

**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.*

ARUBA

Communicated by the Government of The Netherlands

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 [...].

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*Note by the Secretariat: This document is a direct reproduction of the texts communicated to the Secretariat by the Government of The Netherlands.

1993 no. 70

STATE ORDINANCE of December 22, 1993 containing regulations concerning the penalization of laundering money, securities, and claims (State Ordinance Penalization Laundering).

Issued December 28, 1993

The Minister of Justice
H.R. Croes

IN THE NAME OF THE QUEEN!

THE GOVERNOR of Aruba,

Having taken into consideration:

- that it is necessary to give implement Article 3 of the Treaty concluded in Vienna on December 20, 1988 against the illicit trade in narcotics and psychotropic substances (Treaty Gazette 1989, 97) and Article 6 of the Treaty concluded in Strasbourg on November 8, 1990 concerning the laundering, investigation, seizure and forfeiture of proceeds from crimes (Treaty Gazette 1990, 172);
- that it is desirable to implement the recommendations of the Financial Action Task Force on money laundering established in Paris in July 1989, as well as the recommendations of the Caribbean drug money laundering conference held in Aruba in June 1990;

Has, having heard the Advisory Council, in joint consultation with Parliament, laid down the following State Ordinance:

Article 1

1. The following persons shall be liable to either imprisonment not exceeding twelve years, or a fine not exceeding Afls. 1,000,000.-- or to both penalties, as being guilty of wilfully laundering money, securities or claims:

- a. he who acquires, has in his possession, or transfers money, securities, or claims while at the time of the acquisition, having in possession, or the transfer of the money, the securities, or the claims this person knew or had to know that the money, the securities, or the claims was, or were acquired through criminal offense;
- b. he who has in his possession or transfers wilfully, for profit purposes, money, securities, or claims acquired through criminal offense.

2. He who wilfully derives profit from the proceeds of money, securities, or claims acquired through criminal offense, shall be liable to the same penalty.

Article 2

He who habitually commits wilful laundering of money, securities, or claims, shall be liable to either imprisonment not exceeding sixteen years, or a fine not exceeding Afls. 1,250,000.--, or to both penalties.

Article 3

1. The following persons shall be liable to either imprisonment not exceeding four years, or a fine not ex-

ceeding Afls. 250,000.--, as being guilty of laundering money, securities or claims through default:

- a. he who acquires, has in his possession, or transfers money, securities, or claims while at the time of the acquisition, having in possession, or the transfer of the money, the securities, or the claims this person should have suspected that the money, the securities, or the claims was, or were acquired through criminal offense;
- b. he who has in his possession or transfers, for profit purposes, money, securities, or claims while this person has to suspect in reason that the money, securities, or claims was, or were acquired through criminal offense.

2. He who derives profit from the proceeds of money, securities, or claims while this person has to suspect in reason that the money, the securities, or the claims was, or were acquired through criminal offense, shall be liable to the same penalty.

Article 4

The acts rendered punishable under this State Ordinance are felonies.

Article 5

1. In the event an act rendered punishable under this State Ordinance is committed by a corporate body under Aruban or Foreign law, criminal prosecution can be instituted, and the penalties* provided for in this State Ordinance, and the measures provided for in the Criminal Code of Aruba (GG 1991 no. GT 50) can be imposed, if they are eligible therefor:

- a. on the corporate body, or
- b. on those who gave the order to this act, as well as on those who were actually in charge of the prohibited act, or
- c. against those mentioned under a and b together.

2. For the application of the first paragraph, the non-corporate company, the partnership, and the terminal funding capital shall be put on a par with a corporate body.

Article 6

Article 11d of the State Ordinance Narcotics (GG 1990 no. GT 7) shall be worded as follows:

The provisions in the Articles 11a, 11b, and 11c as regards objects shall also apply to vehicles, vessels, and substances in as far as possible.

Article 7

1. This State Ordinance shall become effective as of the day after the day of its insertion in the Government Gazette of Aruba.

2. It may be referred to as State Ordinance Penalization Laundering.

Given in Oranjestad, December 22, 1993

O. Koolman

The Minister of Justice
H.R. Croes

State Ordinance containing
regulations concerning the
penalization of the laundering
of money, securities, and claims
(State Ordinance Penalization
Laundering)

EXPLANATORY MEMORANDUM

General explanation

The last few years one may notice the trend that crime and criminality more and more often take place in an organized way. In most cases it concerns crimes involving large amounts of money. This gave rise to the opinion that fighting this kind of criminality can be taken up most effectively by tackle the perpetrators - in addition to imprisonment - on the point for which they committed the crime in the ~~first~~ place: financial gain. After having inserted the measure of seizure of fraudulently gained profit in Article 38e of the Criminal Code of Aruba (GG 1991 no. GT 50) for this purpose in 1988 already, it is desirable in addition to this in the Government's opinion, to render the laundering of money, securities, or claims punishable as a separate felony. By doing this one also gives effect to Article 3 of the Treaty concluded in Vienna on December 20, 1988 against the illicit trade in narcotics and psychotropic drugs (Treaty Gazette 1989, 97) and Article 6 of the Treaty concluded in Strasbourg on November 8, 1990 concerning the laundering, seizure and forfeiture of the proceeds from crimes (Treaty Gazette 1990, 172). The legislative proposals for Acts of the Realm to ratify these treaties have already been introduced in the Lower Chamber of the States General (22 080 [R1406], 22 081 [R1407]).

Also at an international level, one has been engaged in the fighting of money laundering for some time already. For this purpose the so-called G-7 countries (the seven largest industrial countries) i.a. established a Financial Action Task Force on money laundering in 1989. On February 7, 1990, this Task Force issued a report containing forty recommendations to realize this objective. This bill satisfies the national statutory measurers deemed necessary.

Finally, the Government observes that the 21 recommendations of the Caribbean drug money laundering conference held in Aruba in June 1990 have also played a role in drawing up this bill.

The penalization of laundering in relation to fencing:

In the Articles 431 through 432a of the Criminal Code of Aruba, fencing is rendered punishable (under the name "begunstiging" [helping a perpetrator of a punishable act after the offense has been committed, trans.]). In addition to this the Articles 11a through 11c of the State Ordinance

Narcotics (GG 1990 no. GT 7) contain special "begunstiging" provisions imposing considerably severer penalties. According to current jurisprudence the word "object" in these Articles is understood to also include "money", so that it may be said that money laundering is already punishable. It is once again explicitly stipulated in Article 11d of the State Ordinance Narcotics, for that matter, that for the purpose of this State Ordinance "objects" has to be understood to include moneys, other instruments of payment and claims. Nevertheless, the following considerations constitute reasons to render the laundering of money, securities, and claims punishable as a separate felony.

In the first place, in view of the necessity of effectively fighting the laundering of these objects, the aforementioned fencing provisions do not suffice. For they refer to the acquisition and possession of objects acquired through crime, but not to the offering or transfer of such objects. In the Government's judgment also the person who e.g. offers a bank an amount of money acquired through crime, has to be punishable. This is effected by means of the words "he who (...) transfers money" inserted in the Articles 1 and 3.

Contrary to the fencing provisions, the descriptions of felonies proposed are especially tailored to the laundering of money, securities, and claims. As already observed, the description of the felony, which is based on the relevant articles in aforementioned Treaties, widens the punishability of laundering, and simplifies the onus of proof for this felony. Consequently, this description of the felony enables the Public Prosecution and the police to act more decisively than on the basis of the general fencing provisions in the Criminal Code of Aruba.

In the second place the Government is of the opinion that the present punishment for money laundering (fencing) not acquired through drugs offenses, is too low; namely imprisonment not exceeding six years, if it concerns a habitual offense (Article 432 of the Criminal Code). Such a maximum penalty - as may be assumed - does not make enough impression on those who commit organized crime. Furthermore, it is pointed out that the difference in punishment between laundering drugs moneys and criminal moneys not coming from drugs offenses, is not very well defensible. Meanwhile, experience has shown that drugs traffickers also commit other forms of serious criminality, such as e.g. arms traffic. Laundering moneys acquired through this should not be less punishable than laundering drugs moneys. Moreover, it has appeared in the meantime that such a restriction of the penalization to laundering drugs moneys causes the necessary problems in rendering proof. For the Public Prosecution will have to prove that the suspect knew or should have known in reason that the money is coming from the narcotics trade; this is not simple in many cases, while, based on other information known to the Public Prosecution, it is plausible that it concerns "tainted" money. For the rest, it is repeated here what was stated in page 1 of this memorandum, that - in addition to imposing

the fine under this draft State Ordinance - also the withdrawal from circulation and the seizure of the fraudulently acquired profit can be imposed.

In the third place the Government observes that in the State Ordinance Narcotics habitual fencing is not rendered punishable. In view of the nature of such organized activities, one cannot do without the penalization of habitual laundering, especially in fighting organized crime.

Finally, the Government is of the opinion that, in view of the international attention to the fighting of laundering, it has to be made clear to the international community unambiguously, that laundering is punishable in Aruba, and that - in view of both the maximum penalties proposed, and the actual investigation and prosecution, fighting it is taken seriously. Furthermore, a separate penalization of laundering, as proposed in the present draft, whereby the wording of the description of the felony has been brought into line with the relevant articles in the international treaties, simplifies the international cooperation in the criminal field concerning laundering. In this connection it is of importance that also as regards a corporate body under foreign law it is provided that it can commit laundering, and that it is liable to punishment as such.

Explanation of each clause

Re Articles 1 through 3

The penalization of laundering proposed is a special "begunstiging" provision: a *lex specialis* of fencing. On the analogy of the fencing provisions in the Criminal Code of Aruba and the State Ordinance Narcotics, a distinction is made between wilful and habitual laundering and laundering through default. Article 1 penalizes wilful laundering. The second paragraph of both Article 1 and Article 3 proposed (also on the analogy of these fencing provisions) penalize the wilful derivation of profit and the derivation of profit through default from money acquired through crime. There is question of this, for example, if one makes use of goods bought with criminal moneys.

The acts included in the description of the felony are: the acquisition, possession, and transfer. The acquisition and transfer of money, securities, or claims includes all acts resulting in somebody's acquiring or transferring the actual control of the money or the claim. Possession covers any actual possession, irrespective of the purpose for which one has it, or the title on which it is based. For possession it is not necessary that one can always dispose of the money without delay. It also includes being able to dispose of the money which is kept e.g. in a safe deposit abroad.

The intention is to render the person who accepts the money from the criminal, or who keeps it or disposes of it (again) liable to punishment. On the analogy of Article 3

of the Vienna Treaty and Article 6 of the Strasbourg Treaty, it is explicitly included in the description of the felony that at the time of the acquisition, possession, or transfer of the money, the securities, or the claims, the person in question knew or should have suspected in reason that the money is coming from a crime. Otherwise, the person, who at the time of the acquisition, possession, or transfer of the money, acted in good faith but finds out in course of time that the money was acquired through crime, would commit laundering as of that moment, as long as he has this money in his possession, or as soon as he transfers it. This would stretch the penalization of laundering too far. Persons who absolutely act in good faith and incur no reproach whatsoever, would be rendered punishable in that case. This is otherwise if these persons, who meanwhile found out that it concerns tainted money, keep or transfer it for profit purposes. The first paragraph of Article 1 renders these acts punishable. So, this provision does not intend to make it impossible for the acquirer in good faith, who later on discovers the criminal origin of the money, to dispose of the money with impunity. Only if he acts in this way "for profit purposes" is he liable to punishment.

It is included as a component of the proposed description of the felony that the money of the claim was acquired through crime. Therefore, as already explained above, laundering is not limited to drugs offenses. The penalization covers all kinds of crimes. It is immaterial whether the perpetrator of the crime through which the money or the claim was acquired, is personally punishable, whether the crime has become extinguished by limitation, or that another hindrance bars the prosecution, or whether the crime was committed within the scope of Aruban criminal law.

In the bill securities are understood to be all documents constituting evidence of a claim on a third person, for example registered stock, or bearer stock, bonds, checks, bills of exchange, and the like. Claims are understood to be personal rights on a third party.

The punishments proposed for the wilful felony of Article 1 and the "through default" variant (as proposed in Article 3) are in line with the punishments for wilful fencing and fencing through default in the State Ordinance Narcotics, respectively a maximum of twelve years imprisonment and a fine not exceeding one million florins, and a maximum of four years imprisonment and a fine not exceeding Afls. 250,000.-- florins. The same can be said of habitual laundering inserted in Article 2, by imposing a penalty hereon not exceeding sixteen years and a fine not exceeding Afls. 1,250,000.-- florins. Just like in case of a conviction under the State Ordinance Narcotics, for that matter, these penalties can also be imposed together.

Re Article 4

In view of the seriousness of the acts rendered pun-

ishable in this bill, it is self-evident in the Government's opinion that it concerns felonies here.

Re Article 5

In anticipation of a general regulation concerning the penalization of corporate bodies, which the Government intends to have inserted in the Criminal Code of Aruba, it is proposed in this Article to provide that also corporate bodies can commit the felonies of this bill, and consequently are punishable as well. In this way, if necessary, one will also be able to take action against banks and other institutions that commit laundering.

Re Article 6

Now that it is proposed to penalize the laundering of money, securities, and claims separately, laundering will no longer be prosecuted based on the special fencing provisions in the State Ordinance Narcotics, therefore it is proposed to delete the words "moneys and other instruments of payment" from Article 11d of this State Ordinance.

