by the bank concerned, to which account third parties have direct access for carrying out transactions for their own benefit.

### Article 18

1. A bank is prohibited from establishing or maintaining a correspondent bank relationship or other comparable relationship with a shell bank.

2. Banks must ascertain that financial service providers established outside Aruba with whom they establish or maintain a correspondent bank relationship or other comparable relationship, do not cause their accounts to be used by shell banks. If a situation as referred to in the first sentence presents itself, the bank concerned must immediately end the correspondent bank relationship or other comparable relationship.

## §6. Documents, data and information required for identification and verification

### Article 19

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

2. If a customer is an Aruban legal person with its registered office in Aruba or is a foreign legal person with its registered office in Aruba, its identity will be verified based on documents, data or information from a reliable and independent source.

3. If a customer is a foreign legal person established outside Aruba, its identity will be verified based on reliable and internationally accepted documents, data, or information, or on the basis of documents, data, or information recognized by law in the customer's state of origin as a valid means of identification.

4. The third paragraph applies equally to the ultimate beneficial owners of the assets of the trust or other legal structure.

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

6. The Minister may set rules with regard to the type and content of the documents, data, and information referred to in paragraphs one through five, as well as with regard to the verification of the identity of the customers that do not fall under paragraphs one through five.

## CHAPTER 3

## Reporting unusual transactions

### §1. The Financial Intelligence Unit Aruba

### Article 20

1. Aruba has a Financial Intelligence Unit.

2. With a view to the prevention of money laundering, terrorist financing, and proliferation financing the FIU-Aruba is charged with the following tasks:

a. to collect, register, process, and analyze data it obtains in order to assess whether these data may be relevant for the prevention and detection of money laundering, terrorist financing, the financing of proliferation of weapons of mass destruction, asset tracing and the underlying criminal offenses;

b. to provide data in accordance with the provisions laid down by or pursuant to this State Ordinance or another state ordinance regarding the prevention and combating of money laundering, terrorist financing, and proliferation financing;

c. to inform the person who submitted a report in accordance with Article 26 or Article 26a regarding the completion of the report, if data have been provided in accordance with letter b of this paragraph;

d. to investigate developments in the area of money laundering, terrorist financing, and proliferation financing and the improvement of the methods to prevent and combat money laundering, terrorist financing, and proliferation financing;

e. to give information about the types and the prevention and combating of money laundering, terrorist financing, and proliferation financing;

f. to maintain contact and exchange data with foreign agencies whose task is similar to that of the FIU-Aruba;

g. to provide information regarding the reporting behavior of service providers to the Supervisory Authorities as referred to in Article 1(1) under 1° or 2° of the definition of 'Supervisory Authority';

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

i. to suspend suspicious transactions as referred to in Article 28a.

3. The FIU-Aruba carries out the tasks and activities it has been charged with by or pursuant to this State Ordinance in an independent and autonomous manner.

4. Articles 25 and 26 of the Government Accounts Ordinance 1989 (*Comptabiliteitsverordening 1989*) (AB 1989 No. 72) do not apply to the allocation of work, supplies, and services for the benefit of the FIU-Aruba.

5. The FIU-Aruba is a separate and independent department of the Ministry of the Minister.

6. The FIU-Aruba is managed by a head. The head of the FIU-Aruba is appointed, suspended or dismissed only after the advisory committee referred to in Article 21 has been heard. The head is responsible for appointing, suspending and dismissing the other staff members of the FIU-Aruba.

Article 21

1. There is an advisory committee charged with giving advice on the appointment, suspension, and dismissal of the head of the FIU-Aruba.

2. The committee consists of the following members:
   a. a representative of the Minister;
   b. the director of the Legislation and Legal Affairs Department;
   c. the director of the Aruban Security Service.

3. The members of the committee elect a chairman from their number.

4. In all other respects, the advisory committee determines its own working method.

§2. Processing, consulting, and providing data by the Financial Intelligence Unit Aruba.

Article 22

1. The FIU-Aruba keeps a register for processing the data and information obtained pursuant to the application of this State Ordinance.

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

3. Rules will be laid down by State Decree containing General Administrative Orders regarding the provision of data from the register to agencies in or outside the Kingdom that have a task comparable to that of the FIU Aruba, as well as regarding the conditions under which the data are provided.

Article 23

1. For the proper performance of its duties, the FIU-Aruba is authorized to consult the registers and sources of information, both closed and open, of the agencies and officials charged with the implementation of laws and regulations or the detection and prosecution of punishable offenses.

2. The agencies and officials referred to in the first paragraph are obliged to allow the FIU-Aruba to consult the registers and sources as referred to in the first paragraph. As regards all closed and open digital registers and sources, the agencies and officials referred to in the first paragraph are obliged to grant the FIU-Aruba direct and anonymous access.

3. For the purposes of adequate consultation, the head of the FIU-Aruba may enter into an agreement with the agencies or officials referred to in the first paragraph.

