REPOBLIKAN'I MADAGASIKARA
Fitiavana - Tanindrazana - Fandrosoana

PRESIDENCY OF THE REPUBLIC

LAW No. 2018-043 of February 13, 2019
ON THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

The National Assembly and the Senate passed in their respective sessions on December 31, 2018 and December 28, 2019.

THE PRESIDENT OF THE REPUBLIC

In view of the Constitution;

In view of the Decision n°04-HCC/D3 of February 2, 2019 of the High Constitutional Court.

PROMULGATES THE FOLLOWING LAW:

TITLE ONE

DEFINITIONS AND SCOPE

Preliminary Article - The purpose of this Law is to establish rules to prevent, detect and punish all activities aimed at money laundering, as well as the financing of terrorist acts, whether or not associated with money laundering.

Article 1 - Definition of money laundering

For the purposes of the present Law, the following shall be considered as money laundering:

a) The conversion or transfer of property for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his/her acts;

b) The concealment or disguise of the nature, origin, location, disposition, movement of real property, or rights thereto by any person knowing that such property is derived from a crime or offence or from participation in a crime or offence;

c) The acquisition, possession or use of property, by any person who knows that such property constitutes proceeds of a crime or offence or is from participation in a crime or offence as defined in this Law.

Knowledge, intent or motivation as an element of the offence may be inferred from objective factual circumstances.

Negligence, lack of vigilance, non-compliance with applicable regulations shall be considered as criminal intent for the offences provided for in this Law.

The offence of money laundering applies to all types of movable or immovable property or income resulting directly or indirectly from an offence. It also applies even if the predicate offence was committed abroad.

Art. 2 - Definition of financing of terrorism

For the purposes of this Law, the financing of terrorism is defined as any act committed by a natural or legal person who, by any means, directly or indirectly through himself or through an intermediary, has deliberately provided or collected property, funds and other financial resources with the intent to use them or knowing that they will be used, in whole or in part, for the purpose of committing:

(a) one or more terrorist acts ;

(b) one or more terrorist acts by a terrorist organization;

(c) one or more terrorist acts by a terrorist or group of terrorists.

The commission of one or more of these acts constitutes an offence.

Attempting to commit a terrorist financing offence or helping, abetting, facilitating or assisting in its commission is also a terrorist financing offence.

The offence is committed, whether the act specified in this Article occurs or not, whether the property has been used to commit the act or not.

The offence is also committed by any legal or natural person who is involved as an accomplice, plans or incites others to commit the aforementioned acts.

The offence of financing terrorism is applicable if the act has been committed within the territory of Madagascar, regardless of the nationality of the perpetrator, or abroad by a person of Malagasy nationality or to the detriment of a Malagasy national. The offender may be prosecuted even if the terrorist organization or the terrorist act committed or planned is located in one or more other countries.

Knowledge or intent, as elements of the above-mentioned activities, can be inferred from objective factual circumstances.

Negligence, lack of vigilance, non-compliance with the legislation in force are considered as criminal intent guilty of the offences as defined herein.

Art.3 - Refusal of any justification

No political, philosophical, ideological, racial, ethnic, religious or any other consideration may be taken into account to justify the commission of any of the offences referred to in Articles 1 and 2 of this Law.

Art. 4.- Terminology:

For the purposes of this Law:

1. The term **"proceeds of crime"** refers to any property or economic benefit derived directly or indirectly from a crime or an offence;

Such benefit may consist of any property as referred to in paragraph 2 of this Article;

2. The term **"funds"** or **"property"** means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, fungible or non-fungible, and legal documents or instruments in any form, including electronic or digital, evidencing ownership of or interest in such assets, including credits, travellers' checks, bank checks, money orders, shares, securities, bonds, drafts or letters of credit, and any interest, dividends or other income or value derived from or generated by such assets;

3. The term « **freezing of transaction** » consists of suspending the execution of one or several funds or property transactions;

4. The term « **instruments**» refers to any property used or intended to be used in any manner, wholly or in part, to commit one or more offences;

5. The term **"criminal organization"** refers to any group structured for the purpose of committing crimes or offences;

6. The term **« confiscation »** refers to the definitive forfeiture of property or proceeds obtained from the commission of an offence or from the means used to obtain them, by an order of a court or any other competent authority;

7. The term **"predicate offence"** means any criminal offence, even if committed abroad, that enabled the perpetrator to obtain proceeds within the meaning of this Law;

8. The term **"perpetrator"** means any person who participated in an offence either as the main perpetrator, co-perpetrator or accomplice;

9. The term **"freezing"** or **"seizure"** means the temporary prohibition of the transfer, conversion, disposition or movement of funds or property held or controlled by any person, pursuant to a provisional measure or decision by a court or competent authorities;

10. The term **"bearer security"** means a security that does not bear the name of its holder but bears a serial number by which it can be identified;

11. The term **"terrorist act"** refers to any act that constitutes an offence under the universal conventions and treaties on terrorism as well as any other act intended to cause death or serious physical injury to a civilian or any other person who is not directly involved in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate the population or compel the Government or an international organization to perform or to refrain from performing any act;
12. The expression **"Non-Profit Organization"** or NPOs means all associations, foundations, or non-governmental organizations, whether legally constituted or de facto, which are mainly involved in raising and distributing funds for charitable, religious, cultural, educational, social, fraternal, or other types of "good work" purposes.

13. The term **« occasional customer »** refers to a person who goes to a bank for an exclusive purpose to make a one-off operation, but does not have an account in the bank;

14. The term **« beneficial owner »** means any natural person who ultimately owns or controls a customer and/ or an account, the person on whose behalf a transaction is being conducted. Also included are persons who ultimately exercise effective control over a legal person or legal arrangement.

15. The term **"electronic transfer"** means any transaction by electronic means carried out on behalf of an originator (whether a natural or legal person) via a financial institution with a view to making a certain sum of money available to a beneficiary at another financial institution. The originator and the beneficiary may be one and the same person.

16. A **"shell company"** refers to a company in which the persons who are members of the company, representing themselves as partners, are in fact only nominees or accomplices of another person, who is himself a partner or a complete stranger to the company, or who does not have a physical existence, or who does not carry out any transaction. It is qualified as "screening", when the company created appears only as a screen masking the activity of another legal person, or when the partners of a subsidiary are only nominees of the parent company.

17. The term **"manual exchange"** means the purchase or sale, primarily from an authorized financial institution such as bank agencies, post offices, or bureaus de change, of banknotes or travellers' checks denominated in foreign currency in exchange for domestic currency.

18. The term **"financial institution"** means any natural or legal person who engages in one or more of the following activities or transactions on a commercial basis in the name of or on behalf of a customer:

1. Acceptance of deposits and other repayable funds from the public;
2. Lending, including trade finance and consumer credit;
3. Leasing;
4. Money or value transfer services;
5. Issuing and managing means of payment such as credit and debit cards, checks, traveller's checks; money orders and bank drafts, electronic money;
6. Granting of guarantees and underwriting of commitments;
7. Trading in:
    a) money market instruments such as checks, bills, certificates of deposit, all derivative, instruments,
    b) the foreign exchange market,
    c) currency, interest rate and index instruments,
    d) securities,
    e) commodity futures markets,

8. Participation in securities issues and provision of related financial services;
9. Individual and collective asset management;
10. Safekeeping and administration of securities, in cash or in kind, for the account of others;
11. Other operations of investment, administration or management of funds or money for the account of others;
12. Underwriting and placement of life and non-life insurance and other insurance-related investment products;
13. Manual exchange.