The Minister of Justice,

was signed:
H.R. Croes

E/NL.1997/7

1995 No. 85

State Ordinance of December 20, 1995 concerning the obligation to report unusual transactions in rendering financial services (State Ordinance Obligation to Report Unusual Transactions)

Issued December 29, 1995

The Minister of Justice
E.J. Vos

IN THE NAME OF THE QUEEN!

THE GOVERNOR of Aruba,

Having taken into consideration:

that it is desirable, for the implementation of the recommendations 9, 10, 15, 16, 17, 18, 20, 24, 28, and 32 of the Financial Task Force on Money Laundering of May 30, 1990, to make the reporting of unusual transactions in rendering financial service obligatory, in order that by doing so a contribution can be made to the suppressing of the use of the Aruban financial system for laundering money proceeding from criminal activities.

Has, having heard the Advisory Council, in joint consultation with Parliament, laid down the following State Ordinance:

Chapter I

General Provisions

Article 1

For the purposes of this State Ordinance and the provisions based hereon, the following shall be understood by:

- a. Financial Service: performing the following acts in or from Aruba:
 1. the safe keeping of stock, banknotes, coins, currency notes, precious metals, and other assets;
 2. opening an account in which an amount in money,

- stock, precious metals, or other assets can be kept;
3. renting out safe-deposit boxes;
 4. making a payment on account of the cashing of coupons or similar documents of bonds, or similar securities;
 5. concluding a life insurance agreement as meant in part h, as well as acting as an intermediary in the conclusion hereof;
 6. making a payment on account of a life insurance agreement as meant under 5;
 7. crediting or debiting an account in which an amount of money, stock, precious metals, or other assets can be kept, or cause same to be credited or debited;
 8. exchanging Aruban florins or foreign exchange;
 9. rendering other services to be designated by State Decree containing General Administrative Orders;
- b. Client: the natural person or legal entity to whom/-which, or for the benefit of whom/which a financial service is rendered, as well as, in case of a financial service as meant in part a, under 5 and 6, the one who pays the premium, as well as those for the benefit of which the payment is made;
- c. Transaction: an act or a complex of acts for the benefit of a Client in connection with buying one or more financial services;
- d. Unusual Transaction: a transaction that may be designated as such based on the indicators laid down in pursuance of Article 10;
- e. Report: a report as meant in Article 11;
- f. Reporting Center: the reporting center meant in Article 2;
- g. Commission: the commission meant in Article 16;
- h. Life Insurance Agreement: an agreement whereby the insurer undertakes against payment of a premium to pay

benefits as a lump sum or in installments to the insured or a beneficiary designated by the latter, and whereby the benefit based on the payment of premium is made dependent in one way or another on the being alive or the death of a certain person.

Chapter II

The reporting Center Unusual Transactions

Article 2

There shall be a Reporting Center Unusual Transactions, which comes under the Minister of Finance and under the direction of a Head.

Article 3

The task of the Reporting Center shall be:

- a. the collection, recording, processing, and analyzing of the information it obtains in order to ascertain whether this information may be of importance to the prevention and detection of criminal acts.
- b. furnishing information in conformity with the provisions by or in pursuance of this State Ordinance;
- c. informing the person who made a Report in conformity with Article 11 with a view to the correct compliance with the obligation to report, as regards the disposal of the report. In that case this person shall only be informed whether furnishing the information took place in conformity with part b;
- d. to inquire into the developments in the field of money laundering and the improvement of methods to prevent and detect money laundering;
- e. making recommendations, having heard the Central Bank of Aruba, for the relevant branches of industry concerning the introduction of adequate procedures for

- internal control and communication and other measures to be taken for the prevention of the use of these branches of industry for money laundering;
- f. providing information concerning the forms in which money laundering manifests itself and the prevention of money laundering;
 - g. reporting annually on its activities and its plans for the coming year to the Minister of Finance, and to bring this report to the knowledge of the Minister of Justice.

Article 4

1. The Reporting Center shall keep a register. The Minister of Finance shall be the keeper of the register.

2. The register shall only contain information obtained lawfully, and which is required for the purpose for which set up.

3. The register shall only contain information that was obtained lawfully, and is necessary for the object for which it was opened.

4. No information from the register shall be furnished, unless provided for by the rules by or in pursuance of this State Ordinance.

Article 5

1. For the purpose of a proper execution of its task, the Reporting Center shall be authorized to inspect the registers of the agencies and the officials charged with the detection and prosecution of punishable acts.

2. The agencies and officials mentioned in the first paragraph are obligated to allow the Reporting Center the inspection meant in the first paragraph.

Article 6

The Reporting Center is obligated to provide the agencies and officials charged with the investigation and prosecution of criminal acts, with the following information:

- a. information giving rise to a reasonable suspicion that a certain person committed money laundering or an underlying criminal act;
- b. information of which it can be assumed in reason that it is of importance to the detection of money laundering or the underlying criminal acts;
- c. information of which it can be assumed in reason that it is of importance to the prevention or detection of future criminal acts that may be underlying money laundering and which, in view of their seriousness or frequency, or the organized level at which they will be committed, constitute a serious infringement of the legal order.

Article 7

1. By State Decree containing General Administrative Orders, rules shall be laid down concerning the provision of information from the Reporting Center's register as well as the conditions on which this will take place, to agencies designated by the authorities, within or outside the Kingdom, having a task similar to the one of the Reporting Center.

2. The provision of information meant in the first paragraph to agencies outside the Kingdom shall only take place on the basis of a treaty.

Article 8

Appointment, suspension, and dismissal of the Head and the other members of the staff of the Reporting Center

shall take place, having heard the Commission, by State Decree by and with the advice of the Minister of Finance in agreement with the Minister of Justice.

Article 9

The Minister of Finance, having heard the Commission, and in agreement with the Minister of Justice, shall determine the budget and formation of the Reporting Center.

Chapter III

The obligation to report

Article 10

1. After consultation with the Reporting Center, and having heard the Commission, the Minister of Finance and the Minister of Justice shall jointly determine, for a period not exceeding six months, the indicators - if necessary per branches of industry and professional groups, or categories of Transactions to be distinguished for this purpose.

2. Based on the indicators, meant in the first paragraph, it shall be judged which Transactions have to be deemed-unusual.

3. If necessary, the indicators shall be determined per branche of industry and professional group, after making a survey of the financial services rendered by the branche of industry or professional group concerned.

4. The indicators meant in the first paragraph shall remain in force after the lapse of the period mentioned in the first paragraph, if they are sanctioned by State Decree containing General Administrative orders within this period of time.

Article 11

1. Anyone who renders a Financial Service by virtue of his profession or business, is obligated to promptly report to the Reporting Center a transaction performed or intended to be performed, which is deemed unusual based on the indicators meant in Article 10.

2. In as far as possible a Report shall contain the following information:

- a. the Client's identity;
- b. the nature and number of the Client's identity card;
- c. the nature, the time, and the place of the Transaction;
- d. the size and in case of a Financial Service meant in Article 1, part a, under 7, the destination and origin of the moneys, stock, precious metals, or other assets involved in the Transaction;
- e. the circumstances based on which the Transaction is deemed unusual.

Article 12

1. The Reporting Center shall be authorized to request additional data or information from the person who made a Report, as well as from the person who, due to the rendering of a Financial Service as meant in Article 1, part a, under 7, is involved in a Transaction concerning which the Reporting Center has collected information, in order to be able to judge whether information collected has to be furnished based on its task meant in Article 3, part b.

2. The person from whom information or data is requested in conformity with the first paragraph, is obligated to provide same in writing, as well as - in urgent cases in the judgment of the Reporting Center - orally, within the period of time stipulated by the Reporting Center.

Article 13

By State Decree containing General Administrative Orders, additional rules may be given concerning the way in which a Report has to be made, respectively data and information requested in pursuance of Article 12, first paragraph, have to be provided.

Article 14

1. Data and information supplied in conformity with the Articles 11 or 12, second paragraph, cannot serve as basis for, or for the purposes of, a criminal investigation or prosecution on account of suspicion of, or as evidence in connection with a charge on account of infringement of the State Ordinance Penalization Money Laundering (SPG 1993, No. 70)^{1/} by the person who provided these data or information.

2. The first paragraph shall similarly apply to the person who is employed by the person who supplied data or information in conformity with the Articles 11 or 12, and who has assisted therein.

Article 15

~~The person~~ who proceeded to make a Report based on Article 11, shall not be liable for the damage suffered by a third party in consequence hereof, unless it is made plausible that, in view of all facts and circumstances, one should not have proceeded to reporting in reason.

Chapter IV

The Counseling Commission

Article 16

1. There shall be a Counseling Commission for the Reporting Center.

2. The Counseling Commission shall consist of no more than twelve members, and it shall determine its own working procedures.

Article 17

1. the commission shall consist of representatives of:
- a. the Ministry of Finance;
 - b. the Ministry of Justice;
 - c. the branches of industry falling under the scope of this State Ordinance;
 - d. the supervisory authorities for the branches of industry falling under the scope of this State Ordinance;
 - e. the Public Prosecution;
 - f. the police.

2. The members members of the Commission shall be appointed and dismissed by the Minister of Finance on the recommendation of the agencies and institutions meant in the first paragraph. When composing the commission, the Minister of Finance shall seek a balanced distribution of the agencies/institutions represented.

3. A representative of the Ministry of Finance shall act as chairman of the Commission.

Article 18

The task of the Commission shall be:

- a. to counsel the Reporting Center as regards its functioning;
- b. to make its knowledge and expertise available to the Reporting Center;
- c. to advise the Minister of Finance or the Minister of

Justice jointly if so requested, or on its own initiative, on i.a.:

1. the way in which the Reporting Center performs its task;
2. the determination of the indicators meant in Article 10;
3. the effectiveness of the obligation to report.

Article 19

The Counseling Commission can request information from the Reporting Center for the purpose of a proper performance of its task. The Reporting Center is obligated to provide this information. Personal data shall be provided in anonymous form.

Chapter V

Secrecy

Article 20

Any person, who by virtue of the application of this State Ordinance or of Decrees in pursuance of this State Ordinance performs or performed any task, is prohibited from using data or information supplied or received in pursuance of this State Ordinance, any further or in any other way, or to disclose it further or in any other way, than is required for carrying out his task, or than is required by this State Ordinance.

Article 21

1. The person who makes a Report in pursuance of Article 11, or who supplies further information or data in pursuance of Article 12, second paragraph, is obligated to keep this secret, except in as far as the necessity to

disclose its results from the objective of this State Ordinance.

2. The person who received data or information in pursuance of Article 3, under c, is obligated to keep this secret.

Chapter VI

Right of Inspection

Article 22

1. Any person shall be informed, upon his request, by or on behalf of the keeper of the register of the Reporting Center whether, and if so, what personal data concerning this person have been recorded in the register.

2. The information meant in the first paragraph shall not be given in as far as this is necessary for the proper performance of the task of the Reporting Center, or in case weighty interests of third parties require this.

3. In the event the request meant in the first paragraph is not granted, the person in question may apply to the Court in the First Instance, within two months after receipt of the rejection of the request, petitioning to order the keeper to comply with this request as yet. The Court shall allow this request in as far as it deems it well-founded.

Chapter VII

Supervision

Article 23

1. The officials of the Reporting Center designated by Decree of the Minister of Finance shall be charged with the supervision over the compliance with the provisions by or

in pursuance of this State Ordinance by those who are obligated to report as meant in Article 11, first paragraph. Such a designation shall be published by insertion in the Government Gazette of Aruba.

2. By State Decree containing General Administrative Orders rules may be laid down concerning the performance of the duties by the officials designated by virtue of the first paragraph.

3. The officials designated by virtue of the first paragraph shall be authorized exclusively in as far as this is reasonably necessary for the execution of their tasks:

- a. to demand from anybody inspection of all books and documents, and to make copies thereof;
- b. to enter all places, with the exception of dwelling houses.

4. If necessary, they shall gain access to a place as meant in the third paragraph, part b, with the aid of the strong arm.

5. In the exercise of powers as meant in the third paragraph, the supervisors shall identify themselves, unless, due to this, the objective of the supervision could not be attained due to this. In the latter case they shall identify themselves as soon as this is possible in reason.

Chapter VIII

Penal Provisions

Article 24

1. Infringement of, or acting in violation of, the provisions in the Articles 11, 12, second paragraph, 20, 21, and 23, third paragraph, or by virtue of Article 13, in as far as this took place intentionally, shall be liable either to imprisonment not exceeding four years, or a fine not exceeding five hundred thousand florins, or to both penalties.

2. Infringement of the regulations as meant in the first paragraph, in as far as not committed intentionally, shall be liable to either imprisonment not exceeding one year, or a fine not exceeding two hundred and fifty thousand florins, or to both penalties.

3. The acts rendered punishable in the first paragraph are felonies; the acts rendered punishable in the second paragraph are misdemeanors.

Article 25

1. In the event that an act rendered punishable in Article 24 is committed by or by order of a legal entity, criminal prosecution can be instituted and the penalties imposed either against this legal entity, or against those who ordered the act to be committed, or who actually were in charge of the prohibited act or omission, or against them jointly.