Article 24

1. When requested or on its own initiative, the FIU-Aruba will provide the following data and information to the relevant agencies and officials charged with the detection and prosecution of criminal offenses:
   a. data and information giving rise to a reasonable suspicion that a certain person is guilty of money laundering, terrorist financing, or proliferation financing, and the underlying criminal offenses;
   b. data and information of which it can be reasonably suspected that they are important in the prevention or detection of money laundering, terrorist financing, or proliferation financing;
   c. data and information of which it can be reasonably suspected that they are important in the prevention or detection of criminal offenses, which, given their purpose or the context in which they have been or can be committed, constitute a serious breach of the legal order.
   d. information arising from investigations as referred to in Article 20(2), letter d, and statistical data.
2. The FIU-Aruba is authorized to provide data and information to organizations that are established by State Ordinance and charged with state security and to the National Sanction Committee, as referred to in Article 10(1) of the Sanction Decree Combat Terrorism and Financing Terrorism (*Sanctiebesluit bestrijding terrorisme en terrorismefinanciering*) (AB 2010 No. 27). The FIU-Aruba is also authorized to provide data and information on its own initiative to both domestic and foreign agencies.
3. The FIU-Aruba is furthermore authorized to provide data and information as regards the contents of reports as referred to in Articles 26 and 26a to the Supervisory Authorities as referred to in Article 1(1) under 1° or 2° of the definition of 'Supervisory Authority'.
4. Article 23(3) applies by analogy.
5. The FIU-Aruba may also, for the performance of its tasks as referred to in Article 20(2), letters a and b, provide data and information to relevant Aruban government agencies or to relevant Aruban agencies designated by the government, if providing such data and information may be connected to money laundering, terrorist financing, or proliferation financing, provided that:
   a. the information provided contains relevant facts and background information;
   b. the reasons for providing the data or information;
   c. the restrictions and conditions imposed by the FIU-Aruba on the use of the information are complied with.
6. Article 23(3) applies by analogy to paragraph 5.

§3. Obligation to report

Article 25

Following consultation with the FIU-Aruba, and if necessary per group of service providers or category of transactions, the Minister will determine indicators on the basis of which an assessment is made whether a transaction will be considered an unusual transaction or a transaction that justifies suspension.

Article 26

1. A service provider must submit a report to the FIU-Aruba of an unusual transaction

carried out or intended, as soon as the unusual nature of the transaction has become known to it.

2. Together with a report as referred to in the first paragraph, the service provider concerned will provide the following data as a minimum:

a. the identity of the customer and, if the transaction concerns the transfer of funds, also the identity of the beneficiary;
b. the type and number of the customer's identity document;
c. the nature, time, and place of the transaction;
d. the amount and designated use and origin of the monies, securities, precious metals, or other values involved in the transaction;
e. the circumstances based on which the transaction is considered unusual;
f. if it concerns a transaction regarding a high-value object, a description of the object in question;
g. the indicator or indicators based on which the transaction is considered unusual.

3. By State Decree containing General Administrative Orders, other data may be identified that must be provided together with a report as referred to in the first paragraph.

Article 26a

1. A service provider must notify the FIU-Aruba immediately of a suspended transaction, if the transaction meets a suspension indicator.

2. Article 26(2) and (3) apply by analogy.

Article 27

1. With a view to performing its tasks, as referred to in Article 20 (1), the FIU-Aruba may request the provision of further data and information from a service provider.

2. The person who has been requested to provide further data or information in accordance with the first paragraph, must submit such data or information to the FIU-Aruba in writing, and, in urgent cases determined as such by the FIU-Aruba, orally, within the period set by the FIU-Aruba.

3. Without prejudice to Article 48(3), the head of the FIU-Aruba may, with regard to a service provider:

a. who has submitted a report which is not in accordance with Article 26,
b. who has failed to provide the data and information requested pursuant to the first paragraph, or failed to provide such data and information in full,

issue a direction in order to ensure that, within a period set by the head of the FIU-Aruba, the report will comply with Article 26 or the data and information requested pursuant to the first paragraph are provided as indicated. The head of the FIU-Aruba will inform the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' of a direction as referred to in the first sentence.

4. With regard to a service provider who has not or has insufficiently complied with a direction as referred to in paragraph 3, letter b, the head of the FIU-Aruba and the officials employed at the FIU-Aruba who are designated by State Decree, will be authorized, only to the extent reasonably required for the collection of data and information, as referred to in the first paragraph:

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

The second sentence of the third paragraph, and Article 35 (4) to (7) apply by analogy.

Article 28

1. The head of the FIU-Aruba determines, on the basis of guidelines, the manner in which reports must be submitted, and the manner in which the data and information, requested pursuant to Articles 26, 26a, and 27, must be provided.
2. A service provider must always comply with a regulation issued pursuant to the first paragraph.