19. The expression **"Designated Non-Financial Businesses and Professions"** or **"DNFBP"** means any natural or legal person that conducts, advices and controls operations involving a transfer of funds, including:

    (a) Casinos and gambling houses, including online gambling;
    (b) Real estate agents and brokers;
    (c) Vehicle dealers in road, rail, inland waterway, sea and air transport;
    (d) Jewellers;
    (e) Lawyers, notaries, other independent legal professionals;
    (f) Accountants, auditors;
    (g) Legal representatives and managers of casinos and groups, clubs and companies organizing games of chance, lotteries, betting, sports or horse racing forecasts;

(h) Chartered accountants and employees authorized to practice public accounting;
(i) Court administrators and legal representatives;
(j) Judicial auctioneers;
(k) Cash transporters.

20. The **"Financial institutions"** subject to reporting suspicions include:

- Banking Institutions;
- Insurance and reinsurance undertakings and insurance and reinsurance intermediaries;
- bureaux de change;
- Saving bank;
- The post office;
- Money transporters;
- The providers of money or value transfer services;
- Electronic money institutions ;
- Investment companies dealing with financial transformations;
- Pension funds.

21. **"Politically Exposed Persons"** or **"PEPs":**

The term **"Foreign PEPs"** means natural persons who hold or have held significant public functions in a foreign country, namely:

a) Heads of State or Government;
b) Members of royal families;
c) High ranking officials of public authorities:
- Ministers, Deputy Minister or Vice-Minister, Secretary of State,
- Parliamentarians: Senators, Deputies,
- Heads of institutions,
- Civil servants occupying high responsibility positions equal to or higher than that of a ministry director;
d) Members of the Supreme Courts, Constitutional Courts or other high courts whose decisions are not subject to further appeal, except in exceptional circumstances;
e) Members of the courts of auditors or of the boards of central banks;
f) Ambassadors, Chargés d'affaires and high-ranking military personnel;
g) Members of the administrative, management or supervisory bodies of state companies;
h) Senior officials of political parties;
(i) persons known to be closely associated with a PEP, including any close relative, family member by direct lineage or marriage, or any person connected by business relationships.

The term **"National PEPs"** means individuals who hold or have held important public positions in Madagascar, including the following individuals:
a) Heads of State or Government;
b) Senior officials of public authorities:
- Ministers,
- Senators,
- Deputies,
- Heads of institutions,
- Heads of Provinces, Commissioners-General, Regional Prefects, Regional Chiefs, Heads of Districts,
- President of the Special Delegation (PDS) of a territorial authority of a level higher than or equal to the communes,
- Mayors,
- Civil servants occupying positions of high responsibility equal to or higher than that of a ministry director,
- Members of the Corps of Administrators, Inspectors and Commissioners in the Public Administration,
- All judicial, administrative and financial magistrates, whatever their grade and function,

- All persons exercising the functions of authorising officers and public accountants,
- Corporate executives who sit on the boards of public establishments and companies with public participation;
c) High-ranking military personnel:
- General officers and senior officers of the army, police and gendarmerie,
- Heads of higher military training at the company level,
- Inspectors of the General Inspectorate of the State, the General Inspectorate of the Malagasy Army and the General Inspectorate of the National Gendarmerie;
d) Political party leaders;
e) Persons known to be closely associated with a PEP, including any close relative, family member by direct lineage or marriage, or any person connected by business relationships.

The expression **"PEPs of international organizations"** means persons who perform or have performed significant functions in or on behalf of an international organization, including members of senior management, in particular, directors, deputy directors and members of the Board of Directors and all persons performing equivalent functions. The concept of PEP is not intended to cover middle or lower ranking persons falling under the above categories.

The duration of the PEP status for the three categories is two years after termination of function or title.

22. The term **"beneficial owner"** means any individual or legal person represented in any manner, or signatories of a bank or financial account or beneficiary of rights or economic benefits arising from the account;

23. An **"official document"** refers to a valid identification document of the customer, such as a national identity card, passport, or resident card, which certifies his/her identity, filiation, address, or profession;

24. The term **" delegated governmental authority"** includes notaries or other private persons carrying out missions of public authority;

25. The term **"reporting institutions"** refers to financial institutions, designated non-financial businesses and professions, business associations, and industrial unions.

26. The expression **"terrorist act"** refers to any act that constitutes an offence under the universal conventions and treaties on terrorism, as well as any other act intended to cause death or serious physical injury to a civilian or any other person not taking a direct part in hostilities in a situation of armed conflict, when, by its nature or context, such act is intended to intimidate the population or to compel the Government or an international organization to perform or to refrain from performing any act.

27. The term **"terrorist"** means any natural person who (i) commits or attempts to commit terrorist acts by any means, directly or indirectly and willfully; (ii) participates as an accomplice in terrorist acts or in the financing of terrorism; (iii) organizes or directs others to commit terrorist acts ; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose, where such contribution is intentional and intended to further the commission of the terrorist act or with knowledge of the group's intent to commit a terrorist act.

28. **"Terrorist organization"** means any group that (i) commits or attempts to commit terrorist acts by any means, directly or indirectly, intentionally; (ii) participates as an accomplice in terrorist acts; (iii) organizes or directs other groups to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose, where such contribution is intentional and and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

29. The term **"shell bank"** means any financial institution incorporated and licensed in a country where it has neither a physical presence nor an affiliation with a regulated financial group subject to consolidated and effective supervision. The expression “physical presence" means the existence of

management and decision-making authority in a country. The mere presence of a local agent or subordinate staff does not constitute physical presence.

30. The expression **"high-risk customers"** refers to persons using a banking or financial service who do not have sufficient information to trace the origins and beneficial owners of their transactions, who do not cooperate with the request for proof of their transactions, occasional customers, as well as customers who refuse to comply with the vigilance measures established by the reporting institution.

The authority in charge of supervising reporting institutions and the Financial Intelligence Unit may issue guidelines for designating high-risk customer profiles.

31 **"Vulnerable NPOs"** means Non-Profit Organizations managed in a non-transparent way, in their activities, their funds donators' identities, the origin of their financing, unable to provide the necessary information and documents related to their organization and activities, or affiliated directly or through their leaders with terrorist organizations.

The results of the ML/TF risk assessment will further define the vulnerability of NPOs.

31. A **"serious indication"** means information, a fact or a set of elements tending to reveal or corroborate the probable illicit nature of one or more transactions that are the subject of suspicion of money laundering or terrorist financing.

In order to serve as a basis for prosecution for money laundering, the original deeds committed abroad must have the character of a criminal offence in the country where they were committed and in Madagascar's domestic law, unless specifically agreed otherwise.

TITLE II

PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING

Chapter I Risk assessment

Art. 5 - National risk assessment and application of the risk-based approach

The State shall organize the identification and assessment of money laundering and terrorist financing risks and take the necessary measures, including the designation of an authority or mechanism to coordinate risk assessment actions and mobilize resources, to ensure that risks are effectively mitigated.

On the basis of this assessment, the State shall apply a risk-based approach in order to ensure that the prevention and mitigation measures for money laundering and financing of terrorism are appropriate to the identified risks.

Art. 6 - Risk assessment by reporting institutions

The reporting institutions provided for in Article 8 of this Law shall take appropriate measures to identify and assess the money laundering and terrorist financing risks to which they are exposed, taking into account relevant risk factors such as customers, territory or geographical areas, products, services, transactions or distribution channels.

The assessments referred to in the first paragraph above shall be documented, maintained and made available to the competent authorities and self-regulatory bodies.

These reporting institutions must have policies, procedures and control mechanisms to efficiently mitigate and manage the money laundering and terrorist financing risks identified at their own level. These policies, procedures and control mechanisms must be proportionate to the nature and size of the risks and the volume of activities.

Article 7 - National strategy and coordination of the fight against money laundering and terrorist financing

The State shall draw up the National Strategy to combat money laundering and terrorist financing, taking into account the risks identified.

It shall set up a coordination and orientation committee. This committee, organized under the conditions set by a Decree, is responsible for adopting and assessing the National Anti-Money Laundering / Countering Financing of Terrorism Strategy. It ensures the monitoring and the implementation of the strategy and facilitates cooperation between the various stakeholders in the fight against money laundering and terrorist financing.

