UNITED NATIONS

E/NL.2003/43
19 September 2003

English and Spanish only
ORIGINAL: Spanish

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.

EL SALVADOR

Communicated by the Government of El Salvador

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 [...].

AGREEMENT No. 356

INSTRUCTION BY THE FINANCIAL INVESTIGATION UNIT TO PREVENT MONEY-LAUNDERING IN FINANCIAL BROKERING INSTITUTIONS

V.03-88229 (E)

AGREEMENT No. 356

The Office of the Attorney-General of the Republic

WHEREAS

I. It is necessary in accordance with Chapter III of the Money-Laundering Act and Chapters II and III of the Regulation implementing that Act, to define the actions that institutions subject to monitoring under that Act are required to perform in order to prevent and identify acts, transactions and operations involving funds, assets and associated rights resulting directly or indirectly from criminal activities;

II. Under article 11 of the Regulation implementing the Money-Laundering Act, all State institutions and bodies whose activities are subject to monitoring under that Law must comply with the instructions issued by the Financial Investigation Unit (FIU) and it is therefore necessary to adopt measures for the standardization of procedures for identifying and ensuring knowledge of clients, and for the conservation of documents, drafting of forms for cash transactions and reporting of suspicious operations, so as to help prevent exploitation of these institutions, which are meant because of the functions they perform and their legal framework to inspire public trust; it is thus aimed to prevent persons and organizations from taking advantage of that special legal regime or trying to do so in order to conceal or cover up the unlawful origin of their income; and

III. These unlawful practices generally involve operations between different countries throughout the world, the aim being to make it more difficult to identify the true origins of the recycled resources, thereby compromising the overall security of the States concerned and the sound operation of their financial and economic systems through their improper use for such purposes and thus creating a problem of international dimensions;

Therefore,

AGREES to adopt the following:

INSTRUCTION BY THE FINANCIAL INVESTIGATION UNIT TO PREVENT MONEY-LAUNDERING IN FINANCIAL BROKERING INSTITUTIONS

CHAPTER I

BACKGROUND

1. Purpose

The purpose of this Agreement is to issue special rules for the prevention, detection and reporting of operations connected with money-laundering for financial brokering institutions in accordance with the Money-Laundering Act promulgated in Legislative Decree No. 498 of 1998 and the Regulation implementing the Money-Laundering Act approved by Executive Decree No. 2 of 20 January 2000.

2. Scope (institutions subject to the provisions)

National banks, foreign banks, their branches, agencies and subsidiaries, finance companies, foreign exchange bureaux, stock markets, stock trading companies, credit-card issuing companies and related groups, finance groups or conglomerates and non-bank financial brokering agents shall be required to comply with the Directives of the Financial Investigation Unit attached to the Office of the Attorney-General of the Republic aimed at preventing and identifying operations involving unlawfully acquired assets.

3. Legal framework

The Money-Laundering Act, whose purpose is to prevent, identify, penalize and eradicate the offence of money-laundering and its concealment, was approved by Legislative Decree No. 498 of 2 December 1998, published in the Official Gazette No. 240, volume 341, of 23 December 1998.

By Executive Decree No. 2 of 21 January 2000, the President of the Republic, through the Ministry of Public Security and Justice, approved the Regulation implementing the Money-Laundering Act, published in the Official Gazette No. 21, volume 346, of 31 January 2000, which authorizes the Financial Investigation Unit attached to the Office of the Attorney-General of the Republic to issue instructions to ensure due compliance with the obligations imposed by the Money-Laundering Act and its implementing Regulation on institutions subject to monitoring under the said Act.

4. Banking, stock exchange and tax secrecy

In accordance with article 24 of the Money-Laundering Act, article 19 of the Central American Convention for the Prevention and Suppression of the Offences of Money-Laundering and Laundering of Assets Connected to Illicit Drug Trafficking and Related Offences, article 232, paragraph 3, of the Banking Act, article 143, paragraph 4, of the Non-Banking Financial Brokering Act, article 35, paragraph 3, of the Stock Market Act and article 77 of the Organic Law of the Department of Public Prosecution, banking, stock exchange and tax secrecy shall not be applicable in the investigation of money-laundering offences; accordingly neither banking nor stock exchange secrecy shall be deemed to have been violated by the submission of reports of suspicious operations to the Financial Investigation Unit of the Office of the Attorney-General of the Republic. Nor shall replies to written requests for information on the basis of these Provisions by the Financial Investigation Unit be deemed to violate confidentiality.

It is emphasized that reports or information are to be made solely and exclusively to the authorities competent to receive them, that is to say the Financial Investigation Unit of the Office of the Attorney-General of the Republic. For that reason, information arising out of these Provisions may not be divulged to clients or users of the institutions or to any person, office or body other than those that are legally authorized to receive it.

CHAPTER II

DEFINITIONS

First—For the purposes of this Instruction:

(a) "Provisions" means the provisions set forth in this Instruction by the Financial Investigation Unit of the Office of the Attorney-General in pursuance of article 11 of the Regulation implementing the Money-Laundering Act;

(b) "Institutions" means the institutions referred to in Chapter I, paragraph 1, of this Instruction which, in accordance with article 2, paragraph 2, of the Money-Laundering Act, are subject to monitoring under that Law;

(c) "Operations" means all active, passive, service and similar or related operations carried out by the institutions in accordance with the laws governing them;

(d) "Suspicious or irregular operation" means any unusual operation outside the customary pattern of their normal transactions, any insignificant but regularly performed operation without an evident economic or legal basis, and any operation that is inconsistent with or unrelated to the client's economic activities;

(e) "Client" means any natural or legal person that has had or continues to have a contractual relationship, whether occasional or regular, with the institutions;

(f) "User" means any natural person or legal person that has dealings with the institutions or makes use of the services offered by them to the general public, as well as sellers, buyers and brokers of foreign exchange;