§3a Suspension of suspicious transactions

Article 28a

1. The FIU-Aruba is authorized to have all or part of a transaction with a service provider suspended, whether on its own initiative or following a substantiated request from:
   a. a foreign agency whose task is comparable to that of the FIU-Aruba;
   b. the Public Prosecution Service;
   c. an investigative authority; or
   d. the Aruban Security Service or a comparable authority established in a country within the Kingdom of the Netherlands.
2. The first paragraph will only be applied if:
   a. it can be reasonably suspected that the transaction is related to money laundering, terrorist financing, or proliferation financing, or
   b. suspending the transaction will be helpful towards asset tracing.
3. The head of the FIU-Aruba will provide as much information as possible to the agency involved referred to in the first paragraph.
4. Article 27(2) applies by analogy.
5. A service provider must comply with a suspension request without delay.
6. A suspension may last a maximum of five working days. The head of the FIU-Aruba may extend the duration of the term referred to in the first sentence to fifteen working days.

§4. Indemnity against civil and criminal liability

Article 29

1. Data or information provided in accordance with Articles 26, 26a, 27(2), and 28a, or 32(2) and (3) may not serve as a basis for, or for the benefit of a criminal investigation or prosecution on suspicion of money laundering, terrorist financing, or proliferation financing, or as evidence regarding a charge in this respect, brought by the service provider that provided this data or information.
2. Data or information provided on the reasonable assumption that Articles 26, 26a, 27(2), and 28a, or 32(2) and (3) are implemented, may not serve as a basis for, or for the benefit of a criminal investigation or prosecution on suspicion of, or as evidence regarding a charge of violation of Articles 2:232 or 2:233 of the Criminal Code of Aruba.
3. The first and second paragraphs will apply equally to persons employed by the service provider that has provided data or information in accordance with Articles 26, 26a, 27(2), and 28a, or 32(2) and (3) and who cooperated in that provision.

Article 30

1. A service provider that has submitted a report in good faith pursuant to Article 26 or Article 26a, or that has provided data or information to the FIU-Aruba pursuant to Article 27(2), will not be liable for any loss suffered by a third party as a consequence thereof.

2. The first paragraph will apply equally to persons employed by the service provider that has provided data or information in accordance with Articles 26, 26a, 27(2), and 28a and who cooperated in that provision.

3. The first paragraph applies equally to public-sector personnel employed by a government agency, or persons employed by a public corporation of which all shares are held by the State or by legal persons governed by public law established in Aruba and who have provided data or information to the FIU-Aruba in accordance with Article 30(2) or (3).

§5. Confidentiality and obligation to provide information

Article 31

1. Directors, officers, compliance officers and employees of the service provider who submit a report pursuant to Article 26 or Article 26a, or who provide further data or information pursuant to Article 27(2), are obliged to observe confidentiality with regard to this data or information, except if the need for disclosure arises from the object of this State Ordinance. The obligation to observe confidentiality is not intended to obstruct the sharing of information in accordance with Article 46.

2. Persons who obtain data or information pursuant to Article 20(2), letter c, are obliged to maintain confidentiality with regard to this data or information.

3. The first and second paragraphs apply equally to anyone who gains knowledge of a report, of the fact that a report may give rise to further investigation or of the provision of further data or information as referred to in Article 27(2), and knows or may reasonably suspect that a duty of confidentiality as referred to in the first or second paragraph applies to the service provider.

Article 32

1. If the persons or bodies charged with the supervision of persons or bodies active in the financial markets, or of designated non-financial service providers, discover facts in the performance of their duties that may indicate money laundering, terrorist financing, or proliferation financing, they must inform the FIU-Aruba, if necessary contrary to the applicable statutory confidentiality provisions.

2. If a government agency or public-sector personnel discover facts in the performance of their duties or office that may indicate money laundering, terrorist financing, or proliferation financing, they must inform the FIU-Aruba, if necessary contrary to the applicable statutory confidentiality provisions.

3. The second paragraph applies equally to persons employed by the following entities:
   a. public corporations of which all shares are held by the State;
   b. legal persons governed by public law established in Aruba.

4. In the event of a report as referred to in paragraphs 1 through 3, additional requirements may be set for the report by regulation of the Minister.

5. The FIU-Aruba may request the person submitting the report to provide further data

or information.

## CHAPTER 4

### Storing by service providers of data and information they obtained pursuant to this State Ordinance

### Article 33

1. A service provider must store the data and information obtained pursuant to Chapter 2, as well as the results from the analyses and assessments carried out by the service provider pursuant to this State Ordinance, in an accessible manner in Aruba, for a period of at least ten years after the date of termination of the business relationship or after the relevant transaction has been carried out. Data and information, as well as the results from the analyses and assessments as referred to in the first sentence, must always be stored in such manner that separate transactions can be reconstructed at all times and submitted to the competent authorities at their request. The data, information, analyses, and assessments referred to in the first sentence include in any case:

