

# **MONEY LAUNDERING AND TERRORIST FINANCING PREVENTION ACT<sup>1</sup>**

## **Chapter 1**

### **GENERAL PROVISIONS**

#### **Division 1 Purpose and Scope of Application of Act**

##### **§ 1. Purpose of Act**

The purpose of this Act is to prevent the use of the financial system and economic space of the Republic of Estonia for money laundering and terrorist financing.

##### **§ 2. Scope of application of Act**

(1) This Act regulates:

- 1) the application of due diligence measures by obligated persons for the prevention of money laundering and terrorist financing;
- 2) monitoring the implementation of the Act by obligated persons;
- 3) the bases of activities of the Financial Intelligence Unit;
- 4) the liability of obligated persons for non-compliance with the requirements of this Act.

(2) The provisions of the Administrative Procedure Act apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

##### **§ 3. Application of Act**

(1) This Act applies to the economic or professional activities of the following persons:

- 1) credit institutions;
- 2) financial institutions;
- 3) organisers of games of chance;
- 4) persons who carry out or intermediate immovable property transactions;
- 5) traders for the purposes of the Trading Act, if a cash payment of no less than 200,000 kroons or an equal amount in another currency is made to the trader, regardless of whether the financial obligation is performed in the transaction in a lump sum or in several related payments, unless otherwise provided by law;
- 6) pawnbrokers;
- 7) auditors and providers of accounting services;
- 8) providers of advisory services in the areas of accounting and taxation;
- 9) providers of trust and company services.

(2) This Act applies to notaries public, attorneys, bailiffs, trustees in bankruptcy, interim trustees in bankruptcy and providers of other legal services if they act in the name and for the account of a customer in financial or immovable property transactions. This Act also applies to the specified persons if they instruct the planning or execution of a transaction or perform an official act, which concerns:

- 1) the purchase or sale of immovables, enterprises or companies;
- 2) the management of the customer's money, securities or other property;
- 3) the opening or managing of bank or security accounts;
- 4) the acquisition of funds necessary for the foundation, operation or management of companies;
- 5) the foundation, operation or management of trusts, companies or other similar entities.

(3) For the purposes of this Act "cash" means cash within the meaning of Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls

of cash entering or leaving the Community. The provisions regarding cash are also applicable to performance of financial obligations using a precious metal, which is measured in bars or other units.

## **Division 2 Definitions**

### **§ 4. Money laundering**

(1) Money laundering means:

- 1) concealment or maintenance of the confidentiality of the true nature, origin, location, manner of disposal, relocation or right of ownership or other rights of property acquired as a result of a criminal activity or property acquired instead of such property;
- 2) conversion, transfer, acquisition, possession or use of property acquired as a result of a criminal activity or property acquired instead of such property with the purpose of concealing the illicit origin of the property or assisting a person who participated in the criminal activity so that the person could escape the legal consequences of his or her actions.

(2) Money laundering is also a situation, whereby a criminal activity as a result of which the property used in money laundering was acquired, occurred in the territory of another state.

### **§ 5. Terrorist financing**

Terrorist financing means financing acts of terrorism for the purposes of § 273<sup>3</sup> of the Penal Code.

### **§ 6. Credit and financial institutions**

(1) For the purposes of this Act, a credit institution is:

- 1) a credit institution within the meaning of the Credit Institutions Act;
- 2) the branch of a foreign credit institution registered in the Estonian commercial register.

(2) For the purposes of this Act, a financial institution is:

- 1) a financial institution within the meaning of the Credit Institutions Act;
- 2) providers of currency exchange services;
- 3) providers of payment services;
- 4) providers of services of alternative means of payment;
- 5) an insurer engaged in life assurance within the meaning of the Insurance Activities Act (hereinafter insurer);
- 6) an insurance broker engaged in mediation of life assurance within the meaning of the Insurance Activities Act (hereinafter insurance broker);
- 7) a management company and an investment fund established as a public limited company within the meaning of the Investment Funds Act;
- 8) an investment firm within the meaning of the Securities Market Act;
- 9) a savings and loan association within the meaning of the Savings and Loan Associations Act;
- 10) an electronic money institution within the meaning of the Electronic Money Institutions Act;
- 11) a branch of a foreign service provider registered in the Estonian commercial register providing a service specified in clauses 1)-10).

(3) For the purposes of this Act, a currency exchange service is the exchange of the official currency of one country for the official currency of another country within the economic or professional activities of an undertaking.

(4) A provider of services of alternative means of payment is a person who in its economic or professional activities and through a communications, transfer or clearing system purchases, sells or intermediates funds of monetary value by which financial obligations can be

performed or which can be exchanged for an official currency, but who is not a person specified in subsection (1) or a financial institution for the purposes of the Credit Institutions Act.

### **§ 7. Trust and company service provider**

A provider of trust and company services is a natural or legal person whose primary economic or professional activity lies in providing a third party with the following services:

- 1) foundation of a company or another legal person;
- 2) acting as a director or management board member in a company, as a partner in a general partnership or in such a position in another legal person, as well as the arrangement of assumption of this position by another person;
- 3) enabling the use of the address of the seat or place of business, including granting the right to use the address as part of one's contact information or for receiving mail as well as providing companies or other legal persons, civil law partnerships or other similar contractual legal arrangement with services relating to the aforementioned;
- 4) acting as a representative of a civil law partnership or another such contractual legal arrangement or appointing another person to the position;
- 5) acting as a representative of a shareholder of a public limited company or arrangement of representation of a shareholder by another person, except in the case of companies whose securities have been listed in a regulated securities market and with respect to whom disclosure requirements complying with European legislation or equal international standards are applied.

### **§ 8. Beneficial owner**

(1) A beneficial owner is a natural person who, taking advantage of his or her influence, exercises final control and in whose interests or favour or on whose account a transaction or act is performed. A beneficial owner is a natural person who permanently owns the company or exercises final control over the management of a company:

- 1) by owning over 25 percent of shares or voting rights through direct or indirect shareholding or control, including in the form of bearer shares;
- 2) otherwise exercising control over the management of a legal person.

(2) A beneficial owner is also a natural person who, to the extent of no less than 25 percent determined beforehand, is a beneficiary of a legal person or civil law partnership or another contractual legal arrangement, which administers or distributes property, or who exercises significant control over the property of a legal person, civil law partnership or another contractual legal arrangement to the extent of no less than 25 percent.

(3) A beneficial owner is also a natural person who, to the extent not determined beforehand, is a beneficiary of a legal person or civil law partnership or another contractual legal arrangement, which administers or distributes property, and in whose interests mainly the legal person, civil law partnership or another contractual legal arrangement is set up or operates.

(4) Clause (1) 1) does not apply to companies whose securities have been listed in a regulated stock exchange.

### **§ 9. Property**

For the purposes of this Act, property is any object as well as the right of ownership of such an object or documents certifying the rights related to the object, including electronic documents and the benefit received from the object.

### **§ 10. Obligated person**

An obligated person is a person specified in subsection 3 (1) or (2).

### **§ 11. Business relationship**

(1) For the purposes of this Act, a business relationship is a relationship of an obligated person, which:

1) arises upon conclusion of long-term contract in economic or professional activities;  
2) is not based on a long-term contract, but which may reasonably be expected to last for a certain term and during which an obligated person repeatedly enters into separate transactions in the framework of its economic or professional activities.

(2) For the purposes of this Act, a customer is a person who has a business relationship with the obligated person.

## **Chapter 2 DUE DILIGENCE**

### **Division 1 Due Diligence Measures**

### **§ 12. Obligation to apply due diligence measures**

(1) In economic or professional activities an obligated person shall pay special attention to the activities of a person or customer participating in a transaction or official act and to circumstances which refer to money laundering or terrorist financing or to the probable connection with money laundering or terrorist financing, including to complex and unusual transactions of high value which do not have any reasonable economic purpose.

(2) An obligated person shall apply due diligence measures at least:

- 1) upon establishment of a business relationship;
- 2) upon concluding or intermediating transactions on an occasional basis, while the value of the transaction exceeds 200,000 kroons or an equal amount in another currency, regardless of whether the financial obligation is performed in a lump-sum or in several related payments, unless otherwise provided by law;
- 3) upon suspicion of money laundering or terrorist financing, regardless of any derogations, exemptions or limits specified by law;
- 4) in the event of insufficiency or suspicion of the correctness of the documents or data gathered earlier in the course of identification and verification of a person or updating the respective data.

