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National Ordinance of the containing rules to prevent and combat money laundering and the financing of terrorism based on the recommendations of the Financial Action Task Force (National Ordinance Combatting Money Laundering and the Financing of Terrorism)

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IN THE NAME OF THE KING!

The Governor of Sint Maarten,

Having taken into consideration:

that to implement the recommendations of the Financial Action Task Force and respond to the evaluation of Sint Maarten's financial system carried out by the Caribbean Financial Action Task Force in 2013, it is essential to amend a number of national ordinances related to combatting and preventing money laundering, the financing of terrorism and the proliferation of weapons of mass destruction;

that due to the mutual relationship between the National Ordinance Identification when rendering Financial Services and the National Ordinance Disclosure of Unusual Transactions and in the interests of their efficient and effective implementation, these two national ordinances are to be integrated to form one new national ordinance;

Having heard the Council of Advice, and in consultation with Parliament, has adopted the national ordinance below:

Chapter I  
Application and scope

§ 1. Definitions

**Article 1**

In this national ordinance and the provisions based on it, the following terms are defined as follows:

- a. Bank: The Central Bank of Curaçao and Sint Maarten;
- b. investment institution: an investment fund or investment company;
- c. investment fund: assets, not placed in a legal entity, including requested or acquired funds or other goods to be invested collectively in order for the participants to share in the investment returns;

- d. investment company: a legal entity which has requested or acquired funds or other goods to be invested collectively in order for the participants to share in the investment returns;
- e. client: a natural person or legal entity with whom or which a business relationship is entered into or who or which instructs a transaction to be executed;
- f. credit card: a credit card or prepaid payment instrument (prepaid card);
- g. correspondent bank relationship: a permanent relationship between a bank registered in Sint Maarten and a respondent bank registered outside Sint Maarten or a comparable institution for the settlement of transactions or the execution of instructions;
- h. service provider:
  - 1<sup>o</sup>. financial service provider: any person or entity that in a professional or commercial capacity provides services as referred to in article 2, under a;
  - 2<sup>o</sup>. non-financial service provider: any person or entity that in a professional or commercial capacity provides services as referred to in article 2, under b;
- i. securities:
  - 1<sup>o</sup>. share certificates, debt instruments, profit-sharing and founders certificates, option contracts, warrants and similar negotiable instruments;
  - 2<sup>o</sup>. rights of joint ownership, options, futures contracts, registration in shareholders' registers and debt registers and comparable instruments, whether or not with conditional rights;
  - 3<sup>o</sup>. rights from agreements to set-off an exchange rate or price difference and similar negotiable rights and monetary instruments;
  - 4<sup>o</sup>. certificates and scrips representing negotiable monetary instruments as referred to under 3<sup>o</sup>, with the exception of negotiable monetary instruments which exclusively have the character of a means of payment and apartment rights;
- j. electronic monetary transactions: through the intermediary of a financial institution transferring money electronically on behalf of a client, with the purpose of making the amount of money available for the benefit of an account held by a beneficiary at a financial institution, irrespective of whether the client or the beneficiary are one and the same person;
- k. factoring: taking over responsibility for the administration and collection of a company's outstanding accounts by a company (the factor) that specialises in acquiring financial risks and accounts receivable records and in return for which provides liquid assets to the company transferring its administration;
- l. the financing of terrorism: conduct deemed a criminal offence in articles 2:54 and 2:55 of the Criminal Code, as well as the financing of the proliferation of weapons of mass destruction;
- m. forfeiting: the financing of a trade transaction whereby a credit institution purchases an exporter-creditor's receivables from an importer-debtor, whereby the credit institution agrees to pay the debt of the debtor, under a guarantee from the debtor's bank;
- n. monetary transaction: a transaction, consisting of a:
  - 1<sup>o</sup>. cash transaction: a payment, including a payment with tax aspects, with the aid of cash or a similar means of payment, including credit cards or prepaid payment instruments (prepaid cards), debit cards, cheques, traveller's cheques, bank drafts or money orders; and

- 2°. cashless transaction: a payment, including a payment with tax aspects, by means of the transfer of an amount of money to an account intended for cashless payments at a bank or an equivalent financial institution;
- o. identification: to have a statement of identity provided;
- p. indicator: an objective or subjective fact on the basis of which a service provider should report a transaction, whereby:
- 1°. an objective fact corresponds to a certain threshold amount which if exceeded would cause the transaction to be deemed unusual; and,
  - 2°. a subjective fact is used by a service provider who suspects that the execution of a transaction could be linked to money laundering or the financing of terrorism;
- q. a report: a report as referred to in article 25;
- r. National ordinances on reporting: this national ordinance, the National Ordinance Reporting Cross-Border Cash Transports and the Sanctions National Ordinance;
- s. Office for the Disclosure of Unusual Transactions: The Office for the Disclosure of Unusual Transactions referred to in article 2 of the National Ordinance Office for the Disclosure of Unusual Transactions;
- t. Minister: the Minister of Justice;
- u. non-profit organisation: a foundation, private foundation, association, cooperative, partnership, unincorporated trust or mutual insurance association;
- v. unusual transaction: a transaction that is designated as such on the basis of article 24;
- w. politically prominent person: a person who either within or outside Sint Maarten holds or has held a prominent public office, or holds a responsible and prominent position in an international organisation, and the family members or relations of this person:
- a. a prominent public function, which is in any case:
    - 1 °. head of state, head of government, minister or state secretary;
    - 2 °. Member of Parliament or member of a similar legislative body;
    - 3 °. party leader of a political party;
    - 4 °. member of a Supreme Court, Constitutional Court or of a Supreme Judicial Court giving rulings against which, except in exceptional circumstances, no appeal is possible;
    - 5 °. member of a court of audit or a board of directors of a central bank;
    - 6 °. ambassador, agent or senior officer of the armed forces;
    - 7 °. member of the management, supervisory or administrative bodies of a state-owned company;
    - 8 °. director, deputy director, member of the board of directors or person holding an equivalent position at an international organization; with the proviso that middle or lower officials do not fall under these prominent public functions;
  - b. family member of a politically prominent person:
    - 1 °. the spouse of a politically prominent person or a person who is considered equivalent to the spouse of a politically prominent person;
    - 2 °. a child of a politically prominent person, the spouse of that child or a person who is considered to be equivalent to the spouse of that child;
    - 3 °. the parent of a politically prominent person;
  - c. relationship of a politically prominent person:
    - 1 °. a natural person who is known to be a jointly beneficial person of a legal entity or legal entity with a politically prominent person, or who has other close business relationships with a politically prominent person;

- 2<sup>o</sup>. a natural person who is the sole beneficial owner of a legal entity or legal arrangement that is known to have been set up for the actual benefit of a politically prominent person.
- x. legal entity: a legal entity as well as a partnership or an unincorporated trust;
- y. shell bank: a financial service provider incorporated outside Sint Maarten which has no physical presence in the country in which it is incorporated and is unaffiliated to a financial services group which is subject to effective consolidated supervision;
- z. the financing of terrorism: conduct deemed a criminal offence in articles 2:55 and 2:57 of the Criminal Code;
- aa. supervisor: the body which supervises the way in which a service provider implements the provisions of this national ordinance; the bodies which exercise this supervision over service providers are:
- 1<sup>o</sup>. the Bank;
- 2<sup>o</sup>. the Office for Disclosure; or,
- 3<sup>o</sup>. a supervisory authority instituted by the competent authority for this purpose;
- bb. transaction: an action or set of actions carried out by or for a client in connection with the procurement or provision of services, or an action of which a service provider has become aware in the context of its service provision to a client;
- cc. transit account: an account held by one bank at another bank to which both parties have direct access to carry out transactions on their own behalf;
- dd. trust, trustee and settlor: as is understood in the Convention on the Law Applicable to Trusts and on their Recognition (1985 Treaty Series, 141);
- ee. ultimate beneficiary: a natural person who:
- 1<sup>o</sup>. has an interest of more than 25% of the capital, or can exercise more than 25% of the client's voting rights at a shareholders' meeting, or in some other way can exercise effective control in or on behalf of the client;
- 2<sup>o</sup>. is the beneficiary of 25% or more of the capital in a legal construction, including a foundation or a trust, or can exercise effective control in the legal construction; or
- 3<sup>o</sup>. has control over 25% or more of a client's capital;
- ff. verifying the identity: investigating and establishing that the identity provided corresponds with the actual identity;
- gg. money laundering: an act made punishable in Title XXXI of the Second Book of the Criminal Code;
- hh. business relationship: a professional or commercial relationship between a service provider and a client, which is related to the commercial or professional activities of the service provider and which, at the time that contact was first made, was expected to continue for some time.