Chapter II - General Prevention Provisions

Art. 8 - Professions subject to Titles II and III of the present Law

Titles II and III of the present Law apply to the financial institutions, Designated Non-Financial Businesses and Professions enumerated in paragraphs 19 and 20 of Article 4, or to any natural or legal person who carries out, supervises or advises on operations involving money transfers, including actors who operate directly or indirectly in sectors performing transactions outside the regulated financial circuit.

Institutions, professions and persons as mentioned must inform the Financial Intelligence Unit set up by Article 23 as soon as it appears that sums or capital or transactions on such sums or capital are suspicious or are likely to be used or related to financing of terrorism.

Art. 9 - Vigilance measures regarding the use of cash and check payment

The financial institutions, Designated Non-Financial Business and Profession specified in Article 8 of this Law are required to establish vigilance measures for cash and check payments in view of the risks involved, in accordance with Article 6 of this Law.

They are required to have sufficient information referred to in Articles 13, 14 and 15 enabling to identify beneficial owners, occasional customers, and economic beneficiaries and to trace the source of their customers' funds.

They shall not execute any transaction when the identity of the persons concerned could not be controlled or when it is incomplete or obviously fictitious.

They are required to inform the Financial Intelligence Unit, specified in Article 23 of this Law, of transactions executed by customers that do not have the sufficient information specified in Article 13 of this Law, to identify them and to trace the origins and the beneficial owners of their transactions.

All payments by check must be nominative.

Art.10 - Obligation to carry out international transfers of funds through a credit or financial institution

Any transfer of funds, bonds or securities to or from abroad must be made through an authorized credit or financial institution, or through its intermediary.

Art.11 - Obligation to report or communicate physical cross-border transportation of currency and bearer negotiable instruments

All cross-border physical transportation of currency and bearer negotiable instruments or traveller's checks entering and leaving the territory, the amount of which is fixed by regulation, must be reported by the interested parties to the customs service. This declaration is required for all types of transportation, in particular:

(1) physical transport by a natural person, in the luggage accompanying that person or in his vehicle;
(2) shipment of cash or bearer negotiable instruments by containerized freight; and
(3) shipment by courier, by a natural or legal person, of cash, negotiable bearer instruments.

The Financial Intelligence Unit shall have access to such information.

The Customs service must inform the Financial Intelligence Unit about any physical cross-border transportation incidents.

Chapter III - Transparency in Financial Transactions

Art. 12 - General provisions

The State shall organize the legal and regulatory frameworks in order to ensure the transparency and traceability of economic relations, particularly by ensuring that company law and legal arrangements on the protection of property do not allow the creation of shell or front entities.

The State shall take all measures to prevent the use of legal arrangements for money laundering or terrorist financing purposes and to facilitate access to information on beneficial owners and on the control of legal structures by financial institutions and Designated Non-Financial Businesses and Professions.

The institution that issues a license to any establishment covered by this Law is required to ensure supervision, regulation and control.

Financial institutions and Designated Non-Financial Businesses and Professions shall identify and assess money laundering and terrorist financing risks and take effective measures to mitigate them.

Banks and financial institutions shall not hold anonymous accounts or accounts under obviously fictitious names.

The establishment of fictitious credit and financial institutions is strictly prohibited. Therefore, banks must refuse to enter into or continue any relationship with such entities.

Art. 13 - Identification of clients by reporting institutions

Reporting institutions are required to ascertain the identity and address of their customers before opening an account or saving books, safekeeping stocks, securities or bonds, granting safe-deposit facilities, or establishing any other business relations.

Reporting institutions must identify the beneficial owner(s) and take risk-appropriate measures to verify their identity.

For verification purpose, a natural person is required to present an original official identity document currently valid and bearing a photograph, a copy of which is to be kept. His address is to be verified by the presentation of an evidence document.

For identification purpose, a legal person is required to producing statutes and any legally registered document establishing that it does actually exist at the time of the identification, a copy of which is to be kept.

Executive managers, employees and agents called on to enter into transaction on behalf of third parties shall submit, in addition to the documents referred to in the paragraph 2 of this Article, documents proving the delegation of power granted to them, as well as documents attesting the identity and address of the beneficial owners.

Throughout the business relationship period, the reporting institutions shall collect, update and analyse the requested information that provides appropriate knowledge of their customer. The collection and

storage of such information must be carried out in accordance with the objectives of assessing the risk of money laundering and terrorist financing and of monitoring in accordance with this risk.

At any time, these reporting institutions must be able to justify to the supervisory authorities the adequacy of the vigilance measures they have implemented regarding the money laundering and terrorist financing risks presented by the business relationship.

Article 14 - Identification of occasional customers

Financial institutions and Designated Non-Financial Businesses and Professions are required to establish and check the identity of their occasional customers.

For verification purpose, a natural person is required to present an original official identity document currently valid and bearing a photograph, a copy of which is to be kept.

In the case of a non-resident person or a person travelling on the national territory, the presentation of a document proving his travel address and the indication of his residential address abroad or the usual address in Madagascar is regarded as address evidence.

Art. 15 - Identification of the beneficial owner

Where it is uncertain whether a customer is acting on his/ her own behalf, the reporting institutions must seek information by all available means to ascertain the true identity of the principal and the party on whose behalf the customer is acting. After verification, if the beneficial owner's identity stays doubtful, the business relation shall be terminated, without prejudice, where applicable, to the obligation of reporting suspicious transactions.

If the customer is a lawyer, a public or private accountant, a private party with delegated public authority, or an agent acting as a banking intermediary, he/she cannot invoke professional secrecy to refuse to communicate the identity of the genuine operator.

Art. 16 - Special monitoring of certain transactions

a) Complex and unusual transactions

When a transaction is carried out under unusually complex or unwarranted conditions, or appears to have no economic justification or legal purpose, the reporting institution is required to exercise due diligence in accordance with internal policy directives or directives issued by any control and supervisory structures, in particular to obtain information on the origin and destination of the funds, the purpose of the transaction and the identity of the economic actors in the transaction.

The reporting institutions shall draw up a written confidential report containing all relevant information on the terms and conditions of the transaction, as well as on the identity of the principal and, where applicable, those of the economic actors in the transaction. They are required to communicate the report to the Financial Intelligence Unit, provided for in Article 23 of this Law.

The report shall be preserved as specified in Article 17.

b) Circumstances of transactions

Reporting institutions shall take reasonable measures to determine whether a customer or beneficial owner is a PEP or a high-risk person.

Reporting institutions shall take enhanced customer due diligence measures, especially towards transactions performed by PEPs.

With respect to foreign PEPs, in addition to the normal customer due diligence measures, financial institutions must be required to:

- have appropriate risk management systems in place to determine whether the customer or beneficial owner is a Politically Exposed Person;
- get authorization from senior management to establish or continue a business relationship, if the customer is an existing customer;
- Take reasonable measures to establish the source of assets and the origin of funds;
- ensure ongoing monitoring of the business relationship;

The obligations applied to all types of PEPs apply to their family members, and to persons closely associated with them.

Reporting institutions must also take enhanced customer due diligence measures, mainly towards:

- transactions carried out by high-risk customers, vulnerable non-profit organizations;
- transactions carried out in sectors deemed to be at risk;
- transactions involving cross-border correspondent banking relationships, and other similar relationships;
- transactions or business relations with natural or legal persons, as well as with financial institutions located in high risk countries as classified by the Financial Action Task Force (FATF) or any similar international organization;
- transactions or business relations with natural or legal persons classified as terrorists by the Financial Action Task Force (FATF) or any international public organization, as well as by any national authority, in particular that provided for in Article 55 of this Law;
- transactions or business relations with terrorist organizations or organizations supporting terrorist activities or classified as such by the Financial Action Task Force or by any international public organization, as well as by any national authority, in particular that specified by the Article 55 of the present Law.