### **§ 13. Due diligence measures**

(1) To perform the obligation provided in § 12 an obligated person applies in economic or professional activities the following due diligence measures:

- 1) identification of a customer or a person participating in a transaction on the basis of the documents and data submitted by him or her and verification of the submitted information on the basis of the information acquired from a reliable and independent source;
- 2) identification and verification of a natural person or a representative of a legal person and the right of representation;
- 3) identification of the beneficial owner, including gathering information about a legal person, trust, civil law partnership or other contractual legal arrangement on the basis of the information provided in pre-contractual negotiations or obtained from another reliable and independent source;
- 4) acquisition of information about the purpose and nature of the business relationship and transaction;

5) constant monitoring of a business relationship, including monitoring transactions concluded during the business relationship, regular verification of the data used for identification, updating relevant documents, data and information and, if necessary, identification of the source and origin of funds used in the transaction.

(2) Credit and financial institutions apply the due diligence measures in an agency, branch or subsidiary, where they have a majority shareholding, located in a third country, and follow the requirements for collection and storage of data, which are at least equal to the provisions of this Act. If the legislation of the third country does not allow application of equal measures, the credit or financial institution shall immediately notify the competent supervisory authority thereof and apply additional measures for prevention of money laundering or terrorist financing risks.

#### **§ 14. General application of due diligence measures**

(1) An obligated person shall apply the due diligence measures provided in clauses 13 (1) 1)-4) before establishment of any business relationship or entering into any transaction, unless otherwise provided by this Act.

(2) If a financial obligation is performed in a transaction by way of several related payments and the total amount of these payments is unknown, the person shall be identified and verified as soon as the exceeding of the amount provided by clause 12 (2) 2) becomes evident.

(3) An obligated person shall apply all due diligence measures specified in subsection 13 (1), but may choose the appropriate scope of application of the due diligence measures depending on the nature of the business relationship or transaction or the risk level of the person or customer participating in the transaction or official act.

(4) Upon application of the due diligence measures specified in clauses 13 (1) 1)-3), an obligated person has the right to rely on the information received in a format which can be reproduced in writing from a credit institution registered in the Estonian commercial register or from a branch of a foreign credit institution or from a credit institution who has been registered or whose place of business is in a contracting state of the European Economic Area or a third country where requirements equal to those provided in this Act are in force.

#### **§ 15. Specifications for the application of due diligence measures by credit and financial institutions**

(1) Upon opening an account in a credit or financial institution or upon the first use of another service by a person with whom the credit or financial institution has no business relationship, the person participating in the transaction or using the service shall be identified while being present at the same place with the person or his or her representative.

(2) A credit and financial institution may not provide services which can be used without identification or verification of the person participating in the transaction. A credit and financial institution is obligated to open and keep the account only in the name of the account holder.

(3) A credit and financial institution may not enter into a contract or make a decision on opening an anonymous account or savings bank book. A transaction in violation with the prohibition is void.

(4) A credit and financial institution may exceptionally, at the request of the person participating in the transaction, open an account before full application of due diligence measures on the condition that the account is debited after full application of the due diligence measures specified in clauses 13 (1) 1)-4) and the first payment relating to the transaction is made through the same person's account which has been opened in a credit institution that operates in a contracting state of the European Economic Area or in a state where requirements equal to those provided for in this Act are in force.

(4<sup>1</sup>) A credit institution may open an account in the name of the company being founded according to provisions specified in clause 67 (4) 1) of Commercial Code on the basis of personal data automatically controlled by registrar through the computer network or by notary on the basis of subsection 520 (4) of Commercial Code on the condition that payment of the contribution of share capital has made to the named account through the account which has been opened in a credit institution that operates in a contracting state of the European Economic Area or in a branch of a foreign credit institutions opened in a contracting state and that the account is debited after full application of the due diligence measures specified in clauses 13 (1) 1)-4) according to conditions specified in subsection (1) of this section. The representatives of the company have to enable to perform the due diligence measures specified in subsection (1) of this section and conclude a settlement contract about this account within six months after account opening.

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(5) An insurer and an insurance broker may verify the identity of a beneficiary under a life assurance contract after establishment of the business relationship, but not later than upon making a disbursement or commencement of realisation of the rights of the beneficiary arising from the life assurance contract.

(6) Upon the performance of currency exchange services the provider of currency exchange services is obliged to identify and verify all persons participating in the transaction if the amounts exchanged in cash either in a single transaction or related transactions exceed 100,000 kroons or an equal amount in another currency.

(7) Upon provision or intermediation of a payment service, the provider of payment services is obliged to identify all customers who initiate or receive money transfers through the provider of payment services.

(8) A provider of services of alternative means of payment is obliged to:

1) identify and verify each customer upon establishment of a business relationship and entering into a transaction while being present at the same place with the customer, if the value of the transactions of the customer exceeds 15,000 kroons per calendar month or an equal amount in another currency;

2) upon mediation of a transaction between several customers identify and verify each person participating in a transaction and the represented data.

## **§ 16. Specifications for the application of due diligence measures by other obligated persons**

(1) An organiser of games of chance shall identify and verify the data specified in subsection 23 (3) regarding all persons who pay or receive in a single transaction or several related transactions an amount exceeding 30,000 kroons or an equal amount in another currency.

(2) Identification of persons and application of other due diligence measures by a notary public shall be based on the Notarisation Act and the Notaries Act with the specifications provided by this Act.

(3) A notary public, bailiff, trustee in bankruptcy, auditor, attorney and another legal service provider may identify and verify the identity of a customer, the person participating in a transaction and a beneficial owner while establishing a business relationship or entering into a transaction, provided that it is necessary for the purpose of not interrupting the ordinary course of professional activities and if the risk of financing money laundering or terrorist financing is low.

(4) In the case specified in subsection (3) the application of due diligence measures must be completed as soon as possible after the first contact and before performing any binding acts.

## **§ 17. Application of simplified due diligence measures**

(1) Upon fulfilment of the conditions provided for in § 18, an obligated person may, in the case of a low risk of money laundering or terrorist financing, apply the due diligence measures specified in subsection 13 (1) pursuant to a simplified procedure, determining the appropriate scope thereof depending on the nature of the business relationship or the risk level of the person or the transaction and the customer participating in the transaction or official act.

(2) Simplified due diligence measures are not applied if there is a suspicion of money laundering or terrorist financing.

(3) An obligated person is obliged to gather adequate amount of information to identify whether a transaction performed in economic or professional activities or a person or customer participating in a transaction or an official act is in compliance with the requirements provided by subsections 18 (1)-(4).

### **§ 18. Conditions of the application of simplified due diligence measures**

(1) An obligated person may apply simplified due diligence measures if a person or a customer participating in an official act or a transaction concluded in economic or professional activities is:

- 1) a legal person governed by public law founded in Estonia;
- 2) a governmental authority or another authority performing public functions in Estonia or a contracting state of the European Economic Area;
- 3) an authority of the European Community;
- 4) a company of a contracting state of the European Economic Area or a third country, which is subject to requirements equal to those provided by this Act and whose securities are traded in a regulated securities market in one or several contracting states of the European Economic Area;
- 5) a credit or financial institution, a credit or financial institution located in a contracting state of the European Economic Area or a third country, which in the country of location is subject to requirements equal to those provided by this Act and the performance of which is subject to state supervision.

(2) An obligated person may apply the simplified due diligence measures with regard to the beneficial owners of an official account opened by a notary public or bailiff of a contracting state of the European Economic Area or a third country, provided that the official account is subject to due diligence measures which are in compliance with the international standards for prevention of money laundering and terrorist financing, state supervision is exercised over adherence to these requirements and the notary public or bailiff has and preserves information about the identity of the beneficial owner.

(3) An insurer and an insurance broker may apply simplified due diligence measures if:

- 1) a life assurance contract is made whereby the annual assurance premium does not exceed 15,000 kroons or a single premium does not exceed 35,000 kroons;
- 2) a pension insurance contract which does not provide for the right of withdrawal or cancellation and which cannot be used as loan collateral is concluded;
- 3) a transaction is concluded in the framework of a superannuated pension scheme or another scheme allowing for such pension benefits whereby insurance premium is debited from wages and the terms and conditions of the pension scheme do not allow for assignment of the rights of the participant in the scheme.

(4) An obligated person may apply simplified due diligence measures in a transaction if:

- 1) a written long-term contract has been concluded with a customer;
- 2) a payment is made through the account of a person or customer participating in a transaction, which has been opened in a credit institution or the branch of a foreign credit institution registered in the Estonian commercial register or in a credit institution which has

been registered or has its place of business in a contracting state of the European Economic Area or in a country where requirements equal to those provided by this Act are in force;

3) the obligated person has established by rules of internal procedure beforehand that the annual total value of performance of financial obligations arising from transactions of such type does not exceed the maximum limit of 200,000 kroons.

