



## LAWS AND REGULATIONS

### PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.*

#### AUSTRIA

Communicated by the Government of Austria

##### NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

#### FEDERAL BANKING LAW

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**\*Note by the Secretariat:** This document is a direct reproduction of the text communicated to the Secretariat.

Art. 40 and Art. 41 Money Laundering

Art. 40

- (1) Credit and financial institutions shall record the identity of a customer:
  1. Upon establishment of a continuing business relationship, except
    - (a) On the opening of savings books and securities accounts and
    - (b) For purposes of conducting transactions in accordance with art. 12 of the Custodianship Law;
  2. In all transactions not coming within the framework of a continuing business relationship and whose value amounts to at least S 200,000 or the equivalent thereof, independently of whether the transaction is conducted in a single operation or in several, evidently connected operations: where the value is not known at the start of the transaction, identity shall be recorded as soon as the amount is known and it has been determined that it attains at least S 200,000 or the equivalent thereof;
  3. Where a justified suspicion exists that the customer is in fact participating in transactions which serve money laundering (arts. 165 and 278a, para. 2 of the Penal Code).
- (2) Credit and financial institutions shall require the customer to state whether he wishes to conduct the business relationship (para. 1 subpara. 1, except in cases under (a) and (b)) or the transaction (para. 1 subpara. 2) on his own behalf or on that of a third party; the customer shall comply with this requirement. If the customer states that he wishes to conduct the business relationship (para. 1 subpara. 1) except in cases under (a) and (b) or the transaction (para. 1 subpara. 2), on behalf of a third party, he shall then reveal to the credit or financial institution likewise the identity of the provider of the funds.
- (3) Credit and financial institutions shall retain:
  1. Documentation serving for identification under para. 1 and para. 2 for at least five years after the termination of the business relationship with the customer in question;
  2. Vouchers and records relating to all transactions for at least five years after their execution.
- (4) Credit and financial institutions shall:
  1. Introduce appropriate control and communications procedures in order to prevent transactions serving money laundering and
  2. By means of appropriate measures acquaint staff engaged in the execution of transactions with the provisions having the purpose of preventing or combating money laundering; these measures shall, inter alia, include the participation of the relevant staff in special supplementary training programmes, so that they may learn to recognize transactions possibly connected with money laundering and proceed correctly in such cases.

Art. 41

(1) Where a justified suspicion exists,

1. That an already completed, a current or a forthcoming transaction serves money laundering, or
2. That the customer has contravened the obligation to reveal fiduciary relationships in accordance with art. 40, para. 2,

the credit and financial institutions shall immediately notify the authority (art. 6 of the Security Police Law (SPG)) thereof and pending clarification of the facts of the situation refrain from any further conduct of the transaction, unless the danger exists that delaying the transaction will render more difficult or prevent the establishment of the said facts. In cases of doubt, orders for the deposit of funds may be executed, while orders for the withdrawal of funds shall not be complied with. Credit and financial institutions shall have the right to demand of the authority that the latter decide whether there are objections to the immediate execution of a transaction; if no such decision is forthcoming from the authority (art. 6 SPG) by the end of the next bank working day, the transaction may be effected forthwith.

- (2) Credit and financial institutions shall upon request provide the authority (para. 1) with all the data that the latter deems necessary for preventing or for proceeding against money laundering.
- (3) The authority (para. 1) shall be authorized to order that a current or a forthcoming transaction, in connection with which there exists a justified suspicion that it serves money laundering, shall not be executed or shall be temporarily postponed.
- (4) Credit and financial institutions shall keep secret from customers and third parties all proceedings connected with the observance of paras. 1 to 3.
- (5) Where, in the course of exercising bank supervisory functions, the Federal Minister of Finance or the Austrian National Bank suspects that a transaction is serving money laundering, he or it shall immediately notify the authority (para. 1) thereof.
- (6) Data obtained by the authority under paras. 1, 2 and 5 may, on pain of invalidity, not be used to the disadvantage of the accused or of subsidiarily involved parties in proceedings conducted exclusively on the basis of arts. 33 to 41 inclusive and 49 to 52 inclusive of the Financial Penal Law (FinStrG). If, on the basis of data obtained under paras. 1, 2 and 5, the authority (para. 1) suspects only a violation of arts. 33 to 41 inclusive and 49 to 52 inclusive of the FinStrG, it shall refrain from notification in accordance with art. 84 of the Code of Criminal Procedure and also from notification of the financial prosecuting authorities.

- (7) Claims for compensation on the grounds that a credit or financial institution or an employee thereof, in negligent ignorance that the suspicion regarding money laundering or the suspicion of an offence within the meaning of art. 40, para. 2 was unfounded, has delayed or not executed a transaction shall not be admissible.
- (8) Where such is necessary for ensuring the effectiveness of the obligation to furnish information under para. 1, the Federal Minister of Finance shall by means of an order designate an office for advising credit and financial institutions regarding the observance of this obligation. The following conditions shall here apply:
1. Credit institutions shall not be under an obligation to observe bank secrecy vis-à-vis the office in question (art. 38);
  2. The office and its staff shall treat confidential data which have become known to them in the course of their duties as bank secrets;
  3. The obligation to observe bank secrecy under subpara. 2 shall not apply vis-à-vis the courts in connection with criminal proceedings which have been brought, with exception of the proceedings referred to in para. 6; art. 38, para. 2 shall not be applied;
  4. Errors on the part of the office and its staff in performing their advisory activities vis-à-vis credit and financial institutions shall constitute grounds for compensation only in cases of gross fault.

The Law on the Supervision of Insurance Companies 1978, last amended by Federal Law BGBI. No. 769/1992, shall be amended as follows:

1. An art. 18 (a) drafted as follows shall be added after art. 18:

"Art. 18 (a). (1) Insurance companies authorized to transact life insurance shall, when so doing, record the identity of the insured party:

1. In cases of conclusion of an insurance agreement if the annual premium exceeds 1,000 ECU or the single premium exceeds 2,500 ECU; should the annual premium rise above 1,000 ECU during the duration of the agreement, the identity of the insured shall be recorded as from that point;
2. In cases where there are justified grounds for suspecting that the insured party is in fact participating in transactions which serve money laundering (art. 165 of the Penal Code).

(2) Para. 1, subpara. 1 shall not be applicable to

1. Pension insurance agreements in connection with work contracts or the professional activity of the insured party, provided that such insurance agreements neither contain a surrender clause nor can serve as security for a loan ...