2. An act rendered punishable in Article 24 is committed i.a. by or by order of a legal entity, if it is committed by persons who, either by virtue of employment, or for other reasons, act in the sphere of the legal entity, irrespective of the fact whether these persons committed the punishable act individually, or that the elements of this act are to be found with them jointly.

3. ~~If~~ the criminal prosecution is instituted against a legal entity, it shall be represented during the prosecution by the manager/director, and in the event there are more managers/directors, by one of them. The representative may appear by attorney. The judge may order the appearance of a certain manager/director; in that case he may have him brought in by the strong arm.

4. As regards the acts rendered punishable in Article 24, legal entities shall be deemed to be domiciled, for the application of Article 19 of the Code of Criminal Procedure of Aruba, at the place where they are established.

5. In the event criminal prosecution is instituted

against a legal entity, the services, summonses, notices, notifications, or other communications prescribed in the Code of Criminal Procedure of Aruba shall be addressed to the person or the residence of the manager/director, and in the event that there are more managers/directors, to one of them, or to the place where the Board has its seat or office, except when it concerns a summons meant in Article 130, second and third paragraph of the Code of Criminal Procedure of Aruba.

6. For the application of the preceding paragraphs the non-corporate company, the partnership, and the terminal funding capital shall be put on a par with the legal entity.

Article 26

In the event the officials charged with the investigation, as well as the experts are denied access to a place which is a dwelling house, or which can only be reached via a dwelling house, then they shall only enter without the explicit permission of the occupant with a specific written warrant of the Public Prosecutor in the Common Court of Justice or the Court in the First Instance, and in case no one of them is an official as meant in Article 8, parts 1 and 3 of the Code of Criminal Procedure of Aruba—in the presence of the assistant prosecutor.

Chapter IX

Final provision

Article 27

1. This State Ordinance shall become effective on a date to be stipulated by State Decree.

2. It may be referred to as the State Ordinance Obligation to Report Unusual Transactions.

The Minister of Finance,
A.W. Engelbrecht

Given in Oranjestad, December 20, 199
O. Koolman

The Minister of Justice,
E.J. Vós

State Ordinance concerning the obligation
to report unusual transactions in rendering
financial services (State Ordinance
Obligation to Report Unusual Transactions)

EXPLANATORY STATEMENT

Introduction

Since the early eighties, more and more international initiatives have been developed in the fight against laundering moneys, stock, precious metals, and other liquid assets, proceeding from criminal activities (for the sake of brevity, called hereinafter: money laundering). The increased international activity in this field culminated at a global level, in forty recommendations on May 30, 1990, of the Financial Action Task Force (FATF), instituted by the Security Council of the United Nations, and the supplementary recommendations of the Aruba conference in June 1990. The latter supplementary recommendations were confirmed, in a slightly altered form, in the Declaration of Kingston on Money Laundering of November 5 and 6, 1993.

The Government deems it of national and international importance to improve the possibilities of taking effective action against this manifestation of organized crime. The present draft's purport is to improve the information position for the purpose of law enforcement by introducing an obligation to report, as well as to promote the integrity of the financial service by this obligation to report. With this, the recommendations 15, 16, 17, 20, 21, 26, 28, and 32 of the FATF are implemented in the Aruban legislation, and a policy choice is made as regards recommendation 24.

International obligations

The obligation to report as proposed, is the implementation of the recommendations 15 and 16 of the FATF. Recommendation 15 is worded:

"Therefore, financial institutions have to devote special attention to all intricate, unusual, large transactions, and to all unusual transaction patterns that do not have any clear economic or visible lawful purpose. The background and the objective of such transactions have to be checked, in as far as possible, after which the findings have to be recorded in writing, and be available for the officials charged with the supervision, audit, and maintenance of law and order."

Recommendation 16 provides:

"If financial institutions suspect that the money was obtained from crime, it has to be permitted or obligatory that they promptly report their suspicions to the competent authorities."

Objective

Based on the aforementioned recommendations, this State Ordinance lays down a system of reporting, serving a dual objective: the prevention of the misuse of the financial system—~~for~~ money laundering purposes,—~~and~~ fighting this money laundering itself.

The obligation to report, as proposed, intends to prevent moneys proceeding from crime from being laundered via financial institutions. The key issue here is the preservation of the integrity of the financial system. If part of the financial system is systematically abused by laundering moneys that are the proceeds of crime, this can do serious harm to the public confidence in the financial system as a whole, and consequently to the functioning of this system. The prevention of the abuse of the financial system for money laundering purposes promotes the integrity of the

financial service in Aruba and the confidence of the public in the enterprises and institutions rendering financial services, which is related thereto and essential for its proper functioning.

In addition to this preventive function, the obligation to report, as proposed, also has a repressive function. By analysis of the data provided, and the comparison thereof with other data files, facts can be discovered that may be of importance to the detection and prosecution of offenses.

It is pointed out here that money laundering will not only be fought by means of the proposed obligation to report. The State Ordinance Penalization Money Laundering (SPG 1991, No. 70), already promulgated, is at least as important.

Obligation to report in relation to the right to respect private life

Article I.16 of the Constitution (SPG 1987, No. GT 1) formulates the right to respect the personal privacy. The first paragraph of this Article provides the possibility to restrict aforementioned right by, or by virtue of, State Ordinance. Article 8, first paragraph, of the European Treaty on Protection of Human Rights (ETPHR) (Treaty Gazette 1951, 154), grants each and anybody i.a. the right to respect of his private life. The second paragraph of this Article contains a number of criteria as regards the objectives, based on which the right may be infringed. Before discussing this any further, it should be observed that Article 17 of the International Treaty on Civil and Political Rights (ITCPR) (Treaty Gazette 1969, 99) does not grant the citizen more protection, in as far as of importance here, than Article 8 ETPHR does, so that it suffices to discuss Article 8 ETPHR here.

The concept "private life" is vague. Nevertheless, it

is certain that reporting an unusual transaction, in conformity with Article 11 of the present draft, infringes the private life of the person the report is about. For the fact is that the report contains, in as far as possible, the client's identity, the nature and number of the identity document, the nature, amount, time and place of the transaction, and the circumstances based on which the transaction is deemed unusual. Furthermore, also the recording, processing, and analyzing of these data, and handing these data on to the police, constitute an infringement of private life. The second paragraph of Article 8, ETPHR, imposes the following requirements on such an infringement.

In the first place, the restriction of private life has to be "in accordance with the law". This implies that the obligation to report and the powers of the Reporting Center to record, process, and analyze these data, must have a legal basis. Furthermore, this implies that certain requirements have to be imposed on the quality of this regulation. The regulation has to be sufficiently accessible, and should provide protection from arbitrary interference by the authorities in the rights in question, and from abuse of power.

Also in view of the above, it is proposed not to place the Reporting Center directly under the control of the police. The Reporting Center should function as a buffer between the financial institutions on the one hand, and the police and judicial authorities on the other hand. Its task is to select the data, and only furnish the police with those data that may be of importance to the prevention and investigation of offenses.

Furthermore, the Articles 20 and 21 of the draft contain secrecy obligations. The purpose of these Articles is also to prevent the information from being misused, or that the information is used for other purposes than those intended. In the second place, the regulation should have a "legitimate aim", and in the third place be "necessary in a

democratic society" (pressing social need). The "pressing social need" is already present based on the fact that the Financial Action Task Force Aruba recommends to create an obligation to report. In addition to this, the "pressing social need" implies in particular that the restriction of private life is proportional to the legitimate aim intended. The proposed regulation complies with this, by making it obligatory for the financial institutions to report only those transactions that are unusual, and therefore may be of importance to the prevention and investigation of offenses. Nothing more is expected from the financial institutions. The infringement of private life is in the interest of "the protection of the rights and freedom of others" and "the prevention of disorder and crime". The interest of a contracting State in the application of such a ground for restriction "must be balanced against the seriousness of the interference with the right to respect his private life". The obligation to report, and the recording, preservation, and analyzing of the data reported, as well as the furnishing of these data to the police can contribute towards the prevention and detection of serious offenses, which is in the interest of the victim, public order, and the prevention of punishable acts. Therefore, these infringements of Article 8 ETPHR are justified.

The obligation to report unusual transactions

For the implementation of the aforementioned recommendations 15 and 16, it is proposed to introduce a reporting system for the prevention and fighting of the use of the financial system for money laundering purposes. The undersigned decided that the reporting system should be based on obligatory reporting, and not on reporting on a voluntary basis. Obligatory reporting is also to be preferred with a view to effectiveness, quality before the law, and legal

security. The obligation to report creates clarity for all concerned, prevents distortion of competition, and problems of a civil or criminal nature are warded off.

Not only banks, but also financial institutions not being banks will have to fulfil this obligation to report. The undersigned prefer to use the term "unusual transactions" in this connection, partly also as this term is in line with the endeavors to reach objectification of the obligation to report. From their own specific position, financial institutions are pre-eminently able to judge - also in view of the relation with a certain client - whether a transaction is unusual.

It remains desirable, for that matter, that persons employed by financial institutions, who discover that a punishable act has been committed, report this to the police. The power to do so is given by on Article 12 of the Code of Criminal Procedure of Aruba. In these cases one will also have to report the transaction as being unusual.

It should be pointed out that financial institutions, in consultation with the Prosecution, may decide in the interest of the investigation, to still execute certain money laundering transactions (transactions of which the person taking receipt of the money, knows or suspects in reason that it proceeds from crime).

A system of obligatory reporting unusual transactions also creates a special obligation to pay attention to these transactions. For the obligation to report unusual transactions implies that these transactions have to be examined with special attention.

In Article 11, first paragraph, the present draft provides for an obligation to report any unusual transaction effected or intended. This obligation applies to any person rendering a financial service by virtue of his profession or as a business (hereinafter: financial institution). Article 1, part a, provides an enumeration of the financial services in the sense of the draft of the State Ordinance. Any person who renders these services by virtue

of his profession or as a business, falls - should the occasion arise - under the obligation to report unusual transactions. One should think at any rate of banks, life insurers, insurance brokers, and stock brokers. In addition to this, Article 1, part a, under 9, grants the power to designate other services. The power to designate other services by State Decree containing General Administrative Orders, to which the obligation to report is applicable, intends to enable the Government to react adequately to new money laundering techniques.

There is only one question of a financial service, for that matter, if the service is rendered in or from Aruba. This means that an Aruba branch office of a foreign financial institution falls under the scope of the draft of the State Ordinance, whereas a foreign branch office of an Aruban financial institution does not. Of course, a foreign branch office of an Aruban credit institution is subject to any regulations in this field of the Central Bank of Aruba. Furthermore, such a branch office will fall under the local legislation on money laundering. For a further explanation of financial services reference is made to the explanation of the individual articles, Article 1.

Article 11, first paragraph, is aimed at any person who renders a financial service by virtue of his profession or as a business. In order to prevent misunderstandings, it is emphasized here that the above does not mean that the obligation to report is imposed on the employees of financial institutions, who actually do not render financial services by virtue of their professions or as a business, but in paid employment. The obligation to report is aimed at the institution. In this context it is assumed that the financial institutions develop proper internal procedures, which make it possible that each unusual transaction can be reported as such by the institution.

Also planned/intended unusual transactions fall under the obligation to report. In case of a clear expression of will by the client to execute an unusual transaction, this

intended transaction has to be reported, also if it has not (yet) been executed. Of course, no report has to be made in case of an intended unusual transaction, if this makes no sense, due to the lack of data (worth mentioning), e.g. when the client refuses to identify himself, and there is no question of any other relevant facts worth mentioning.

Furthermore, it is stipulated in the proposed Article 11, first paragraph, that a report has to be made without any delay, that is to say, at the moment that the unusual nature of the transaction has become known to the financial institution.

By virtue of Article 13, of this draft, the Reporting Center is authorized to lay down additional rules by State Decree containing General Administrative Orders, concerning the way in which a report has to be made.

The indicator system

The concept "unusual" plays a key role in the reporting system proposed. In Article 1, part d, an unusual transaction is defined as a transaction designated as such based on the indicators laid down in pursuance of Article 10. Article 10 constitutes the basis of the indicator system, as elucidated in this section.

The indicator system intends to objectify the concept "unusual" as much as possible. It is proposed to lay down the indicators by Ministerial Regulation, after consultation with the Reporting Center, having heard the Counseling Committee, as meant in Article 16 of the present draft (in which the branches of industry concerned will also be represented), by Ministerial Regulation, after which this Regulation has to be enacted within 6 months by State Decree containing General Administrative Orders. The reason of this delegation is, that it has to be possible that the lists of indicators to be developed on the basis of Article 10, are altered or supplemented quickly and

simply. These lists will have to be adjusted continuously to the latest (knowledge of the) developments in the field of money laundering. For the fact is that it is to be expected that those who want to have their money laundered, will react to the lists of indicators by changing existing money laundering patterns. It is emphatically pointed out here, that a quick, formal alteration of the indicators is also essential to the legal security of those who are obligated to report. This can be all the more important, because the institutions involved will be familiar with the new indicators planned at an early stage already through their role in the Counseling Committee. In that case it would not be right to let such indicator "hover over the market" for months. The lists of indicators will be published as State Decree containing General Administrative Orders; or as Ministerial Regulation, in the Statute Publication Gazette of Aruba.