(5) The criteria of the low risk of money laundering or terrorist financing with regard to certain persons or transactions in the case of which simplified due diligence measures may be applied shall be established by a regulation of the Minister of Finance.

### **§ 19. Application of enhanced due diligence measures**

(1) If a situation involves a high risk of money laundering or terrorist financing, an obligated person shall apply enhanced due diligence measures.

(2) An obligated person must apply the enhanced due diligence measures specified in subsection (3) if:

1) a person or customer participating in a transaction or official act performed in economic or professional activities has been identified and verified without being present at the same place as the person or customer;

2) upon identification or verification of a person suspicion arises of the truthfulness of the data or authenticity of the documents submitted or of the identification of the beneficial owner or the beneficial owners;

3) a person or customer participating in a transaction or an official act performed in economic or professional activities is a person specified in subsection 21 (1).

(3) In the events specified in subsections (1) and (2) an obligated person shall apply at least one of the following enhanced due diligence measures:

1) identification and verification of a person on the basis of additional documents, data or information, which originate from a reliable and independent source or from a credit institution or the branch of a credit institution registered in the Estonian commercial register or a credit institution, which has been registered or has its place of business in a contracting state of the European Economic Area or in a country where requirements equal to this Act are in force, and if in such credit institution the person has been identified while being present at the same place as the person;

2) application of additional measures for the purpose of verifying the authenticity of documents and the data contained therein, among other things, demanding that they be notarised or officially authenticated or confirmation of the correctness of the data by the credit institution specified in clause 1), which issued the document;

3) making the first payment relating to the transaction through an account opened in the name of a person or customer participating in the transaction in a credit institution which has its place of business in a contracting state of the European Economic Area or in a country where requirements equal to those provided for in this Act are in force.

(4) In the events specified in subsections (1) and (2) an obligated person shall apply the due diligence measures specified in clause 13 (1) 5) more frequently than usually.

(5) An obligated person is responsible for proper application of the due diligence measures.

### **§ 20. Politically exposed person**

(1) A politically exposed person is a natural person who performs or has performed prominent public functions, also the family members and close associates of such a person. A person who, by the date of entry into a transaction, has not performed any prominent public functions for at least a year, or the family members or close associates of such a person are not considered politically exposed persons.

(2) For the purposes of this Act, a person performing prominent public functions is:

- 1) a head of state, head of government, minister, and deputy or assistant minister;
  - 2) a member of parliament;
  - 3) a justice of a supreme, constitutional or another court of which the judgments can be appealed only in exceptional circumstances;
  - 4) a member of the supervisory board of a state audit institution or the central bank;
  - 5) an ambassador, chargé d'affaires and senior officer of the Defence Forces;
  - 6) a member of a management, supervisory or administrative body of a state-owned company.
- (3) The provisions of clauses (2) 1)-5) include positions of the European Union and other international organisations.
- (4) A family member of a person performing prominent public functions is:
- 1) his or her spouse;
  - 2) a partner equal to a spouse under the law of the person's country of residence or a person who as of the date of entry into the transaction had shared the household with the person for no less than a year;
  - 3) his or her children and their spouses or partners within the meaning of clause 2);
  - 4) his or her parent.
- (5) A close associate of a person performing prominent public functions is:
- 1) a natural person who has a close business relationship with a person performing prominent public functions or with whom a person performing prominent public functions is the joint beneficial owner of a legal person or contractual legal arrangement;
  - 2) a person who as a beneficial owner has full ownership of a legal person or contractual legal arrangement, which is known to have been set up for the benefit of the person performing prominent public functions.

## **§ 21. Transactions with politically exposed persons of other Member States and third countries**

- (1) Upon establishment of a business relationship or entry into a transaction or performance of an official act with a politically exposed person of a contracting state of the European Economic Area or a third country or his or her family member or close associate, an obligated person shall apply the enhanced due diligence measures provided for in § 19.
- (2) In the event specified in subsection (1), an obligated person shall also implement the following requirements:
  - 1) apply appropriate risk-based internal procedures for making a decision on establishment of a business relationship or on conclusion of a transaction;
  - 2) the management board of the obligated person or a person or persons authorised by the management board shall decide on establishment of business relationships;
  - 3) upon establishment of a business relationship or upon the conclusion of a transaction, take appropriate measures for identification of the origin of the money or other property used;
  - 4) continuously apply the due diligence measures specified in clause 13 (1) 5).

## **§ 22. Correspondent relationships of credit and financial institutions**

- (1) A credit and financial institution shall apply enhanced due diligence measures upon opening a correspondent account with a credit institution of a third country and during the period of validity of the respective contract, thereby regularly assessing:
  - 1) the trustworthiness and reputation of the credit institution of the third country and the effectiveness of the supervision exercised over the credit institution on the basis of the information accessible to the public;
  - 2) the control systems of the credit institution of the third country for prevention of money laundering and terrorist financing.

(2) The contract serving as the basis for opening a correspondent account or the rules of procedure of the credit institution must contain the prohibition to open a correspondent account for a credit institution which corresponds to the condition specified in clause (3) 1), and the obligations of the parties:

1) upon application of due diligence measures for prevention of money laundering and terrorist financing, including with regard to a customer having access to a payable through account or another similar account;

2) upon the submission of the data acquired in the course of identification of the customer on an enquiry and verification of the submitted information.

(3) A credit and financial institution is prohibited to open and hold a correspondent account in a credit institution, which meets one of the following conditions:

1) the actual place of management or business of the credit institution is located outside its receiving state and the credit institution is not part of the consolidation group or group of undertakings of a credit or financial institution which is subject to sufficient supervision;

2) an account for a credit institution corresponding to the characteristics specified in clause 1) has been opened in the credit institution;

3) there are deficiencies in the trustworthiness of the executives of the credit institution and in the assessment of the measures for the prevention of money laundering and terrorist financing according to respective international standards or the circumstances provided for in this section, which are used as a basis for assessment.

(4) An agreement in violation of the prohibition of opening a correspondent account in a credit institution corresponding to the conditions specified in clauses (3) 1) and 2) is void.

(5) Subsections (3) and (4) are applied to correspondent relationships with an institution and undertaking whose principal and permanent activity lies in concluding transactions similar to the transactions provided for in subsection 6 (1) of the Credit Institutions Act.

## **Division 2 Collection and Preservation of Data**

### **§ 23. Documents and data serving as basis of identification of natural persons**

(1) An obligated person shall identify a natural person and verify the person on the basis of a document specified in subsection 2 (2) of the Identity Documents Act or a valid travel document issued in a foreign country or a driving license complying with the conditions provided in subsection 4 (1) of the Identity Documents Act. In addition to an identity document, the representative of a person participating in a transaction shall submit a document certifying the right of representation in the required format.

(2) A copy shall be made of the page of the identity document submitted to enable identification which contains the personal data and a photograph. In addition, upon identification and verification of the persons specified in subsection (1), an obligated person shall register the following personal data:

1) the name and the representative's name;

2) the personal identification code or, in case of absence of a personal identification code, the date and place of birth;

3) upon identification and verification of persons, the name and number of the document used and its date of issue and the name of the agency that issued the document;

4) upon identification and verification of the right of representation, the name of the document used and its date of issue and the name of the issuer.

(3) On the basis of the information received from the person specified in subsection (1), an obligated person shall register the address of the place of residence and the profession or the area of activity of the person. If a person or customer participating in a transaction concluded in economic or professional activities is a natural person of a contracting state of the European

Economic Area or a third country, the obligated person shall register the information whether the person performs or has performed any prominent public functions or is a close associate or a family member of a person performing prominent public functions.

(4) At the request of an obligated person, a person or customer participating in a transaction performed in economic or professional activities shall submit documents and provide relevant information required for the application of the due diligence measures specified in subsection 13 (1).

(5) A representative of a legal person of a foreign country shall, at the request of an obligated person, submit a document certifying his or her powers, which has been notarised or authenticated pursuant to an equal procedure and legalised or authenticated by a certificate replacing legalisation (apostille), unless otherwise prescribed by an international agreement.

(6) If the document or data specified in subsections (1) and (3) cannot be received, documents certified or authenticated by a notary public or authenticated officially may be used for verification of the identity of a person.

(7) A person or customer participating in an economic or professional transaction or an official act shall, at the request of an obligated person, confirm the authenticity of the submitted information and documents received from the application of the due diligence measures by his or her signature.