a. of natural persons:
   1º. the surname, first names, date and place of birth, address, and domicile and/or place of business of the customer and the ultimate beneficial owner and of the person acting on behalf of this natural person, or a copy of the document used to verify the identity, containing a personal identification number;
   2º. the type, number, and date and place of issue of the document used to verify the identity;
   3º. the nature and date of the transaction;
   4º. the type and quantity of the currency involved in the transaction;
   5º. the type and number of the account used for the transaction;
   6°. all account statements and business correspondence;
b. of legal persons incorporated under Aruban law:
   1º. the legal form, name under the articles of incorporation, trade name, address, and, if the legal person is listed with the Chamber of Commerce and Industry, the registration number with the Chamber of Commerce and Industry, and the manner in which the identity has been verified;
   2°. the surname, first names, and date of birth of the persons in charge of the legal person's overall management, the persons acting on behalf of the legal person, and of the ultimate beneficial owner;
   3º. the data referred to in letter a, under 3° through 6°;
c. of foreign legal persons and comparable entities:
   1º. the documents used to verify the identity;
   2°. the surname, first names, and date of birth of the persons in charge of the legal person's overall management, the persons acting on behalf of the legal person, and of the ultimate beneficial owner;
   3º. the data referred to in letter a, under 3° through 6°;
d. of trusts or other legal structures:
   1°. the documents used to verify the identity of the ultimate beneficial owners of the trust or other legal structure;
   2º. the data referred to in letter a, under 3° through 6°.

2. The Supervisory Authority as referred to in Article 1(1) under 1º of the definition of

'Supervisory Authority' may stipulate with respect to special cases that the documents must be stored, as referred to in paragraph 1, for a longer period to be determined by the Supervisory Authority.

Article 34

A service provider must store the data referred to in Article 26(2) and Article 26a in an accessible manner for a period of at least ten years following the date of submitting the report. Article 33(1) second sentence, and 33(2) apply by analogy.

CHAPTER 5

Supervision and administrative enforcement

§1. Supervision

Article 35

1. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' designates persons employed by it to supervise compliance with the provisions laid down by or pursuant to this State Ordinance. Such a designation will be published in the Official Gazette of Aruba.
2. The persons designated pursuant to the first paragraph must report on the exercise of their powers as referred to in the first paragraph to the designated managers at the Supervisory Authority.
3. To the extent reasonably required for the performance of their duties, the persons designated pursuant to the first paragraph are authorized:
a. to request all information;
b. to demand inspection of all company books, documents, and other data carriers and to make transcripts or copies thereof;
c. to access all premises, except for dwellings without the express permission of the resident.
4. If necessary, access to premises as referred to in the third paragraph, letter c, will be gained with the aid of the police.
5. The State Decree on General Provisions for Exercise of Regulatory Powers (*Landsbesluit algemene bepalingen toezichtuitoefening*) (AB 1998 No. 70), or the state decree replacing it, applies to the manner in which the persons designated pursuant to the first paragraph perform their duties.
6. Each person is obliged to grant the persons designated pursuant to the first paragraph all cooperation demanded pursuant to the third paragraph.
7. If a service provider is an attorney-at-law, civil-law notary, tax advisor, or an accountant, he may not invoke statutory confidentiality or confidentiality laid down in any other manner or professional privilege with regard to the exercise of the powers referred to in the third paragraph, insofar it concerns one or more of the circumstances referred to in Article 6(2), letters a through g. Before exercising the powers referred to in the third paragraph, letter b or c, the persons designated pursuant to the first paragraph will inform the Dean of the Bar Association or a representative of the relevant professional organization. At the request of the relevant attorney-at-law, civil-law notary, tax advisor, or accountant, the Dean of the Bar Association or a representative of the relevant professional organization may be present when the powers, referred to in the third paragraph, letters b and c, are exercised.

Article 36

1. Contrary to Article 49, without the prior permission of the regulatory authority that has provided the information, the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' is not permitted to exchange data and information it has obtained in the performance of its duties under this State Ordinance with government-designated agencies abroad that are charged with:

a. supervising compliance with laws and regulations on the prevention and combating of money laundering, terrorist financing, and proliferation financing;
b. supervising persons and entities that are active on the financial markets.

2. At the request of an agency as referred to in the first paragraph, the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' may request a service provider to provide data and information or may conduct an investigation or cause an investigation to be conducted at a service provider, or at any other party that may reasonably be assumed to possess data or information that may be of importance to the requesting agency.

3. The party that has been requested to provide data or information as referred to in the second paragraph, must provide this data or information within a reasonable period to be set by the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority'.

4. The party that is subject to an investigation as referred to in the second paragraph must grant all cooperation necessary for the proper conduct of this investigation. Article 35(3) and (4) apply by analogy.

5. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' may allow an officer of an agency as referred to in the first paragraph to participate in the implementation of a request as referred to in the second paragraph. The official referred to in the first sentence must observe the instructions of the Supervisory Authority's employee charged with implementing the request. The order referred to in the fourth paragraph will also apply to the official referred to in the first sentence.

6. Paragraphs one through five apply equally to the exchange of data and information with government-designated agencies other than the agencies referred to in the first paragraph.