The indicators have to make the term "unusual transactions" concrete. One may distinguish two categories of unusual transactions: the evidently unusual transactions, and the other unusual transactions. Evidently unusual transactions will be objectified by means of indicators. So, there is no question of a further subjective judgment as far as these transactions are concerned. As regards the other unusual transactions, the indicators will be of a more qualitative nature, and be more in line, in this way, with the subjective evaluation of the financial institution ("know your client").

By way of example, one may think of the following objective indicators: cash transaction in foreign currencies, cash transaction in which uncounted cash is presented, and transactions in which there are identification problems. If a number - still to be fixed - of such indicators is met, the transaction is evidently unusual.

An example of a subjective indicator is a transaction which is atypical for a certain client (it does not fit in the usual transaction pattern of this client), or a cash

transaction in which money is presented in unusual packing.

The application of indicators for measuring "usualness" as provided, gives something to hold on to - especially where there is question of objective indicators - for the (counter) employees of financial institutions, and facilitates in this way the implementation of the present legislation. Furthermore, a uniform application of the new legislation can be effected in this way. Moreover, the system of indicators serves the interest of the enforceability of the obligation to report, in the sense that it can help establish violations thereof. The Counseling Committee, as meant in Article 16 of the present draft, will also evaluate the way in which the indicators function, and to advise the Minister of Finance or the Minister of Justice on this matter, if necessary. It is observed that the system leaves open the possibility to stipulate that any transaction exceeding a certain amount has to be deemed unusual, and therefore has to be reported. So, it is possible to prescribe such an indicator for a certain sector. Use will be made of this possibility, if it turns out that intensifying the supervision over certain sectors is desirable, because there is suspicion, for example, that these sectors are deliberately misused for money laundering. It is also conceivable that a certain threshold amount is fixed, if it turns out that working with subjective and objective indicators does not function properly.

The Reporting Center unusual transactions

The Reporting Center unusual transactions is created in Article 2 of the present State Ordinance. Reporting unusual transactions as meant in Article 11, first paragraph, has to take place to this Center. The general management, the organization, and the administration of the Reporting Center are the responsibility of the Minister of Finance.

It was decided to set up one, central, Reporting Center in order to ensure a uniform application of the present regulation, and to optimize the insight in the unusual transaction patterns. The choice of a non-police Reporting Center is based on the consideration, that from a constitutional point of view it is not desirable to force private financial institutions to report unusual acts of citizens directly to the police. As already indicated above, the Reporting Center will act as a buffer between the Reporting Center and the authorities charged with the investigation and prosecution.

The Reporting Center has to collect, record, process and analyze the data it obtains, in order to check whether these data may be of importance to the prevention or detection of offenses. The collection of data is mainly related to the data provided by the financial institutions in pursuance of the obligation to report under Article 11, first paragraph. In addition to this, as will be explained below, the Reporting Center can collect data from registers of the police and judicial services, and from foreign reporting centers. Furthermore, the Reporting Center can collect data from information accessible to the public. The registration of the data implies the recording of the data in an accessible and systematic way. The processing and analysis of data concern the finding of links between the data obtained. Due to this, the data get an added value as compared with the original data supplied by the financial institutions, and it is possible to trace data that may be of importance to criminal investigations, or to start new investigations.

A good cooperation between the Reporting Center, the police and the Prosecution is of importance in this matter. Furthermore, the Reporting Center will inform the reporting institution of the result of the report. Such feedback is necessary for a proper implementation of the present State Ordinance. In the first place, it is of importance that the financial institutions can judge based on this feedback,

whether they complied with their obligation to report in the correct way, in particular whether they correctly applied the indicators. In the second place, this feedback can stimulate the institutions which are obligated to report, to comply with the new obligation. This information may not contain anything but the fact whether the report was passed on to the police or the Prosecution in conformity with Article 3, part b. Furthermore, Article 21, second paragraph, contains the obligation to secrecy of data or information received in pursuance of this State Ordinance. So, the data supplied by the Reporting Center to the financial institutions may not be passed on, or used for other purposes, for example for the purpose of terminating the contract with a client.

The investigative task, laid down in part d, of Article 3, is not an exclusive task of the Reporting Center, and, therefore, it has to be executed in close cooperation with other agencies engaged herein.

In this context, the concept "money laundering" has to be interpreted broadly. The investigative task covers the acts and methods used for concealing gains obtained by or from crime, or concealing the illegal origin of such gains. The Reporting Center can also give recommendations for branches of industry. One may think i.a. of recommendations regarding the recognition of money laundering practices, and regarding training programs and internal control procedures in financial institutions. By means of the recommendations it will be possible to provide guidance, and specific knowledge of money laundering methods can be transferred to the branches of industry. It is the intention to involve the branches of industry, the Prosecution, and the supervisory authorities in an informal way in formulating the recommendations. In this way the recommendations can play an important supplementary role in the fight against the abuse of the financial system for money laundering purposes. Furthermore, this system makes it as simple as possible for the financial institutions to deal with the

obligation to report. The know-how and information on money laundering practices available at the various parties involved, can be combined in this way and be made universally accessible. Moreover, it is proposed to explicitly grant the Reporting Center a number of powers required for an effective execution of its task: the power to consult the registers of officials charged with the investigation and prosecution (Article 5), the power to request additional information or data (Article 12, first paragraph) and the power to lay down further rules by State Decree containing General Administrative Orders, concerning the exchange of information with foreign reporting centers (Article 7).

As regards the power of the Reporting Center meant in Article 5, to consult registers of officials charged with the investigation and prosecution of punishable acts, it should be observed that this power offers the Reporting Center the possibility to properly perform its task, namely the refining of data. In pursuance of the second paragraph of Article 5, the keepers of police registers are obligated to grant the officials of the Reporting Center inspection of the data recorded in their registers.

It may be demanded from the police and judicial authorities that they assist the Reporting Center in the performance of its task in general, and in the supply of data in particular. The object of this data supply is to enable the Reporting Center to discover information by comparing and analyzing data, which may be of importance to the detection of offenses. If certain conditions, to be elucidated below, have been met, the Reporting Center is authorized and even obligated to pass the refined data on to the police and judicial authorities. Consequently, police and judicial authorities benefit from a good cooperation with the Reporting Center. The task of the Reporting Center is a police task as well, namely to collect and supply data with a view to the investigation of offenses.

However, the police and the judicial authorities are

not authorized to directly inspect the register of the Reporting Center. The reason hereof is, that the Reporting Center obtains very "soft" data reported by the financial institutions on the basis of the indicators. Much of this information will concern innocent citizens. The undersigned deem it incorrect that police and judicial authorities have access to these data. Only if certain conditions have been met, which guarantee that the data are also actually of importance to the police and judicial authorities, will these data have to be given to them. In Article 12, first paragraph, the State Ordinance provides for the power of the Reporting Center to request further data or information from the institutions that are obligated to report, in order to be able to judge whether the data collected have to be passed on, based on its task meant in Article 3, under b. In many cases the Reporting Center will want to ask these data or this information from the one who made a report. However, in case of a financial service as meant in Article 1, part a, under 7, the Reporting Center is also authorized to request these data or this information from other institutions involved in a transaction on which the Reporting Center collected data. In case of a chain of intermediaries or payment institutions involved in a transaction, the Reporting Center can ask each of them for further data or information. It is emphasized, however, that the Reporting Center can only ask for further data or information in a concrete case in connection with information already obtained. This information already obtained need not have been obtained from a report made, for that matter. The Reporting Center may also have received information, for example, by exchange of data with foreign reporting centers. In the latter case, the Reporting Center may ask further information from the Aruban financial institutions involved in one way or another in transactions on which information was obtained in this way.

The power to request further information can make a crucial contribution to the ultimate recognition of an

unusual transaction such as a money laundering transactions. Therefore, institutions from which these data or this information is asked, are obligated to furnish this to the Reporting Center. Furnishing additional data or information will have to take place in writing, and in urgent cases verbally, within a term fixed by the Reporting Center. Based on Article 13 of the present draft, further rules will be laid down concerning the way in which a report has to be made. These rules may not tend to have the financial institutions report more data than to which they are obligated under Article 11, second paragraph. They may only concern the way in which reports have to be made. In this connection it is obvious that a standard form will be designed for the report, so that the way in which reports are made will be somewhat harmonized. In this context the Reporting Center might also consider, in consultation with the institutions involved, in what way use could be made of modern electronic techniques of data transfer.

Article 6 of the draft obligates the Reporting Center to supply the police and judicial authorities with data that are of importance to the prevention and investigation of money laundering or of the underlying offenses. So, the Reporting Center is not authorized to furnish the police or judicial authorities with data other than the data meant above. In this way it is prevented that, on the one hand, data reported by the financial institutions are passed on to the police and judicial authorities without any further check, while, on the other hand, it is ensured that the police and judicial authorities will promptly be informed of the data that are of importance to the performance of their tasks. Furthermore, it is necessary for the proper performance of its task, that the Reporting Center is allowed to exchange data with other reporting centers, within or outside the Kingdom. Article 7 of the present draft stipulates that rules will be laid down by State Decree containing General Administrative Orders, concerning the supply of data from the register of the Reporting

Center, and the conditions on which this has to take place, to agencies within or outside the Kingdom designated by the Government, which have a task similar to the one of the Reporting Center.

This Article provides the legal basis for supplying data from the register of the Reporting Center to reporting centers within and outside the Kingdom. In as far as this concerns reporting centers outside the Kingdom, a treaty-basis is required. If, on the basis of Article 6, the Reporting Center supplied data to the police, these data can be supplied, in conformity with the relevant legislation, to foreign police authorities, including foreign police reporting centers.

Criminal and civil indemnity

Financial institutions reporting an unusual transaction in conformity with Article 11 of the present draft, would run the risk, without any further provision, that they provide data based on which they themselves can be prosecuted for money laundering. For the fact is that it not impossible that it appears from these data that the reporting financial institution accepted money, while it knew or could suspect in reason that the money proceeded from a crime. In view of the fact that the obligation to report is not proposed primarily to designate financial institutions money launderers, but to trace the identity of those who present criminal moneys, it is proposed in Article 14 as regards criminal liability, that data or information that were provided in an obligatory way, in conformity with the present State Ordinance, may not be used as evidence for a charge of infringement of the State Ordinance Penalization Money Laundering (SPG 1993, No. 70) by the reporting financial institution. Of course, the aforementioned data can be used in the investigation, prosecution, and trial of the person who presented the money. The

financial institutions which are obligated to report, remain criminally liable for money laundering, but cannot be convicted on the basis of the data reported.

In connection with supplying the data required, financial institutions fulfilling the obligation to report, could be sued by their client in a civil action based on non-performance or tort for any possible loss resulting herefrom.

The undersigned deem it reasonable to indemnify these institution from and against this. For this reason it is proposed in Article 15, that the institution that proceeded to reporting based on Article 11, is not liable for the loss a third person suffers due to this, unless it is made plausible that, in view of all facts and circumstances, one could not have proceeded to reporting in reason.

The Counseling Committee

Article 16 of the present draft creates the Counseling Committee for the Reporting Center unusual transactions. The task description of this Committee is laid down in Article 18.

The Committee will serve as counselor and expert panel for the Reporting Center. For the rest, the task of the Committee actually boils down to the evaluation of the way in which the Reporting Center performs its task, and, if necessary, advising the Minister of Finance and the Minister of Justice in this field. The committee will also have to evaluate the way in which the indicators function. Attention will have to be paid to the question whether these indicators provide sufficient clarity for the financial institutions. In addition to this, the result of the obligation to report has to be evaluated (in other words, how many and what percentage of the reports are relevant for investigative purposes). Partly also depending hereon it has to be considered whether the indicators have to be

adjusted or supplemented. For the purpose of an adequate performance of its task, the Counseling Committee can dispose of personal data, made anonymous, from the register of the Reporting Center. As regards the composition of the Committee, the draft proceeds on it that, in principle, all parties involved may be members of it. Based on Article 17, the Committee consists of representatives of the Ministries of Finance and Justice, the branches of industry falling under the scope of this State Ordinance, the supervisory authorities for the branches of industry falling under the scope of this State Ordinance, and the Public Prosecution. The members and substituting members are appointed and dismissed by the Minister of Finance on the recommendation of aforementioned agencies/bodies. It will be endeavored to arrive at a balanced composition, and it is anticipated that certain persons, such as e.g. the Public Prosecutor of the Common Court and the President of the Central Bank will be appointed by virtue of their position. Furthermore, it is deemed desirable for reasons of effectiveness that the Head of the Reporting Center attends the meetings of the committee. He will then be able to bring forward the experiences of the Reporting Center in these meetings, for which there will be a need, especially in the beginning. In this way, any possible problems can be discussed immediately with all parties involved. Furthermore, he will hear in advance what possible suggestions for improvements there are from the financial institution on the one part, and the Public Prosecution on the other part, so that he can react to them at once. However, it was decided not to make him a member, as the committee will have to evaluate the way in which the Reporting Center performs its task. Of course, the Counseling Committee might consider to establish one or more task forces on which experts will serve. This could notably be desirable in connection with the intended role of the Committee as regards the indicators, as set forth above.

Financial consequences

The introduction of the system of reporting unusual transactions resulting from international obligations, has financial consequences, both in terms of expenses, and in terms of revenue. Since the Reporting Center will only start in 1996, the expenses involved in the Reporting Center will be included in the national budget of 1996.