## § 2. Definitions of the services

### **Article 2**

1. In this national ordinance and the provisions based on it, the term service has the following meanings:
- a. services through a financial service provider in or from Sint Maarten:
- 1<sup>o</sup>. to receive securities, bank notes, coins, government notes, gemstones, precious metals, jewellery, collateral or other negotiable monetary instruments;

- 2°. to rent out a safe-deposit box;
- 3°. to open an account in which a balance in cash, securities, gemstones, precious metals, jewellery, collateral or other negotiable monetary instruments can be kept;
- 4°. to credit or debit an account, or cause an account to be credited or debited, in which a balance in cash, securities, precious metals, gemstones, jewellery, collateral or other negotiable monetary instruments can be kept;
- 5°. to grant credit through a credit provider including mortgage and consumer credit, and the provision of financial security, including guarantees, and providing suretyship, financial leasing and forfaiting;
- 6°. to exchange coupons, comparable bonds or comparable negotiable instruments for money, either through contact or electronically;
- 7°. to exchange guilders or foreign currency;
- 8°. to deal in:
  - a. guilders or foreign currency;
  - b. instruments from the money market, such as cheques, bills of exchange, share certificates and derivatives;
  - c. exchange rate, interest rate and index instruments;
  - d. transferable securities;
  - e. commodity market futures;
- 9°. to enter into an obligation to make payment, for the benefit of the holder of a credit card, to the party that has accepted the presentation of that credit card by way of payment, to issue or manage credit cards including executing payment transactions in favour or chargeable to a credit card or a credit account, to the extent this does not involve a credit card which can only be used in the company or institution which issued this credit card or in a company or institution belonging to the same economic entity to which the legal entities and companies are organisationally affiliated;
- 10°. to receive funds or monetary instruments, in the context of a money transfer, in order to make these funds or monetary instruments payable elsewhere or cause these to be made payable elsewhere, whether or not in the same form;
- 11°. to receive funds or monetary instruments in the context of a money transfer, in order to make these funds or monetary instruments payable, or cause these to be made payable to a third party elsewhere, whether or not in the same form, whereby this money transfer is an independent service;
- 12°. to conclude, surrender and pay out, as well as act as an intermediary to conclude, surrender and pay out, life insurance contracts against a premium, as referred to in article 1, paragraph 1, under a, respectively c, of the National Ordinance Supervision of the Insurance Industry of an amount in excess of the amount stipulated by the Minister in a ministerial regulation, and of other investment-related insurance products;
- 13°. to provide factoring services;
- 14°. to participate in the trade in securities and corresponding financial services;
- 15°. to manage individual and collective portfolios, as well as invest, administer or manage funds for the benefit of third parties;

16°. to request or acquire funds or other goods to be invested collectively in order for the participants to share in the investment returns;  
or,

17°. to act as an intermediary and carry out transactions for the benefit of a client, or to enter into a business relationship with third parties on the Dutch Caribbean Securities Exchange;

18° to provide administrative, trust and management services, whether or not for payment, at all times including:

- a. incorporating legal entities or trusts or having them incorporated;
- b. conducting the governance of a legal entity, including making a natural person or legal entity available to act as a director, secretary, representative or other senior executive position which is, inter alia, charged with decision making;
- c. undertaking the administration, including the accounting, as well as acquiring, recording, processing and providing information for the benefit of the governance or functioning of an investment institution, respectively the acquisition, recording and processing of registrations, the submission of securities to investment institutions and the provision of information to the parties entitled to those securities;
- d. acting as a trustee or having someone act as a trustee or an authorised shareholder for another person;
- e. liquidating or having a legal entity liquidated; or,
- f. granting domicile and office facilities;

b. services through a non-financial service provider in or from Sint Maarten:

1°. to provide advice or assistance through a natural person, legal entity or company that independently performs, professional activities or activities in a commercial capacity, or prepares and carries out transactions as a lawyer, civil-law notary or junior civil-law notary, accountant, tax adviser or as an expert in a legal, fiscal or administrative area, or in the practice of a similar legal profession or business in relation to:

- a. the purchase or sale of immoveable property, vehicles, construction material, art works, antiques and the rights to which these are subjected;
- b. the management of client funds, securities or other assets;
- c. the management of a bank account, savings account, or securities account;
- d. the incorporation, operation or management of companies, legal entities or similar bodies;
- e. the purchase or sale or taking over of companies; or
- f. the preparation, approval or amendment of annual financial statements;

2°. to trade in vehicles, gemstones, precious metals, jewels or other items of great value designated by ministerial regulation, or brokering the trade in such items which are in excess of an amount to be stipulated by the Minister in a ministerial regulation, which amount can differ for the different types of items;

3°. to offer or provide pledges as referred to in paragraph 3 of this article by a pawnshop as referred to in paragraph 4 of this article;

4°. to offer the opportunity to participate in:

- a. games of chance as referred to in the National Ordinance Games of Chance;

b. games of chance as referred to in the National Ordinance Offshore Games of Chance; or,

c. a lottery as referred to in the Lottery Ordinance;

5°. to act as an intermediary in relation to the purchase or sale of immoveable property and the rights to which immoveable property is subjected;

6°. to act independently as a project developer, whether or not on the instruction of a third party, to develop land including the buildings established on or associated with the land;

7°. to act independently or on the instruction of a third party carrying out appraisals of property subject to registration including the rights to which this property is subjected; or,

8°. to provide other services designated by national decree containing general measures.

2. In respect of the actions referred to in paragraph 1, under a, 12° respectively under b, 1° of this article, the following are not designated services:

a. receiving, in the context of a premium payment under an insurance contract, funds or monetary instruments in order to make these funds or monetary instruments payable elsewhere - whether or not in the same form - or causing these to be made payable elsewhere, to an institution which, on grounds of the National Ordinance Supervision of the Insurance Industry, is permitted to operate insurance business in Sint Maarten;

b. paying or making payable, in the context of a payment under an insurance contract, funds or monetary instruments, after these funds or monetary instruments have been made available elsewhere - whether or not in the same form - by an institution which, on grounds of the National Ordinance Supervision of the Insurance Industry, is permitted to operate insurance business in Sint Maarten; or

c. the activities referred to in paragraph 1, under b (1°) of this article which are related to the determination of a client's legal position, its representation at law, the provision of advice before, during and after a court case, or the provision of advice on instituting or avoiding a court case, to the extent performed by a lawyer, civil-law notary or junior civil-law notary.

3. For the application of the provisions of or pursuant to this national ordinance, the term pledge shall be taken to mean:

an agreement whereby one party, the pawnshop, makes a sum of money available to the other party, the pledger and, in return, the pledger delivers a movable item, not subject to registration, to the authority of the pawnshop under the stipulation that:

a. either the pawnshop returns the item to the pledger if, within the contractually agreed period of the loan, the pledger has repaid the initial price in full to the pawnshop and also paid any interest charged on the loan by the pawnshop but if, within the contractually agreed period, the initial price and interest on the loan are not paid in full the pawnshop becomes the owner of the property;

b. or the pledger immediately transfers ownership of the item to the pawnshop but the pawnshop is obliged to return the item to the pledger if, within the contractually agreed period of the loan, the pledger has repaid the initial price in full to the pawnshop and also paid any interest charged on the loan.

4. For the application of the provisions of or pursuant to this national ordinance, the term pawnshop shall be taken to mean:  
a natural person or legal entity who in the course of his/her/its profession or business offers pledges.