7. If a government-designated agency other than the agencies referred to in the first paragraph requests that a Supervisory Authority provide data or information with the purpose of sharing this data or information with another agency, the request to the Supervisory Authority must contain the following information:

a. the agency on whose behalf the request is made;
b. the other agencies with whom the data or information will be shared; and
c. the purpose of the request.

Article 36a

1. The Supervisory Authorities as referred to in Article 1(1) under 1° or 2° of the definition of 'Supervisory Authority' are authorized to consult the registers and request all information from the Chamber of Commerce and Industry, the Land Registry and Cadastral Department (*Dienst Landmeetkunde en Vastgoedregistratie*), the Civil Registry Office (*Dienst Burgerlijke Stand en Bevolkingsregister*), as well as other agencies to be designated by State Decree containing General Administrative Orders.

2. The agencies referred to in the first paragraph must grant the Supervisory

Authorities, free of charge, all cooperation requested on the basis of the first paragraph within the reasonable period set by the Supervisory Authorities.

3. Contrary to Article 49, the Supervisory Authorities as referred to in Article 1(1) under 1° or 2° of the definition of 'Supervisory Authority' are authorized to provide data and information they have obtained in the performance of their duties under this State Ordinance to persons and agencies charged with exercising prosecution powers under the Code of Criminal Procedure of Aruba and to the FIU-Aruba.

§2. Administrative enforcement

Article 37

1. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' may impose an order subject to a penalty for violations of the regulations laid down by or pursuant to Articles 3 through 7, 8, first paragraph, 9, 10, second and third paragraphs, 11 through 19, 26, 26a, 27, second paragraph, 28, second paragraph, 28a, 31, 33, 34, 35, sixth paragraph, 36, third and fourth paragraphs, 45 through 47, 48, second and third paragraphs, second sentence, 50, first, second and fourth paragraphs, and 54.

2. For the violations referred to in the first paragraph, the relevant Supervisory Authority may also impose an administrative fine not exceeding Afl. 1,000,000 per separate violation.

3. Violations may be committed by natural persons and legal entities. Article 1:127, second and third paragraphs, of the Criminal Code of Aruba applies by analogy.

4. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' lays down guidelines for exercising the powers referred to in the first and second paragraphs, and records these guidelines in a policy document. The policy document must in any case contain a description of the procedures to be followed when exercising the powers referred to in the first and second paragraphs. The policy document referred to in the first sentence, and all subsequent amendments to be made, must be published beforehand in a manner to be determined by the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority'.

5. Rules will be laid down by State Decree containing General Administrative Orders concerning the grounds for determining the amount of the order subject to a penalty and the administrative fine per violation. The violations will be categorized in order of the severity of the violation with the corresponding base amounts, minimum amounts and maximum amounts.

6. Forfeited penalties and administrative fines accrue to the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority'.

Article 38

1. If a violation occurs within five years of an administrative fine having been imposed on the violator for the same violation, the amount of the administrative fine, referred to in Article 37(2), will be doubled for each separate violation.

2. Contrary to Article 37(2), the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' may set the amount of the administrative fine at a maximum of twice the amount of the advantage the violator gained by the violation, if his advantage exceeds Afl. 1,000,000.

Article 38a

1. If the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' intends to impose an administrative fine, it must inform the party concerned thereof, stating the grounds for its intention.

2. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' must give the party concerned a reasonable period in which to express his view orally or in writing, at his discretion, before the administrative fine is imposed by decision.

3. If the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' decides, after the party concerned has expressed his view, that no administrative fine will be imposed for the violation, it must inform the party concerned of this decision in writing.

Article 39

A party in respect of whom an act has been performed from which he could reasonably deduce that an administrative fine will be imposed on him for a violation, is not obliged to make any statement in respect thereof. He will be notified of this before being requested to provide information.

Article 40

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

2. The administrative fine will be increased by the statutory interest as of the day on which six weeks have passed since the date of the decision.

Article 41

1. The power to impose an administrative fine will lapse:

a. if criminal proceedings have been instituted on account of the violation and the examination in court has commenced, or the right to prosecute has lapsed pursuant to Article 1:149 of the Criminal Code of Aruba;

b. three years after the day on which the non-compliance with the regulation was established.

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

3. The right to prosecute will lapse if an administrative fine has already been imposed on the party concerned for the same violation.

4. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' and the Public Prosecution Service will consult each other on a regular basis on the choice between imposing an administrative fine and criminal-law sanctions, in order to avoid unlawful concurrence of such sanctions.

Article 42

1. At the request of the violator, the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' may lift an order subject to a penalty, suspend its duration for a certain period or reduce the penalty in the event that the violator is

unable, whether indefinitely or temporarily, to comply with all or part of his obligations.

2. At the request of the violator, the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' may also lift an order subject to a penalty if the decision has been in force for a year without the penalty having been forfeited.

Article 43

The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' must record the acts performed in the context of an investigation that is carried out before an administrative fine has been imposed, including the names of the persons who have performed the acts.

Article 44

1. If a forfeited penalty or fine has not been paid within the period stipulated by the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority', the violator will receive a written demand to pay the penalty or fine, plus the costs of the demand, within two weeks.