Explanation of each separate Article

In the preceding sections of the Explanatory Statement, most Articles have already been discussed in detail in their interrelations, so that this explanation of the individual articles can be restricted to a brief discussion.

Chapter I General provisions

Article 1

Article 1, part a, contains a definition of a financial service.

In case of a transaction by giro, the financial service consists of opening the account, or crediting or debiting this account. If a transfer takes place from one account holder to another account holder with two or more financial institutions, then all financial institutions involved can be obligated to report. The transaction in Article 1, part c, defined as an act or complex of acts of, or for the benefit of a client in connection with the buying of one or more financial services, will actually consist on the part of the debited client, of the order to transfer, and on the part of the credited client, it will actually consist of taking receipt of the amount of money involved, and in case

of any possible in-betweens it will actually consist of the passing on for the benefit of client.

By virtue of Article 1, part a, under 9, also other financial services can be brought under the scope of the State Ordinance. Not only financial institutions can be misused by money launderers. It may even be the case that a successful anti-money laundering policy as regards these institutions, may cause money launderers to flee to other vulnerable economic activities. The international consultations notably concentrated in the first instance on the prevention and fighting of the use of the financial system for money laundering. For this reason the undersigned also aim in the first instance at this system. Depending on the experiences, it will be considered whether an expansion to other sectors is desirable.

Chapter II The Reporting Center unusual transactions

Article 2 through 9

In Article 2, the Reporting Center unusual transactions is created. Unusual transactions have to be reported to this Center.

The responsibility for the general management, the organization, and administration of the Reporting Center are imposed by Article 2 on the Minister of Finance. In connection with this responsibility, it is logical that he is also competent based on Article 8, to recommend the appointment, suspension, and dismissal of the Head and the other staff of the Reporting Center. Such a recommendation will always have to take place in agreement with the Minister of Justice, since the Head will play an important role in the anti-money laundering policy, and Finance and Justice bear a joint responsibility in this field. For this reason Article 9 stipulates that the Minister of Finance determines the budget and formation of the Reporting Center

in agreement with the Minister of Justice.

Article 4 provides that the Reporting Center keeps a register. The Minister of Finance is the keeper of this register, and therefore will be able to lay down rules as regards the keeping of this register by Ministerial Order.

Chapter II The obligation to report

Article 10 through 15

Article 10 constitutes the basis of the indicator system explained above. Attention was drawn to the necessity of flexibility in determining the indicators. For this reason it is proposed to lay down the indicators, after consultation with the Reporting Center, having heard the Counseling Committee, by Ministerial Regulation, after which this Regulation has to be enacted by State Decree containing General Administrative Orders, within 6 months.

The first paragraph of Article 11 contains the obligation to report unusual transactions. It is observed that this Article does not distinguish between cash transactions and transactions by giro. Any unusual transaction will have to be reported. However, different indicators may be applicable to cash transactions and transactions by giro. The second paragraph of Article 11 enumerates the data to be included in a report.

Based on Article 12, first paragraph, the Reporting Center may ask for additional data, in order to be able to judge whether data already obtained should be passed on based on its task set forth in Article 3, under b. In pursuance of the second paragraph of Article 12, the financial institution will have to comply with such a request. Normally speaking, this will have to be done in writing, but in urgent cases verbal supply of the additional data or information is prescribed as well. At any rate, the data or information will have to be supplied within a term to be

fixed by the Reporting Center.

In pursuance of Article 13, additional rules may be laid down by State Decree containing General Administrative Orders, concerning the way in which a report has to be made, or additional data or information have to be given respectively. This concerns rules of a procedural nature.

In Article 14 and 15 a further provision has been laid down concerning criminal and civil liability.

Chapter V Secrecy

Article 20 and 21

The clause "except in as far as the necessity to disclose results from the objective of this State Ordinance" inserted in the first paragraph of Article 21, links the importance of reporting to the objective of this State Ordinance; that is to say: the prevention of the use of the financial system for money laundering, and fighting money laundering itself. Without this clause, the existing warning system between financial institutions could be hindered. (In practice certain financial institutions warn each other when a transaction is suspicious). In pursuance of Article 21, second paragraph, also the data and information financial institution obtain from the Reporting Center, based on Article 3, under c, are secret. This Article precludes any possible supply of information.

Chapter VI Right of inspection

Article 22

In principle, this Article grants anybody a right to inspect the personal data on him recorded in the register of the Reporting Center. The keeper of the register may

reject a request for inspection, in as far as this is necessary for the proper performance of the task of the Reporting Center, or in as far as weighty interests of third parties make this necessary. The applicant may lodge an objection to a rejection of the request with the Court in the First Instance, which can order the keeper to comply with the request as yet.

Chapter VII Supervision

Article 23

Article 23 grants the Minister of Finance the power to designate officials of the Reporting Center, supervisors over the compliance with the provisions by, and by virtue of this State Ordinance.

The enforcement of this State Ordinance cannot only take place along the lines of criminal law. It is of importance that supervision is exercised over the compliance with the obligation to report.

If, in exercising his supervision, the official of the Reporting Center establishes infringements of the obligation to report, he can call in the police, who subsequently will make an official report.

Chapter VIII Penal provisions

Article 24

In Article 24, infringement of the obligation to report under Article 11, of the obligation to supply additional data or information as meant in Article 12, second paragraph, of the secrecy of Article 20 and 21, or (in as far as designated punishable acts) of regulations given by virtue of Article 13, are designated felonies or misde-

meanors, depending on the question whether there is or is no question is design. Furthermore, non-compliance with the obligation to cooperate with the supervisory official of the Reporting Center is penalized.

[was signed:]

The Minister of Finance, a.i.

The Minister of Justice, a.i.

1995 No. 86

State Ordinance of December 20, 1995 containing regulations concerning the identification for rendering financial services (State Ordinance Identification for Rendering Financial Services)

Issued December 29, 1995

The Minister of Justice
E.J. Vos

IN THE NAME OF THE QUEEN!

THE GOVERNOR of Aruba,

Having taken into consideration:

that it is desirable, within the framework of the recommendations of May 30, 1990 of the Financial Task Force on Money Laundering, to proceed to the determination of the identity for financial services, in order that a contribution can be made to the international suppression of laundering money proceeding from criminal activities;

Has, having heard the Advisory Council, in joint consultation with Parliament, laid down the following State Ordinance:

Article 1

For the purposes of this State Ordinance and the provisions based hereon, the following shall be understood by:

- a. Financial Service Provider: any person who provides a financial service by virtue of his profession or business;
- b. Financial Service: the performance by the Financial Service Provider of the following acts in or from Aruba:
 1. the safe keeping of stock, banknotes, coins, currency notes, precious metals, and other assets;
 2. opening an account in which an amount in money, stock, precious metals, or other assets can be

- kept; -
3. renting out a safe-deposit box;
 4. making a payment on account of the cashing of coupons or similar documents of bonds, or similar securities;
 5. providing a service concerning a transaction, or of apparently interrelated transactions, having an equivalent or total equivalent, equal to, or exceeding the amount to be determined by regulation by the Minister;
 6. rendering other services to be designated by State Decree containing General Administrative Orders;
- c. Client: the natural person or legal entity to whom/- which, or for the benefit of whom/which a financial service is rendered, it being understood that for the purposes of this State Ordinance a non-corporate company shall be put on a par with a legal entity;
- d. Transaction: an act or a complex of acts for the benefit of a Client in connection with buying one or more financial services;
- e. The Minister: the Minister of Finance.

Article 2

1. Each and any Financial Service Provider is obligated to establish the identity of a client, before he renders this client any Financial Service. If the client is a natural person, who is incompetent to perform the legal acts relating to the Financial Service, the Financial Service Provider may restrict himself to determining the identity of the person who acts in this matter as the legal representative in the sense of the Civil Code of Aruba.

2. The first paragraph shall similarly apply, if the amount of the Transaction as meant in Article 1, part b, under 5, is not known or is smaller than the amount set

in pursuance of those regulations, but, in view of its nature, the Transaction has to be deemed an unusual transaction as meant in the State Ordinance Obligation to Report Unusual Transactions (SPG 1995, No. 85), or constitutes part of a whole of interrelated transactions, rendered by several financial institutions.

Article 3

1. If the Client is a natural person, the identity shall be established by means of one of the following documents:

- a. a valid driver's license as meant in the Road Safety Ordinance, or
- b. a valid identity card as meant in the State Ordinance Identity Cards, or
- c. a valid travel document in the sense of the Passport Act (Statute Publication Gazette of the Netherlands 1991, No. 498; SPG 1991, No. 121, or
- d. another travel document valid in the country of origin of the person in question, which meets the requirements to be laid down by State Decree containing General Administrative Orders.

2. If the Client is a legal entity, the identity shall be established by means of a certified extract from the register of a Chamber of Commerce domiciled within the Kingdom, or a notarial deed executed within the Kingdom.

3. It shall be determined by regulation of the Minister what data have to be included at least in the notarial deed as meant in the second paragraph.

Article 4

1. The Financial Service Provider is obligated to establish, in accordance with Article 3, the identity of the natural person who appears before him on behalf of a Client, before he renders a Financial Service

2. The Financial Service Provider is obligated to ascertain whether the natural person appearing before him, acts for himself or for a third party.

3. In the event the natural person acts for a third party, the Financial Service Provider is obligated to determine the identity of this third party by means of documents as meant in Article 3, to be submitted by the natural person.

4. If the Financial Service provider knows, or has to suspect in reason, that the natural person appearing before him, acts for a third party, he shall take reasonable measures in order to find out the identity of this third party.

Article 5

In deviation from Articles 3 and 4, the obligation meant in Article 2, first paragraph has been fulfilled, if for the determination of the identity of a client, the Financial Service Provider makes use of data he ascertained for a Financial Service rendered to Client at an earlier date with due observance of the provisions in this State Ordinance, provided these data are not more than five years old.

Article 6

1. The Financial Service Provider is obligated to record the following data in such a way that they are accessible:

- a. the name, the address and the place of residence, or registered office of the Client and of the person in whose name the account or the deposit is registered, or of the person who will have access to the safe-deposit box, or of the person in whose name a payment is made or a Transaction is effected, as well as their representatives;

- b. the nature, the number, and the date and place of issue of the document by means of which the identification took place, except when Article 5 is applicable;
- c. the nature of the Financial Service.

2. In addition to the data mentioned in the first paragraph, the following data relating to the Financial Services mentioned in Article 1, shall also be recorded:

- a. in case of taking into custody the assets mentioned in Article 1, part b, under 1: the value represented by these assets at the moment of taking them into custody, or, in the event that the value represented by these assets cannot be determined in reason, an accurate description of these assets and the account number in question;
- b. in case of opening an account or deposit: a clear description of the kind of account or the kind of deposit, and the number given to this account or this deposit;
- c. in case of renting out a safe-deposit box: the number or another distinguishing indication of the safe-deposit box in question;
- d. in case of making payments on account of cashing coupons or similar documents of bonds or similar securities: the amount involved in the Transaction, and the account number in question;
- e. in case of a Financial Service as meant in Article 1, part b, under 5: the amount involved in the Transaction, and the account number in question;
- f. in case of a Financial Service as meant in Article 1, part b, under 6: the data relating to this Service laid down by State Decree containing General Administrative Orders.

Article 7

The Financial Service Provider is obligated to pre-

serve the data meant in Article 6 in an accessible way during five years after the termination of the agreement under which the Financial Service was provided, or five years after the execution of a Financial Service as meant in Article 1, part b, under 4 and 5.

Article 8

A Financial Service Provider is prohibited from providing a Financial Service, if the Client's identity has not been established in the way as laid down in this State Ordinance.

Article 9

1. The officials designated by the Minister of Finance shall be charged with the supervision over the compliance with the provisions by or in pursuance of this State Ordinance.

2. By State Decree containing General Administrative Orders rules may be laid down concerning the performance of the duties by the officials designated by virtue of the first paragraph.

3. The officials designated by virtue of the first paragraph shall be authorized exclusively in as far as this is reasonably necessary for the execution of their tasks:

- a. to demand from anybody inspection of all books and documents, and to make copies thereof;
- b. to subject goods to inspection and examination, and to take them along temporarily for this purpose;
- c. to enter all places, with the exception of dwelling houses, accompanied by persons designated by them.

4. If necessary, they shall gain access to a place as meant in the third paragraph, part c, with the aid of the strong arm.

5. In the exercise of powers as meant in the third paragraph, the supervisors shall identify themselves, unless, due to this, the objective of the supervision could

not be attained. In the latter case they shall identify themselves as soon as this is possible in reason.

Article 10

1. Infringement of, or acting in violation of, the provisions in the Articles 2, first and second paragraph, 4, 6, 7, 8, and 9, third paragraph, in as far as this took place intentionally, shall be liable either to imprisonment not exceeding four years, or a fine not exceeding 500,000.- florins, or to both penalties.

2. Infringement of the regulations as meant in the first paragraph, in as far as not committed intentionally, shall be liable to either imprisonment not exceeding one year, or a fine not exceeding 250,000.-- florins, or to both penalties.

3. The acts rendered punishable in the first paragraph are felonies; the acts rendered punishable in the second paragraph are misdemeanors.