Chapter II  
Customer due diligence

§ 1. The scope of customer due diligence

**Article 3**

1. In the following situations, a financial service provider shall conduct customer due diligence, as referred to in articles 6, 7 and 10, when:
- a. in or from Sint Maarten, it enters into business relationships;
  - b. in or from Sint Maarten, it executes incidental transactions for the benefit of a client or two or more transactions which are linked and have a value, respectively a joint value, in excess of the amount of NAF 25.000,00;
  - c. in or from Sint Maarten, it executes a monetary transaction, as referred to in Article 1 of the National Ordinance Supervision of Money Transfer Companies, whereby funds are provided in cash and made payable to a third party;
  - d. in or from Sint Maarten, it carries out an electronic transfer whereby essential information about the client or beneficiary is lacking;
  - e. it has any doubts about the accuracy or sufficiency of data previously obtained from the client;
  - f. it observes that there has been an essential change in the way in which the client's account is being used and this does not correspond to the client's profile;
  - g. it suspects the existence of money laundering or the financing of terrorism; or,
  - h. there is any risk of an existing client being involved in money laundering or the financing of terrorism.
2. In the following situations, a non-financial service provider conducts customer due diligence, when:
- a. in or from Sint Maarten, it enters into business relationships;
  - b. in or from Sint Maarten, it acts as a professional or commercial intermediary, gives advice or assistance, and also prepares and executes transactions in relation to:
    - 1°. valuing, purchasing or selling property subject to registration, as well as the rights to which these properties are subjected;
    - 2°. managing funds, securities and other assets;
    - 3°. managing bank, savings or securities accounts;
    - 4°. organising contributions for the benefit of the incorporation, operation or management of enterprises;
    - 5°. incorporating, operating or managing legal entities or entities comparable to legal entities, as well as the purchase and sale of enterprises; or,
    - 6°. preparing and approving financial statements;
  - c. it relates to a trust office which, in or from Sint Maarten, prepares or executes a transaction for a client, as well as undertakes one or more of the following activities or duties:

- 1°. acts as the founder of legal entities;
  - 2°. provides a registered office, business address or accommodation, correspondence or administrative address to an enterprise, company or partnership or other legal entity or organisational form;
  - 3°. acts or has another party act as the manager or representative of a trust; or,
  - 4°. acts in the name of or has another party act in the name of a shareholder;
  - d. it relates to games of chance as referred to in the National Ordinance Games of Chance, the National Ordinance Offshore Games of Chance or the Lottery Ordinance whereby transactions in excess of an amount of NAf 5.000,00 are paid for using cash, electronically or by means of other payment systems;
  - e. it relates to a natural person, a legal entity or a company which professionally or commercially deals in vehicles, art works or antiques whereby transactions in excess of an amount to be stipulated by the Minister in a ministerial regulation are paid for using cash, electronically or by means of other payment systems;
  - f. it relates to a natural person, a legal entity or a company which professionally or commercially deals in gemstones, precious metals or jewellery to the extent these are paid for using cash and their value exceeds an amount of NAf 25.000,00, irrespective of whether the transaction consists of one transaction or several linked transactions;
  - g. there is any suspicion that the client is involved in money laundering or the financing of terrorism;
  - h. there are any doubts about the validity or reliability of data previously obtained from the client; or
  - i. there is any risk of an existing client being involved in money laundering or the financing of terrorism.
3. Taking account of articles 3, 6 and 10, a service provider shall match its customer due diligence to the risk sensitivity of money laundering and the financing of terrorism. To this end it shall compile a risk profile of the client and the ultimate beneficiary.
4. By means of a ministerial regulation, rules can be drawn up concerning the execution of monetary transfers specifically including the data and information that has to be recorded in respect of the party that has made the funds or monetary instruments available to the financial service provider within the context of a monetary transfer as well as that of the beneficiary of the transaction.

§ 2. The times when customer due diligence has to be conducted

**Article 4**

1. A financial service provider shall conduct customer due diligence:
- a. prior to the commencement of the procedure for entering into a business relationship; and,
  - b. repeatedly before executing an incidental transaction, as referred to in article 3, paragraph 1, under b or c, or a transaction as referred to in article 3, paragraph 2, under b to f, if there is any suspicion of money laundering and the financing of terrorism.
2. By way of derogation from the first paragraph:

- a. a service provider may verify the client's identity and that of the ultimate beneficiary during the procedure for entering into a business relationship, if this is necessary to ensure the service provision is not disrupted and there is little risk of money laundering and the financing of terrorism. In such cases, the service provider should verify the identity as quickly as possible after the business relationship with the client has been established;
  - b. if it relates to a life insurance or other investment-related insurance, a financial service provider may identify the beneficiary of the insurance and verify this at or prior to the time the payment is made or, at or prior to the time that the beneficiary wishes to exercise any rights pursuant to the insurance;
  - c. a financial service provider operating as a bank may open an account prior to verifying the client's identity, if it can guarantee that this account shall not be used before the identity is verified;
  - d. a financial service provider may execute securities transactions if the market conditions justify the transactions being executed before the client's identity is verified; or,
  - e. a non-financial service provider being a civil-law notary can verify a client's identity, as well as the identity of the ultimate beneficiary, at the time that identification is required, on the basis of article 30 in conjunction with article 31 of the National Ordinance Civil-Law Notaries.
3. In addition to the customer due diligence required for the client and the ultimate beneficiary, when it relates to life insurance policies or other investment-related insurance policies, the financial service provider should:
- a. record the surnames, first names and places and dates of birth of the beneficiary or beneficiaries of the insurance, as soon as these are identified or designated; or,
  - b. gather sufficient information about the beneficiary, who or which can be categorised as a person or a legal entity, to ensure the service provider is able to guarantee the identity of the beneficiary or beneficiaries at the time the insurance is paid out.
4. If, in the course of the term of the life insurance, suspicions are aroused in respect of money laundering and the financing of terrorism, article 25 applies accordingly.

**Article 5**

- 1. Financial service providers are prohibited from operating anonymous accounts or accounts under unmistakably false names.
- 2. Without prejudice to article 4, paragraph 2, a service provider is prohibited from entering into a business relationship or executing a transaction if it has not conducted any customer due diligence, is unable to carry out the customer due diligence or the customer due diligence has not produced the result intended in articles 3, 7 and 8.
- 3. On the basis of the relative significance and risks, a service provider shall gather sufficient data and conduct periodic due diligence in order to be able to establish whether a client's risk profile should be amended.
- 4. If, after entering into a business relationship, a service provider can no longer comply with articles 3, 7 and 8, it shall terminate this business relationship without delay.

§ 3. Special provisions relating to the scope of customer due diligence

## Article 6

1. By way of derogation from article 4, paragraph 1, a service provider can, in accordance with the provisions of articles 3, 7 and 8, conduct simplified customer due diligence:
  - a. in respect of the following clients:
    - 1°. a financial service provider based in Sint Maarten that is subject to the supervision of the Bank or another legal entity governed by public law;
    - 2°. a financial service provider based outside Sint Maarten that is subject to internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism and is subject to effective supervision in respect of compliance with these standards;
    - 3°. private limited companies and comparable entities which are subject to statutory provisions regarding public financial reporting and have issued shares which are traded on recognised stock markets designated as such by the Minister through a ministerial regulation;
    - 4°. the public legal entity Sint Maarten; or,
    - 5°. a legal entity governed by public law outside Sint Maarten but incorporated and operating in the Kingdom, provided customer due diligence is conducted by a service provider subject to supervision;
  - b. if a service provider executes a transaction or enters into a business relationship in respect of:
    - 1°. a life insurance contract, on the basis of an annual or one-off premium, for an amount less than the amount stipulated by the Minister in a ministerial regulation;
    - 2°. a pension or comparable scheme which aims to provide employees with provision for their old age, whereby the deposits on behalf of the pension provision are paid by means of deductions from the salaries of the employees and whereby the employees are not permitted to transfer, pledge or use as security any rights ensuing from the pension scheme;
    - 3°. an ultimate beneficiary of an account held at a non-financial service provider which is used exclusively to hold the funds of third parties, provided this service provider is subject to provisions preventing and combatting money laundering and the financing of terrorism which comply with internationally accepted standards for the prevention and combatting of money laundering and financing of terrorism and is subject to effective supervision in respect of compliance with these standards;
    - 4°. brokering the purchase or sale of property subject to registration and rights to which immovable property are subjected provided the broker has a contract with the civil-law notary who is to execute the relevant deed in which the civil-law notary guarantees the correct implementation of customer due diligence, referred to in this article or in articles 7 or 10.
2. Simplified customer due diligence shall always include identification and measures to establish certain facts as referred to in article 7, paragraph 1, under a, b, c and e.
3. A service provider shall gather sufficient data and conduct periodic due diligence in order to be able to establish whether or not paragraph 1 applies to the client.
4. Paragraph 1 is not applicable if the client, business relationship or transaction involves a higher risk of money laundering or the financing of terrorism, or there are indications that the client is involved in money laundering or the financing of terrorism.