(g) "Property" means all the assets, securities, rights and obligations relating to them that a person, voluntarily or by operation of the law, separates from his own and gives to another in trust or title for the purpose of carrying out operations that it has been instructed to perform or that it is required to do in its capacity as administrator or trustee by virtue of specific statutory regimes or procedures resulting from the statutory instruments governing them on behalf of that person or a third party and of returning them in the same form at the appointed time or on fulfilment of a condition defined in the aforementioned regulations. The legal structure thereof shall be as defined by law and for the purposes of this Instruction they shall be described not in terms of property law but of the specific legal concept used. Included in this definition are trusts, portfolios managed by stock brokering companies authorized to manage assets, and pension funds managed by pension fund management companies and other similar institutions as defined by the law;

(h) "Monitoring and supervisory authorities" means authorities set up to monitor and supervise the bodies and institutions mentioned in the laws establishing them;

(i) "Transaction" means any operation or act carried out as part of the regular business or activities of the institutions or in connection with the activities governed by article 2, paragraph 2, of the Money-Laundering Act;

(j) "Monetary instrument" means the coins and banknotes of El Salvador or the legal tender of El Salvador and other countries and any other instrument used as means of payment, including cheques of all kinds, credit cards, traveller's cheques or other means that might be used in the future;

(k) "FIU" means the Financial Investigation Unit;

(l) "Transactions and operations in cash" means transactions and operations carried out with banknotes constituting legal tender or their equivalent in foreign currencies.

CHAPTER III

CLIENT IDENTIFICATION

Second—The most important way of avoiding the risk of institutions' being involved and exploited as intermediaries in unlawful operations is accurate "knowledge of the client".

For that reason, this Chapter describes specific and strict measures for identifying and knowing the client, which should be applied when accounts are opened, contracts signed and transactions carried out.

Institutions shall establish specific and strict measures for identifying and knowing the Client prior to carrying out transactions as follows:

I. Natural persons carrying out transactions involving amounts in excess of those specified in paragraph 2 of the third part of these instructions shall be required to present identification in the form of an original document or documents of the type considered suitable by the institution and issued by the competent authority, containing a photograph of the bearer, his or her signature and address, a copy or copies of such document being kept by the institution, except in the case of collection agencies, house collection and payment services, night safes and automatic teller machines (ATMs).

Irrespective of the foregoing, institutions must keep a file on the client in physical and electronic form to provide a record of his/her full name, date of birth, nationality, occupation, activity or line of business and home address (street, number, district, postcode, city, town or village, and telephone number, and his or her tax number (NIT), where applicable.

II. Institutions shall open an identification file on clients that are legal persons, to be used to provide a record of their name, official designation or company style, domicile (street, number, district, postcode, city, town or village, and telephone number), nationality, name of manager or managers, director, managing director or legal proxy whose signatures commit the legal person, economic activity or line of business, NIT, copy of the duly registered official transcript of the articles of association or

other document certifying the legal existence and domicile of the legal person, such as the most recent receipt of payment of municipal rates, rent contract, or receipt of payment of an electricity, telephone or water invoice, and shall keep a photocopy of all the aforementioned documents.

III. For foreigners, the following must also be provided in addition to the requirements for nationals mentioned in these Provisions:

(a) For natural persons, a valid passport or residence permit;

(b) For legal persons, the original document certifying its legal existence duly authenticated by the appropriate consular authority and a document certifying that the natural person representing it is authorized to do so, together with the latter's passport if he or she is a foreigner.

Third—For the purposes of this Instruction, institutions shall be required to identify their clients or users when they make cash deposits or withdrawals in excess of 5,000 colons or the equivalent amount in foreign currency at the corresponding exchange rate, by noting on the pay-in or withdrawal form the type and number of the official identification document of the person actually carrying out the transaction. The above-mentioned requirement shall not apply to operations carried out through collection agencies, house collection and payment services, night safes and ATMs or systems with electronic validation equivalent or similar thereto.[1]

For cash operations or transactions in excess of 15,000 colons or the equivalent amount in foreign currency at the corresponding exchange rate, institutions shall use the form referred to in article 13, paragraph 2, of the Money-Laundering Act and article 13 of the Central American Convention for the Prevention and Suppression of the Offences of Money-Laundering and Laundering of Assets Connected to Illicit Drug Trafficking and Related Offences, the contents of which shall be determined by the FIU. The form shall be submitted to the FIU and relevant monitoring and supervisory authority in the form and within the time limit stipulated in article 9 of the Money-Laundering Act.

SPECIAL REGULATIONS

(a) Opening an account

(1) A close relationship must be maintained with clients so as to afford knowledge of their activities and thus ensure sound financial and banking practices in accordance with the applicable legislation in force.

(2) Accounts shall not be opened or contracts signed with clients who do not provide the documentation and information necessary for their identification.

(3) The institution shall identify prospective clients on the basis of an official document containing their photograph, signature and address.

[1] This clause was amended in accordance with the Instruction of the Financial Investigation Unit of 17 April 2002.

(4) The institution must verify that the signatures and names in the record and contract are the same as those in the identification documents provided by the party to the contract.

(5) A record must be kept of the opening of an account including all the client's documentation and a description of his or her regular business. The institution shall be responsible for keeping the record complete and up to date and for archiving it for the period and under the conditions stipulated in the chapter of this Instruction on archiving and conserving documentation.

(6) The institution must ensure that all the requirements for opening an account or signing a contract are complied with.

(7) A record need not be opened for bank deposits into a savings account or other such arrangements, provided that such accounts are opened at the request of an enterprise or established institution with an account at the institution and that the accounts are opened in the name of registered employees of the enterprise, with the deposit being debited to the enterprise's account.

(8) If the client's situation justifies it, a period of 60 working days may be allowed from the date of opening an account or signing a contract before establishing the identification file. If the file is not established within this time, the account must be closed and, depending on the amount, frequency, nature of the operation and the client's specific situation, may be reported as a suspicious operation.

(9) For trust, commission and mandate operations, the fiduciary institution shall identify the parties appearing in person to sign the contracts when these operations are set up.

(10) In the event of increases in the amount involved in a transaction or withdrawals with respect to these operations that are carried out by persons other than the initial founders of the trust, mandators or agents, the fiduciary institution must also identify them at the time the operations are carried out.