#### **§ 24. Documents and data serving as basis of identification of legal persons**

(1) An obligated person shall identify a legal person and its passive legal capacity and verify the obtained information. A legal person registered in Estonia or a branch of a foreign company registered in Estonia shall be identified on the basis of an extract of a registry card of the relevant register and a foreign legal person is identified on the basis of an extract of the relevant register or a transcript of the registration certificate or an equal document, which has been issued by a competent authority or body not earlier than six months before submission thereof.

(2) The document submitted to enable identification shall at least contain:

- 1) the business name or the name, seat and address of the legal person;
- 2) the registry code or registration number;
- 3) the date of issuance of the document and the name of the agency that issued the document.

(3) On the basis of the documents specified in subsection (1) or, if the aforementioned documents do not contain the respective data, on the basis of the information received from the representative of the legal person participating in the transaction, an obligated person shall register the following data:

- 1) the names of the director or the members of the management board or a body replacing it and their authorisation in representing the legal person;
- 2) the area of activity of the legal person;
- 3) telecommunications' numbers;
- 4) the data of the beneficial owners of the legal person.

(4) If an obligated person has information that a politically exposed person of another contracting state of the European Economic Area or third country may be related to a person or customer participating in a transaction entered into in economic or professional activities, the circumstances specified in subsection 23 (3) shall be registered on the basis of the information received from the representative of the legal person in addition to the data specified in subsection (3).

(5) An extract of the registry card does not have to be submitted if an obligated person has access to the data of the commercial register and the register of non-profit associations and foundations or the corresponding register of a foreign country via the computer network.

(6) If the document or data specified in subsections (1) and (3) cannot be received, documents certified or authenticated by a notary public or authenticated officially shall be used for verification of the identity of a person.

#### **§ 25. Registration of the data of the transaction**

(1) Upon identification and verification of a person, an obligated person shall register the date or period of time of the conclusion of the transaction and a description of the content of the transaction.

(2) A credit and financial institution shall register the following data about a transaction:

1) upon opening an account, the account type, account number, currency and significant characteristics of the securities or other property;

2) upon the deposit of property, the deposit number and the market value of the property on the date of depositing or a detailed description of the property if the market value of the property cannot be determined;

3) upon renting or using a safe deposit box or a safe in a bank, the number of the safe deposit box or safe;

4) upon making a payment to the customer relating to shares, bonds or other securities, the type of the securities, the monetary value of the transaction, the currency and the account number;

5) upon the conclusion of a life assurance contract, the account number debited to the extent of the first premium;

6) upon making a disbursement under a life assurance contract, the account number that was credited to the extent of the amount of disbursement;

7) in the case of the payment mediation service, the data, the communication of which is compulsory under Regulation (EC) No. 1781/2006 of the European Parliament and Council, of the payer accompanying the transfers of funds;

8) in the case of providing services of alternative means of payment, the name of the payer and recipient, the personal identification code, and upon absence thereof, the date and place of birth or a unique feature on the basis of which the payer can be identified;

9) in the case of another transaction, the transaction amount, the currency and the account number.

#### **§ 26. Preservation of data**

(1) An obligated person shall preserve the original documents or copies of the documents specified in §§ 23 and 24, which serve as the basis of identification and verification of a person, and the documents serving as the basis of establishment of a business relationship no less than five years after the termination of the business relationship.

(2) An obligated person shall preserve the documents prepared relating to the transaction on any data medium and the documents and data serving as the basis of the notification obligations specified in subsections 32 (1) and (2) for no less than five years after the conclusion of the transaction or the performance of the notification obligation.

(3) An obligated person shall preserve the documents and data specified in sections (1) and (2) in a manner which allows for an exhaustive and immediate reply to enquiries from the Financial Intelligence Unit or other investigative bodies or from a court pursuant to legislation.

### **Division 3 Management of Risks Relating to Money Laundering and Terrorist Financing**

#### **§ 27. Refusal from transaction and termination of business relationship**

(1) An obligated person is prohibited to establish a business relationship or to enter into a transaction specified in clause 12 (1) 2) if a person or customer participating in the transaction or the official act, regardless of a respective request, does not submit the documents or relevant information required to comply with the due diligence measures specified in clauses 13 (1) 1) to 4) or if, on the basis of the documents submitted, the obligated person has reasonable doubt that it may be money laundering or terrorist financing.

(1<sup>1</sup>) A credit institution is prohibited to conclude a settlement contract, if the owner of the account specified in clause 15 (4<sup>1</sup>), regardless of a respective request, does not submit the documents or relevant information required to comply with the due diligence measures specified in clauses 13 (1) 1) to 4) or if, on the basis of the documents submitted, the obligated person has reasonable doubt that it may be money laundering or terrorist financing.

[RT I 2008, 27, 177 – enforced. 10.07.2008]

(2) An obligated person is prohibited to conclude a transaction if a person or customer participating in the transaction or the official act, regardless of a respective request, does not submit the documents or relevant information required for identification of the circumstances specified in clauses 13 (1) 1) to 4) or data certifying the legal origin of the property constituting the object of the transaction or if, on the basis of the data and documents submitted, the obligated person suspicion that it may be money laundering or terrorist financing.

(3) In a long-term contract serving as the basis of a business relationship, an obligated person shall stipulate the right to terminate it extraordinarily without following the term of advance notification, if a person or customer participating in a transaction concluded in economic or professional activities does not, regardless of a respective request, submit documents and relevant information or if the submitted documents and data do not eliminate the obligated person's suspicion that the purpose of the transaction or business relationship may be money laundering or terrorist financing.

(4) In the event of termination of a business relationship on the basis of subsection (2) of this section, a credit or financial institution may transfer the property of a customer only to an account opened in a credit institution or a branch of a credit institution registered in the Estonian commercial register or in a credit institution registered or having its seat in a contracting state of the European Economic Area or in a country, where requirements equal to those provided in this Act are in force. Provisions of subsection 720 (6) of the Law of Obligations Act do not apply relating to this subsection.

(4<sup>1</sup>) An agreement in violation of the prohibition specified in subsection (1<sup>1</sup>) of this section is void. Subsection (4) is applied to the accounts of the company being founded if the Financial Intelligence Unit has not prescribed differently in the precept made on the basis of subsection 40 (1) of this law.

[RT I 2008, 27, 177 – enforced. 10.07.2008]

(5) The provisions of subsections (1) to (3) do not apply to notaries public, attorneys, bailiffs, trustees in bankruptcy or other legal service providers or to auditors and persons providing accounting or tax advice when evaluating the customer's legal position, defending or representing the customer in court, challenge or other such proceedings, including providing the customer with consultations regarding the initiation or avoidance of proceedings.

(6) An obligated person shall register the information about refusal to establish a business relationship or conclude a transaction and the circumstances of the termination of a business relationship and the information serving as the basis of the notification obligation arising from § 32 and shall preserve it pursuant to the procedure provided for in § 26.

## **§ 28. Outsourcing of activities related to economic or professional activities of obligated persons**

(1) If an obligated person has outsourced an activity to a third party for the purpose of better performance of the obligations related to its economic or professional activities, it shall be deemed that the third party knows of all requirements arising from this Act. The obligated person who outsourced its activities is liable for infringement of the requirements.

(2) Outsourcing is permitted only if:

1) it does not harm the justified interests of the obligated person or the person participating in the transaction;

2) it does not impede the activities of the obligated person or the performance of the obligations provided in this Act;

3) it does not impede exercising state supervision over the obligated person;

4) the third party to whom the activities are outsourced has the required knowledge and skills and it is capable of fulfilling the requirements provided for in this Act;

5) the obligated person has the right and opportunity to check the third party's performance of the requirements provided in this Act;

6) it is ensured that the documents and data collected for the fulfilment of the requirements arising from this Act are preserved pursuant to the procedure provided for in this Act and legislation adopted on the basis thereof.

(3) An obligated person notifies the competent supervisory authority of outsourcing its activities.

### **§ 29. Internal security measures**

(1) An obligated person shall establish written rules of procedure for application of the due diligence measures provided in this Act, including the assessment and management of the risk of money laundering and terrorist financing, the collection of information and the preservation of data, and the performance of the notification obligation and the notification of the management, as well as rules of internal procedure for checking adherence thereto.

(2) The management board of a legal person considered an obligated person, the head of a branch of an obligated person or, upon absence of the former, an obligated person shall ensure the providing of regular training in the performance of duties arising from this Act for employees whose duties include establishment of business relationships or conclusion of transactions.

(3) The management board of a credit and financial institution and the head of a branch of a foreign credit and financial institution registered in the Estonian commercial register appoints a person as the contact person of the Financial Intelligence Unit (hereinafter contact person).