## **Article 7**

1. To prevent and combat money laundering or the financing of terrorism, a service provider shall conduct standard customer due diligence which shall, at least, include the following:
  - a. the identification of the client and the verification of the client's identity;
  - b. the identification of the ultimate beneficiary and taking reasonable measures to verify the identity of the ultimate beneficiary in such a way that the service provider is convinced of the identity of the ultimate beneficiary;
  - c. measures to establish the objective and the envisaged nature of the business relationship;
  - d. conducting ongoing checks of the business relationship and the transactions carried out during this relationship, in order to ensure these correspond to the knowledge the service provider has of the client, his/her/its business and the ultimate beneficiary, as well as their risk profiles, including, if necessary, the origin of the financial resources; and,
  - e. measures to establish whether a client is acting for him/her/itself or on behalf of a third party and taking measures to establish and verify the identity of the third party.
2. If it involves a non-financial service provider as referred to in Article 1, the customer due diligence should extend to the client's co-contracting party if it relates to an immovable property contract and the rights to which the immovable property is subjected.
3. The data and information, referred to in paragraphs 1 and 2, which form part of customer due diligence, shall at least include the following:
  - a. in respect of natural persons:
    - 1°. the surnames, the first names, the place and date of birth, the address of the place of residence or domicile of the client and the ultimate beneficiary, as well as anyone who acts on behalf of these natural persons or a copy of the document containing a personal identification number on the basis of which their identification was confirmed;
    - 2°. the nature, number, date and place of issue of the document used to verify the identity;
    - 3°. the nature and date of the transaction;
    - 4°. the type of currency and the amount involved in the transaction;
    - 5°. the type and number of the bank account used in the transaction;and
    - 6°. all the bank statements and business-related correspondence;
  - b. in respect of legal entities:
    - 1°. the legal form, the deed of incorporation, the articles of association, the trade name, the address and, if the legal entity is registered with the Chamber of Commerce and Industry, its registration number at the Chamber of Commerce and Industry, as well as the way in which its identity has been verified by a reliable and independent source;
    - 2°. the surnames, first names, places and dates of birth of those who hold executive positions, those who act on behalf of the legal entity, the ultimate beneficiary, or those who have effective control of the legal entity, as well as the way in which these identities have been verified by a reliable and independent source; and,
    - 3°. the data referred to under a, parts 3° to 6°;
  - c. in respect of trusts:

1°. the registration number of the registration in the public register, referred to in Title 1, Article 2, of Book 3 of the Civil Code to the extent the assets of the trust consist of property subject to registration, or in the shareholders' register to the extent the assets of the trust consist of shares in the name of a public or private limited company, or in the commercial register to the extent the assets of the trust consist of a company or the share of a fully liable partner in a public partnership;

2°. the documents used to verify the identity of the trustee, the person who exercises effective control over the trust, the settlor of the trust, the protector, the beneficiaries or categories of beneficiaries and the ultimate beneficiary of the assets of the trust (if different), as well as the way in which these identities have been verified by a reliable and independent source; and

3°. the data referred to under a, parts 3° to 6°.

4. If the client or the owner of the controlling interest is a listed company and is subject to rules concerning the publication of information which guarantees transparency in respect of the economic ownership, or is a subsidiary of such a company, the provisions of this article in respect of establishing and verifying identity are not applicable to the shareholders or ultimate beneficiaries of such a company.
5. The provisions in paragraphs 2, 3 and 4 apply accordingly to any party claiming to act on behalf of the client.

#### **Article 8**

1. If a client is a legal entity or a legal construct, the service provider shall check whether the natural person who proposes to act on behalf of the client is authorised to do so; furthermore, the service provider shall establish the identity of the natural person and verify this identity before it provides the service; the service provider shall also record details pertaining to the client's legal form and representation.
2. In respect of a client, as referred to in paragraph 1, a service provider shall take reasonable measures which, at a minimum, result in the service provider gaining insight into the ownership and actual control structure of that client.
3. Paragraph 2 applies accordingly to any client that acts as a trustee of a trust or enters into a business relationship or executes a transaction within the context of the management of a trust, on the understanding that these reasonable measures result in the identity of the settlor of the trust and the ultimate beneficiaries to the assets of the trust being established and verified.

#### **Article 9**

1. A service provider is responsible for ensuring that the data and information which is obtained in the context of customer due diligence, in particular data and information related to clients, ultimate beneficiaries or business relationships which pose a higher risk of money laundering and the financing of terrorism are updated and relevant.
2. If a service provider reasonably takes the view that the customer due diligence process may warn a client or prospective client then, having collected data from which the identity of the client or prospective client can reasonably be deduced, the service provider may decide not to pursue the due diligence inquiries any further but to submit a report of a suspicious transaction.

3. A service provider is responsible for ensuring its employees are familiar with, and sensitive to, the risk that a client or prospective client could be warned by or during the customer due diligence process.

#### **Article 10**

1. A service provider shall conduct enhanced customer due diligence if, and depending on whether, the nature of a business relationship or transaction carries a higher risk of money laundering and the financing of terrorism.
2. Enhanced customer due diligence, as referred to in paragraph 1, should be carried out before the business relationship is entered into or the transaction executed, as well as during the business relationship, if it relates to:
  - a. a client that is not a resident of Sint Maarten, respectively not based in Sint Maarten;
  - b. a client that is not physically available to be identified;
  - c. a complex, unusually large transaction;
  - d. a transaction without a clear economic or legal purpose;
  - e. private asset management for the benefit of high-net-worth natural persons;
  - f. legal entities, trusts or comparable entities which are intended for the placement of personal assets;
  - g. companies and comparable entities in which the shares have been converted into bearer shares or are registered shares held for the benefit of a third party;
  - h. natural persons, legal entities, trusts and comparable entities which are registered or based in a country or jurisdiction which does not, or does not sufficiently, comply with internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism;
  - i. politically exposed persons;
  - j. entering into correspondent bank relationships;
  - k. a client or transaction which is subject to a restriction on the basis of the Sanctions National Ordinance;
  - l. if one or more of the details referred to in article 22, paragraph 1, are missing.
3. If the financial service provider ascertains that the beneficiary of a life insurance cannot be sufficiently established and identified, it should then conduct enhanced due diligence comprising reasonable measures to establish and verify both the identity of the beneficiary and the ultimate beneficiary at the time of payment.
4. At a minimum, enhanced customer due diligence shall consist of standard customer due diligence, as referred to in article 7, paragraph 1, supplemented with:
  - a. additional information about the client and the ultimate beneficiary;
  - b. additional information about the intended nature of the business relationship;
  - c. information about the source of the client's funds or assets;
  - d. information about the reasons for transactions, both intended and completed;
  - e. approval from the board for entering into or continuing the business relationship;
  - f. enhanced supervision of the business relationship by revising the number and timing of the checks, and selecting transaction patterns

- which require more extensive investigation;
- g. the requirement that the first payment is executed through an account in the client's name at a bank which has conducted the same level of customer due diligence.

#### **Article 11**

1. A service provider shall conduct an adequate policy and have risk assessment procedures to establish whether a client, a prospective client, an ultimate beneficiary or a beneficiary of a life insurance policy is a politically prominent person. Moreover, a service provider shall have procedures to enable it to establish the origins of the assets and bank balances of its clients and the ultimate beneficiaries who, on the basis of the first complete sentence, are designated politically prominent persons.
2. Without prejudice to the provision in paragraph 3, a service provider which enters into a business relationship with, or executes a transaction for, a politically prominent person is responsible for ensuring that:
  - a. the decision to enter into the business relationship, or execute an individual transaction, is only taken or approved by persons who are in overall charge of the service provider;
  - b. there is ongoing supervision of the business relationship.
3. If, after a business relationship has been entered into, a client or ultimate beneficiary is designated a politically prominent person, the business relationship shall only be maintained after it has been approved by persons who are in overall charge of the service provider.
4. For two years after a client, prospective client or ultimate beneficiary has ceased to hold a prominent public office, he/she shall still be designated a politically prominent person. The first complete sentence applies accordingly to family members and relations.