Special vigilance must be exercised with respect to transactions originating from establishments or financial institutions that are not subject to sufficient obligations, particularly from high risk countries in terms of customers' identification or monitoring of transactions.

c) New products, new technologies or business practices

Reporting institutions shall assess the risks and take appropriate measures prior to the launch of new products, or new business practices, or prior to any use or development of new technologies in connection with new or pre-existing products, including new distribution mechanisms, in order to mitigate money laundering or terrorist financing risks.

d) Electronic transfers

When transactions are carried out by electronic transfers, banks and financial institutions must require information on the principal and all the required information about the beneficiary of the electronic transfer and other related messages.

Such information must accompany the electronic transfer or related message throughout the payment system.

Banks and financial institutions shall monitor electronic transfers and detect those that do not include the required information about the principal and/or the beneficiary.

If banks and financial institutions receive electronic transfers that do not include complete information about the principal, they shall take measures to obtain from the sending institution or the beneficiary any missing information to complete and verify them. If they do not obtain such information, they shall refrain from carrying out the transfer and report it to the Financial Intelligence Unit.

With respect to cross-border electronic transfers, financial institutions acting as intermediaries in a chain of electronic transfers should ensure that all originator and beneficiary information accompanying the electronic transfer remains attached and take appropriate measure in the event of a failure to do so.

The beneficiary's financial institution should take reasonable measures to detect cross-border electronic transfers on which required information about the principal or beneficiary is missing. Such measures may include *a posteriori* or real-time monitoring, where possible.

Money or value transfer service providers must comply with all applicable wire transfer requirements in the countries in which they operate, directly or through their agents. Where a money or value transfer service provider controls both the procurement and reception of an electronic transfer, the money or value transfer service provider must:

1) take into account all information emanating from the principal and the beneficiary in order to decide if any Suspicious Transaction Report (STR) should be made;

2) make Suspicious Transaction Reports STR in all the countries concerned by the suspicious electronic transfer, and make available all the information about the transaction to the Financial Intelligence Unit.

e) Use of third parties

Financial institutions may use third parties to carry out the due diligence obligations provided for in Articles 13 to 15 of this Law, without prejudice to their ultimate responsibility for compliance with such obligations.

Financial institutions must ensure that third parties are subject to regulations and supervision in terms of anti-money laundering and combating the financing of terrorism that are at least equivalent to those of the reporting institutions.

For financial institutions, the obligations set forth in Articles 13 to 15 of this Law may be implemented by a third party under the following conditions:

1) The third party is a financial institution or one of the Designated Non-Financial Businesses or Professions located or having its head office in Madagascar;
2) The third party may be a person belonging to a category corresponding to paragraph 1 above on the basis of a foreign law in a third country imposing equivalent obligations with regard to the fight against money laundering and terrorist financing;
3) The information collected by the third party shall be made available to the reporting institution, under the conditions laid down by the supervisory authority.

Financial institutions may communicate information collected to implement Articles 13 to 15 of this Law to another financial institution located or having its registered office in Madagascar. They may also communicate such information to an institution offering financial activities equivalent to those carried out by financial institutions, under the following terms:

1) the receiving third party is located in a third country that imposes equivalent obligations in terms of combating money laundering and terrorist financing;
2) personal data are treated by the receiving third party under conditions ensuring sufficient guarantees of protection of privacy and basic human rights, according to the regulations in force in this matter.

The third party, which applies the due diligence obligations provided for in Articles 13 to 15 of this Law, shall make available to the financial institutions without delay the information relating to the identity of the customer and, where applicable, of the beneficial owner, as well as that relating to the purpose and nature of the business relationship.

The third party shall transmit to them, at their first request, copies of the documents identifying the customer and, where applicable, the beneficial owner, as well as any document relevant to the performance of these procedures.

An agreement may be signed between the third party and the financial institutions to specify the terms and conditions for the transmission of the information thus collected and the control of the due diligence carried out.

f) Life insurance contracts

For life insurance activities and other insurance-related investment products, financial institutions must, in addition to the due diligence measures required with respect to the customer and the beneficial owner, implement the following due diligence measures with respect to the beneficiary or beneficiaries of life insurance contracts and other insurance-related investment products, as soon as such beneficiary or beneficiaries are identified or designated:

a) Record the name of the person for the beneficiary or beneficiaries who are natural or legal persons or legal arrangements identified by name;
b) obtain sufficient information about the beneficiary(ies) who are designated by characteristics or by category such as spouse or children at the time the insured event occurs or by other means such as a will;

The information collected under subparagraphs (a) and/or (b) shall be maintained and updated as provided in Article 17 of this Law.

In both cases mentioned in the above paragraphs (a) and (b) above, verification of the identity of the beneficiary or beneficiaries should occur at the time of payment of benefits.

The beneficiary of a life insurance contract must be considered a relevant risk factor by the financial institution.

g) Reinsurance cession

For the transfer of premiums in case of reinsurance cession, financial institutions must, in addition to the required customer and beneficial owner due diligence measures, implement the following due diligence measures prior to making the transfer:

a) Ascertain the identity of the transferee company by name and obtain sufficient information about the transferee company, including the nature of its business;
b) Verify the purpose of the transfer;
c) Obtain the bank details of the transferee company.

The information collected must be kept and updated as per the provisions of Article 17 of this Law. The transferee company must be considered as a relevant risk factor by the financial institution.

Art. 17 - Preservation of documents by credit institutions and financial institutions and Designated Non-Financial Businesses and Professions

Credit institutions, financial institutions, Designated Non-Financial Businesses and Professions shall keep and make available to the authorities listed in Article 18:

1) Documents relating to the identity of customers for at least 5 years after the closure of accounts or the termination of relations with the customer;
2) Documents relating to the transactions carried out by customers and the reports referred to in Article 16 for at least 5 years after the execution of the transaction;

3) The books of account, the business correspondences made by the customers and any analysis completed on the customers' transactions kept for at least 5 years after the termination of the business relations.

Art. 18 - Communication of documents

The information and documents referred to in Articles 13 to 17 shall be communicated to the Financial Intelligence Unit established under Article 23.

Under no circumstances shall the persons obliged to transmit the aforementioned information and documents, nor any other person with knowledge of them, communicate them to other natural or legal persons than those listed in paragraph 1, unless authorized by the above-mentioned authorities.

The monitoring, control and regulatory bodies shall collaborate closely with the Financial Intelligence Unit.

The monitoring, control and regulatory bodies shall carry out systematic document-based and, if necessary, on-site controls. These controls consist of verifying the implementation and effectiveness of a mechanism to combat money laundering and terrorist financing within the reporting institutions.

The monitoring, control and regulatory bodies referred to in this Law shall transmit to the Financial Intelligence Unit any suspicion relating to the risk of money laundering or terrorist financing or both.

The Financial Intelligence Unit shall have access to all information necessary for the investigation.

Article 19. - Internal anti-money laundering and anti-terrorist financing arrangements within reporting institutions

Reporting institutions shall draw up programs to prevent money laundering and terrorist financing. These arrangements include:

a) centralizing information on the identity of customers, principals, beneficiaries and proxy holders, beneficial owners, account signatories, natural or legal representative persons, and on suspicious transactions;

b) specifying those responsible for this in senior management, at each branch, and at each agency or local service;

c) continuous training of public officials or employees;

d) Internal control of implementation and effectiveness of adopted measures towards the enforcement of this Law.

When a reporting institution has subsidiaries, branches or associates, it must ensure that its branches and affiliates abroad comply, through these programs, with anti-money laundering and anti-terrorist financing measures in accordance with the country requirements.

Art. 20 - Manual exchange

The entities authorized to carry out manual foreign exchange transactions are those provided for by the Law establishing the Foreign Exchange Code.

Before beginning their activity, bureaus de change are required to justify the licit origin of the funds necessary to establish its bureau or institution.