(11) Identification is not required in the following cases:

- Beneficiaries of trusts set up to provide employee benefits or general welfare provisions where contributions are made by enterprises, their employee associations or members of either, including specifically the following: pension fund trusts with seniority premium plans, or trusts founded to provide multiple benefits or services or employee mortgages, or mutual savings banks or funds. In the case of pension trusts, the beneficiary must be identified.

(b) Transactions

(1) For all transactions involving cash amounts of more than 500,000 colons or the equivalent amount in foreign currency, the person carrying out the transaction must be identified in accordance with the procedure described in these Provisions.

(2) For operations involving cash amounts of more than 500,000 colons or the equivalent amount in foreign currency or in any of the circumstances specified

in articles 15 and 17 of the Money-Laundering Act, transactions may not be carried out if the client:

- Declines to provide the identification or additional information required to establish his or her line of business or the nature of the operation;
- The identification provided does not comply with the requirements of these Provisions.

(3) The institution must keep the documents verifying compliance with the identification criteria for transactions where such identification is required.

(4) Documents must be kept for the periods and in accordance with the security requirements stipulated in the chapter of this Instruction on archiving and conservation of documents.

(5) Operations involving cash amounts in excess of 500,000 colons or the equivalent amount in foreign currency carried out on behalf of a legal person without an account may be accepted only if the articles of association of the enterprise and the authorization and identity documents of the legal representative are submitted.

(6) Clients with an account in the institution carrying out cash transactions involving amounts in excess of 500,000 colons or the equivalent amount in foreign currency need only show identification, without the transaction being entered in the record or a photocopy being kept, provided that a record exists for the client in which he or she is fully identified in accordance with the provisions of this Instruction.

PROCEDURE FOR OPENING AN ACCOUNT OR SIGNING A CONTRACT

(a) Scope

The procedures described below apply to the opening of accounts in all institutions, their branches, agencies and subsidiaries and for all operations involving the receipt, paying in or transfer of funds to or from any type of deposits, savings, investments, trusts, mandates, commissions or safe deposit boxes, or the granting of credit in any form.

(b) Interview

The interview is designed to afford knowledge of the client, his or her moral character, way of working and financial resources in the context of the local practices and customs and line of business.

In order to build a profile, the client shall be required to make a sworn statement to the institution when completing the operation or signing the contract indicating the origins or provenance of the funds, his or her economic activity and the planned monthly fund movements, and shall sign this statement in the presence of an official or employee of the institution.

(c) Identification documents

Depending on the type of client, the following documents shall be required:

Type of person	*Natural person*		*Legal person*	
Requirements	*National*	*Foreigner*	*National*	*Foreigner*
Official identification (with signature, photograph and address)	x	x	(of representative) x	x
Proof of address	x(*)	x(*)	x	x
VAT number and NIT	(where applicable) x	x	(where applicable) x	x
Power of attorney of representatives	(where applicable) x	x	x	x
Official transcript of articles of association (**)			x	
Passport/immigration status		x		
Proof of legal existence				x

(*) Proof of address is required only if the identification provided by the client does not indicate the address or if the address is not the same as the one on the contract.

(**) In the case of recently established enterprises, a notarized certificate is required indicating that the first official transcript of the articles of association is being registered.

Once the client has received the official transcript with details of the entry in the Register of Companies, it must submit a copy to the institution.

(d) Natural and legal persons of Salvadorian nationality

(d.a) Identification

(1) The applicant, holder or representative shall be required to provide official identification with a photograph, signature and, where applicable, address.

(2) If the applicant is a legal person, its representatives or authorized agents shall be required to provide official identification with a photograph, signature and, where applicable, address.

(3) In the absence of the address in the identification documents, the address may be provided by way of a supporting document.

(4) Valid identification documents may include the following:

- Driving licence
- Voting registration
- Passport
- Personal identity card

(d.b) Supporting document showing the address

(1) For natural persons, a supporting document shall be required only if the personal identification does not contain the address or the address is not the same as the one in the contract.

(2) For legal persons, irrespective of the identification submitted, the applicant must produce a supporting document showing the address of the enterprise.

(3) Supporting documents showing the address may include:

- Confirmation of payment of electricity invoice
- Confirmation of payment of telephone invoice
- Confirmation of payment of water invoice

NOTE: The supporting documents may be no more than six months old.

(d.c) Tax register (value added tax—VAT)

(1) This requirement shall apply to legal and natural persons who require it as a result of business, professional or other activities.

(2) The applicant or client shall be required to supply his or her VAT or tax number.

(d.d) Official transcript of the articles of association and power of attorney registered with a notary public

(1) This requirement shall apply in all cases to legal persons. For natural persons, the power of attorney shall be required only if they are represented by a mandator or legal proxy.

(2) The applicant or client shall provide the following documents, depending on the type of enterprise:

- ✓ Commercial corporations
  - ❑ Articles of association duly entered in the Register of Companies
  - ❑ Designations and powers granted to the directors of the enterprise
- ✓ Unions and associations
  - ❑ Statutes duly registered with the Ministry of the Interior and/or minutes of the meeting in which the powers were granted

(3) Recently established enterprises shall be required to submit notarized certification that the official transcript of the articles of association is being entered in the Register of Companies, the client being required to submit a copy of the entry in the aforementioned Register once it has received an official transcript with the registration data. Accounts may not be opened nor contracts concluded unless the client presents the aforementioned notarized certification. Unions must produce a record of registration with the Ministry of Labour.

(e) Natural or legal persons of foreign nationality

In addition to complying with the above-mentioned requirements, the following must also be taken into account:

(1) A natural person shall be required to present a passport, and the name, photograph, nationality and signature must comply with the data provided by the applicant. Where necessary, the applicant's immigration status must also be established.

(2) A legal person shall be required to present the original document certifying its legal existence and the document authorizing the natural person to represent it. If the latter is a foreign national, the passport must also be presented in the original.

(3) Documents issued in foreign States must be analogous to the documents required under civil and commercial law.