#### **Article 12**

1. A service provider shall pay specific attention to:
  - a. business relationships and transactions with natural persons, legal entities and trusts which are registered or based in a country or jurisdiction which does not, or does not sufficiently, comply with internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism; and
  - b. all complex and unusual transactions and all unusual features of transactions which have no explicable economic or legal purpose.
2. If a service provider has reasonable suspicions that a transaction with a natural person, legal entity or a trust, registered or based in a country or jurisdiction as referred to in paragraph 1, under a, has no explicable economic or legal purpose, or if it relates to a transaction as referred to in paragraph 1, under b, the service provider should investigate the background and purpose of the transaction and record the findings in writing.
3. The findings referred to in paragraph 2 should be retained for at least ten years.

§ 4. The introduction of clients

#### **Article 13**

If a client is introduced by a service provider based in Sint Maarten then, without prejudice to its own responsibility as referred to in article 7,

paragraph 1, under a, b and c, a service provider can, by way of derogation from article 5, paragraph 2, rely on the customer due diligence conducted by that service provider to the extent this due diligence contains the elements described in article 7, paragraph 1, under a, b and c, and provided that:

- a. the service provider has ascertained that copies of all the data and information relating to the customer due diligence conducted by the third party, as referred to in the opening lines, shall be made available by the third party without delay at the request of the service provider; and,
- b. the service provider has ascertained that the third party has procedures and measures in place which enable it to conduct customer due diligence and to store the data and information obtained during the customer due diligence in the way referred to in Chapter IV.

#### **Article 14**

1. Article 13 does not apply to clients that are introduced by service providers based outside Sint Maarten in a country or jurisdiction which does not, or does not sufficiently, comply with internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism.
2. In accordance with the application of articles 10, paragraph 2, under h, 12, paragraph 1, under a, and paragraph 2, 14, paragraph 1, and 19, paragraphs 2 and 3, a country or jurisdiction is deemed to be noncompliant or insufficiently compliant with internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism if the country or jurisdiction appears on a list of 'high-risk and non-cooperative jurisdictions', as published on the website of the Financial Action Task Force in Paris.

§ 5. The maintenance by banks of correspondent bank relationships

#### **Article 15**

1. A financial service provider operating as a bank which intends to enter into a correspondent bank relationship shall ensure that:
  - a. it gathers sufficient information about the relevant correspondent bank to obtain a full picture of the nature of its activities and can, on the basis of publically available information, establish the reputation of the correspondent bank and the quality of the supervision exercised over that bank, including information about any investigations into money laundering and the financing of terrorism and of any measures taken in respect of the supervision;
  - b. it assesses procedures and measures taken by the bank involved to prevent and combat money laundering and the financing of terrorism, and establishes that these are adequate and effective; and,
  - c. it fully understands the responsibilities of both banks in the area of preventing and combatting money laundering and the financing of terrorism, and records these in writing.
2. A financial service provider operating as a bank shall only enter into a new correspondent bank relationship after a decision is taken in that respect by persons who are in overall charge of the bank.
3. If a correspondent bank relationship involves the use of transit

accounts, a financial service provider operating as a bank shall establish that the correspondent bank involved has identified and verified the identity of those clients that have direct access to the accounts at that bank; and that the identification and verification of the clients was carried out in accordance with internationally accepted standards for identification and verification of identities.

4. A financial service provider operating as a bank shall also establish that the correspondent bank involved is, at the request of the service provider, able to provide the service provider with all the client's relevant identity data.

#### **Article 16**

1. A financial service provider operating as a bank is not permitted to enter into or maintain a correspondent bank relationship with a shell bank.
2. A financial service provider operating as a bank shall establish that any correspondent bank based outside Sint Maarten with which it enters into or maintains a correspondent bank relationship does not allow its accounts to be used by shell banks. If the situation described in the first complete sentence arises, the relevant bank shall terminate its relationship with the correspondent bank without delay.

§ 6. The documents, data and information required for verification

#### **Article 17**

1. If a client is a natural person, his/her identity shall be verified on the basis of reliable and independent documents, data or information.
2. If a client is a legal entity under the laws of Sint Maarten and its registered office is in Sint Maarten or it is a foreign legal entity based in Sint Maarten, its identity shall be verified on the basis of documents, data or information from a reliable and independent source.
3. If a client is a foreign legal entity not based in Sint Maarten, its identity shall be verified on the basis of reliable and internationally accepted documents, data or information or on the basis of documents, data or information which, by statutory provision, are recognised as a valid means of identification in the client's country of origin.
4. Paragraph 3 applies accordingly to a trustee and the person who otherwise exercises effective control, the settlor of the trust and the ultimate beneficiary of the assets of the trust.
5. A service provider shall verify the identity of the ultimate beneficiary on the basis of reliable and internationally accepted documents, data or information or on the basis of documents, data or information which, by statutory provision, are recognised as a valid means of identification in the ultimate beneficiary's country of origin, and in such a way that the service provider is convinced of the identity of the ultimate beneficiary.
6. The service provider shall copy all the documents referred to in the paragraphs 1 to 5.
7. If a service provider reasonably takes the view that making a copy, as referred to in paragraph 6, may warn a client or prospective client then, instead of making copies, the service provider may decide that it is sufficient to gather data from which the identity of the client or prospective client can reasonably be deduced.
8. By ministerial regulation, the Minister can compile rules pertaining to the sort and content of the documents, data and information, referred to in

paragraphs 1 to 5, as well as pertaining to the verification of the identity of clients other than those referred to in paragraphs 1 to 5.

9. Whether or not under a restriction or by prescribing further regulations, the Minister can, by ministerial regulation, grant exemption from the provisions of paragraph 6 to categories of service providers designated in the regulation.

### Chapter III

#### Procedures and measures to prevent and combat money laundering and the financing of terrorism

##### **Article 18**

1. The Minister shall adopt a national policy to promote transparency, integrity and public trust in the governance and management of all non-profit organisations, as well as a national policy to prevent or curtail money laundering and the financing of terrorism, that is based on the risks identified.
2. The policy is, inter alia, aimed at ensuring that policy makers, the Office for the Disclosure of Unusual Transactions, the investigative authorities, supervisors and other relevant competent authorities, involved in policy formation and operational implementation, have access to effective mechanisms that enable them to cooperate and to assess the risks of money laundering and the financing of terrorism of the various types of legal entities based in Sint Maarten and, where relevant, at ensuring the development and implementation of policy and activities to combat money laundering, the financing of terrorism and the proliferation of weapons of mass destruction are undertaken in mutual liaison.
3. The policy shall be reassessed every ten years, amended if necessary, and readopted.
4. The Minister shall take account of the recommendations, referred to in Article 3, paragraph 2, under k and l, of the National Ordinance Office for the Disclosure of Unusual Transactions.

##### **Article 19**

1. A financial service provider with a branch or subsidiary outside Sint Maarten shall be responsible for ensuring that, at a minimum, the branch, respectively the subsidiary, applies internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism, as well as the provisions under or pursuant to this national ordinance in respect of customer due diligence, registration and reporting and, as far as possible, applies all the other regulations under or pursuant to this national ordinance.
2. A service provider, as referred to in paragraph 1, shall exercise enhanced vigilance in respect of branches and subsidiaries in countries and jurisdictions which insufficiently comply with internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism.
3. The provisions in paragraph 1 are only applicable if and to the extent that:
  - a. supervision is exercised on the branch or subsidiary by the competent authority in the other country;
  - b. at a minimum, the branch, respectively the subsidiary, applies internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism, as well as the provisions

- under or pursuant to this national ordinance in respect of customer due diligence, registration and reporting and, as far as possible, applies all the other regulations under or pursuant to this national ordinance; and
- c. the branch, respectively the subsidiary, participates in programmes arranged by the financial service provider aimed at preventing and combatting money laundering and the financing of terrorism.
4. If the laws of the country or jurisdiction involved do not allow the application of paragraph 1, the service provider should inform the Office for Disclosure of this fact and, if necessary in consultation with the Office for Disclosure, take measures to counter the risk of money laundering and the financing of terrorism.