Natural or legal persons who habitually carry out manual foreign exchange transactions are required to:

a) before starting their activity, submit a declaration of activity to the Ministry of Finance, after consultation with the Banking and Financial Supervision Commission and any other competent administration of Madagascar, in order to obtain the authorization to open and operate provided for by the national legislation in force, and to justify, in this declaration, the licit origin of the funds necessary for the creation of the business or the institution;
b) proceed with the identification of customers by obtaining their full names, date and place of birth and main residence address. For this purpose, it requires the presentation of original and valid official documents, including a photograph. For any natural person who is a trader, it is required, in addition to the documents mentioned in this paragraph, any document attesting to his registration in the trade register. For any legal entity, it is required in addition to the documents mentioned in the present paragraph, any information proving its legal constitution in the original form or a duly certified copy, in particular its registration in the Trade and Companies Register, its corporate name, the address of the registered office, the identity and powers of the partners and corporate officers mentioned in the statutes;
c) record, in chronological order, all operations, their nature and amount with indication of the name and surname of the customer as well as the number of the document presented, on a side register or to keep the traces of the operations of the last 5 years on the electronic register after the last recorded operation.

Art. 21 - Casinos and gaming establishments

Casinos and gaming establishments are required to:

a) send, before starting their activity, a declaration of activity to the Ministry of Finance and to the Ministry of the Interior in order to obtain the authorization of opening and operation provided for by the national legislation in force, and to justify, in this declaration, the licit origin of the funds necessary for the creation of the dispensary or the establishment;
b) keep regular accounts and to keep them for at least 5 years. The accounting principles defined by national legislation are applicable to casinos and gaming establishments;
c) check the identity, by a presentation of an original official document currently valid and bearing a photograph, a copy of which is to be kept, of gamblers who buy, bring or exchange chips or tokens for an amount greater than 3 million Ariary;
d) record, in chronological order all transactions mentioned in paragraph c) of this Article, their nature and amount with an indication of the gamblers' names and first names, as well as the presented document number, in a pre-numbered register, and to preserve the register for at least 5 years after the last registered transaction;
e) record, in chronological order, all transfers of funds between such casinos and gaming establishments in a marked register and retain such register for at least 5 years after the last recorded transaction.

In the event that the gaming establishment is operated by a corporation with multiple subsidiaries, the chips must identify the subsidiary through which they are issued. Under no circumstances may chips issued by one subsidiary be redeemed in another subsidiary, including abroad.

Art. 22 - Obligations of non-profit organizations

a) Supervision by the competent supervisory bodies

The competent authority defines and establishes rules to ensure that the funds of non-profit organizations are not used for money laundering or terrorist financing purposes.

Any non-profit organization that collects, receives, donates or transfers funds as part of its philanthropic activity shall be subject to appropriate supervision by its competent supervisory body.

b) Monitoring and control measures for non-profit organizations

Non-profit organizations are required to:

1) Produce at all times information on

- The object and purpose of their activities;

- The identity of the person or persons who own, control or manage their activities, including officers, board members and directors;

2) Publish annually, in the official gazette or in a newspaper of legal announcement, their financial statements with a breakdown of their revenues and expenses;

3) Establish appropriate mechanisms to help them fight money laundering and the financing of terrorism;

4) Have their own control mechanisms to ensure that all funds are properly accounted and used in accordance with the object and purpose of their declared activities;

5) Keep records of their operations for at least five years and make them available to the competent authorities

c) Special due diligence requirements for non-profit organizations

Any non-profit organization, which wishes to collect funds, receive or order transfers of funds, must:

1) Be listed on a register implemented for this purpose by the relevant authority. The initial application for listing on this register shall contain the names, first names, addresses and contact numbers of all the persons assuming responsibility for the functioning of the body concerned, and in particular the president, the vice-president, the general secretary, the members of the board and the treasurer , as the case may be;

2) Communicate to the authority in charge of keeping the register, any change in the composition of the persons responsible previously designated, referred to in the previous paragraph.

Any donation given to a non-profit organization of an amount equal to or greater than 10 million Ariary must be recorded in the register referred to in the first paragraph of this section, including the full name and address of the donor, the date, nature and amount of the donation.

The register referred to in the first subparagraph of this paragraph shall be preserved by the competent authority for a period of at least five years, without prejudice to longer periods of retention prescribed by other legislative or regulatory texts in force. It may be consulted by the Financial Intelligence Unit, by any authority responsible for the control of non-profit organizations and, upon request, by any judicial police officer in charge of a criminal investigation.

Any donation in favour of a non-profit organization, regardless of the amount, must also be declared by the competent authority provided for in paragraph a) of this Article to the authorities in charge of the fight against terrorism and the financing of terrorism, when the funds are likely to be related to a terrorist undertaking or the financing of terrorism.

Non-profit organizations must, on the one hand, comply with the obligation to keep accounts in accordance with the standards in force and, on the other hand, transmit to the control authority their annual financial statements for the previous year, within six months of the date of closure of their fiscal year. They shall deposit in a bank account opened in the books of a credit institution or an approved decentralized financial system, all sums of money given to them as donations or in the context of the transactions they are required to perform

Without prejudice to the proceedings that may be instituted against them, the competent authority may order the temporary suspension or dissolution of non-profit organizations that knowingly encourage, foment, organize or commit any of the offences referred to in Articles 1 and 2 of this Law.

TITLE III

DETECTION OF MONEY LAUNDERING AND TERRORIST FINANCING

Chapter I - Cooperation with the authorities responsible for combating money laundering and the financing of terrorism

Section 1 The Financial Intelligence Unit

Art. 23 - General provisions

A Financial Intelligence Unit, organized under the conditions laid down by a Decree, is responsible for receiving and analysing the declarations required of the persons and organizations referred to in Article 8 and for disseminating the analysis report to the relevant authorities..

The mission of the Financial Intelligence Unit is to conduct the fight against money laundering and terrorist financing.

Art. 24. - Competence

The Financial Intelligence Unit (SAMIFIN), in accordance with the provisions of Article 4, paragraphs 19 and 20, and Article 8 et seq., is competent to deal with all relevant information relating to money laundering, related economic and financial offences and information on the financing of terrorism and any organized crime. The Financial Intelligence Unit shall establish the origin or destination of sums of money, or the nature of operations that have been the subject of a report or information received under the provisions of Articles 12 to 16, and 20 to 22 of this Law.

The Financial Intelligence Unit shall also receive all information that is useful and necessary for the accomplishment of its mission, in particular that communicated by the supervisory authorities or specialized administrations as well as by judicial police officers. The Financial Intelligence Unit treats this information in the same way as a suspicious transaction report.

To this end, the Financial Intelligence Unit ensures the collection, analysis, exploitation and transmission of information related to any organized crime, and in particular related to money laundering and terrorist financing.

This information can be communicated by any means including those made available by the New Technologies of Information and Communication. Its agents are bound by the secrecy of the information thus collected, which may not be used for any purpose other than those provided for in this Law.

The Financial Intelligence Unit may be seized by the judicial authorities, the public administration, as well as by any other natural or legal persons.

Upon completion of its investigation, the Financial Intelligence Unit transfers its report to the relevant authorities so that it is given appropriate follow-up, in particular, the opening of a judicial investigation, a criminal prosecution or the treatment by the specialized administrations.

The Financial Intelligence Unit shall carry out or commission periodic studies on the evolution of techniques used for money laundering and terrorist financing purposes at the national level;

The Financial Intelligence Unit participates in the study of measures to be implemented to counter clandestine financial circuits, money laundering and the financing of terrorism.

The Financial Intelligence Unit shall issue specific directives on vigilance and prevention of money laundering and terrorist financing to the reporting institutions, public and private organizations and non-profit organizations. It ensures the control of the implementation of these directives.

The Financial Intelligence Unit shall notify the orientation and coordination committee of any breach in implementation of vigilance measures.

The Financial Intelligence Unit shall support the orientation and coordination committee in defining State policy and strategy on Anti-Money Laundering / Countering Financing of Terrorism. As such, it serves as the committee secretary, and provides a draft of policy and strategy.