Supporting documents may include:

- Passport
- Immigration forms
- Social security card
- Residence permit

EXEMPTION LIST

Any "know your client" policy must have a clear and verifiable identification procedure for actual and would-be clients of financial services and products. A profile should be established for each client to permit identification of account operating patterns, and hence the client's needs for services, and to detect changes in the patterns, which might not be due to illegal activities but simply to an expansion of the client's business that could result in new financial services or the client's inclusion in the exemption list to be kept by every institution as a means of exempting clients from filling out the Cash Transaction Form (F-UIF 01) issued by the FIU.

The inclusion of a client in the exemption list should be justified and documented, with a file being kept for that purpose with the following information:

(1) Name of the bank official proposing inclusion.

(2) Reasons presented for inclusion and decision taken.

(3) Duly documented justification for the decision to include the client.

The inclusion of a client in the exemption list does not mean that a report need not be made to the competent authorities if there is a sudden change in the client's business patterns.

If a client's ordinary business includes a large number of regular cash transactions and the client's activities have been reasonably established as being lawful, the institution may exempt that client from the Cash Transaction Form (F-UIF 01) requirement.

Criteria for selecting clients to be exempt from the Cash Transaction Form (F-UIF 01) requirement

To be exempted from the Cash Transaction Form (F-UIF 01) requirement, clients must comply with each of the following:

- The client must have been associated with the entity for at least six months or for a period at the discretion of the senior management;
- Full knowledge of the client and its activities must be available together with all the required documentation, and a visit must have been made to it to verify its profile;
- The volume and amount of transactions must involve the handling of large quantities of cash;
- The business must be one of the following:
  * Cooperatives and legal persons
  * Supermarkets
  * Grocer's stores
  * Cinemas
  * Transport companies
  * Special arrangements such as collections for third parties
  * Collection agencies for public utilities
  * Restaurants

CHAPTER IV

SUSPICIOUS OR IRREGULAR OPERATIONS

Fourth—Institutions shall be required to produce operating manuals to be approved by their senior management and duly authorized and registered by the monitoring and supervisory authority. The manuals shall contain the criteria and principles for assessing whether an operation is suspicious and for developing manual or computerized systems to formalize the procedures to which these instructions refer, in particular for monitoring individual or multiple cash operations or transactions in excess of 500,000 colons or the equivalent amount in other currencies.

The monitoring and supervisory authority shall not authorize manuals that are not based on sound commercial, trading and stock exchange customs and practices.

When determining whether an operation is suspicious or irregular, the institutions must take the following into account:

(a) The specific features of each client, its professional activity, line of business or corporate objective;

(b) The amounts usually involved in its operations, their relationship to the activities referred to in the previous paragraph, the type of monetary instrument or other means customarily used by the client for transferring funds;

(c) Prevailing local commercial, trading or stock exchange customs and practices; and

(d) The provisions of Chapter III of the Regulation implementing the Money-Laundering Act.

GENERAL CRITERIA

The designation of an operation as irregular or suspicious should be based on the fundamental principles serving as criteria for distinguishing between normal operations and suspicious or irregular ones, an updated classification of possibly suspicious operations should be kept as an aid to analysis, understanding and application in the different areas of the institutions. At the same time, other criteria are required to provide legal safety in classifying operations as suspicious.

Fundamental principles

(a) Application of the "know your client" policy provides information about the specific features of each client, its professional activities, line of business or corporate objective.

(b) The element of "inconsistency" is normally present in every suspicious operation, since there tends to be something inconsistent about a suspicious operation compared with the client's usual activities.

These principles are complementary since it is necessary to know the client to be in a position to determine whether its operations are inconsistent with its commercial and personal activities.

Classification of possibly suspicious operations

For methodological reasons, possible suspicious operations may be classified as passive, active or service operations.

(a) Passive operations, in which the institution receives funds from the public in the form, for example of current deposits that can be withdrawn on specified dates, fixed-term savings or savings requiring advance notice of withdrawal, loans in the form of bills of exchange repayable in cash on maturity, and the issuance of promissory notes with related commitments.

(b) Active operations, in which the institution redirects the funds received. Included are loans, the granting of credit or discounts, deposits in foreign credit institutions or financial entities, credit cards and the assumption of obligations on behalf of third parties through credit granted on the basis of guarantees, letters of credit and commercial bills of exchange.

(c) Service and other operations, including trusts, mandates and commissions, safe deposit boxes, transfers, payment orders, bank transfers, bank cheques, operations with securities and foreign currencies, the issuance of letters of credit upon receipt of payment and portfolio management.

Examples of possibly suspicious operations

Irrespective of the amounts involved, the operations described below are not necessarily suspicious and only become so when considered in relation to the "know your client" and "inconsistency" criteria. Moreover, they are listed as examples of the type of operation that could attract the attention of the staff dealing with them and that they consider to be suspicious on the basis of the information available to them and after having applied the qualitative criteria mentioned above, not least in the awareness that money-launderers are likely to use all types of operation to achieve their aims.

The examples cited here are not exhaustive and the employees of institutions could well identify or determine other conditions or criteria that, in their opinion, render an operation suspicious and worth reporting.

Institutions must make every effort to devise training, auditing and information programmes to guide, assist and provide information to employees to enable them to identify the transactions described below, which international experience has shown to be potential sources of suspicious operations.

A. Passive operations

- Accounts in which withdrawals and deposits are made in cash and not by documentary means;
- Accounts with large numbers of deposits in cash, by cheque or other monetary instruments and with few withdrawals until a large amount has accumulated, which is then withdrawn in one operation;
- Accounts with a large volume of deposits by cashable cheque, payment orders and/or electronic transfers;
- Accounts with large numbers of transactions (deposits, withdrawals, purchase of monetary instruments);
- Accounts with large cash transactions;
- Isolated large cash deposits in low-denomination coins and banknotes;
- Accounts receiving deposits on the same day from different branches;
- Accounts frequently receiving and sending electronic transfers, particularly to countries with low taxation (tax havens) listed in the annex to this Instruction;
- Accounts receiving a large number of small deposits on the same day or within a short period by transfer, cheque or payment order, which are then remitted immediately to another city or country by electronic transfer, leaving only a small balance on the account;
- Accounts of a client whose private or business address is not in the catchment area of the branch where transactions are usually carried out;
- Accounts with frequent deposits of large amounts of foreign currency;
- Accounts with frequent deposits in very old or damaged banknotes;
- Clients who receive transfers and immediately convert them into monetary instruments in the name of third parties.