#### **Article 20**

1. A service provider is obliged to identify and assess its vulnerability to money laundering and the financing of terrorism and, using a risk-based approach, to mitigate this vulnerability effectively.
2. A service provider shall conduct an adequate policy as well as compile written procedures and measures which focus on preventing and combatting money laundering and the financing of terrorism; in particular, these are necessary for the application of Chapters II, III, IV, V and VI of this national ordinance. An adequate policy as referred to in the first complete sentence means, inter alia, that if higher risks are identified, the service provider and its employees should take enhanced measures to manage and mitigate the risks.
3. A service provider shall conduct an adequate policy and have adequate procedures which focus on preventing the abuse of new technological developments, new products, new business practices and instruments for the benefit of money laundering and the financing of terrorism. The procedures, referred to in the first complete sentence, also relate to risk assessments prior to the launch of the new products and business practices, and to the use of new or developing technologies.
4. The identification and assessment, referred to paragraph 1, and the procedures and measures, referred to in paragraphs 2 and 3, shall at all times relate to the service provider's internal organisation and internal audits, as well as to the employment, function changes, background, education, information provision and ongoing training of the relevant personnel and the application of customer due diligence, the recording of data and information, the internal decision-making process for the submission of reports, as well as to the periodic evaluation of the effectiveness of these procedures and measures.
5. Periodically, a service provider shall evaluate the procedures and measures in order to be able to assess whether, and to what extent, it is vulnerable to money laundering and the financing of terrorism as a result of its activities and work, and it shall subject this evaluation to an independent audit.
6. The findings of the periodic evaluations, referred to in paragraph 5, shall be recorded in writing and a copy sent to the Office for Disclosure.

#### **Article 21**

1. A service provider is responsible for ensuring that, to the extent relevant for the performance of their duties, its employees are familiar with the provisions of these national ordinances and follow periodic education and training courses which enable them to recognise unusual transactions.

2. A service provider shall designate one person who, for the benefit of its organisation, is specifically charged with ensuring compliance with statutory provisions in the area of preventing and combatting money laundering and the financing of terrorism.
3. A service provider shall designate at least one person within its organisation who is charged with the internal receipt and assessment of potential reports, as well as for submitting reports to the Office for Disclosure on behalf of the service provider.
4. A service provider shall inform the Office for Disclosure of the appointment of the persons, referred to in paragraphs 1 and 2, within one month of the date of their appointment.

#### Chapter IV

The storage of data and information acquired by service providers pursuant to this national ordinance

#### **Article 22**

1. When electronically transferring funds and messages related to the transfers, a financial service provider shall attach accurate data relating to both the client and the beneficiary; this data is necessary for the whole payment chain.
2. For at least ten years after a transaction has been executed, a service provider should retain all the data related to the transaction, on both a national and international level, which could be necessary to be able to comply with a request for information from a competent authority without delay. The data shall be stored in such a way that individual transactions can at all times be reconstructed and used as evidence for the prosecution of criminal offences.
3. For at least ten years after a business relationship has been terminated or a transaction executed, a service provider should retain all the data acquired through customer due diligence, the accounts, commercial correspondence, as referred to in article 3, paragraph 3, as well as the results of the analyses of any unusual transactions which are necessary to be able to comply with a request for information from a competent authority without delay. The data shall be stored in such a way that individual transactions can at all times be reconstructed and used as evidence for the prosecution of criminal offences.
4. A financial service provider shall maintain a register in which the data related to transactions and data acquired during customer due diligence is registered and can be easily accessed.

#### **Article 23**

For at least ten years after a business relationship has been terminated, a service provider should retain the copies, referred to in article 17, paragraph 6, in an accessible manner and on request provide these to a competent authority without delay.

#### Chapter V

A service provider's duty to report

#### **Article 24**

After consulting the Office for Disclosure, the Minister shall, by ministerial regulation, establish indicators on the basis of which it is possible to assess whether or not a transaction should be designated an unusual transaction; if necessary indicators may be established for distinct groups of service providers or categories of transactions.

#### **Article 25**

1. A service provider shall report an unusual transaction, either executed or proposed, to the Office for Disclosure within 2 x 24 hours of it becoming aware of the unusual nature of the transaction, unless the Office for Disclosure has prescribed a longer period for certain reports.
2. When submitting a report, as referred to in paragraph 1, the service provider shall, at a minimum, provide the following data:
  - a. in respect of natural persons:
    - 1°. the client's identity as established on the basis of article 3, paragraph 3;
    - 2°. the type, number, date and place of issue of the client's proof of identification;
    - 3°. the nature, time and place of the transaction;
    - 4°. the scope, destination and origin of the funds, securities, precious metals or other assets involved in the transaction;
    - 5°. the circumstances on the basis of which the transaction is designated unusual; and
    - 6°. if it relates to a transaction involving an item which has a higher value than that established by the Minister in a ministerial regulation, a description of the item concerned;
    - 7°. the indicator or indicators on the basis of which the transaction has been designated unusual;
    - 8°. the type and number of the bank account used in the transaction; and
    - 9°. the bank statements and business-related correspondence;
  - b. in respect of legal entities incorporated under the laws of Sint Maarten:
    - 1°. the legal form, the name given in the articles of association, the trade name, the address and, if the legal entity is registered with the Chamber of Commerce and Industry, its registration number at the Chamber of Commerce and Industry as well as the way in which its identity has been verified;
    - 2°. the surnames, first names, places and dates of birth of those who act on behalf of the legal entity and the ultimate beneficiary; and
    - 3°. the data referred to under a, 3° to 6°;
  - c. in respect of foreign legal entities and comparable entities:
    - 1°. documents on the basis of which the identity has been verified;
    - 2°. the surnames, first names and dates of birth of those who act on behalf of the legal entity and the ultimate beneficiary; and
    - 3°. the data referred to under a, 3° to 6°;
  - d. in respect of trusts:
    - 1°. the registration number of the registration in the public register, referred to in Title 1, Article 2, of the Civil Code to the extent the assets of the trust consist of property subject to registration, or in the shareholders' register to the extent the assets of the trust consist of shares in the name of a public or private limited company, or in the commercial register to the extent the assets of

the trust consist of a company or the share of a fully liable partner in a public partnership;

2°. the documents used to verify the identity of the trustee or the person who exercises effective control over the trust, the settlor of the trust and the ultimate beneficiaries of the assets of the trust; and

3°. the data referred to under a, 3° to 6°.

3. A service provider shall inform the Office for Disclosure without delay if customer due diligence has not provided the required information and there are indications that the client is involved in money laundering or the financing of terrorism.

When submitting such a report, reasons have to be given explaining why the customer due diligence failed to provide the required information.

4. A ministerial regulation may stipulate that other data be provided when a report, as referred to in paragraph 1, is submitted.

### **Article 26**

1. In accordance with the Commercial Registers Decree making it compulsory to register data in the commercial register, a service provider shall, without delay, inform the Office for Disclosure which services, as referred to in article 2, it provides as well as any changes to such.

2. The director of the Office for Disclosure determines the way in which reports as referred to article 25 and in paragraph 1 of this article are submitted.

## Chapter VI Confidentiality

### **Article 27**

1. Except to the extent that the need to disclose ensues from the objective of this national ordinance, the following have a duty of confidentiality:

- a. a service provider that, in accordance with article 25, submits a report or, at the request of the Office for Disclosure, provides further data or information;
- b. the director and other employees of the service provider, referred to under a;
- c. persons and bodies which, at the request of the Office for Disclosure, provide data and information or grant access to registers or other information sources which are under their control;
- d. the director and other employees of the Office for Disclosure who, by application of this national ordinance or resolutions adopted pursuant to this national ordinance, perform or have performed any duty and have, therefore, taken cognisance, or could take cognisance, of data and information provided or received pursuant to this national ordinance; and
- e. the supervisors of the service providers referred to in article 1 who, when performing their duties, take cognisance of data, information and facts which could be construed as money laundering or the financing of terrorism.

2. A supervisor who, in the performance of his/her duties, discovers facts which could be construed as money laundering or the financing of terrorism should, if necessary, inform the Office for Disclosure without

delay, if necessary by way of derogation from the applicable statutory duty of confidentiality.

3. By way of derogation from the provision in paragraph 1, a service provider may submit reports to:
  - a. service providers that belong to the same group and who have at least complied with the obligation to conduct customer due diligence;
  - b. service providers based or registered in a country within the Kingdom of the Netherlands, that undertake their work, whether or not as an employee, within the same legal entity or network;
  - c. lawyers, civil-law notaries, junior civil-law notaries, brokers, accountants or financial enterprises, based or registered in a country within the Kingdom of the Netherlands, provided it involves the same client and the same transaction and the report is exclusively intended to prevent money laundering and the financing of terrorism;
  - d. lawyers, civil-law notaries, junior civil-law notaries, brokers, accountants or financial enterprises, based or registered in a country within the Kingdom of the Netherlands, who are subject to equivalent obligations in the area of professional confidentiality and the protection of personal data, and belong to the same professional category, provided it involves the same client and the same transaction and the report is exclusively intended to prevent money laundering and the financing of terrorism.
4. For the application of paragraph 3, network shall be taken to mean: a larger structure to which a person belongs and which collectively shares the ownership, management or responsibility for checking compliance with the obligations.