(4) An obligated person who is not a credit or financial institution may appoint a contact person for the performance of the duties related to prevention of money laundering and terrorist financing. Unless a contact person has been appointed, the duties of a contact person shall be performed by the management board of a legal person, the head of a branch of a foreign company registered in the Estonian commercial register, or a sole proprietor.

(5) An employee or a structural unit may perform the functions of the contact person. If a structural unit performs the duties of the contact person, the head of the respective structural unit shall be responsible for the performance of the given duties. The competent supervisory authority shall be notified of the appointment of the contact person.

### **§ 30. Requirements for rules of procedure**

(1) The rules of procedure established by an obligated person shall correspond to the type, scope and complexity of the economic or professional activities of the obligated person and set out the rules for application of due diligence measures at least in the events specified in subsection 13 (1).

(2) An obligated person shall regularly check whether the established rules of procedure are up-to-date and establish new rules of procedure where necessary.

(3) The rules of procedure shall:

- 1) describe transactions of a lower risk level and establish the appropriate requirements and procedure for entering into such transactions;
- 2) describe transactions of a higher risk level and establish the appropriate requirements and procedure for entering into and monitoring such transactions;
- 3) set out the rules of application of the due diligence measures specified in clause 13 (1) 5);
- 4) set out the requirements and procedure for preservation of the documents and data provided in Division 2 of this Chapter.

(4) The rules of procedure shall also contain instructions regarding how to effectively and quickly identify whether or not the person is:

- 1) a politically exposed person;
- 2) a person whose place of residence or seat is in a country where no sufficient measures for the prevention of money laundering and terrorist financing have been applied;
- 3) a person with regard to whose activities there is prior suspicion that the person may be involved in money laundering or terrorist financing;
- 4) a person with regard to whom international sanctions are imposed;
- 5) a person with whom a transaction is concluded via telecommunications.

(5) The rules of procedure are introduced to all employees of an obligated person whose duties include establishment of business relationships or conclusion of transactions.

(6) The requirements for the rules of procedure to be established by credit and financial institutions, internal audit rules for checking the performance, and the application thereof shall be established by a regulation of the Minister of Finance.

### **§ 31. Contact person**

(1) The organisational structure of a credit or financial institution shall be suitable for the performance of the requirements arising from this Act and ensure direct subordination of the contact person to the management board of the credit or financial institution.

(2) The management board of a credit and financial institution and the head of a branch of a foreign credit and financial institution registered in the Estonian commercial register shall ensure that the contact person has the competence, means and access to relevant information required for the performance of the functions provided in this Act in all structural units of the credit or financial institution.

(3) The functions of the contact person are:

- 1) organisation and analysis of information referring to unusual transactions or transactions with the suspicion of money laundering or terrorist financing in the activities of the obligated person;
- 2) notification of the Financial Intelligence Unit in the event of suspicion of money laundering or terrorist financing;
- 3) periodic submission of written statements on implementation of the rules of procedure to the management board of the credit or financial institution or the head of the branch of the foreign credit or financial institution registered in the Estonian commercial register;
- 4) performance of other obligations, which are related to the fulfilment of the requirements of the Act by the credit or financial institution.

(4) The contact person has the right to:

- 1) make proposals to the management board of the credit or financial institution or the head of a branch of a foreign credit or financial institution registered in the Estonian commercial register for the amendment or modification of the rules of procedure containing requirements

for prevention of money laundering and terrorist financing or the organisation of training specified in subsection 29 (2);

2) demand that the structural units of the obligated person eliminate within a reasonable term the deficiencies detected in the implementation of the requirements of the prevention of money laundering and terrorist financing.

### **Chapter 3**

## **ACTION TAKEN IN CASE OF SUSPICION OF MONEY LAUNDERING OR TERRORIST FINANCING**

### **§ 32. Notification obligation in case of suspicion of money laundering or terrorist financing**

(1) If, upon performance of economic or professional activities or when carrying out an official act, an obligated person identifies an activity or circumstances which might be an indication to money laundering or terrorist financing or in case the obligated person has reason to suspect or knows that it is money laundering or terrorist financing, the obligated person shall immediately notify the Financial Intelligence Unit thereof.

(2) Subsection (1) shall also be applied in the events provided by subsections 27 (1) and (2).

(3) An obligated person, except a credit institution, notifies the Financial Intelligence Unit of any transaction where the financial obligation exceeding 500,000 kroons or an equal amount in another currency is performed in cash, regardless of whether the transaction is made in a single payment or several related payments. A credit institution notifies the Financial Intelligence Unit of any currency exchange transaction exceeding 500,000 kroons in cash, unless the credit institution has a business relationship with the person participating in the transaction.

(4) Notaries public and attorneys are not subject to the notification obligation arising from subsections (1) and (3) when evaluating a customer's legal position, defending or representing the customer in court, challenge or other such proceedings, including providing the customer with consultations regarding the initiation or avoidance of proceedings, regardless of whether the information has been received before, during or after proceedings.

(5) An obligated person has the right to postpone a transaction or an official act in the event specified in subsection (1). If postponement of a transaction may cause considerable harm, the transaction has to be concluded or if it may impede the apprehension of the person who possibly committed money laundering or terrorist financing, the transaction or the official act shall be carried out and the Financial Intelligence Unit shall be notified thereafter.

### **§ 33. Place and format of the performance of the notification obligation**

(1) The information is forwarded to the Financial Intelligence Unit of the contracting state of the European Economic Area in whose territory the obligated person is located.

(2) A notification is communicated orally, in writing or in a format which can be reproduced in writing. If a notification was communicated orally, it shall be repeated the next working day in writing or in a format which can be reproduced in writing.

(3) The data used for identifying and verifying a person or, where necessary, copies of relevant documents may be appended to a notification.

(4) The format of the notification to be forwarded to the Financial Intelligence Unit and instructions for the preparation thereof shall be established by a regulation of the Minister of the Interior.

### **§ 34. Confidentiality obligation of the notifier**

(1) An obligated person, a structural unit and a member of a directing body and an employee of an obligated person who is a legal person, is prohibited to notify a person, the beneficial owner or representative of the person about a notification given to the Financial Intelligence Unit about the person and about precepts made by the Financial Intelligence Unit or initiation of criminal proceedings under § 40 or 41. An obligated person may notify a person that the Financial Intelligence Unit has restricted the use of the person's account or that other restrictions have been imposed after fulfilment of the precept made by the Financial Intelligence Unit.

(2) The provisions of subsection (1) are also applied to the providing of information to third parties, unless otherwise provided in this Act.

(3) An obligated person may give information to a third party if:

1) the third party belongs to the same consolidation group or financial conglomerate as the obligated person specified in clauses 3 (1) 1) and 2) of this Act and the undertaking is located in a contracting state of the European Economic Area or third country where requirements equal to those provided in this Act are in force, state supervision is exercised over fulfilment thereof and requirements equal to those in force in Estonia are applied for the purpose of keeping professional secrets and protecting personal data;

2) the third party acts in the same legal person or structure, which has joint owners and management or internal control system as the obligated person in the profession of a notary public, attorney or auditor;

3) the information specified in subsection (1) concerns the same person and the same transaction which is related to several obligated persons and the information is given by a credit institution, financial institution, notary public, attorney or auditor to a person operating in the same branch of the economy or profession who is located in a contracting state of the European Economic Area or third country where requirements equal to those provided in this Act are in force, state supervision is exercised over fulfilment thereof and requirements equal to those in force in Estonia are applied for the purpose of keeping professional secrets and protecting personal data.

(4) Information exchanged pursuant to subsection (3) may be used only for the purpose of the prevention of money laundering and terrorist financing.

(5) The prohibition provided by subsection (1) is not applied if a notary public, attorney or auditor tries to convince a customer to refrain from illegal acts.

### **§ 35. Exempt from liability**

(1) An obliged person, its employee, representative or a person who acted in its name is not, upon the performance of the obligations arising from this Act, liable for the damage arising from the failure to conclude a transaction or to conclude a transaction by the due date, if the damage was caused to the person participating in the transaction concluded in economic or professional activities in connection to the notification of the Financial Intelligence Unit of the suspicion of money laundering or terrorist financing in good faith, also for the damage caused to a person or customer participating in a transaction concluded in economic or professional activities in connection with the cancellation of a long-term contract on the basis of subsection 27 (2).

(2) The performance of the notification obligation in good faith arising from § 32 and the communication of the relevant data by an obligated person is not deemed infringement of the confidentiality requirement provided by law or contract and no liability provided by legislation or contract is imposed on the person who performed the notification obligation for the disclosure of the information. An agreement derogating from this provision is void.