Article 11

1. In the event that an act rendered punishable in Article 10 is committed by or by order of a legal entity, criminal prosecution can be instituted and the penalties imposed either against this legal entity, or against those who ordered the act to be committed, or who actually were in charge of the prohibited act or omission, or against them jointly.

2. An act rendered punishable in Article 10 is committed i.a. by or by order of a legal entity, if it is committed by persons who, either by virtue of employment, or for other reasons, act in the sphere of the legal entity, irrespective of the fact whether these persons committed the punishable act individually, or that the elements of this act are to be found with them jointly.

3. If the criminal prosecution is instituted against a

legal entity, it shall be represented during the prosecution by the manager/director, and in the event there are more managers/directors, by one of them. The representative may appear by attorney. The judge may order the appearance of a certain manager/director; in that case he may have him brought in by the strong arm.

4. As regards the acts rendered punishable in Article 10, legal entities shall be deemed to be domiciled, for the application of Article 19 of the Code of Criminal Procedure of Aruba, at the place where they are established.

5. In the event criminal prosecution is instituted against a legal entity, the services, summonses, notices, notifications, or other communications prescribed in the Code of Criminal Procedure of Aruba shall be addressed to the person or the residence of the manager/director, and in the event that there are more managers/directors, to one of them, or to the place where the Board has its seat or office, except when it concerns a summons meant in Article 130, second and third paragraph of the Code of Criminal Procedure of Aruba.

6. For the application of this Article the non-corporate company, the partnership, any other association of persons with terminal funding capital, shall be put on a par with a legal entity.

Article 12

In the event the officials charged with the investigation, as well as the exerts are denied access to a place which is a dwelling house, or which can only be reached via a dwelling house, they shall only enter without the explicit permission of the occupant with a specific written warrant of the Public Prosecutor in the Common Court of Justice or the Court in the First Instance, and - in case no one of them is an official as meant in Article 8, parts 1 and 3 of the Code of Criminal Procedure of Aruba - in the presence of the assistant prosecutor.

Article 13

As from the effective date of this State Ordinance, Financial Service Providers shall be given the opportunity during four months to take measures for the implementation of the regulations laid down in this State Ordinance.

Article 14

1. This State Ordinance shall become effective on a date to be stipulated by State Decree.

2. It may be referred to as the State Ordinance Identification for Rendering Financial Services.

Given in Oranjestad, December 29, 1995
O. Koolman

The Minister of Finance,
A.W. Engelbrecht

The Minister of Justice,
E.J. Vos

State Ordinance containing regulations
concerning the identification for
rendering financial service (State Ordinance
Identification for Financial Service)

EXPLANATORY STATEMENT

The past decade there has been question of increased international efforts to fight the laundering of moneys which are the proceeds of criminal activities. This led on a global level to forty recommendations of the Financial Action Task Force (FATF) on money laundering of May 30, 1990. In addition to the present State Ordinance, the State Ordinance Penalization Money Laundering (SPG 1993, No. 70) and the draft of the State Ordinance Reporting Unusual Transactions, presently pending in Parliament, are also of importance to the implementation of these FATF recommendations. The latter State Ordinance intends to prevent and -if necessary - fight the laundering of moneys which are the proceeds of criminal activities, by imposing the obligation to report unusual transactions. By the identification obligation for rendering financial services, regulated by the present draft, it is endeavored to prevent and fight the use of the financial system for money laundering.

In the Government's opinion, financial service providers have to demand identification from their clients when entering into business relations or effecting transactions exceeding a certain threshold, in order to prevent that those who launder money take advantage of their anonymity to undertake criminal activities. Furthermore, the

Government deems it desirable that these service providers see to the preservation of copies of, or references to the documents based on which the identification of their clients took place. The prevention of money laundering practices entails in this connection that - in compliance with the recommendations 12, 13 and 14 of the FATF - the financial service providers have to proceed to identification not only when entering into a permanent relation with a client, but also when rendering certain incidental financial services.

These recommendations are worded:

"12. Financial institutions shall not open any anonymous accounts or accounts in apparently fictitious names: they have to be obligated (based on the law, regulations, agreements between supervisory authorities and financial institutions, or agreements on this matter between financial institutions among themselves) to establish the identity of casual and regular clients, based on an official or other reliable identity document, and record this identity, when they enter into a relation or execute a transaction (notably when opening an account or a savings account, enter into fiduciary transactions, rent out safe-deposit boxes, and effect large transactions in cash).

13. Financial institutions shall take reasonable measures to obtain information on the true identity of the persons on whose behalf an account is opened or a transaction is effected, if it is suspected that the client does not act on his own behalf, notably in cases of co-called domiciliary companies (that is, institutions, enterprises, foundations, trusts, etc., that have no trading or production establishment, or any other form of commercial activity in the country of their registered office).

14. Financial institutions shall preserve all necessary documents concerning national or international transactions for at least five years, in order to be able to promptly comply with requests for information by the competent authorities. These documents shall be such that it is

possible to reconstruct individual transactions (including the amounts and currencies), in order - if required - to supply evidence for the purpose of the prosecution of criminal acts.

Financial institutions shall keep record of the client's personal data (e.g. copies or registers of official identification papers such as passports, ID cards, driver's licenses, or similar documents), statements of account and business correspondence, and this during at least five years after closure of the account. The documents in question shall be available to national competent authorities in connection with criminal prosecution and investigation."

Since the draft constitutes the implementation of the regulations laid down in the aforementioned FATF recommendations, only the articles of the draft that do not directly stem from these recommendations, will be discussed hereinafter.

So, for example, Article 1 introduces a set of concepts created specifically for this draft. The most important ones are the definitions included as parts a and b. Part a defines the financial service provider as any person who renders a financial service by virtue of his profession or as a business. The functional description of a financial service provider has the advantage that each natural person and legal entity who/which renders a financial service as meant in Article 1, part b, falls under the definition. Part b also gives a functional description as regards the financial services. The assets mentioned under 1 and 2 refer to all things, not yet mentioned, having a value that can be expressed in (some) money. All services not falling under 1 through 4, fall under the services meant under 5, provided they exceed a certain amount to be fixed by the Minister of Finance. In this way, the often non-recurring, incidental services (e.g. the exchange of cash) are brought under the scope of the present State Ordinance. Under 6, the possibility is created to also bring other categories of professions, enterprises, and companies under the scope

of the present draft by State Decree containing General Administrative Orders, if it might appear that they are misused for laundering moneys which are the proceeds of criminal activities; an example hereof could be the casinos. For the rest, it should also be observed that the financial services provided by life insurers have not been included in the definition, since there is no separate regulation in Aruba as yet which regulates the various insurance agreements. Presently, an organization selling life insurances in Aruba, falls under the State Ordinance Supervision Banking and Credit System (SPG 1990, No. GT 56). As soon as the State Ordinance containing new provisions concerning the supervision over the Banking and Credit System, presently in preparation, will have been enacted, the present draft will be adjusted in the sense that the life insurers will also fall under the provisions in the present draft.

In Article 2, first paragraph, it is stipulated that a financial service provider is obligated to establish the identity of a client, before he renders a client a financial service. In the second paragraph, the identification obligation is extended to cases in which it is not known what amount will be involved in the transaction (or interconnected transactions), or the amount is smaller than the amount fixed in pursuance of Article 1, part b, under 5, if it appears from the nature of the transaction that the transaction can be deemed unusual in the sense of the State Ordinance Reporting Unusual Transactions, or constitutes part of a whole of connected transactions effected by several financial institutions. Finally, Article 13 intends to give the financial service providers the opportunity to prepare themselves for the compliance with the present State Ordinance. In this context one should think i.a. of giving information to any possible employees, and the development of internal procedures.

As regards the financial consequences of the present draft, it may be observed that no expenses will be involved for the State in the implementation of the present draft for the time being.

The Minister of Finance,

1996 No. 22

MINISTERIAL REGULATION of February 29, No. 1, for giving effect to Article 10, first paragraph, of the State Ordinance Obligation to Report Unusual Transactions (SPG 1995 No. 85).

Issued February 29, 1996

The Minister of Justice, a.i.
P.E. Croes

The Minister of FINANCE
and
The Minister of JUSTICE, a.i.

Having taken into consideration:

that it is necessary to lay down indicators, based on which it can be established in what cases there is question of unusual transactions as regards financial services in the sense of the State Ordinance Obligation to Report Unusual Transactions (SPG 1995, No. 85);

Having regard to:

Article 10, first paragraph, of the State Ordinance Obligation to Report Unusual Transactions (SPG 1995, No. 85);

Having heard:

by means of the advice of February 9, 1996, the Counseling Commission as meant in Article 16, first paragraph, of the State Ordinance Obligation to Report Unusual Transactions (SPG 1995, No. 85);

HAVE DECIDED:

Article 1

The indicators set forth in Article 3, first and second paragraph, shall only apply to the financial services mentioned in Article 2, rendered or intended by the credit institutions and credit unions that are obligated to report in pursuance of Article 2 of the State Ordinance Supervision Banking and Credit System (SPG 1990, No. GT 56).

Article 2

The indicators shall only apply to the following financial services:

- a. the safe keeping of stock, banknotes, coins, currency notes, precious metals, and other assets;
- b. opening an account in which an amount in money, stock, precious metals, or other assets can be kept;
- c. crediting or debiting an account, or causing an account to be credited or debited, in which an amount of money, stock, precious metals, or other assets is kept;
- d. making a payment on account of cashing coupons or similar documents of bonds or similar securities;
- e. exchanging Aruban florins or foreign currencies.

Article 3

1. The financial institutions meant in Article 1, shall proceed to reporting a transaction effected or intended, to the Reporting Center Unusual Transactions, if there is question as regards one of the financial services mentioned in Article 2, of:

- a. a transaction reported to the police or judicial authorities in connection with a possible infringement of the State Ordinance Penalization Money Laundering (SPG 1993, No. 70);
- b. opening a business account for the benefit of a non-resident of Aruba;
- c. a cash transaction exceeding Afls. 100,000.--;
- d. a cash transaction exceeding Afls. 100,000.--, whereby deposit is made into a private or business account;
- e. a cash transaction exceeding Afls. 20,000.--:
 1. whereby exchange into higher denominations takes place;
 2. whereby exchange takes places into other currencies;

3. concerning the purchase or cashing of checks and similar instruments of payment;
 - f. a transaction exceeding Afls. 5,000.-- whereby the institution makes this amount available for collection in Aruba or abroad by a person not holding an account;
 - g. a transaction by giro exceeding Afls. 1,000,000.--, which meets two or more of the following sub-indicators:
 1. the transaction comes from abroad;
 2. the transaction is meant for abroad;
 3. the transaction is processed via an account with an institution, meant in Article 14 of the State Ordinance Supervision Banking and Credit System;
 4. the transaction is effected for, and on instructions of, a non-resident of Aruba;
 - h. a transaction by giro exceeding Afls. 20,000.--:
 1. for non-account holders meant for abroad;
 2. in which stock is involved.
2. The financial institutions meant in Article 1 shall proceed to reporting a transaction effected or intended to the Reporting Center Unusual Transactions, if the institution is of the opinion that one of the following situations is applicable to the transaction:
- a. there is cause to presume that the transaction is related to an offense as meant in the State Ordinance Penalization Money Laundering (SPG 1993, No. 70);
 - b. there is question of opening an account, whereby two or more of the following sub-indicators are met:
 1. the account is opened for, and on instructions of, a non-resident of Aruba;
 2. there are identification problems;
 3. an unusual condition offer is made;
 4. there is question of a remarkable number of accounts;
 - c. there is question of a cash transaction exceeding Afls. 20,000.-- meeting two or more of the following sub-indicators:

1. there are identification problems;
 2. an unusual condition offer is made;
 3. the transaction is atypical for client;
 4. the transaction takes place in denominations unusual for the client;
 5. the transaction takes place in packing unusual for client;
 6. there is question of frequent deposits by persons not being account holders;
 7. client is nervous without clear cause;
 8. client is accompanied and checked by a third person;
 9. client acts as an in-between for a third party;
 10. the transaction has no understandable legal object, or no visible relation with (business) activities;
 11. there is question of a remarkable turnover, or remarkable change in the balance of account;
 12. inflow consists of many small amounts, and outflow of large amounts;
 13. without this being inherent in the (business) activities, client presents uncounted amounts;
 14. the deposit is not made into own or business account;
 15. the deposit is made in favor of an account with a foreign bank.
- d. there is question of one or more cash transactions having a value which is lower than the one mentioned in the first paragraph, parts c, d, or e, raising the suspicion that the client wants to avoid reporting in this way;
- e. there is question of a transaction by giro exceeding Afls. 1,000,000.--, meeting two or more of the following sub-indicators:
1. one of the sub-indicators as contained in the first paragraph, part g, under 1, 2, and 3;
 2. the transaction has no understandable legal ob-

ject, or no visible relation with (business) activities;

3. there is question of a remarkable turnover, or remarkable change in balance of account;
4. there is question of identification problems;
5. an unusual condition offer is made;
6. the transaction is atypical for client;
7. the client is deemed to act as an in-between for a third person;

3. Sums of money amounting to the equivalent in foreign currencies, shall be put on a par with the amounts expressed in Aruban florins mentioned in the first and second paragraph.

Article 5

This Ministerial Regulation shall become effective as of March 1, 1996.