#### **Article 28**

The secrecy laws of financial institutions may not inhibit implementation of the national ordinances on reporting unusual transactions.

### Chapter VII Indemnity

#### **Article 29**

1. A service provider that in good faith has submitted a report, as referred to in article 25, or has provided data or information to the Office for Disclosure, shall be indemnified against criminal and civil liability due to having breached a ban on disclosing information pursuant to an agreement or any statutory or administrative regulation.
2. Paragraph 1 is accordingly applicable to liability for any damage/loss which a client, an intermediary or third party consequently suffers, unless the damage/loss is the result of an intentional or wilfully reckless act on the part of the service provider.
3. Paragraphs 1 and 2 apply accordingly to the director and other employees of the service provider who cooperated or were involved in the actions referred to in paragraph 1.

#### **Article 30**

1. Data or information that has been reported or provided in good faith by the service provider in the implementation of or pursuant to this national ordinance cannot be used against the service provider as the basis for, or

for the benefit of, a criminal investigation or prosecution due to suspicions of, or as evidence in, charges of money laundering or the financing of terrorism.

2. Paragraph 1 applies accordingly to the director and other employees of the service provider who cooperated or were involved in the actions referred to in paragraph 1.

## Chapter VIII Supervision and enforcement

### **Article 31**

1. The Office for Disclosure is responsible for the enforcement of the national ordinances on reporting unusual transactions, and for supervising the compliance of non-financial service providers with these national ordinances. The Bank is responsible for the enforcement of the national ordinances on reporting unusual transactions, and for supervising the compliance of financial service providers with these national ordinances.
2. In order to promote compliance with the national ordinances on reporting unusual transactions, the Office for Disclosure is authorised to issue guidelines to the service providers, including financial service providers.
3. To implement this national ordinance, the Office for Disclosure and the Bank are authorised to impose an astreinte, an enforcement action or an administrative penalty. The National Ordinance Administrative Enforcement applies to both the Office for Disclosure and the Bank, provided that the administrative penalty, referred to in article 55 of that national ordinance, amounts to no more than ANG 4,000,000.

## Chapter IX Detection

### **Article 32**

1. In addition to the officers referred to in article 184 of the Code of Criminal Procedure, the supervisors working at the Office for Disclosure, designated for this purpose by national decree, are charged with detecting the offences made punishable in article 33. Such appointments will be announced in the National Gazette.
2. A report as referred to in article 25 and information, in whatsoever form, provided by a financial intelligence unit in another country cannot serve as independent evidence for a criminal conviction.
3. By way of derogation from the provisions of article 27 and using data and information obtained in the performance of the duties imposed on it pursuant to this national ordinance, the Office for Disclosure can make announcements, provided these cannot be traced back to individual transactions. With written permission from the service provider to which it relates, the data or information in respect of the individual transactions may be published.

## Chapter X Penalty provisions

### **Article 33**

1. Each action in breach of the provisions under or pursuant to articles 3, 4, 5, 6, 8, 10, 11, 12, 15, 16, 17, paragraph 6, 18, 19, 20, 21, 22, 23, 25, 26, paragraph 1, 27 or 37, paragraph 2, shall, to the extent it was intentional, be punished by either a prison sentence of a maximum of four years or a financial penalty of the sixth category.
2. Each action in breach of the provisions under or pursuant to articles 3, 4, 5, 6, 8, 10, 11, 12, 15, 16, 17, paragraph 6, 18, 19, 20, 21, 22, 23, 25, 26, paragraph 1, 27 or 37, paragraph 2, shall, to the extent it was unintentional, be punished by either imprisonment for a maximum of one year or a financial penalty of the sixth category.
3. If an action in breach of the provisions of article 27 results in the report or the information becoming known to the person/entity to whom/which the report or information relates, the prison sentence for the infringement shall be increased by one and a half times.
4. The facts deemed punishable in paragraph 1 shall be considered criminal offences. The facts deemed punishable in paragraph 2 shall be considered misdemeanours.
5. The party committing the act is punishable, as well as the directors and executives, irrespective of whether these are natural persons, legal entities, groups of natural persons or legal entities, or organisations.

## Chapter XI

### Amendments to other national ordinances

### **Article 34**

The Sanctions National Ordinance shall be amended as follows:

A

Article 2 shall be amended as follows:

1. In paragraph 1, the phrase "the promotion of the international legal order or combatting of terrorism" is to be replaced by the phrase: "the promotion of the international legal order, the combatting of terrorism and financing of terrorism, or the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing".
2. In paragraph 2, the phrase "the promotion of the international legal order or combatting of terrorism" is to be replaced by the phrase: "the promotion of the international legal order, the combatting of terrorism and the financing of terrorism, or the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing".
3. Two new paragraphs, denoted 3 and 4 shall be inserted, reading:
  3. A ministerial regulation may stipulate that natural persons and legal entities are required to freeze, without delay and without prior notice, the funds or other assets of persons and entities designated in the ministerial regulation. This requirement also applies to:
    - a. all funds or other assets that are owned or controlled by the designated person or entity, and not just those funds or assets that

- can be tied to a particular terrorist act, plot or threat;
  - b. the funds or other assets that are wholly or partially owned or controlled, directly or indirectly, by designated persons or entities;
  - c. the funds or other assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by designated persons or entities; as well as
  - d. funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.
- 4. A ministerial regulation may stipulate that, unless licensed or permitted by the Minister or an international organisation in accordance with the relevant Security Council resolutions, natural persons and legal entities are prohibited from making any funds or other assets, economic resources or financial or other related services, available, directly or indirectly, wholly or partially, for the benefit of:
  - a. designated persons and entities;
  - b. entities owned or controlled, directly or indirectly, by designated persons or entities; or,
  - c. persons and entities acting on behalf of, or at the direction of, designated persons or entities.

## B

In article 3, paragraph 2, the phrase "in relation to the regions designated in a sanctions regulation" is to be deleted.

## C

Articles 7 to 13 are to be renumbered as articles 11 to 17 and four new articles, numbered 7, 8, 9 and 10 are to be inserted, reading:

### **Article 7**

Within 48 hours, natural persons and legal entities, as referred to in article 2, paragraphs 3 or 4, are required to report to the Office for the Disclosure of Unusual Transactions, referred to in article 2 of the National Ordinance Office for the Disclosure of Unusual Transactions, any assets frozen and other actions taken in compliance with the provisions under or pursuant to this national ordinance, including attempted transactions.

### **Article 8**

1. In the event that the Security Council, the 1718 Sanctions Committee, the 1267 Committee or the 1988 Committee of the United Nations, or the Council of the European Union decides to amend or scrap the designation of a state, region, natural person, legal entity, group or organisation, the corresponding designation in the ministerial regulation referred to in article 2 shall be amended or cease to have effect as of the day on which the decision comes into force.
2. With effect from the same moment, all obligations referred to in articles 2, 3 and 4 relating to a state, region, natural person, legal entity, group or organisation referred to in paragraph 1 shall either be amended or cease to have effect.
3. The first and second paragraphs apply accordingly if the Minister or the court decide that the obligations referred to in articles 2, 3 and 4 are being wrongly applied with respect to a state, region, natural person, legal entity, group or organisation with the same or similar name as that designated in the ministerial regulation referred to in article 2.

### **Article 9**

1. The Minister shall announce a decision as referred to in this national ordinance, without delay, and notify this to the service providers referred to in article 1, under h, of the National Ordinance Combatting Money Laundering and the Financing of Terrorism.
2. The consolidated text of the Sanctions Regulation shall be posted on the Office for Disclosure's website.

### **Article 10**

1. A ministerial regulation as referred to in article 2 is open to appeal on the grounds of the National Ordinance Administrative Justice.
2. Natural persons and legal entities that act in good faith in implementing the provisions under or pursuant to this national ordinance are not liable towards third parties for the assets they have frozen or any other actions they have taken in compliance with the provisions under or pursuant to this national ordinance.

D

In article 14 (new), paragraph 1, the phrase "The Office for the Disclosure of Unusual Transactions," is to read: "The Office for the Disclosure of Unusual Transactions referred to in article 2 of the National Ordinance Office for the Disclosure of Unusual Transactions."