2. In the event of failure to pay, the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' will collect the amount and costs referred to in the first paragraph, plus the collection costs, by way of a writ of execution.

3. The writ of execution will be served by bailiff's notification as referred to in the Code of Civil Procedure of Aruba and will constitute entitlement to enforcement, which may be carried out under application of the provisions of this Code.

4. The writ of execution will in any case include the following:

a. at the beginning, the words 'writ of execution';
b. the amount of the collectable principal sum, plus the statutory interest due;
c. the decision or the legal provision on the basis of which the amount is due;
d. the costs of the demand and of the writ of execution;
e. that the writ can be executed at the expense of the violator.

5. Objection to the writ of execution may be lodged during a period of six weeks following the date of service. Objection proceedings must be brought against the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' before the court in the first instance and in the manner prescribed for filing claims. If the objection is lodged in time and in the prescribed manner, it will suspend the enforcement of the writ of execution.

§3. Authority to publish and risk management

Article 44a

1. In view of the interests this State Ordinance intends to protect, the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' may publish an irrevocable decision to impose an administrative fine or an order. In view of the interests this State Ordinance intends to protect, the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' may publish a decision to impose an order subject to a penalty as soon as the penalty has been forfeited.

2. If it intends to exercise the power referred to in the first paragraph, the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' must notify the party concerned in writing of this intention and give the party concerned the

opportunity to express his view.

3. The publication referred to in the first paragraph will not take place before five working days have passed since the day on which the party concerned was informed of the imminent publication.

4. The order to publish will enter into effect on the day on which the violation was made public, without the effect being suspended for the duration of the period for appeal or, if appeal has been lodged, of the appeal, if the address of the party concerned is not known and cannot be obtained with reasonable efforts.

5. The Minister may lay down rules for the exercise of the power referred to in the first paragraph.

Article 44b

The Minister, the minister in charge of General Affairs and the minister in charge of Justice will jointly publish, from time to time, reports on the national risks of money laundering, terrorist financing, proliferation financing and other related threats that have been identified, analyzed and assessed.

Article 44c

1. An Aruba AML/CFT Steering Committee, hereinafter referred to as 'the Steering Committee', will be formed by State Decree at the joint recommendation of the Minister, the minister in charge of General Affairs and the minister in charge of Justice. The Steering Committee is charged with preparing and implementing the policy, and monitoring and coordinating the internationally acknowledged recommendations by the Financial Action Task Force for combating money laundering, terrorist financing, and the financing of proliferation of weapons of mass destruction.

2. The Steering Committee is supported by an administrative office and meets at least four times a year.

3. The structure, composition, duties and powers of the Steering Committee and of the administrative office are regulated by State Decree.

## CHAPTER 6

## Procedures and measures for the prevention and combating of money laundering, terrorist financing, and proliferation financing

Article 45

1. A service provider forming part of a group must effectively apply the policy and the procedures and measures applicable at group level, insofar as this policy and these procedures and measures comply with the regulations set by or pursuant to this State Ordinance.

2. The procedures and measures referred to in the first paragraph in any case also relate to data protection and sharing of information within the group, insofar as the data and information relate to the prevention and combating of money laundering, terrorist financing, and proliferation financing.

3. Article 46(2) applies by analogy.

Article 46

1. A service provider that has a branch office, agent, or subsidiary outside Aruba, must ensure that the branch office, agent, or subsidiary effectively applies the policy and the procedures and measures referred to in Article 45.

2. The first paragraph applies in particular with regard to branch offices, agents and subsidiaries in countries and jurisdictions that do not or insufficiently comply with the internationally accepted standards for the prevention and combating of money laundering, terrorist financing, and proliferation financing.

3. If the legal system of the country or jurisdiction involved does not allow the application of the first paragraph, the service provider must inform the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' accordingly and must take measures, if necessary in consultation with the aforementioned Supervisory Authority, to counter the risks of money laundering, terrorist financing, and proliferation financing.

Article 46a

1. Service providers must carry out an adequate policy and have written procedures and measures in place aimed at preventing and combating money laundering, terrorist financing, and proliferation financing, in particular for the application of Chapters 2, 3, and 4, and limiting and effectively managing the risks identified in the most recent version of the national risk assessment, as referred to in Article 44b, the risks identified in the regular evaluations, as referred to in the fifth paragraph, and the assessments referred to in Article 46b.

2. The policy and the procedures and measures referred to in the first paragraph are proportional to the nature, size and risk profile of the service provider.

3. The procedures and measures referred to in the first paragraph will in any case concern the service provider’s internal organization and internal control, screening of employees before they are hired and regular screening during their employment, change of position, background, education, guidance and ongoing training of the relevant staff, the application of customer due diligence, the additional measures taken by the service provider when performing enhanced customer due diligence, the conditions on which a customer can make use of the business relationship before its identity has been verified, the recording of data and information, the internal decision-making process for submitting reports, as well as the independent regular evaluation of the effectiveness of those procedures and measures.