B. Active operations

- Clients who suddenly pay off all or part of a problematic loan without any apparent explanation for the source of the funds;
- Clients who pay off all or part of a problematic loan in cash, foreign currency or documents that do not permit identification of the drawer;
- Loans granted with collateral deposited in the institution or elsewhere whose origin is unknown or whose value bears no relation to the client's situation;
- Documentary letters of credit for import or export in which, contrary to the institution's rules, there is no information about the importer or exporter; or such letters of credit payable against copies of documents;
- Issuance of contingent letters of credit to guarantee services authorized by foreign financial entities.

C. Service or other operations

- Clients who purchase cheques, payment orders, traveller's cheques or other similar instruments with large cash amounts or with great frequency without apparent reason;
- Sudden changes, inconsistencies or identifiable patterns in foreign exchange operations;
- Clients who frequently change low-denomination for high-denomination banknotes and vice versa;
- Unusual cash purchases of payment orders and cheques;
- Detection of operations with securities by means of trusts, mandates, commissions and contango business for large amounts and in cash;
- Exchange operations in which the client is uninterested in the rate of exchange;
- Purchase of assets awarded or received as payment, the origins of which are dubious;
- Placement in trust of immovable assets (large areas of land), the designated beneficiary being a foreign individual or legal person who is not fully identified and the trustee being able to freeze the assets in order to obtain loans from other financial institutions;
- Placement in trust with testamentary disposition of amounts of foreign currency, particularly United States dollars, without the client being able to determine with precision the origins of the funds or the channels through which they were obtained;
- Establishment of trusts to guarantee alleged loans from foreign financial institutions when in reality the loan is charged to an account held by a client of such an institution who has not been fully identified;
- Granting of a fiduciary guarantee by means of loans unsupported by evidence proportionate to the value of the assets held in trust;

- Trusts to guarantee financial assistance to recently established enterprises without any previous loan, commercial or business history;
- Use of a trust as mechanism for bringing large amounts of funds into the country without a designated purpose or objective;
- Clients interested in setting up trusts in institutions with international operations as a basic condition for receipt of funds, with the client claiming that its shareholders will allow the funds to be handed over only to this type of institution and asking for letters of acceptance by the trustee of the proposed trust fund.

For the purpose of this Instruction, trust operations may also be carried out by mandate, commission or managed funds.

Other criteria

(1) The fact of reporting suspicious operations shall not prevent their being carried out or cancelled, as the case may be. This criterion shall apply, even if for some other reason it is not considered appropriate to carry out the operation.

(2) If a client presents information that subsequently turns out to be incorrect or unverifiable, or if the compliance officer receives a report of a possibly suspicious operation for his analysis and notes that the client has not complied with its obligation to submit a copy of the registration of the articles of association, the operation in question shall be reported as suspicious. If the account is closed before entry in the Register, the operation shall be reported as suspicious with indication of the movement, amount, type of transactions and information available about the client.

(3) If the client refuses to identify itself, the operation shall not be carried out and, in consequence, no information will be available for reporting a suspicious operation.

(4) The client should not be informed that its operation has been reported as suspicious.

Special provision—Institutions must report as being suspicious or irregular to the Financial Investigation Unit (FIU) of the Office of the Attorney-General and the relevant Supervisory Authority any operation or transaction carried out or account opened, regardless of the amount involved, by clients or users about whom there is evidence or information of any kind connecting or relating them directly or indirectly to any of the criminal activities referred to in article 6 of the Money-Laundering Act, in particular acts of terrorism at the local or international level.

Moreover, the FIU must be informed in advance of any decision to close or cancel the accounts of clients thought to be connected or related directly or indirectly to the offences referred to in the previous paragraph, so that the FIU can intervene in good time and prevent evidence from being lost and to enable the Department of Public Prosecution to conduct precautionary measures and/or institute criminal proceedings.

PROCEDURE

Any official or employee of an institution who detects a suspicious or irregular operation shall fill out the form designed for that purpose and submit it to his or her immediate superior so that the latter can forward it to the compliance officer that every institution is required to appoint to collect and analyse reports and make the necessary arrangements for them to be forwarded, if appropriate, to the FIU of the Office of the State Attorney-General and the relevant supervisory and monitoring authorities.

In the procedures devised by each institution, it is imperative that the person detecting the operation remain anonymous but that it also be possible for his or her identity to be established internally at any given time. The obvious aim of this anonymity is to protect the official or employee. For that reason, reports of suspicious operations shall be presented by the compliance officer, who may use code numbers for identification in the report after giving written notification to the FIU and relevant supervisory and monitoring authority.

REPORT

The layout of the suspicious operation report shall be notified by the FIU. Information must be presented in this format on disk or other means specified by the FIU. The entities must have suitable systems at their disposal for this purpose.

Fifth—Institutions shall formulate and present the required information to the relevant supervisory and monitoring authority and the FIU on the forms for cash transactions and for reporting suspicious operations, the contents of which shall be notified by the FIU, within the time limit specified in article 3 of the Money-Laundering Act.

Multiple operations—cash transactions: These are defined as daily cash transactions carried out at one or more branches during the period of one month as defined in article 3, second paragraph, of the Regulation implementing the Money-Laundering Act by or for the benefit of one and the same person, each one of which involves amounts of less than 500,000 colons or the equivalent in foreign currency but whose sum exceeds this amount.

The data-processing department of each institution shall establish for each client at the end of the calendar month a computerized or printed list for its branches and agencies with a copy for the compliance office.

By reviewing and analysing this list, the agencies can identify those clients that do not, in their normal course of business, transact this amount of money during a single month. Such operations performed by the aforementioned clients shall then be reported to the compliance office as suspicious or irregular on the form provided with due documentation.