A.W. Engelbrecht

P.E. Croes

EXPLANATION

The purpose of the State Ordinance Obligation to Report Unusual Transactions (SPG 1995, No. 85) is to preserve and promote the integrity of Aruba's financial system. The State Ordinance endeavors to achieve this by laying down regulations for financial transactions, as set forth in that State Ordinance, and this, within the framework of fighting the abuse of this financial system for the purpose of laundering moneys that are the proceeds of crime. The essence of the regulation is the introduction of an obligation for (i.a.) financial institutions to report established unusual financial transactions.

Whether there is question of unusual transactions, has to be judged in accordance with aforementioned State Ordinance, based on so-called lists of indicators. These lists contain criteria to be used by these financial institutions, or branches of industry or professional groups rendering financial services as a touchstone in order to determine whether a transaction effected or intended, has to be reported to the Reporting Center as being unusual.

The lists of indicators will be drawn up for each separate branch of industry or professional group falling under the scope of the State Ordinance. The present Ministerial Regulation provides the lists of indicators for the financial institutions belonging to the banking system. This concerns credit institutions and credit unions in the sense of the State Ordinance Supervision Banking and Credit System. The off-shore banks fall under the scope of the Regulation as well, since they are obligated to report in the sense of Article 2 of the latter State Ordinance.

The indicators are not applicable to all financial services in the sense of the State Ordinance Obligation to Report Unusual Transactions. The most frequent services were elected (for the time being) from the enumeration of

financial services as contained in Article 1, under a, of aforementioned State Ordinance (see Article 2 of the Regulation).

As regards the indicators, set forth in Article 3, a distinction is made between indicators which, if there is question of them, automatically lead to the obligation to report the transaction in question (see Article 3, first paragraph), and indicators which, in principle, leave the institutions in question some discretionary room for judgment whether or not to proceed to reporting (see Article 3, second paragraph). It is expressly stated that the institutions only have freedom of judgment as regards the question whether one of the situations meant in Article 3, second paragraph, are applicable. If this is the case according to the institution, then reporting the transaction is obligatory. The standard to be used by the institutions in question, is the criterion of reasonableness; that is to say, that if it has to be judged in reason that there is question of the presence of one or more subjective indicators, one will have to proceed to reporting a transaction.

A number of concepts in this Regulation, as well as a few indicators included in Article 3, first and second paragraph, should be explained in further detail. However, it should be stated in advance, that the terminology used in this Regulation is in line with the terminology as used in the State Ordinance Obligation to Report Unusual Transactions and, consequently, it has to be interpreted in conformity with Article 1 of this Ordinance.

However, the concept "transaction intended" is not included in that Article. In accordance with Article 11, first paragraph, of the State Ordinance, such a transaction, just like a "transaction effected", qualifies for reporting. This concept is also used in the present Regulation. It is of importance that there will already be question of a transaction intended, in case of a client's clear expression of will to effect an unusual transaction, also when this transaction has not been, or will not be, exe-

cuted. Consequently, the term "intended" does not refer to the bank's intention to execute a certain transaction, but to the client's objective. This means that a transaction refused by the financial institution, but to be deemed unusual in view of the indicators, may, or has to, be reported.

The indicator mentioned in part a of the first paragraph of Article 3 - reporting is obligatory, if a transaction has been reported to the police or judicial authorities - intends to prevent that the financial institutions pass on data that are of importance to money laundering to the judicial authorities, but the Reporting Center is not, or will not be informed hereof. In view of the description of the duties of the Reporting Center, as set forth in Article 3, opening lines, and parts a, d, and e of aforementioned State Ordinance, it is necessary that all data that are of importance to a proper performance of the duties, are recorded in the register of the Reporting Center. Exactly, and in the first place, because of this reason, the Reporting Center will have to dispose at any rate of data directly reported by the financial institutions on their own initiative to the prosecution authorities.

As regards Article 3, first paragraph, part b, it should be observed that a business account should be understood to be an account in the name of a legal entity (a corporation, Aruba exempt corporation, foundation, association, etc.), including accounts in the name of a one-man business, partnership, or of other forms of business joint ventures.

Subsequently, in part b - but also elsewhere - there is question of a transaction effected for a non-resident of Aruba. By way of contrast, it is indicated what has to be understood by the term "resident" in order to describe the concept "non-resident". Residents are:

1. natural persons residing in Aruba and recorded in the population register, or who are staying in Aruba for a

- term exceeding one year after their arrival here, as soon as this year has lapsed;
2. legal entities, general partnerships, and limited partnerships, domiciled in Aruba;
 3. branches, branch offices, enterprises and agencies established in Aruba, in as far as not falling under 2;
 4. administrative organs, services and enterprises;
 5. the persons, legal entities, and other institutions designated by the Central Bank of Aruba, in as far as not falling under 1 through 4.

Consequently, non-residents include at any rate natural persons, legal entities, general partnerships, limited partnerships, branches of aforementioned bodies, as well as branch offices and agencies not falling under the description of the concept "resident".

Subsequently, in Article 3, first paragraph, part g, under 3, mentions as a sub-indicator the circumstance that a transaction is executed through an account with a credit institution as meant in Article 14 of the State Ordinance Supervision Banking and Credit System. This refers to the so-called off-shore banks, which to a very great extent are withdrawn from the participation in the regular financial intercourse. Based on Article 1 of this Regulation, these banks themselves already fall under the obligation to report of the State Ordinance Obligation to Report Unusual Transactions. Therefore, this sub-indicator has been included in the first place, and only, for the situation in which an ordinary bank or an off-shore bank transfers, or receives by transfer, money from an off-shore bank. This circumstance is a sub-indicator to establish an unusual transaction. Consequently, it is not the intention that the sub-indicator creates an obligation to report for the off-shore banks themselves beforehand, if only one of the other sub-indicators mentioned in part g is met.

"Stock", as mentioned in Article 3, first paragraph, part h, should be understood to mean share certificates,

bonds, mortgage bonds, deposit fraction certificates, participation and profit sharing certificates, founder's shares, stock options, treasury notes, inscriptions in the registers of national debt and share registers, and similar securities and rights, certificates of aforementioned securities and rights, as well as scrips of all above-mentioned securities.

As regards the interpretation of the indicators stated in Article 3, attention should be paid to part a of the second paragraph as well, in which there is question of a cause to presume that the transaction is related to money laundering. Consequently, this concerns the suspicion that the institution is abused in connection with money laundering. As regards this indicator, the financial institution will have to make it plausible that it could arrive at this conclusion in reason. However, this judgment need not be based solely on circumstances to be found in the list of indicators. In addition to this, the judgment can be based on the fact that transactions of the same client reported to the Reporting Center in the past, were reported to the police or judicial authorities, or that the institution knows that the activities of the client are the subject of a police investigation.

By the sub-indicator "identification problems", as mentioned in Article 3, second paragraph, part b, under 2. reference is made to the use of identification papers of which it turns out that they are stolen or forged, or to an unwilling or hesitating pose or attitude of the client.

By the sub-indicator "an unusual condition offer" (second paragraph, part b, under 3) reference is made i.a. to accepting low interest, or opening a current account or a transaction account, whereas a savings account or a time deposit would be more obvious for that which the client claims to intend.

The sub-indicator of part b, under 4, refers to the situation in which the number of accounts is not in line with the nature of the transactions of the client.

The indicator contained in Article 3, second paragraph, part c, under 10; and part e, under 4, - there is no understandable legal object for the transaction, or no visible relation with certain (business) activities - there is question of transactions about which one may wonder what the client wants to achieve by it, for example because the transaction only costs commission. If it cannot be made clear in any way, what purpose a certain transaction may serve, this may be an indication of illegitimate use of the financial system.

The indicator as contained in part d of the second paragraph intends to fight the so-called practice of "smurfing". This term means that the client deposits moneys in smaller amounts in the bank, since when depositing a larger lump sum, the suspicion of an unusual transaction might arise, and one would have to proceed in that case to reporting, based on the indicators of Article 3. If the bank suspects that the client deposits smaller amounts in order to avoid reporting, this is also a situation in which the institution will have to proceed to reporting.

Finally, reference is made in Article 3, second paragraph, part e, under 1, to the sub-indicators of the first paragraph, part g, under 1, 3, and 3. These indicators are not explicitly repeated here in order to avoid the appearance that certain combinations of these sub-indicators, both automatically (based on Article 3, first paragraph), as well as based on the judgment by the institutions (Article 3, second paragraph) classify for reporting. Part e refers to the situation in which one of the sub-indicators mentioned in the first paragraph, part g, under 1, 2, or 3, can be linked with the sub-indicators under 4 through 9.

[was signed:]

The Minister of Finance,

The Minister of Justice,

STATE ORDINANCE NARCOTICS

~~Definitions~~

Article 1

1. For the purposes of this State Ordinance the following shall be understood by:

the Minister: the Minister of Public Works and Public Health;

raw opium: the juice, coagulated by itself, obtained from the plant of the species *Papaver somniferum* L., and which only underwent the processes required for packing and transportation, irrespective of the morphine content thereof;

medicinal opium: raw opium that underwent the required processes in order to make it suitable for medicinal use, either in a powdered or granulated state, or mixed with neutral substances, in conformity with the requirements of the pharmacopoeia;

coca leaf: the leaf of the plant of one of the species of the genus *Brythroxylon*, with the exception of a leaf from which all ecgonine, cocaine and all other ecgonine alkaloids have been removed;

raw cocaine: all products, extracted from the coca leaf, that can be used directly or indirectly for the production of cocaine;

ecgonine: the laevorotatory ecgonine ($[\alpha]^{20} = 45.6^\circ$ determined in a solution of 5% in water) with the formula $C_8H_{15}NO_3 \cdot H_2O$, and all derivatives of this ecgonine, that might be used in the industry to make ecgonine again;

morphine: the main alkaloid of opium, with the chemical formula $C_{17}H_{19}NO_3$;

diacetylmorphine: diacetylmorphine (diamorphine, heroin) with the formula $C_{21}H_{23}NO_5$

cocaine: the methylester of the laevorotatory benzoyl-ecgonine ($[\alpha]^{20} = -16.4^\circ$ determined in a solution of 20% in chloroform with the formula $C_{17}H_{21}NO_4$;

hemp: the blooming or fruit-bearing tips, or parts there of, of any plant of the genus *cannabis* (with the exception of the seeds and leaves if they are not accompanied by the tips)

from which the resin has not been extracted, indicated by whatever name;

prepared opium: the product, obtained from raw opium by a series of special processes, and in particular by solution, effervescence, roasting, and fermenting, and for the purpose of converting it into an extract suitable for use. The prepared opium includes the dregs and all other residues of the opium smoked;

Single Treaty: Single Treaty on Narcotics, 1961 with appendices; New York, March 30, 1961 (Treaty Gazette 1963, No. 81).

2. The importation of substances meant in the Articles 3 and 4 shall include: the importation of objects or goods in which the substances are packed or stored, and each and any act aimed at the further transportation, the storage, delivery, receipt, or transfer by whatever person, relating to substances themselves, present in this country and not released on the open market, or to the objects or goods in which these substances are packed or stored.
3. The exportation of substances meant in the Articles 3 and 4 shall include: the exportation of the objects or goods in which the substances are packed or stored, and the transportation destined for a foreign country, the acceptance for transportation or presentation for transportation, declaring for exportation, and having in, on, or onto a vessel or vehicles destined for a foreign country of the substances themselves present in this country on the open market, or of the objects or goods in which these substances are packed or stored.

Prohibitions as regards the cultivation of plants Article 2

The cultivation of plants of the species *Papaver somniferum* L., of one of the species of the genus *Erythroxylon*, and of the genus *Cannabis* is prohibited.

Prohibitions as regards i.a. opium Article 3

1. It is prohibited:
 - A. to import, export, or forward in transit,
 - B. to prepare, process, treat, sell, deliver, transport,
 - C. to possess, have, or use,
 - D. to produce, including the refining and conversion,
 - a. opium, to be understood to be raw opium and medicinal opium,
 - b. prepared opium,

- c. raw cocaine and ecgonine,
 - d. morphine, diacetylmorphine, cocaine, and their respective salts,
 - e. any preparation of the substances meant under a, b, c, or d,
 - f. extract and tincture of hemp,
 - g. the narcotics designated by the Minister and other substances that in case of use can lead to harm to health of man or harm to society in His opinion.
2. The Minister can designate a preparation as meant under letter e of the first Paragraph of this Article, to which the prohibition imposed in this Article does not, or not fully apply.
 3. Preparing preparations directly from opium, or medicinal opium, and containing more than 20 percent morphine, shall be deemed the preparation of morphine.
 4. Conversion as mentioned in the first Paragraph, under D, shall be understood only to be the conversion in a chemical way; this shall not include the conversion of alkaloids into their salts.

Prohibition as regards i.a. hemp
Article 4

1. It is prohibited:
 - A. to import, export, or transfer in transit,
 - B. to possess, have, or use,
 - a. coca leaves,
 - b. hemp,
 - c. the resin extracted from hemp,
 - d. the usual preparations on the basis of this resin (such as hashish, esrar, chiras, and djamba).
2. By State Decree containing General Administrative Orders, cases can be designated in which the prohibition contained in the first Paragraph, under B, does not apply.
 3. By State Decree containing General Administrative Orders, rules may be laid down, as regards the substances meant in the first Paragraph, to ensure the compliance with the provisions in the Single Treaty and in this State Ordinance, and to prevent abuse.