4. The policy and the procedures and measures referred to in the first paragraph require the approval of the persons in charge of the service provider's overall management.

5. Service providers must carry out regular evaluations to assess if and to what extent they are vulnerable, due to their activities and operations, to money laundering, terrorist financing, and proliferation financing.

6. When assessing the risks of money laundering, terrorist financing and proliferation financing referred to in the fifth paragraph, and determining the policy and the procedures and measures referred to in the first paragraph, the service provider must in any case take account of the risk factors related to the type of customer, product, service, transaction and supply channel and of countries or geographical areas.

7. The findings of the regular evaluations referred to in the third and fifth paragraphs, and the assessments referred to in Article 46a, must be recorded in writing and, where applicable, will result in the amendment of the policy and the procedures and measures referred to in the first paragraph.

8. On request, the findings of the regular evaluations referred to in the third and fifth paragraphs, and the assessments referred to in Article 46a, will be provided to the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority'.

Article 46b

1. Service providers assess the risks of money laundering, terrorist financing, and proliferation financing that may arise from the development of new products or services and business practices, including new supply channels, and the use of new or developing technologies, relating to both existing and new products.

2. Service providers must ensure that they:
   a. perform a risk assessment prior to launching new products, services, business practices, including supply channels, and using new or developing technologies; and
   b. take adequate measures to limit and effectively manage risks of money laundering, terrorist financing, and proliferation financing.

Article 46c

A service provider must ensure that its employees, as well the directors insofar as relevant to the performance of their duties, and taking into account the risks, nature and size of the service provider, attend regular training courses enabling them to recognize unusual transactions and perform customer due diligence properly and in full.

Article 47

1. A service provider must designate a person who is in charge of the service provider's overall management, who will in particular bear responsibility for compliance with laws and regulations on the prevention and combating of money laundering, terrorist financing, and proliferation financing.

2. Insofar as appropriate to its nature and size, a service provider must at least have one person in charge of an independent and effective compliance function aimed at any case at monitoring compliance with laws and regulations on the prevention and combating of money laundering, terrorist financing, and proliferation financing and the procedures and measures referred to in Article 46(1).

3. Service providers must have at least one person in their organization in charge of the internal receipt and assessment of potential reports and submitting reports to the FIU-Aruba on behalf of the service provider.

4. The persons referred to in the second and third paragraphs must perform their work from Aruba.

5. A service provider must notify the FIU-Aruba and the relevant Supervisory Authorities as referred to in Article 1(1) under 1° or 2° of the definition of 'Supervisory Authority' of the appointment of the persons referred to in the second and third paragraphs, within one month of the commencement of their appointment.

Article 48

1. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' may, if necessary per category of service providers, lay down guidelines for and give information related to the application of Chapters 2, 3, 4, and 6 of this State

Ordinance. A guideline may also relate to the application of other statutory provisions, insofar as this is necessary to achieve the objectives of this State Ordinance. If a guideline relates to the application of Chapter 3, the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' must consult with the FIU-Aruba in advance.

2. Service providers must observe a guideline as referred to in the first paragraph.

3. The Supervisory Authority may issue instructions to an individual service provider for it to follow a specified course of action with respect to subjects to be specified, in order to accomplish that the service provider will comply with the provisions of this State Ordinance within a time frame to be determined by this Supervisory Authority, or to comply with measures to be formulated by this Supervisory Authority in connection with business relationships and transactions with natural persons, legal persons, corporations, trusts and other legal structures from countries or jurisdictions that do not or insufficiently comply with the internationally accepted standards for the prevention and combating of money laundering, terrorist financing, and proliferation financing. The second sentence of the first paragraph and the second paragraph apply by analogy.

4. Contrary to Article 3 of the State Ordinance on Official Languages (*Landsverordening officiële talen*) (AB 2003 No. 38), the guidelines and instructions referred to in the first and third paragraphs may be issued in English only.

## CHAPTER 7

## Other provisions

### Article 49

Anyone who performs or has performed any duty arising from the application of this State Ordinance or from decisions made pursuant to this State Ordinance is prohibited from using or disclosing in any way data or information provided or received pursuant to this State Ordinance, other than required for the performance of his duty or pursuant to a state ordinance.

### Article 50

1. Service providers that are not subject to the regulatory supervision of the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority', and designated non-financial service providers that perform work as described in Article 1, first paragraph, or 6, second paragraph, letter a through g, must register with the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority'.

2. The registration referred to in the first paragraph must be accompanied by data and information regarding the identity, trade name and address of the persons who are responsible for the management and the policy of the service provider referred to in the first paragraph.

3. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' determines the model for the registration referred to in the first paragraph. It must ensure that a copy of a report is sent to the FIU-Aruba.

4. If any change occurs in the data and information referred to in the second paragraph, the service provider concerned must notify the Supervisory Authority.

5. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' must maintain a register of the service providers referred to in the first paragraph. The Supervisory Authority referred to in the first sentence determines the structure

of the register referred to in the first sentence and makes it available to the public in digital format.