## **Chapter 4**

## **FINANCIAL INTELLIGENCE UNIT**

### **§ 36. Financial Intelligence Unit**

(1) The Financial Intelligence Unit is an independent structural unit of the Central Criminal Police.

(2) The head of the Financial Intelligence Unit is appointed by the national police commissioner of the Police Administration on the proposal of the police chief of the Central Criminal Police for five years.

(3) The Police Board provides the Financial Intelligence Unit with sufficient funds for the performance of the functions provided by law.

### **§ 37. Functions of Financial Intelligence Unit**

(1) The functions of the Financial Intelligence Unit are:

1) to collect, register, process and analyse information received pursuant to §§ 32 and 33 of this Act. In the course thereof, the significance of the information submitted to the Financial Intelligence Unit for the prevention, identification or investigation of money laundering, criminal offences related thereto and terrorist financing are assessed;

2) to inform the persons who submit information to the Financial Intelligence Unit of the use of the information submitted for the purposes specified in clause 1) of this section in order to improve the performance of the notification obligation;

3) tracing criminal proceeds and application of the enforcement powers of the state on the bases and within the scope provided by law;

4) to supervise the activities of obligated persons in complying with this Act, unless otherwise provided by law;

5) public disclosure of the information on prevention and identification of money laundering and terrorist financing, analysing the respective statistics, and preparing and publishing an aggregate overview at least once a year;

6) cooperation with obligated persons, investigative bodies and police institutions in the prevention of money laundering and terrorist financing;

7) training obligated persons, investigative bodies, prosecutors and judges in matters related to prevention of money laundering and terrorist financing;

8) organisation of foreign communication and exchange of information pursuant to § 46;

9) exercising supervision over the application of the measures specified in clauses 3 (1) 3) to 5) of the International Sanctions Act, unless otherwise provided by the Act or legislation of the European Union;

10) to conduct proceedings in matters of misdemeanours provided for in this Act.

(2) The Financial Intelligence Unit analyses and verifies information about suspicions of money laundering or terrorist financing, taking measures for preservation of property where necessary and immediately forwarding materials to the competent authorities upon detection of elements of a criminal offence.

### **§ 38. Administrative acts of the Financial Intelligence Unit**

(1) The Financial Intelligence Unit issues precepts and other administrative acts in order to perform the functions arising from law.

(2) A precept issued on the basis of subsection 40 (1) of this Act does not set out the factual basis for the issue. The factual circumstances reasoning the precept are reflected in a separate document. The person whose transaction was suspended or the use of whose account was restricted by a precept has the right to examine the document presenting the factual circumstances. The Financial Intelligence Unit has the right to deny a request to examine a

document if this would impede the prevention of money laundering or terrorist financing or hinder the truth from being ascertained in criminal proceedings.

(3) An administrative act of the Financial Intelligence Unit is signed by the head or deputy head of the Financial Intelligence Unit or by an official authorised by the head of the Financial Intelligence Unit. Upon signature by an authorised official, the number and date of the document granting the right of signature and the place where the document can be reviewed is indicated next to the signature.

(4) In the event of failure to comply with an administrative act, the Financial Intelligence Unit may impose a coercive measure pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act. The upper limit for a penalty payment for failure to comply with the administrative act is 20,000 kroons for the first occasion and 80,000 kroons for each subsequent occasion.

### **§ 39. Guidelines of the Financial Intelligence Unit**

(1) The Financial Intelligence Unit has the right to issue advisory guidelines to explain the legislation regulating the prevention of money laundering and terrorist financing.

(2) The Financial Intelligence Unit issues advisory guidelines regarding the characteristics of suspicious transactions.

(6) The Financial Intelligence Unit issues advisory guidelines regarding the characteristics of terrorist financing. The guidelines are coordinated with the Security Police Board beforehand.

(4) The guidelines of the Financial Intelligence Unit are published on the website of the Financial Intelligence Unit.

### **§ 40. Suspension of transaction, restriction of disposal of property and transfer of property to state ownership**

(1) In the event of suspicion of money laundering or terrorist financing, the Financial Intelligence Unit may issue a precept to suspend a transaction or to impose restrictions on the disposal of an account or other property constituting the object of the transaction for up to thirty days as of the delivery of the precept. In the case of property registered in the land register, ship register, traffic register or commercial register, the Financial Intelligence Unit may, in the event of justified suspicion, restrict the disposal of the property for the purpose of ensuring its preservation for up to thirty days.

(2) Before expiry of the term specified in subsection (1) a transaction may be entered into or the restriction of disposal of an account or other property may be derogated from only upon the written consent of the Financial Intelligence Unit. During the time the restrictions on using the account are in force, the credit or financial institution does not execute any orders issued by the account holder for debiting the account.

(3) On the basis of a precept the Financial Intelligence Unit may restrict the use of property for up to 60 days for the purpose of ensuring its preservation if:

1) during verification of the source of the property in case there is a suspicion of money laundering, the owner or possessor of the property fails to submit evidence certifying the legality of the source of the property to the Financial Intelligence Unit within thirty days as of the suspension of the transaction or as of the imposition of restrictions on the use of the account;

2) there is suspicion that the property is used for terrorist financing;

(4) If in case of suspicion of money laundering the legality of the source of the property is verified before the term specified in subsection (3) of this section expires, the Financial Intelligence Unit is required to revoke the restrictions on the disposal of the property immediately. If criminal proceedings have been commenced in the matter, a decision shall be

taken on the revocation of the restrictions on the disposal of the property from pursuant to the procedure provided by the Acts regulating criminal procedure.

(5) Disposal of property may be restricted for a term exceeding the term specified in subsection (3) if criminal proceedings have been commenced in the matter.

(6) The Financial Intelligence Unit or the investigative body may restrict the disposal of property until identification of the actual owner as well as upon termination of criminal proceedings if it has not proven possible to establish the actual owner of the property and if the possessor of the property asserts that the property does not belong to possessor and relinquishes possession thereof.

(7) The Prosecutor's Office or the investigative body may apply to an administrative court for permission to transfer property to state ownership if, within a period of one year as of establishment of the restrictions on the disposal of the property, it has not proven possible to establish the owner of the property and if the possessor of the property asserts that the property does not belong to him and relinquishes possession thereof. In the event where possession of movable property or immovable property is relinquished, the property shall be sold pursuant to the procedure provided in the Acts regulating the enforcement procedure and the amount received from the sale is transferred to the state. The owner of the property has the right to reclaim an amount equivalent to the value of the property within a period of three years from the date on which the property is transferred to state ownership.

#### **§ 41. Requesting additional information**

(1) To perform the functions arising from law the Financial Intelligence Unit has the right to receive information from the Financial Supervision Authority or local government authorities and, on the basis of precepts, from obligated persons regarding the circumstances, transactions or persons related to suspicion of money laundering or terrorist financing.

(2) The addressee of a precept is required to comply with the precept and to submit the requested information, including any information subject to banking or business secrecy, during the term prescribed in the precept. The information is submitted in writing or in a format which can be reproduced in writing.

(3) In order to prevent money laundering, the Financial Intelligence Unit has the right to obtain, pursuant to the procedure provided by legislation, relevant information, including information collected by surveillance, from any surveillance agency. If the Financial Intelligence Unit wishes to forward information collected by surveillance and which was submitted by a surveillance agency to other agencies, the Financial Intelligence Unit must obtain written consent from the agency which submitted the information.

(4) On the basis of a precept the Financial Intelligence Unit has the right to receive information from third parties to identify the circumstances which are relevant to the prevention of money laundering or terrorist financing, including accounting documents on any data medium from a third party whose connection to the investigated transactions became evident in the course of the inspection or analysis.

(5) This section does not apply to an attorney, except in cases where the notification submitted by the attorney to the Financial Intelligence Unit does not meet the established requirements, the required documents are not attached to the notice or the attached documents do not meet the requirements.

#### **§ 42. Interbase cross-usage of data**

In order to perform the functions arising from law, the Financial Intelligence Unit has the right to make enquiries and receive data from state and local government databases and databases maintained by persons in public law, pursuant to the procedure provided by the legislation.

#### **§ 43. Restrictions on the use of information**

- (1) Only the officials of the Financial Intelligence Unit shall have access to and the right to process the information in the Financial Intelligence Unit database.
- (2) In order to prevent or identify money laundering or terrorist financing or criminal offences related thereto and in order to facilitate pre-trial investigation thereof, the Financial Intelligence Unit is required to forward significant information, including information subject to tax and banking secrecy to the prosecutor, the investigative body and the courts in connection with court proceedings.
- (3) Information registered in the Financial Intelligence Unit shall only be forwarded to the authority engaged in the pre-trial procedure, the prosecutor or a court in connection with criminal proceedings on the basis of a written request of the preliminary investigation authority, the Prosecutor's Office or the court or on the initiative of the Financial Intelligence Unit if the information is significant for the prevention, establishment or investigation of money laundering or a criminal offence related thereto.
- (4) The Financial Intelligence Unit may notify the Financial Supervision Authority of infringement of the requirements established by this Act by a credit or financial institution.
- (5) The Financial Intelligence Unit shall not disclose personal data of the person performing the notification obligation or a member or employee of the directing body of the obligated person.
- (6) The procedure for the registration and processing of the information collected by the Financial Intelligence Unit shall be established by a regulation of the Minister of the Interior.