There is no need for form F-UIF 01 to monitor these operations, although the obligation to report them as irregular or suspicious remains if there are sufficient reasons to do so.

CHAPTER V

PROCEDURES

Sixth—The institutions' manuals shall contain the basic principles and procedures to be observed, including the following requirements:

(a) The establishment of rules, parameters and qualitative criteria for detecting suspicious operations with allowance for the characteristics of the institution, the area within the country in which it operates and the special features of the operation and the client, and commercial, trade and stock exchange customs and practices prevailing in the place of operation;

(b) Completion and sending of the reports referred to Chapter III of these instructions to the relevant monitoring and supervisory authorities and to the FIU;

(c) Participation with the FIU in drafting and updating the instructions and the forms for cash transactions and suspicious operations;

(d) Replying to requests for information by the FIU on the basis of these instructions;

(e) Establishing of procedures permitting the evaluation and verification of due compliance with this Instruction;

(f) Scheduling of specific measures to prevent acts and operations involving funds, assets or associated rights derived directly or indirectly from criminal activities;

(g) Completion and sending of quarterly reports to the relevant monitoring and supervisory authorities and to the FIU on acts and internal operations involving activities giving rise to concern in the institutions and, where appropriate, on employees, officials and members of the management board involved who have been dismissed for that reason;

(h) Design and scheduling of staff training sessions and courses on the use of the manuals;

(i) Performance of internal auditing pursuant to article 10 (d) of the Money-Laundering Act.

The manual shall be approved by the board of directors or its equivalent and made available to all the institution's staff and, at their request, to the FIU and external auditors.

Seventh—The manuals and internal procedures described in this Instruction and modifications thereto shall be submitted to the relevant monitoring and supervisory authorities for information and to enable them to monitor compliance.

CHAPTER VI

ARCHIVING AND CONSERVATION OF DOCUMENTS

Eighth—Copies of the forms and reports and of the identification documents referred to in Chapter III shall be kept for at least five years as provided for in

article 10, subparagraph (b), of the first paragraph and article 12 of the Money-Laundering Act.

CHAPTER VII

TRAINING AND INFORMATION

Ninth—The institutions shall be required to develop training and information programmes for staff responsible for the application of these Provisions and to provide documentary evidence thereof. For that purpose they shall:

(a) Hold information courses or meetings once a year, without prejudice to the provisions of paragraphs (e) and (f), particularly if there are changes in the Provisions or the forms for cash transactions and suspicious operation reports;

(b) Draft instructions to help staff fill out the forms for cash transactions and suspicious operation reports;

(c) Distribute these Provisions, this Instruction and the internal procedures issued by the compliance officer to the employees and officers responsible for its application so that they can duly comply with the Provisions;

(d) Identify and distribute among the staff the practices of clients or users of the institutions that have been identified by the compliance officer as suspicious practices;

(e) Inform newly arrived employees and officials and departments responsible for public relations and fund management of the contents of these Provisions and the relevant practices of the institutions;

(f) Include the recommendations of the competent authority in its training and information programme;

(g) Employees and officials must confirm in writing that they have been informed of these Provisions and the relevant practices of the institution and of the obligations that they involve; and

(h) Institutions shall guide and provide assistance to their employees to enable them to comply with the obligations arising from this Instruction.

CHAPTER VIII

COMPLIANCE OFFICER

Tenth—Institutions shall set up a compliance office headed by a compliance officer approved by the board of directors. The compliance officer shall have managerial and decision-making responsibility and possess expertise relating to operations, legal aspects, business matters and monitoring, among other competences.

After approval by the board of directors or equivalent body, the name(s) of the officer(s) responsible shall be communicated to the FIU, accompanied by a certified copy of the relevant section of the minutes of the board of directors.

The compliance unit shall be independent with functions limited to the prevention and detection of money-laundering activities.

Any change in the staff of the compliance office shall be notified to the FIU within three days, notification being accompanied by a certified copy of the minutes of the board of directors and curriculum vitae.

Eleventh—Institutions shall ensure that the composition of the compliance office is tailored at all times to the relevant requirements.

The compliance office shall have the following functions:

1. Drafting and amending the internal rules of the institution for preventing and detecting suspicious acts and operations connected with money-laundering;

2. Ensuring compliance within the institution with these Provisions and the internal rules referred to in the previous paragraph;

3. Identifying cases that could be regarded as suspicious operations and determining the procedure for informing the authorities of such operations in accordance with these Provisions;

4. Conveying reports and other information required by the authorities in accordance with these Provisions;

5. Replying to requests for information in connection with these Provisions;

6. Approving training and information programmes for the prevention and detection of suspicious or irregular acts and operations;

7. Monitoring the application of the training and information programmes referred to in the previous paragraph;

8. Establishing committees or working groups as required to carry out the office's functions and defining the rules governing its staffing, financing and competences;

9. Coordinating the responsibilities assigned to employees and officials of the institution by virtue of this Instruction by establishing priorities and resolving any disputes that might arise;

10. Adopting any resolution that might be required in connection with this Instruction and acting as liaison between the institution and the FIU.

CHAPTER IX

DISCRETION AND CONFIDENTIALITY

Twelfth—The officers of the FIU and supervisory and monitoring authorities and the employees, officials, directors, compliance officers, internal and external auditors of the institutions shall maintain the absolute confidentiality of the reports referred to in this Instruction and refrain from disclosing any information or giving advice not expressly provided for by the relevant authorities.

CHAPTER X

COLLABORATION AND ASSISTANCE TO THE AUTHORITIES IN SUBMITTING INFORMATION

The institutions shall collaborate with the FIU, members of the national civil police designated by it and other competent authorities. The compliance office, in coordination with the security department and legal department, shall assist in the investigation of the crime of money-laundering where applicable in accordance with the law.

CHAPTER XI

KNOWLEDGE OF EMPLOYEES AND CODE OF ETHICS

Thirteenth—In order to ensure the highest possible ethical standards in the workplace, institutions should employ rigorous selection procedures in recruiting staff and carefully monitor the conduct of employees, particularly those with responsibilities relating to client management, receipt of money and monitoring of information.