The Financial Intelligence Unit implements the actions defined by the Anti-Money Laundering / Countering Financing of Terrorism policy and strategy.

The Financial Intelligence Unit keeps complete statistical information on the effectiveness and efficiency of Anti-Money Laundering / Countering Financing of Terrorism system, in particular information on suspicious transaction reports received and forwarded, investigations on money laundering and financing of terrorism, frozen, seized or confiscated property, and judicial mutual assistance or any other international request for cooperation.

Relevant authorities are required to provide the Financial Intelligence Unit with the related information.

The Financial Intelligence Unit recommends any reforms necessary for improving the effectiveness of Anti-Money Laundering / Countering Financing of Terrorism.

The Financial Intelligence Unit may cooperate with any national and international authorities, and any governmental and non-governmental organization as part of the fulfilment of its mission.

The constitution, functioning and assignments of the Financial Intelligence Unit, conditions to ensure or reinforce its independence, and the contents and methods of transmission of reports addressed to the Financial Intelligence Unit and, sanctions measures in the event of any breaches noted are determined by Decree.

Art. 25 - Access to information

The Financial Intelligence Unit may, upon its request, obtain from any public authority, from any other natural or legal person referred to in Article 8, the communication of information or documents referred to in Article 18, as part of undertaken investigations.

It may also exchange information with the authorities responsible for applying the disciplinary sanctions provided for in Articles 42 and 54.

It may inspect on the spot the information necessary for the performance of its duties, which is possessed or held by the reporting institutions.

It shall have access to data relating to any communication made by means of the New Technologies of Information and Communication.

It shall have access to the databases of the public authorities and of any other natural or legal person referred to in Article 8.

It may, upon request, have access to the databases of other private establishments concerned by the file.

Upon request from the Financial Intelligence Unit, from the competent supervisor and any other relevant authorities, reporting institutions required to make available preserved information, according to the requested format within the time limit set in the request, in accordance with the format requested.

The Financial Intelligence Unit shall have a database constituted from such various sources of information.

In all cases, the use of the information thus obtained shall be strictly limited to the purposes of this Law.

Any refusal in bad faith to a request for information from the Financial Intelligence Unit shall be deemed to constitute an obstruction of justice and shall be punishable by the penalties provided for in the Anti-Corruption Law.

Art. 26 - Relations with foreign counterparts

The Financial Intelligence Unit may, subject to the principle of reciprocity, exchange information with its foreign counterparts in charge of receiving and analyzing suspicious activity reports, where these latter are subject to similar secrecy obligation and whatever the nature of such services. For this purpose, the Financial Intelligence Unit can conclude cooperation arrangements with such services.

When receiving request of information or transmission from a foreign counterpart Unit dealing with a suspicious transaction report, it responds to the request as a part of the power granted to it by this Law to process such reports.

Section 2. The Suspicious Transaction Report

Article 27 - Obligation to report suspicious transactions

Any natural or legal person from the financial institutions or Designated Non-Financial Businesses and Professions referred to in Article 8 of this Law is required to report to the Financial Intelligence Unit, as soon as the suspicion is established, the transactions referred to in Article 8 when they concern funds that appear to come from the commission of a crime or an offence or are likely to finance an act of terrorism.

The above-mentioned persons are obliged to report the transactions carried out even if it was impossible to postpone their execution or if it only became apparent after the transaction had been carried out that it involved suspicious funds.

They are also obliged to report without delay any information that could reinforce or refute the suspicion.

Within the framework of more effective cooperation between the administrative services of the State that are directly or indirectly involved in the fight against money laundering and terrorist financing, the civil servants of the administrative services of the State who observe facts that they know or suspect to be related to money laundering or terrorist financing, shall inform the Financial Intelligence Unit.

Art. 28 - Transmission to the Financial Intelligence Unit

Reports of suspicious transactions are transmitted to the Financial Intelligence Unit by means of a Suspicious Transaction Report (STR) form, or by electronic platform, or by any other written means. Reports made by telephone may be confirmed by fax or any other written means within the necessary time limits. These declarations shall indicate as the case may be:

1. the identity of the operators and the nature of the operations;

2. the reasons why the operation has already been carried out;

3. the time limit within which the operation must be carried out.

Any transmission of a Suspicious Transaction Report must mention the identity and address of the reporter.

Upon receipt, the Financial Intelligence Unit shall acknowledge receipt of the report.

Reporting parties are prohibited from disclosing the filing of a suspicious transaction report to anyone, under penalty of the sanctions provided for in Articles 43 and 49 of this Law.

The staff of the Financial Intelligence Unit is required to keep secret any information obtained in the course of their duties, even after they have ceased to work for the Unit, under penalty of the sanctions provided for in Articles 43 and 49 of this Law.

Art. 29 - Opposition to the execution of transactions

If the Financial Intelligence Unit considers the matter serious or urgent, it may if necessary put a hold on the execution of the transaction before expiry of the time mentioned by the reporting agent. This objection shall be notified to the latter immediately by fax or any other written means. The opposition shall prevent the execution of the transaction during a time limit that shall not exceed 48 hours.

The President of the competent court of First Instance, notified by the Financial Intelligence Unit by Order on Request, may order the freezing of the funds, accounts or securities for an additional period which may not exceed eight days.

At the end of this period, the Financial Intelligence Unit must refer the matter to the Public Prosecutor's Office of the competent court, which will immediately decide on the follow-up to be given to the freeze.

Art. 30 - Follow-up of reports

As soon as the suspicion of the existence of the offence of money laundering and/or terrorist financing is confirmed, the Financial Intelligence Unit shall send a report on the facts, together with its opinion, to the Public Prosecutor who is required to open a judicial investigation. This report is accompanied by all relevant documents, except for the suspicious transaction reports themselves. The identity of the author of the report must not appear in the report.

The Financial Intelligence Unit, supervisory, oversight and regulatory authorities shall provide feedback and establish guidelines that will assist reporting institutions in the application of national anti-money laundering and countering the financing of terrorism measures and, in particular, in detecting and reporting any suspicious transactions.

Section 3: Control and supervisory authorities

Art. 31 - Supervisory and control authorities for financial institutions and Designated Non-Financial Businesses and Professions (DNFBP)

The State shall appoint or implement a monitoring and supervisory authority for each category of financial institution and Designated Non-Financial Business and Profession. This authority, organized under conditions laid down by regulations is mandated to ensure that the vigilance measures in the fight against money laundering and terrorist financing are applied by Designated Non-Financial Businesses and Professions.

It must also:

1) take any necessary measures to prevent criminals or their accomplices from acceding approved professional status or to attain significant holdings or a monitoring role, to become actual beneficial owners of such holdings, or to occupy positions of responsibility;
2) issue directives for the prevention and detection of suspicious money laundering and terrorist financing operations. It shall monitor the implementation of these directives;

3) Impose effective, proportionate and dissuasive administrative sanctions in case of failure to comply with anti-money laundering and anti-terrorist financing obligations;
4) refer the matter to the criminal courts, if necessary.

In the absence of such authority, the Financial Intelligence Unit may issue directives to such financial institutions and Designated Non-Financial Businesses and Professions and monitor their implementation, in accordance with its competencies defined in Article 24 of this Law.

Art. 32 - Collaboration with the supervisory and regulatory authorities

For the purposes of information exchange and prudential supervision of money laundering and terrorist financing, the authorities responsible for the supervision of the financial sector and of designated non-financial businesses and professions are required to collaborate with the national authorities. They may collaborate with their counterparts in third countries.

Chapter II - Exemption from liability

Article 33 - Exemption from liability for suspicious transaction reports made in good faith

No prosecution for banking or professional secrecy violation may be undertaken against persons or organizations' executives and agents referred to Article 8 that, in good faith, have forwarded information or made reports as provided by this Law.