### **Article 35**

The Commercial Registers Decree shall be amended as follows:

A

By replacing the full stop by a semi-colon at the end of part c, a new part d is to be added to article 1, reading:

- d. ultimate beneficiary: the ultimate beneficiary as referred to in Article 1, under ee, of the National Ordinance Combatting Money Laundering and the Financing of Terrorism.

B

By replacing the full stop by a semi-colon at the end of part e, a new part f is to be added to article 16, reading:

- f. the personal details of the ultimate beneficiaries should be registered if these have not already been registered on the grounds of the other provisions in this article.

C

By replacing the full stop by a semi-colon at the end of part g, a new part h is to be added to article 17, reading:

- h. the personal details of the ultimate beneficiaries should be registered if these have not already been registered on the grounds of the other provisions in this article.

D

By replacing the full stop by a semi-colon at the end of part f, a new part g is to be added to article 18, paragraph 1 reading:

- g. the personal details of the ultimate beneficiaries should be registered if these have not already been registered on the grounds of the other provisions in this article or, as the case may be, the place where the register referred to in article 109 of Book 2 of the Civil Code can be inspected to the extent it relates to ultimate beneficiaries registered in that register.

E

By replacing the full stop by a semi-colon at the end of part e, a new part f is to be added to article 19, paragraph 1, reading:

- f. the personal details of the ultimate beneficiaries should be registered if these have not already been registered on the grounds of the other provisions in this article or, as the case may be, the place where the register referred to in article 109 of Book 2 of the Civil Code can be inspected to the extent it relates to ultimate beneficiaries registered in that register.

F

By replacing the full stop by a semi-colon at the end of part d, a new part e is to be added to article 20, paragraph 1, reading:

- e. the personal details of the ultimate beneficiaries should be registered if these have not already been registered on the grounds of the other provisions in this article or, as the case may be, the place where the register referred to in article 109 of Book 2 of the Civil Code can be inspected, to the extent it relates to ultimate beneficiaries registered in that register.

G

By replacing the full stop by a semi-colon at the end of part e, a new part f is to be added to article 21, paragraph 1, reading:

- f. the personal details of the ultimate beneficiaries should be registered if these have not already been registered on the grounds of the other provisions in this article.

H

By replacing the full stop by a semi-colon at the end of part f, a new part g is to be added to article 22, paragraph 1, reading:

- g. the personal details of the ultimate beneficiaries should be registered if these have not already been registered on the grounds of the other provisions in this article or, as the case may be, the place where the register referred to in article 109 of Book 2 of the Civil Code can be inspected, whether or not with the intervention of the board, to the extent it relates to ultimate beneficiaries registered in that register.

## **Article 36**

Book 2 of the Civil Code is to be amended as follows:

A

By replacing the full stop by a semi-colon at the end of part b, two new parts are to be added to article 25, paragraph 1, reading:

- c. the Office for the Disclosure of Unusual Transactions, referred to in article 2 of the National Ordinance Office for the Disclosure of Unusual Transactions, has informed the Chamber that the legal entity has committed suspicious transactions; or
- d. the legal entity does not comply with the provisions of articles 59 or 89 paragraph 4.

B

After article 58 a new article 59 shall be inserted, reading:

**Article 59**

1. Each year within eight months of the end of the financial year, unless this term is extended by a maximum of six months on the grounds of exceptional circumstances, the management shall adopt an annual report on the performance of the foundation and the policy pursued. It shall also adopt financial statements, at least consisting of a balance sheet, an income statement and notes to these documents.
2. The financial statements shall be signed by all the directors. If any of their signatures are missing, the reason for this shall be reported.
3. The financial statements shall provide insight, according to generally accepted social standards, that allows a true and fair view to be formed of the assets and the results as well as the solvency and liquidity of the foundation, to the extent the nature of financial statements allows for this.
4. Article 15, paragraph 3, applies accordingly to the prepared and adopted financial statements and the accompanying documents.
5. The annual report states:
  - a. the identity of the persons that bear responsibility for the activities of the foundation and who control or manage these, including senior executives and managers, as well as the members of the Supervisory Board if this exists within the foundation;
  - b. the controls available to the management to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the foundation; and
  - c. the controls available to the board to verify the identity of its main donors and the identity and good standing of its beneficiaries.
6. The financial statements shall contain a detailed analysis of income and expenditure as well as a statement of all transactions with or by any person or legal entity based abroad in excess of a value of ANG 25,000 or the equivalent thereof in foreign currency.
7. The annual report and the financial statements are public documents. Within one week of being signed, they shall be published online and sent to the Chamber of Commerce and Industry and the Office for the Disclosure of Unusual Transactions, referred to in article 2 of the National Ordinance Office for the Disclosure of Unusual Transactions.
8. If the term referred to in the first paragraph is extended by a maximum of six months on the grounds of exceptional circumstances, the management shall send notice of this resolution to the Chamber of

Commerce and Industry and the Office for the Disclosure of Unusual Transactions referred to in article 2 of the National Ordinance Office for the Disclosure of Unusual Transactions within one week of the resolution to extend the term.

9. The provisions of this article do not apply if both the balance sheet total and the income statement total amount to less than ANG 100,000.

C

A new paragraph 4 shall be added to article 89, reading:

4. The provisions of article 59 paragraphs 6, 7 and 8 apply accordingly, unless both the balance sheet total and the income statement total amount to less than ANG 100,000.

#### **Article 37**

The National Ordinance Personal Data Protection is to be amended as follows:

A new paragraph 4 shall be added to article 2, reading:

4. To the extent necessary for the proper implementation of the National Ordinance Combatting Money Laundering and the Financing of Terrorism, the Sanctions National Ordinance, the National Ordinance Office for the Disclosure of Unusual Transactions or the National Ordinance Reporting Cross-Border Cash Transports, this national ordinance does not apply to the processing of personal data.

#### **Article 38**

Chapter VII, § 14, of the National Ordinance Substantive Civil Servants Law shall be amended as follows:

A

The heading § 14 Confidential Adviser is to be replaced by: § 14 Promoting Integrity.

B

After article 83 a new article 83a shall be inserted, reading:

#### **Article 83a**

The Minister of General Affairs, as well as the competent authority, referred to in article 4, under b (ii):

- a. conducts an integrity policy which is aimed at promoting good public service, and always ensures attention is paid to the promotion of integrity awareness and the prevention of abuse of power, conflicts of interest and discrimination;
- b. ensures that the integrity policy is a permanent part of the personnel policy by always raising the issue of integrity during performance reviews and team meetings, and by offering training and education in the field of integrity;
- c. is responsible for ensuring there is a code of conduct for good official public service;
- d. determines the manner in which account is rendered each year in

respect of the integrity policy conducted and compliance with the code of conduct.

**Article 39**

The National Ordinance Structure and Organisation of National Government shall be amended as follows:

A

In article 12 after the phrase "personnel policy," the phrase "integrity policy" shall be inserted.

B

In article 13, under a, the phrase "personnel and organisation" shall be replaced by: "personnel and organisation, as well as integrity policy".

Chapter XII  
Transitional and final provisions

**Article 40**

1. The National Ordinance Disclosure of Unusual Transactions shall be repealed.
2. The National Decree governing penal sums and administrative penalties for persons reporting unusual transactions shall be repealed.
3. The statutory basis of the Regulation on Indicators of Unusual Transactions shall be amended in article 2, paragraph 1, part b under 3º, and article 24 of the National Ordinance Combatting Money Laundering and the Financing of Terrorism.

**Article 41**

1. The National Ordinance Identification when rendering Financial Services shall be repealed.
2. The National Decree containing general measures implementing article 1, paragraph b, under 9º of the National Ordinance Identification when rendering Financial Services (AB 2013, GT no 704) shall be repealed.
3. The National Decree governing penal sums and administrative penalties for service providers shall be repealed.

**Article 42**

The National Ordinance Criminalising Money Laundering shall be repealed.

**Article 43**

This National Ordinance shall come into force at the time when the National Ordinance Financial Intelligence Units enters into force.

**Article 44**

This National Ordinance shall be entitled: National Ordinance Combatting Money Laundering and the Financing of Terrorism.

This National Ordinance shall be published, along with the Explanatory Memorandum, in the Official Publication.

Issued in Philipsburg,

The Governor of Sint Maarten

The Minister of Justice