#### **§ 44. Requirements for officials of Financial Intelligence Unit**

- (1) Only a person with impeccable reputation, required experience and abilities, and high moral qualities may be appointed as an official of the Financial Intelligence Unit.
- (2) Officials of the Financial Intelligence Unit are required to maintain the confidentiality of information received in the course of their official duties, including information subject to banking secrecy, even after the performance of their official duties or the termination of a service relationship connected with the processing or use of the information.

#### **§ 45. Cooperation between Financial Intelligence Unit and Security Police Board**

- (1) The Financial Intelligence Unit and the Security Police Board shall cooperate in investigation of transactions suspected of terrorist financing through mutual official assistance and exchange of information.
- (2) The Director General of the Security Police Board shall appoint a contact person who has an equal right to the official of the Financial Intelligence Unit to receive information of all notices of suspicion of terrorist financing and to make proposals to request additional information where necessary.
- (3) The contact person of the Security Police Board shall be subject to the provisions of subsections 37 (1) 1), 6) and 7), § 41, subsections 43 (1) to (5) and subsection 44 (2).
- (4) The contact person of the Security Police Board has the right to exercise supervision specified in § 48 jointly with the Financial Intelligence Unit.

#### **§ 46. International exchange of information**

The Financial Intelligence Unit has the right to exchange information and enter into cooperation agreements with foreign agencies which perform the functions of a financial intelligence unit.

### **Chapter 5**

## **SUPERVISION**

### **§ 47. Supervisory authorities**

(1) The Financial Intelligence Unit exercises supervision over fulfilment of the requirements arising from this Act and legislation adopted on the basis thereof by the obligated persons, unless otherwise provided in this section.

(2) The Financial Supervision Authority exercises supervision over fulfilment of the requirements arising from this Act by credit and financial institutions which are subject to supervision by the Financial Supervision Authority under the Financial Supervision Authority Act.

(3) The board of the Estonian Bar Association (hereinafter the Bar Association) exercises supervision over fulfilment of the requirements arising from this Act and legislation adopted on the basis thereof by the members of the Bar Association on the basis of the Bar Association Act, taking into account the provisions of this Chapter.

(4) The Ministry of Justice exercises supervision over fulfilment of the requirements arising from this Act and legislation adopted on the basis thereof by notaries public on the basis of the Notaries Act, taking into account the provisions of this Chapter. The Ministry of Justice may delegate supervision to the Chamber of Notaries.

(5) The Financial Supervision Authority, the board of the Bar Association and the Ministry of Justice and the Chamber of Notaries shall cooperate with the Financial Intelligence Unit pursuant to the objectives of this Act.

### **§ 48. Rights of the supervisory authority**

(1) The supervisory authority has the right to inspect the place or the seat of business of obligated persons. The supervisory authority has the right to enter the building and the room that is in the possession of an obligated person in the presence of a representative of the inspected person.

(2) In the course of an on-site inspection the supervisory authority has the right to:

- 1) without limitations inspect the required documents and data media, make extracts, transcripts and copies thereof, receive explanations regarding the documents and data media from the obligated person, and monitor the work processes;
- 2) receive oral and written explanations from the obligated person, members of its directing body or employees.

### **§ 49. Rights of the supervisory authority**

(1) If upon exercising supervision the Financial Supervision Authority, the board of the Bar Association, the authorised officials of the Ministry of Justice or the Chamber of Notaries detect a situation of which the elements refer to a justified suspicion of money laundering or terrorist financing, they shall immediately notify the Financial Intelligence Unit thereof pursuant to the procedure provided in subsection 33 (4).

(2) The Financial Supervision Authority, the board of the Bar Association and the Ministry of Justice obliged to submit to the Financial Intelligence Unit by April 15 information about:

- 1) supervisory operations conducted in the previous calendar year;
- 2) violations detected upon exercising supervision and punishments imposed in the previous calendar year based on types of obligated persons.

### **§ 50. Reporting of the inspection results**

(1) The supervisory authority shall prepare a report on the inspection results, which is communicated to the inspected person within one week after the inspection.

(2) The inspection report shall contain the following data:

- 1) the name of the inspection operation;
  - 2) the official title and given name and surname of the author of the inspection report;
  - 3) the place and date of the compiling of the inspection report;
  - 4) reference to provisions serving as the basis for inspection;
  - 5) the given name and surname and the official title of the representative of the inspected person or the possessor of the building or room who attended the inspection;
  - 6) the given name and surname and the official title of another person who attended the inspection;
  - 7) the time of the beginning and the end and the conditions of the inspection;
  - 8) the process and results of the inspection along with the required details.
- (3) The author of the inspection report signs it. The inspection report remains with the supervisory official, a copy shall be given to the inspected person or their representative.
- (4) The inspected person has the right to submit written explanations within 30 days after receiving the inspection report.

### **§ 51. Data protection supervision**

The Data Protection Inspectorate exercises supervision over the legality of the processing of the information registered in the Financial Intelligence Unit.

## **Chapter 6**

### **REGISTRATION IN THE REGISTER OF ECONOMIC ACTIVITIES**

### **§ 52. Registration obligation**

(1) The following persons (hereinafter in this Chapter service providers) are required to register themselves in the register of economic activities (hereinafter in this Chapter register) before commencing operations in the corresponding area of activity:

- 1) financial institutions which are not subject to supervision by the Financial Supervision Authority pursuant to § 2 of the Financial Supervision Authority Act;
- 2) providers of trust and company services;
- 3) providers of currency exchange services;
- 4) providers of payment services;
- 5) providers of alternative means of payment services;
- 6) pawnbrokers.

(2) The provisions of the Register of Economic Activities Act apply to the registration procedure together with the specifications arising from this Act.

### **§ 53. Registration application**

(1) The service provider shall submit a registration application to the authorised processor of the register. The registration application shall contain:

- 1) the name, registry code, address and other contact details of the service provider;
- 2) the area of activity;
- 3) the address or addresses of the place or places providing the service or the address of the website used for providing the service;
- 4) the name and contact details of the person in charge of providing the service with regard to all the places providing the service specified in clause 3);
- 5) the name, personal identification code or, upon absence thereof, the date and place of birth and the address of the place of residence of a member of the directing body of the service provider who is a legal person, unless the service provider is an undertaking registered in the commercial register;

6) the name, personal identification code or, upon absence thereof, the date and place of birth and the address of the place of residence of the beneficial owner of the service provider who is a legal person;

7) the date of submission of the application, and a signature;

8) the name, official title and contact details of the person who signed the application.

(2) If a service provider who is a legal person has not been registered in the Estonian commercial register, the registration application shall contain the name and personal identification code or registry code (upon absence thereof, the date and place of birth) and place of residence of the owner of the service provider.

#### **§ 54. Registration**

(1) In addition to the provisions of the Register of Economic Activities Act, the prerequisite for registration is that it becomes evident from a reply to an enquiry made to the authorised processor of the penal register by the authorised processor of the register that there are no grounds for refusal from registration arising from § 55 in connection with the person specified in clauses 53 (1) 1), 5) and 6).

(2) In addition to the information provided by the Register of Economic Activities Act, the following shall be entered in the register:

1) the area of activity;

2) the address or addresses of the place or places providing the service or the address of the website used for providing the service;

3) the name and contact details of each person in charge of providing the service with regard to the places providing the service;

4) the name, personal identification code or, upon absence thereof, the date and place of birth and the address of the place of residence of a member of the directing body of the service provider who is a legal person;

5) the name, personal identification code or, upon absence thereof, the date and place of birth and the address of the place of residence of the beneficial owner of the service provider who is a legal person.

(3) Only the registered service provider, state authority or a person who must perform duties imposed on it by law or a legislation pursuant to law is entitled to access the data specified in clauses (2) 4) and 5) and receive extracts or make enquiries using the data security measures agreed on the registrar and via a data exchange system based on a computer network.