No civil or criminal liability action may be taken, nor any professional sanction pronounced, against the persons or managers and employees of the bodies designated in Article 8 who, in good faith, have transmitted the information or made the declarations provided for in the provisions of this Law, even if the investigations or judicial decisions have not resulted in any conviction.

No civil or criminal liability action may be taken against the persons or managers and employees of the bodies designated in Article 8 for material and/or immaterial damage that may result from the blocking of a transaction under the provisions of Article 29.

Good faith is presumed and it is up to the victim of the damage caused to prove the contrary.

In the event of damage resulting directly from an unfounded report of suspicion in good faith, the State is liable for the damage suffered before the competent court under the conditions and within the limits laid down by the legislation in force.

Article 34 - Exemption from liability for the execution of operations

When a suspicious transaction has been executed, and except in the case of fraudulent connivance with the money laundering offender(s), no criminal prosecution on the predicate offence of money laundering could be taken against one of the persons specified in Article 8, their executives or agents, if the suspicious transaction report has been made under conditions provided by Articles 26 to 28.

The same shall apply when a person subject to this Law has carried out a transaction at the request of the investigation services acting under the conditions provided for in Article 35.

Chapter III - Investigation Techniques

Art. 35 - Special investigative techniques

For the purpose of obtaining an evidence of the predicate offence and the evidence of offences referred to in this Law, judicial authorities may order, for a specific period of time:

a) the placing under surveillance of bank accounts and accounts assimilated to bank accounts ;

b) access to computer systems, networks and servers;

c) the monitoring or tapping of telephone lines, fax machines or electronic means of transmission or communication

d) audio and video recording of actions and conversations;

e) Use of other means and techniques of electronic investigation,

f) the communication of authentic and private deeds, financial and commercial bank documents.

They can also order the seizure of the above mentioned documents.

The possibilities of carrying out points b, c, d and e are subject to the existence of measures to safeguard and protect privacy and human rights.

However, these operations are only possible when there are serious indications that these accounts, telephone lines, computer systems and networks or documents are used or are likely to be used by persons suspected of participating in the offences referred to in paragraph 1 of this Article.

Art. 36 - Covert operations and controlled deliveries

No punishment may be imposed on officials competent to detect offences that, for the only purpose of obtaining evidence relating to the offences provided by this Law and according to provisions as defined by the following paragraphs, commit deeds which might be construed as elements of one of the offences referred to in Articles 39 and 47.

The authorization of the Public Prosecutor must be obtained prior to any undercover operation or controlled delivery. A detailed report shall be forwarded to the Public prosecutor at the end of the operation.

Chapter IV - Banking or professional secrecy

Art. 37 - Prohibition to invoke banking or professional secrecy

Banking or professional secrecy shall not be invoked, even if a law relating to the concerned profession provides so, to refuse to provide to the Financial Intelligence Unit with the information referred to in Article 18 or required as part of investigation on money laundering and financing of terrorism, ordered by, or implemented under the control of a judicial authority.

The same information must be made available to monitoring, control, supervisory and regulatory authorities of the relevant reporting entity, if they request it.

TITLE IV
COERCIVE MEASURES

Chapter I - Seizure and provisional measures

Article 38 - Seizure and provisional measures

(1) Judicial authorities and public officials competent for detecting offences may impose provisional measures including freezing or seizing, intended to preserve the availability of funds or property that may be subject to confiscation referred to in Article 58 or may continue the intended measures referred to in Article 29.

(2) Such measures may be released by the competent judicial authority at the request of the suspect, or persons claiming rights to the funds or the property subject to the seizure or at the request of the Public Prosecutor's office of the competent jurisdiction.

3) The competent administration shall issue a ban on leaving the country or other measures restricting freedom upon a reasoned request from the Financial Intelligence Unit in the context of its investigations.

Chapter II - Punishment of offences

Section I: Sanctions applicable to money laundering

Art. 39 - Criminal penalties applicable to natural persons for money laundering.

Natural persons that are convicted of money laundering offence shall be sentenced to two to ten years imprisonment and a fine of at least three times the value of the property or funds pertaining to the money laundering transactions.

An attempted money laundering is punishable by the same penalties.

These same penalties are applicable to all beneficial owners.

Article 40 - Aggravating circumstances for money laundering

The offences provided for in Article 39 above are punishable by double the prescribed penalty and a fine of at least five times the value of the property or funds involved in the money laundering operations when:

a) the offence is committed in the exercise of a professional activity ;
b) the offender is a repeat offender. In this case, convictions handed down abroad are taken into account to establish recidivism;
c) the money laundering offence is committed within the framework of a criminal organization.

Art. 41 - Sanctions applicable to legal persons for money laundering

(1) Legal persons other than the State, on whose behalf or for whose benefit a subsequent offence has been committed by one of their organs or representatives, shall be punished by a fine of five times the fines specified for natural persons, without prejudice to the conviction of the latter as perpetrators or accomplices of the offence.

(2) In addition to the cases already provided for in paragraph 1 of this Article, a legal person may also be held liable when the failure to supervise or control the natural person referred to in paragraph 1 has made possible the commission of the offence of money laundering of the said legal person by a natural person under its authority.

Legal persons may be:

a) sentenced to permanent prohibition or to a maximum of five years from directly or indirectly engaging in certain professional activities;
b) sentenced to permanent closure or closure for a period of up to five years of their establishments that were used to commit the offence;
c) sentenced to dissolution when they were created to commit the offence;
d) placed under judicial supervision;

In the event of a conviction, the related judgment must be published in the written press or by any other means of audio-visual communication at the expense of the convicted legal entity.

Art. 42 - Sanctions imposed by disciplinary or supervisory authorities for money laundering

Any persons subject to the obligations described in Title II and Title III of this Law that, willingly or by serious negligence, breach the obligations, commit an administrative offence.

Such administrative offence may be punished by one or more of the following measures:

1) written warnings ;
2) an order to comply with specific instructions;
3) an order given to the financial institution, Designated Non-Financial Business and Profession to regularly report on measures taken;
4) prohibiting the employment of certain persons in the relevant industry or profession;
5) replacement of executives, managers or control shareholders, or restrictions on their power, including the appointment of a special administrator;
6) subjection to outside supervision or suspension, or removal of the prior authorization to operate and a ban on exercising the relevant commercial activities or the profession.

In addition to the above measures and sanctions, the disciplinary or supervisory authorities may apply other measures provided for by the laws and regulations establishing them.

Art. 43 - Sanctions for other offences related to money laundering

1) Shall be sentenced to 1 to 5 years imprisonment and a fine of 1,000,000 to 10,000,000 Ariary or one of these penalties only:

a) persons or executives or agents of organizations specified in Article 8 who shall intentionally make to the owner of the assets or to the author of transactions specified in this Article disclosures on the reports that they have to make or on the responses that might be provided thereto;

b) those who have intentionally destroyed or removed registers or documents the preservation of which is provided in Articles 16, 17, 20, 21 and 22 of this Law;

c) those who have executed or attempted to execute with a false identity one of the transactions provided in Articles 8 to 11, 13 to 16, 20 and 21 of this Law;

d) those who have been aware due to their profession, of an investigation for money laundering, having intentionally informed by any means the person(s) subject to the investigation;

e) those who have communicated to judicial authorities or public officials competent in detecting the predicate and subsequent offences specified in Article 21- d) records or documents that they knew were truncated and incorrect, without informing the latter;

f) those who have communicated information or documents to other persons and other entities than specified in Article 18;

g) those who have not made the suspicious transaction report as specified in Article 27, whereas the circumstances of the transactions would lead to conclude that the funds could have originated from one of the money laundering or financing of terrorism offences;

h) those who build or pursue business relations with shell credit and financial institutions;

i) those who keep anonymous accounts or accounts under manifestly fictitious names;

j) those who omit to put in place provisions to prevent money laundering and financing of terrorism;

k) reporting agents who disclose to a customer or to a third party any information relating to a suspicious transaction report;

l) Financial Intelligence Unit agents that disclose any information obtained as part of their functions;

m) those who establish shell credit and financial institutions;

n) those who refuse in bad faith to execute seizure, freezing and confiscation orders;

o) those who have breached the provisions of Article 10 and Article 11 relating to international transfers and physical cross-border transport of funds;

p) executives and agents of reporting institutions that have breached the provisions of the Articles 9, and 13 to 21;

2) Shall be sentenced to a fine of 500,000 to 5,000,000 Ariary, those who have omitted to make the suspicious transaction report as specified in Article 27;

3). Persons who have been guilty of one or more of the offences specified in paragraphs 1 and 2 above may also be sentenced to a permanent ban or a ban for a maximum of five years on practising the profession in connection with which the offence was committed.