Regarding suspicious conduct that could be associated with money-laundering, institutions shall pay particular attention to employees with an extravagant lifestyle not in keeping with their salaries, those reluctant to take leave and those associated directly or indirectly with the disappearance of funds from the institution.

Institutions shall ensure the administrative and legal liability of employees who do not comply with the rules for preventing and detecting money-laundering.

Staff in both administrative and managerial grades shall be fully apprised of the institution's policies and procedures for preventing money-laundering and of the criminal liability incurred if the services of the institution are used for that purpose.

Fourteenth—The activities of institutions shall be guided by a code of ethics containing a set of ethical standards and principles that employees and officials must know and comply with to ensure that daily business is conducted transparently and in strict accordance with the established procedures.

Bearing in mind that officials of the institutions are called upon, by virtue of their status, to observe the established rules and procedures in order to strengthen the trust placed in these entities by clients, it is essential that they act with complete honesty within the institutions and outside.

Moreover, in order for them to comply properly with the spirit and letter of the law, procedures, internal policies and relevant controls, they should request clarification whenever any of the above appears unclear or ambiguous so as to ensure that their actions are legal and ethical.

All these procedures, actions and types of conduct in performance of assigned functions must also be based on defined ethical principles so as to enhance the confidence and trust of clients (see appendix 2).

CHAPTER XII

PENALTIES

Fifteenth—Non-compliance or partial or late compliance with this Instruction shall be punished in accordance with article 15 of the Money-Laundering Act, without prejudice to any criminal liability that might be incurred.

Sixteenth—Non-compliance or partial or late compliance, or failure to fill out a form or report of an operation, shall be punished in accordance with article 15 of the Money-Laundering Act, without prejudice to any criminal liability that might be incurred.

Violation by public officials of the provisions of Chapter IX of this Instruction shall be punishable by an administrative penalty, without prejudice to any criminal liability that might be incurred.

Seventeenth—No punishment of any kind shall be imposed on any institution, director, official, employee or external auditor of institutions who provides timely information on operations referred to in Chapter IV of this Instruction.

CHAPTER XIII

GENERAL PROVISIONS

Eighteenth—The data required under this Instruction on the various operations carried out by clients shall be entered into the data-processing systems using codes determined or to be determined by the monitoring and supervisory authorities.

TRANSITIONAL PROVISIONS

First—This Instruction shall enter into force on 1 February 2002.

Second—Institutions shall submit the manuals referred to in this Instruction to the relevant monitoring and supervisory authorities within three months of the date on which this Instruction enters into force.

The monitoring and supervisory authorities shall decide whether to authorize and register the aforementioned manuals within two months of the date of submission.

Until the aforementioned manuals are submitted and approved, institutions shall be required, from the date on which this Instruction enters into force, to notify the FIU of operations whose characteristics, in the opinion of each institution and with account taken of Chapter III of the Regulation implementing the Money-Laundering Act, might be regarded as irregular or suspicious operations or transactions.

Third—Institutions shall, as provided for in Chapter III, update their records regarding accounts, contracts, operations or transactions by clients completed from the date on which this Instruction enters into force and, if no record exists for a

client, create one in accordance with the same provisions, without prejudice to the provisions of article 11 of the Money-Laundering Act.

FINAL PROVISION

For all aspects not provided for in this Instruction, the provisions of the Central American Convention for the Prevention and Suppression of the Offences of Money-Laundering and Laundering of Assets Connected to Illicit Drug Trafficking and Related Offences, the Money-Laundering Act and the Regulation implementing it shall apply where relevant.

DONE AT THE OFFICE OF THE ATTORNEY-GENERAL, DEPARTMENT OF PUBLIC PROSECUTION, San Salvador, on 16 July 2001.

BELISARIO AMADEO ARTIGA ARTIGA

Attorney-General of the Republic

APPENDIX 1

COUNTRIES WITH LOW TAXATION (TAX HAVENS)

Under the fourth provision of Chapter IV of this Instruction to Prevent Money-Laundering through the Improper Use of Operations in Financial Brokering Institutions, accounts frequently receiving and sending electronic transfers, particularly from and to countries with low taxation (tax havens), are to be regarded as "suspicious" operations. In that context, the following countries are regarded as having low taxation:

Albania
American Samoa
Andorra
Anguilla
Antigua
Aruba
Bahamas
Barbados
Belize
Bermuda
Bolivia
British Virgin Islands
Brunei
Campione d'Italia
Cape Verde
Cayman Islands
Channel Islands
Cook Islands
Cyprus
Dhahran
Djibouti
French Polynesia
Gibraltar
Grenada
Guam
Guernsey
Guyana
Honduras
Hong Kong
Isle of Man
Jamaica
Jersey
Kiribati
Kuwait
Labuan
Liberia
Liechtenstein
Madeira
Maldives
Malta
Marshall Islands
Monaco
Montserrat
Nauru
Netherlands Antilles
Nevis
Niue
Norfolk Isle
Oman
Panama
Patau
Puerto Rico
Qatar
Saint Kitts
Saint Vincent and the Grenadines
Seychelles
Sri Lanka
Swaziland
Tonga
Turks and Caicos Islands
Tuvalu
United Arab Emirates
Vanuatu
Western Samoa

APPENDIX 2

CODE OF ETHICS

Statement of ethical principles

The ethical principles that should characterize the conduct of an official of a financial brokering institution include:

(i) Ethical considerations have priority over the achievement of particular goals.

(ii) Honesty and sincerity.

This principle guarantees that our actions in relation to the people around us are reliable and trustworthy.

To comply with this principle, an employee must be completely sincere with all his or her work colleagues, who are expected in turn to be open and to identify real or potential problems in good time as they arise.

To ensure that this principle is not violated, the following points should be borne in mind:

- No official may offer or receive personal gratuities, gifts, commissions, courtesies or any other form of remuneration or benefit for acquiring or influencing a transaction or agreement involving the institution.
- Agreements must not be made that commit the entity without due prior authorization. All agreements must be clearly expressed.
- Expense accounts must be presented on time and with due precision.
- Each employee must personally comply with all the institution's procedures and controls and with data protection requirements.
- Employees must submit a report promptly if they become aware of a questionable or possibly illicit transaction affecting the entity.