#### **§ 55. Refusal to register**

In addition to the provisions of the Register of Economic Activities Act the authorised processor of the register shall refuse to register if it becomes evident from a reply to an enquiry made to the penal register that a criminal conviction for a crime specified in §§ 237-237<sup>3</sup> or 394-396 of the Penal Code has entered into force with regard to the persons specified in clauses 53 (1) 1), 5) or 6) or subsection 53 (2) or with regard to whom a criminal conviction for another intentionally committed criminal offence has entered into force and the terms arising from subsection 25 (1) of the Penal Register Act have not expired.

#### **§ 56. Deletion of the registration**

In addition to the provisions of the Register of Economic Activities Act a registration shall be deleted after receipt of respective information if it becomes evident from a reply to an enquiry made to the penal register that a criminal conviction for a crime specified in §§ 237-237<sup>3</sup> or 394-396 of the Penal Code has entered into force with regard to the persons specified in clauses 53 (1) 1), 5) or 6) or subsection 53 (2) or with regard to whom a criminal conviction

for another intentionally committed criminal offence has entered into force and the terms arising from subsection 25 (1) of the Penal Register Act have not expired.

## **Chapter 7 LIABILITY**

### **§ 57. Failure to comply with the identification requirement**

(1) Failure on the part of an employee of a credit or financial institution or on the part of another person or agency or an employee thereof to comply with the identification obligation provided in this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine up to 500,000 kroons.

### **§ 58. Violation of the requirement to register and preserve data**

(1) Violation of the requirement to register and preserve data provided in this Act is punishable by a fine up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine up to 500,000 kroons.

### **§ 59. Failure to submit and late submission of mandatory information**

Failure on the part of an employee of an obligated person to submit mandatory information provided for in this Act to the contact person, or failure to submit such mandatory information on time, is punishable by a fine up to 300 fine units.

### **§ 60. Failure to report suspicion of money laundering or terrorist financing and submission of incorrect information**

(1) Violation of the obligation to notify the Financial Intelligence Unit of suspicion of money laundering or terrorist financing, currency exchange transaction or another transaction where the financial obligation exceeds 500,000 kroons or an equal amount in another currency is performed in cash or submission of incorrect information by the manager, contact person or another employee of an obligated person is punishable by a fine up to 300 fine units or detention.

(2) The same act, if committed by a legal person, is punishable by a fine up to 500,000 kroons.

### **§ 61. Unlawful notification of the information submitted to the Financial Intelligence Unit**

(1) Unlawful notification of a person or a beneficial owner of a person by the manager, contact person or another employee of an obligated person about a notification or data submitted to the Financial Intelligence Unit regarding the person or the precepts made by the Financial Intelligence Unit or criminal proceedings instituted regarding the person is punishable by a fine up to 300 fine units or detention.

(2) The same act, if committed by a legal person, is punishable by a fine up to 500,000 kroons.

### **§ 62. Failure to apply internal security measures**

(1) Failure by the manager of an obligated person to establish rules of procedure for application of due diligence measures, assessment and management of the risk of money laundering and terrorist financing, collection of information, preservation of data and

performance of the notification obligation as well as for appointment of the contact person by the manager of a credit or financial institution is punishable by a fine up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine up to 500,000 kroons.

#### **§ 63. Violation of the obligations of a payment service provider**

(1) Failure to identify, verify or communicate information about a payer by the manager or employee of a payment services provider or a violation of other obligations of a payment service provider established by Regulation (EC) No. 1781/2006 of the European Parliament and of the Council on controls of cash entering or leaving the Community is punishable by a fine up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine up to 500,000 kroons.

#### **§ 64. Violation of the registration obligation**

Violation of the obligation to register an application for the amendment of the registration data or the violation of the obligation to notify of the termination of the activities of the service provider established with regard to financial institutions not subject to supervision exercised by the Financial Supervision Authority, trust and company service providers, currency exchange service providers, payment service providers, providers of services of alternative means of payment and pawnbrokers is punishable by a fine up to 300 fine units.

#### **§ 65. Proceeding**

The misdemeanours specified in §§ 57-64 are subject to the provisions of the general part of the Penal Code and the Code of Misdemeanour Procedure.

(2) Extrajudicial proceedings concerning the misdemeanours provided for in §§ 57-64 of this Act shall be conducted by:

- 1) police prefecture;
- 2) the Financial Supervision Authority;
- 3) the Financial Intelligence Unit.

## **Chapter 8 IMPLEMENTING PROVISIONS**

#### **§ 66. Entry into force of the registration obligation of pawnbrokers, trust and company service providers and financial institutions**

Chapter 6 of this Act shall enter into force with regard to pawnbrokers, trust and company service providers and financial institutions not subject to supervision exercised by the Financial Supervision Authority on 15 June 2008.

#### **§ 67. Repeal of Money Laundering and Terrorist Financing Prevention Act**

The Money Laundering and Terrorist Financing Prevention Act (RT I 1998, 110, 1811; 2007, 24, 127) is repealed.

#### **§ 68. Amendment of Credit Institutions Act**

The Credit Institutions Act (RT I 1999, 23, 349; 2007, 24, 127) is amended as follows:

1) subsection 88 (8) is worded as follows:

“(8) Credit institutions have the right and obligation to disclose information subject to banking secrecy to the Financial Intelligence Unit and the Security Police Board in the cases and to the extent prescribed in the Money Laundering and Terrorist Financing Prevention Act.”;

2) subsection 89 2<sup>3</sup> is worded as follows:

“(2<sup>3</sup>) The standard term by which a credit institution or a financial institution belonging to the same consolidation group as the credit institution reserves the right to amend the standard term specified in subsection 2<sup>2</sup> of this section shall be subject to the provisions of subsection 43 (2) of the Law of Obligations Act. Amendment of the standard term shall be deemed as unfair first of all if the amendment gives the credit institution or the financial institution belonging to the same consolidation group as the credit institution the right to process personal data to an extent which the data subject could not reasonably foresee given the purpose of the contract.”

### **§ 69. Amendment of Security Authorities Act**

Clause 21) is added to § 6 of the Security Authorities Act (RT I 2001, 7, 17; 2007, 16, 77) worded as follows:

“(2<sup>1</sup>) prevention and combating terrorism, terrorist financing and terrorist supporting, and collection and processing of information to that end;”.

### **§ 70. Amendment of Taxation Act**

Subsection 28 (9) of the Taxation Act (RT I 2002, 26, 150; 2007, 44, 316) shall be worded as follows:

“(8) to the Financial Intelligence Unit for the prevention, detection and investigation of money laundering or terrorist financing or criminal offences related to money laundering or terrorist financing;”.

### **§ 71. Amendment of Penal Code**

Subsection § 334<sup>1</sup> (1) of the Penal Code (RT I 2001, 61, 364; 2007, 45, 320) shall be amended and worded as follows:

“(1) Failure to hand counterfeit money over to a police prefecture by an employee of Eesti Post, credit institutions or financial institutions provided for in the Credit Institutions Act, or providers of payment services or providers of currency exchange services specified in the Money Laundering and Terrorist Financing Prevention Act is punishable by a fine up to 300 fine units.”

### **§ 72. Amendment of Notaries Act**

The Notaries Act (RT I 2000, 104, 684; 2006, 7, 42) is amended as follows:

1) subsections 5 (1) and (2) are amended and worded as follows:

“(1) The Ministry of Justice exercises supervision over the professional activities of notaries public. The Ministry of Justice may involve the Chamber of Notaries in exercising supervision.

(2) The Ministry of Justice may delegate supervision over fulfilment of the requirements of the Money Laundering and Terrorist Financing Prevention Act and legislation adopted on the basis thereof as well as supervision over other single issues to the Chamber of Notaries. In the area of delegated supervision the Ministry of Justice may give instructions for exercising supervision and change the decisions approved by the Chamber of Notaries in these issues.”;

2) clause 1<sup>1</sup>) is added to subsection 44 (1) worded as follows:

“(1<sup>1</sup>) monitor that notaries public fulfil the requirements of the Money Laundering and Terrorist Financing Prevention Act and legislation adopted on the basis thereof;”

3) clause 3<sup>1</sup>) is added to subsection 44 (2) worded as follows:

“(3<sup>1</sup>) exercise supervision over fulfilment by notaries public of the requirements of the Money Laundering and Terrorist Financing Prevention Act and legislation adopted on the basis thereof;”.

4) clause 10) is added to subsection 44 (3) worded as follows:

“(10) implementation of the due diligence measures and rules of procedure provided in the Money Laundering and Terrorist Financing Prevention Act.”

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<sup>1</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, pp. 15-36);

Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of "politically exposed person" and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ L 214, 04.08.2006, pp. 29-34).

Ene Ergma

President of the Riigikogu

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