Making available on prescription
Article 5

1. Making any substance, meant in Article 3, available on prescription, may only take place when this prescription meets the regulations to be made by the Minister.

2. Ordering any substance as meant in Article 3, by holders of a permission meant in the first Paragraph of Article 7, by pharmacists, physicians authorized to supply medicines, and veterinarians meant in the second Paragraph of Article 7, may only take place with due observance of regulations to be made by the Minister..
3. It is prohibited to present a fake or forged prescription in order to obtain any substance meant in Article 3.

Importation, and transfer in transit with permission Article 6

1. The prohibition imposed in Article 3, first Paragraph, part A, and the prohibition imposed in Article 4, first Paragraph, part A, shall not apply in case the importation, exportation, or transfer in transit, whether or not involving storage in bonded warehouses or other Customs warehouses, takes place with permission of the Minister, and with due observance of the directions to be given by or on behalf of the Minister. These directions may differ for the various substances meant in those Articles. The importation, exportation and transfer in transit of prepared opium and of preparations of prepared opium shall only take place for scientific or police purposes.
2. A compensation can be levied for each permission meant in this Article in accordance with a rate in conformity with rules to be laid down by State Decree containing General Administrative Orders.

Permission Article 7

1. The prohibition imposed in Article 3, first Paragraph, parts B, C, and D, and in Article 4, first Paragraph, part B, shall not apply:
 - a. in as far as the Minister stipulated this as regards a narcotic meant in Article 3, first Paragraph, letter g,
 - b. in as far as the Minister has given permission in writing to perform one or more of the acts meant there.

For each permission meant in this Article an annual compensation can be levied in accordance with a rate in conformity with rules to be laid down by State Decree containing General Administrative Orders.

2. Without prejudice to regulations to be laid down by State Decree containing General Administrative Orders, the prohibition to prepare, treat, process, sell,

deliver, supply, or transport the substances meant in Article 3, first Paragraph, letters a, c, d, e, f, and g, and to possess and have those substances, and the substances meant in Article 4, first Paragraph, letters a and b, shall not apply either:

- a. to licensed pharmacists and physicians authorized to supply medicines, provided they prepare, treat, process, sell, deliver, supply, transport, possess, or have these substances for only medical purposes, and in doing so they observe the provisions in the State Ordinance Supply of Medicines, or the provisions which replace that State Ordinance at any time, and further regulations to be made by the Minister in order to ensure the compliance with the provisions in the Single Treaty;
 - b. to licensed veterinarians, provided they prepare, treat, process, sell, supply, deliver, transport, possess, or have these substances only for medical purposes for the benefit of animals, and in doing so they observe the regulations to be made by the Minister in order to ensure the compliance with the provisions in the Single Treaty.
3. The prohibition imposed in Article 3, first Paragraph, part B, in as far as it concerns transporting, that in part C, as regards the substances meant there under a, c, d, e, f, and g, and that in Article 4, first Paragraph, part B, as regards the substances meant there under a and b, shall also not apply to those who prove they require these substances in the quantities found for practising medicine, dentistry, or veterinary medicine, or for own medical use, or must have them in stock in pursuance of a statutory provision, and acquired them in a legal way.
 4. The prohibition imposed in Article 3, first Paragraph, part B, in as far as it concerns the transportation, that in part C, as regards the substances meant there under a, c, d, e, f, and g, and that in Article 4, first Paragraph, part B, as regards the substances meant there under a and b, except in as far as it concerns the application of these substances, shall also not apply to those who prove that they transport these substances by order of a person authorized to this effect.

Grounds for permission Article 8

1. The Minister can only grant the permission meant in Article 7, First Paragraph:
 - a. for purely scientific purposes or demonstrations;
 - b. to those who prove to the satisfaction of the Minister that they conduct the wholesale in medi-

- cines or similar substances, and do not sell them over the counter, and do not keep an open shop, unless it concerns a licensed pharmacist;
- c. to those who prove to the satisfaction of the Minister that they prepare medicines on a large scale;
 - d. to those who prove to the satisfaction of the Minister that they manufacture the substances meant in Article 3, first Paragraph, under c, d, or g in certain and precisely describes premises.
2. In case of permission, the Minister imposes the conditions he deems necessary to ensure compliance with the provisions in the Single Treaty and in this State Ordinance, and to prevent abuse.
 3. A permission granted by virtue of this Article can be withdrawn at all times.
 4. The withdrawal shall take place by an Order of the Minister stating the reasons on which it is based; in doing this a term can be fixed within which the merchant or the manufacturer will be able to dispose of his stock acquired prior to the withdrawal, with due observance of the conditions to be imposed by the Minister.

Permission prohibitions Article 3 Article 8a

1. The prohibitions imposed in Article 3, first Paragraph, parts A, B, C, and D shall not apply to the substances that are no narcotics by virtue of letter g of that Paragraph, in as far as the Minister has given permission in writing for the performance of the acts indicated in that permission.
2. The Articles 6, second Paragraph, and 8, second through fourth Paragraph shall similarly apply.

Powers of investigation Article 9

In addition to the persons designated in Article 8 of the Code of Criminal Procedure of Aruba, the officials of the Inspectorate of Medicines and the officials of Import and Excise Duties shall be charged with the supervision on the compliance with, and the detection of infringements of this State Ordinance.

Access to locations / search of body and clothes
Article 10

1. The persons meant in Article 9 shall have access at all times:
 - a. to the vehicles and vessels of which they know, or of which they can suspect in reason that substances as meant in the Articles 3 or 4, first Paragraphs, are imported or transported by them, or that aforementioned substances are in, on, or onto them.
 - b. to the places where an infringement of this State Ordinance is committed, or of which it can be suspected in reason that such infringement is committed there.
2. If they are refused access, then they shall gain access, if need be, with the use of the strong arm.
3. If they are refused access to a place that is a dwelling house, or that can only be reached through a dwelling house, then the officials charged with the investigation, as well as the experts shall only enter against the will of the occupant with a special written warrant of the Public Prosecutor in the Common Court of Justice or the Court of First Instance, and - if no one of them is an official as meant in Article 8, under 1° or 3° of the Code of Criminal Procedure of Aruba - in the presence of an assistant Public Prosecutor. Entry requires the prior identification and communication of the purpose of the entry. The occupant shall promptly be given a copy of the warrant, and a written report of the entry within 2x24 hours.
4. They shall have the power to search the body and clothes of a person suspected of infringement of the acts penalized by or in pursuance of this State Ordinance, if there are serious incriminations against this person.
5. They shall have the power at all times to seize and demand the surrender of all means, substances, and objects capable of seizure in connection with the provisions in this State Ordinance.

Sanction standards
Article 11

1. He who acts in violation of Article 2, Article 3, first Paragraph, Article 4, first Paragraph, or Article 5, of a Order laid down pursuant to Article 4, third Paragraph, or of a condition or regulation, or direction made pursuant to the Articles 6, 7, 8, or 8a shall be liable to:

- a. if he committed the act intentionally:
 - 1° either life imprisonment;
 - 2° or temporary imprisonment not exceeding twenty years,
 - 3° or a penalty not exceeding five million florins, or imprisonment instead thereof for a term not exceeding eighteen months;
 - 4° or both punishments meant under 2° and 3°;
 - b. in all other cases:
 - 1° either imprisonment not exceeding four years,
 - 2° or a penalty not exceeding one million florins,
 - 3° or both punishments meant under 1° and 2°.
2. The user, lessee, or owner of a vehicle or vessel, building, parcel of land, or enclosed parcel of land where one or more of the means or substances meant in the Articles 3 or 4 are present or are found, shall be liable - if it does not appear that this presence is permitted there - to a penalty not exceeding one thousand florins. He shall not be liable to punishment, if it appears that he took the necessary measures to prevent the unlawful presence of the substances.
 3. All that served or was intended, as may be suspected in reason, for the commission of an infringement of this State Ordinance, as well as all they was subject of the punishable act committed, can be declared forfeited, in as far as the fourth Paragraph was not applicable.
 4. All means and substances as meant in the Articles 3 and 4, first Paragraphs, found to be present unlawfully, at whatever location, together with the objects that served as their packing or storage, shall become the property of the State by operation of the law, unless the owner of goods proves within a term of three months after seizure, that this took place wrongfully, or that he lost the goods, or that they were stolen from him, and he had them lawfully, in which cases the means or substances seized, together with the objects that served for their packing or storage, shall be returned to him.
 5. With due observance of the directions given by the Minister, the means or substances forfeited or that became the property of the State, shall only be sold, delivered or supplied to persons who are allowed to possess or have them. If necessary, they shall be made unfit for use or destroyed by order of the Minister.

Participation
Article 11a

1. He who intentionally buys, hires, exchanges, accepts in pledge, accepts as a gift, or sells, lets, exchanges, gives in pledge, transports, preserves, or hides for profit any object that was obtained by a felony penalized by this State Ordinance, shall be liable either to imprisonment not exceeding twelve years, or a penalty not exceeding one million florins, or both punishments.
2. The same punishment shall be imposed on him who intentionally draws any profit from the proceeds of any object as meant in the first Paragraph.

Intentional receiving
Article 11b

1. He who intentionally buys, hires, exchanges, accepts in pledge, accepts as a gift, or sells, lets, exchanges, gives in pledge, transports, preserves, or hides for profit any object that was obtained by a felony penalized in this State Ordinance, if it is due to his fault that his act concerns such object, shall be liable to imprisonment not exceeding four years, or a penalty not exceeding two hundred and fifty thousand florins, or both punishments.
2. The same punishment shall be imposed on him who intentionally draws any profit from the proceeds of any object, if it is due to his fault that his act concerns an object as meant in the first Paragraph.

Culpable receiving
Article 11c

1. He who, in order to prepare or promote an act mentioned in the second Paragraph:
 - a. tries to induce someone else to commit this act, causes it to be committed, participates in the commission, or abets same, or assists in it, or provides an opportunity for this, or provides information,
 - b. tries to provides himself or someone else with the opportunity, means, or information to commit this act,
 - c. has objects of which he knows, or has serious reason to suspect that they are intended for the commission of this act, shall be liable either to imprisonment not exceeding twelve years, or a penalty not exceeding one million florins, or both punishments.

2. An act meant in the first Paragraph, shall be deemed to be the intentionally acting in violation of a prohibition imposed in Article 3, first paragraph, part A, B, or D, or Article 4, first Paragraph, part A.

Scope Article 11a, b, and c Article 11d

The provisions in the Articles 11a, 11b, and 11c as regards objects shall also be applicable, in as far as possible, to vehicles, vessels and substances.

Liability entrepreneurs Article 12

1. Without prejudice to the liability of others, the Head and Manager of an enterprise where means or substances meant in the Articles 3 and 4, first Paragraphs, are present, or are sold, delivered, supplied, transported, manufactured, prepared, treated, or processed, shall be liable for the infringement in or as regards this enterprise of the provisions given by or in pursuance of this State Ordinance, as if the act had been committed by himself. The Head or Manager shall not be liable to punishment, if he has taken all measures required to prevent the infringement.
2. Equal liability as imposed by the first Paragraph on the Head or Manager of an enterprise, shall be imposed on the supervisory staff of the enterprise, its segments, and branches, in as far as they were charged by the Head and the Manager with the care and supervision on the compliance with the provisions given by or in pursuance of this State Ordinance. These staff members shall not be liable to punishment if they have taken all measures to prevent infringement.
3. The other members of the staff of the enterprise shall not be liable to punishment, if their acts or omissions are the result of the order given by the Head or Manager or supervisory staff meant above.

Prosecution and punishment legal entity Article 13

1. If an act penalized by this State Ordinance is committed by or on behalf of a corporation, an Aruban exempt corporation, a cooperative association, or another incorporated association, or a foundation, the prosecution shall be instituted against, and the punishment imposed on the members of the Board.

No punishment shall be imposed on the member of the Board of whom it appears that the act was committed through no fault of his.

Felony or offense / scope operation criminal law

Article 14

1. The acts penalized by or in pursuance of this State Ordinance, in as far as they exist in the intentional infringement of the Articles 2, 3, 4, first Paragraph, 5, or of the rules laid down in pursuance of Article 4, third Paragraph of this State Ordinance, or in the intentional non-compliance with the conditions or directions in case of a permission meant in the Articles 6, 7, 8, and 8a, or imposed in the event of a withdrawal of such permission, shall be deemed felonies, and otherwise offenses. The acts penalized in the Articles 11a, 11b, and 11c shall be deemed felonies.
2. The penal provisions in the State Ordinances concerning import and excise duties shall not apply to the acts falling under a penal provision in this State Ordinance.
3. The criminal law of Aruba shall be applicable to any person who commits outside Aruba:
 - a. one of the acts penalized in Article 11c, first Paragraph, in as far as they were committed in order to intentionally prepare or promote acting in violation of the prohibition imposed in Article 3, first Paragraph, part A, or Article 4, first Paragraph, part A, or
 - b. attempt to participate in the intentionally acting in violation of the prohibition imposed in Article 3, first Paragraph, part A, or Article 4, first Paragraph, part A.

Official title

Article 15

This State Ordinance can be cited as State Ordinance Narcotics