(iii) Fairness.

All activities by officials of the institutions are based on the understanding that they will be carried out with complete fairness and mutual respect vis-à-vis clients, competitors and the various entities with which they deal.

Officials must treat one another with respect, consideration and understanding. Work problems should be discussed and differences resolved rapidly on the principle that full communication on matters of mutual interest is conducive to a good and efficient working atmosphere.

Existing and potential clients must be treated with equal respect and without any preference. This calls for courteous service, ethical working practices and formal recognition of applicable laws and customs.

Fair competition is a legal and ethical requirement. Officials should not enter into discussion or reach agreements with competitors regarding competitive practices. If questions arise regarding a commercial or personal disagreement that

require the assistance of the entity where the person works, the matter should be referred to the person's immediate superior or to the relevant department.

(iv) Integrity in the use of the institution's resources.

All resources, including all names, should be treated as valuable assets and not used in a manner that could be interpreted as imprudent, improper or intended for personal gain.

The use of information and resources for processing and archiving information, including the exclusive use of the data-processing system legally acquired by the institution, should be fully in line with external and internal norms.

External services required by the institution should be chosen in accordance with each entity's policy on the basis of quality or the competitiveness of the fees.

Competition for business should be based on the quality and price of services offered by each institution and the general benefit for the client. No payment or arrangement in violation of this principle is to be permitted.

HANDLING OF CONFLICTS OF INTEREST

A conflict of interest arises in any situation of competing spheres of interest where a person could derive an advantage for himself or another by choosing a particular course of action, by virtue of his or her own functions, involving the failure of the persons concerned to perform their legal, contractual or moral duties.

The term relates to a situation in which one of the interested parties seeks to obtain a moral or material advantage over the other party in the face of resistance by the latter.

Conflicts of interest might include the following situations:

(i) Competing spheres of interest;

(ii) Choices of action that depend on the person's own decision;

(iii) Exploitation of a situation for one's own benefit or that of a third party;

(iv) Failure to perform a legal, contractual or moral duty.

Conflicts of interest undermine the transparency, fairness and good faith that should be characteristic of business relationships. They are thus directly linked with essentially ethical principles, whether enshrined in law or not.

Conflicts of interest can have a variety of causes and be as diverse and numerous as might be imagined in a business relationship. For this reason, it is impossible to describe all the cases that could arise.

Consequently, on the basis of existing law and practical experience, a number of practices that should be either prohibited or controlled have been established with a view to avoiding conflicts of interest. These are not intended to cover all possible cases but are offered purely for preventive purposes. The following general guidelines are provided to assist in their interpretation.

General guidelines

1. In order to safeguard public confidence and trust, which form the foundations of sound financial practice, the conduct of officials both within and outside the institutions for which they work should be based on honesty, probity and the observance of legal, contractual and moral duties.

2. Officials must act in strict observance of the law and the internal regulations, policies and controls of the institution and on the basis of the duty of allegiance vis-à-vis clients, competitors and the general public.

3. If an official believes that he is involved in a conflict of interest other than those expressly mentioned in this document, he should refrain from taking any decision and inform his immediate superior and the entity's legal department. If he makes a decision, he must put his duty of allegiance before his personal interest.

4. Current and potential clients and all other users of the institution's services are to be treated with equal respect and consideration and without any preference. For the institutions, providing conscientious attention and service to the client should be a basic operating principle and standard of conduct and should never constitute special treatment offered out of commercial considerations or personal preferences, still less reciprocity for services rendered or any type of undue payment.

5. Within the institution, officials are required to uphold the entity's policies when granting loans and overdrafts, paying dividends, etc., especially when they are on behalf of officials or their relatives or enterprises. In no case should officials take decisions regarding commitments that they or their relatives or enterprises already have or wish to enter into with the entity.

6. Managers should avoid any operation that could cause a conflict of interests.

7. Officials should refrain from using privileged information held by the entity in which they work or that they become aware of through their functions in order to carry out investments or speculative transactions whose successful outcome depends on this information.

8. Whenever an official of any rank is placed in a position where disregard of any aspect of his duty of allegiance gives an advantage to himself or a third party, he is involved in a conflict of interests.

9. An employee must be held liable for any act that violates the law and/or internal regulations, even if it was carried out on the orders or with the express authorization of his superiors. In that event, those persons shall also be subject to the corresponding disciplinary sanctions.

10. Conflicts of interest should be considered in the context of the particular circumstances in which they arise. Officials should assume that all the events referred to in this guideline may give rise to conflicts of interest. If, however, they are of the opinion that no conflict of interest is present, they may demonstrate this to their superiors.

11. In entities in which officials participate directly or indirectly in the money table,* they have a special duty of allegiance with respect to the entity and should therefore refrain from activities that cause a conflict between their own interests and those of the entity for which they work.

12. In view of the fact that the activities likely to cause a conflict of interest are so numerous, it is the duty of officials to heed the definition and guidelines set forth here such that whenever they identify a conflict of interests that is not expressly foreseen, they should refrain from executing the activity and operation causing it.

PROHIBITED PRACTICES

These are practices that by their nature are highly likely to cause conflicts of interest. The law in some cases and the institutions in others deem that such practices must be avoided so as to help maintain transparency in the conduct of business.

CONTROLLED PRACTICES

These are practices that, while not prohibited, could possibly cause conflicts of interest and are therefore subject to control both before and after the event.

NOTE: In view of this definition, it is recommended that entities include in their internal regulations a list of activities that are subject to control and that require special authorization. It should also list those officials subject to prohibitions and controls.

INTERNAL CONTROL PROCEDURES

Apart from the prior controls that are required in the framework of controlled practices, the internal and external auditor and the monitoring and supervisory authorities should include all aspects relating to the practices and customs described here in their programmes for evaluating compliance with internal controls.

* *Translator's note*: This term refers to a regular meeting among bankers for resolving liquidity problems.