Article 51

1. By or pursuant to the State Decree containing General Administrative Orders, regulations will be laid down on the payment of costs that is owed by service providers as compensation of the costs incurred by the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' in the context of its work with respect to these service providers pursuant to this State Ordinance.
2. This payment will also include any costs relating to the supervision of compliance by these service providers with the provisions set by or pursuant to this State Ordinance.
3. The amount referred to in the first paragraph must be paid within three months of the expiry of the calendar year to which it is relates.
4. Article 44 will apply by analogy.

Article 52

The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' must report to the Minister annually, before 1 July, on the work it has performed in the context of this State Ordinance in the preceding calendar year. The Minister will send Parliament a copy of the report referred to in the first sentence without delay.

Article 53

The amounts referred to in Article 6(1), letter b, and second paragraph, letters e, f, and g, and Article 10(1), letter b under 1°, may be adjusted by State Decree containing General Administrative Orders.

Article 54
(repealed)

Article 55

Within a year of this State Ordinance taking effect, and subsequently every four years, the Minister will send Parliament a report on the effects and effectiveness of this State Ordinance.

Article 55a

1. If the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' carries out a transaction in the performance of its task as a bank of issue as referred to in Article 7(1) of the Central Bank Ordinance (*Centrale Bankverordening*) (AB 1991 No. GT 32), including an intended transaction, which gives cause to believe that it may be connected to money laundering, terrorist financing, or proliferation financing, the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' will be authorized to report this transaction to the FIU-Aruba, if necessary contrary to the applicable statutory confidentiality provisions.
2. In the event of a report as referred to in the first paragraph, the Supervisory Authority

as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' must provide the following data as a minimum:

a. the identity of the customer;
b. the type and number of the customer's identity document;
c. the nature, date, time, and place of the transaction;
d. the amount and designated use and origin of the monies involved in the transaction;
e. the circumstances based on which the transaction is considered unusual

3. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' lays down guidelines for the application of the power referred to in the first paragraph and records these guidelines in a policy document. The policy document must in any case contain a description of the procedures to be followed in case of a report as referred to in the first paragraph. This document, and all subsequent amendments to be made, must be published in a manner to be determined by the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority'.

4. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' must store the data referred to in the second paragraph in an accessible manner, at its discretion, for a period of at least ten years following the date of submitting the report.

5. The Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' may, whether or not on request, provide further data and information to the FIU-Aruba.

Article 55b

1. Data or information provided in accordance with Article 55a may not serve as a basis for, or for the benefit of a criminal investigation or prosecution on suspicion of money laundering, terrorist financing, or proliferation financing, or as evidence regarding a charge in this respect, brought by the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' that provided this data or information.

2. Data or information provided on the reasonable assumption that Article 55a is implemented, may not serve as a basis for, or for the benefit of a criminal investigation or prosecution on suspicion of violation of Articles 2:232 or 2:233 of the Criminal Code of Aruba (AB 2012 No. 24), or as evidence regarding a charge in this respect, brought by the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority'.

3. The first and second paragraphs apply equally to persons employed by the Supervisory Authority as referred to in Article 1(1) under 1° of the definition of 'Supervisory Authority' and who, in accordance with Article 55a, have provided data and cooperated in that provision.

Article 55c

1. A person who submits a report pursuant to Article 55a, or who provides further data or information, is obliged to observe confidentiality with regard to this data or information, except if the need for disclosure arises from the object of this State Ordinance.

2. The first paragraph applies equally to anyone who gains knowledge of a report, of the fact that a report may give rise to further investigation or of the provision of further data or information, and knows or may reasonably suspect that a duty of confidentiality as referred to in the first paragraph applies to the Supervisory Authority as referred to in Article 1(1) under 1° of

the definition of 'Supervisory Authority'.

## CHAPTER 8

## Penal provision

### Article 56

1. Violation of the regulations laid down by or pursuant to Articles 3 through 8, first paragraph, 9, 10, second and third paragraphs, 11 through 19, 26, 26a, 27, second and third paragraphs, 28, second paragraph, 28a, 31, 33, 34, 35, sixth paragraph, 36, third and fourth paragraphs, 45 through 47, 48, second and third paragraphs, second sentence, 50, first, second and fourth paragraphs, and 54, if committed intentionally, will be punished with imprisonment not exceeding six years, or with a fine of the sixth category.

2. Violation of the regulations laid down by or pursuant to Articles 3 through 8, first paragraph, 9, 10, second and third paragraphs, 11 through 19, 26, 26a, 27, second paragraph, 28, second paragraph, 28a, 31, 33, 34, 35, sixth paragraph, 36, third and fourth paragraphs, 45 through 50, and 54, insofar as not committed intentionally, will be punished with imprisonment not exceeding one year, or with a fine of the fourth category.

3. The violations referred to in the first paragraph are criminal offenses; the violations referred to in the second paragraph are minor offenses.

## CHAPTER 9

## Entry into effect and short title

### Article 57

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

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