Art. 44 Optional complementary criminal penalties applicable to natural persons for money laundering

Natural persons guilty of the offences defined in Articles 39, 40 and 43 of this Law may also be subject to the following additional penalties:

a) A permanent ban on entering or residing in the national territory or for a period of one to five years, imposed on any foreigner convicted;
b) A ban on residence for a period of one to five years in one or more administrative districts;
c) a ban on leaving the national territory and the withdrawal of passports for a period of six months to three years;
d) a ban on exercising civil and political rights for a period of six months to three years;
e) a ban on driving land, sea and air motorized vehicles and the withdrawal of driving permits or licenses for a period of three to six years;
f) permanent ban or for a period of three to six years from exercising the profession or activity in connection with which the offence was committed, and ban from holding public office;
g) a prohibition on issuing checks other than such that allow cash withdrawal by the drawer from the drawee or certified checks and a ban on using payment/credit cards for a period of three to six years;
h) Prohibition to possess or carry a weapon subject to authorization for three to six years;

Art. 45 - Exclusion from entitlement to a suspended sentence for money laundering

No criminal sanction for money laundering may be suspended.

Art. 46 - Mitigating circumstances for money laundering

No extenuating circumstances may be applied to individuals convicted as authors, co-authors or accomplices of money laundering offences.

Section II: Penalties applicable to the financing of terrorism

Art. 47 - Criminal penalties for natural persons for financing terrorism

Natural persons guilty of a terrorist financing offence are punished by a term of hard labour and a fine equal to at least five times the value of the property or funds involved in the terrorist financing operations.

Attempted financing of terrorism is punishable by the same penalties.

These same penalties are applicable to all beneficial owners.

Article 48 - Aggravating circumstances for terrorist financing

The offences provided for in Article 47 of this Law are punishable by a sentence of hard labour for life and a fine equal to at least five times the value of the property or funds involved in the terrorist financing operations when:

a) the terrorist financing offence is committed in the course of a professional activity;
b) the offender is a repeat offender. In this case, convictions handed down abroad are taken into account to establish recidivism;
c) the terrorist financing offence is committed within the framework of a criminal organization.

Art. 49 - Criminalization and penalization of offences related to the financing of terrorism

Are punished by an imprisonment of 1 to 5 years and a fine of "2,000,000 to 20,000,000 Ariary or one of these two penalties only, the persons and managers or employees of the natural or legal persons referred to in Article 8 of the present Law when the latter will have intentionally:

a) made revelations to the owner of the sums or to the author of the acts referred to in Article 2 of this Law, concerning the declaration that they are required to make or the consequences that have been reserved for it ;
b) destroy or remove documents or papers relating to the operations and transactions referred to in Articles 13 to 16, the retention of which is provided for in Article 17, and those referred to in Articles 20 and 21 of this Law;
c) carried out or attempted to carry out under a false identity one of the operations referred to in the provisions of Articles 16 and 20, and 21 of this Law;
d) Informed, by any means, the person or persons under investigation for the facts of financing of terrorism of which they had knowledge by reason of their profession or duties;
e) made false declarations or communications when carrying out any of the operations referred to in the provisions of Articles 9, 13 to 16, 20 and 21 of this Law;
f) communicated information or documents to persons other than the judicial authorities, agents of the State charged with the detection and repression of offences related to the financing of terrorism, acting under a judicial mandate, supervisory authorities and the Financial Intelligence Unit;
g) failed to file a suspicious transaction report, as provided for in Article 27 of this Law, when circumstances led to the conclusion that the funds could be linked, associated or intended to be used for the purposes of terrorist financing as defined by the provisions of Article 2 of this Law;
h) disclosed or concealed any information for the benefit of a terrorist organization;
i) refused in bad faith to execute a seizure, freezing and forfeiture order.

Agents of the Financial Intelligence Unit who disclose any information obtained in the course of their duties shall be punished by the same penalty.

Persons and managers or employees of natural or legal persons referred to in Article 8 of the present Law, who unintentionally:

a) omitted to make the declaration of suspicion, provided for in Article 27 of the present Law;
b) contravened the obligations of vigilance and declaration of suspicion imposed on them by the provisions of this Law.

Art. 50 – Additional optional penalties incurred by natural persons for Financing of Terrorism

Natural persons guilty of the offences defined in Article 47 and Article 49 of the present Law may also incur the following additional penalties:

a) a definitive ban on entering or residing in the national territory, pronounced against any convicted foreigner;
b) a banishment for a period of three to seven years from the administrative districts concerned by the offence;

c) a ban on leaving the national territory and withdrawal of passport for a period of two to five years;
d) a ban on exercising civil and political rights, for a period of two to five years;
e) a ban on driving or operating motorized land vehicles, vessels or aircraft and withdrawal of permits or licenses for a period of five to ten years;
f) definitive ban or for a period of five to ten years on exercising the profession or activity where the offence has been committed and ban on exercising any public office;
g) prohibition on issuing checks other than such that allow cash withdrawal by the drawer from the drawee or certified checks and a ban on using payment/credit cards for a period of five to ten years;
h) prohibition on possessing or bearing any weapon subject to an authorization for a period of three to six years.

Article 51 - Criminal sanctions incurred by legal persons for financing of terrorism

Legal persons, other than the State, on whose behalf or for whose benefit an offence of financing of terrorism or one of the offences specified by this Law have been committed by one of their bodies or representatives, shall be sentenced to a fine of five times the specific fine incurred by natural persons, without prejudice to their conviction as perpetrators or accomplices of the same offence.

Legal entities other than the State may, in addition, be sentenced to one or more of the following penalties

a) exclusion from public contracts, permanently or for a period of up to ten years;
b) placement under judicial supervision, for a maximum of five years;
c) permanent disqualification, or disqualification for a maximum of ten years, from engaging directly or indirectly in one or more professional or social activities in connection with which the offence was committed;
d) the permanent closure, or closure for a period of up to ten years, of the establishments or one of the establishments of the company that was used to commit the incriminating acts;
e) dissolution, when they were created to commit the offences;

In the event of conviction, the related judgment must be published in the written press or by any other means of audio-visual communication at the expense of the convicted legal entity.

The sanctions provided for in points b), c), d) and e) of the second paragraph of this article are not applicable to financial institutions under the jurisdiction of a supervisory authority with disciplinary powers.

The competent supervisory authority, when seized by the Public Prosecutor of any proceedings brought against a financial institution, may impose the appropriate sanctions, in accordance with the specific laws and regulations in force.

Art. 52 - Exclusion from entitlement to a suspended sentence on financing of terrorism

No criminal sanction imposed for the offence of financing terrorism may be suspended.

Art. 53 - Exclusion from entitlement to mitigating circumstances for financing of terrorism

No mitigating circumstances may be applied to individuals convicted as perpetrators, co-perpetrators or accomplices of terrorist financing offences.

Art. 54 - Sanctions imposed by the disciplinary or supervisory authorities for terrorist financing

Any person subject to the obligations set forth in Titles II and III of this Law who, intentionally or through serious negligence, breaches those obligations, commits an administrative offence.

Such administrative offence may be punished by one or more of the following measures:

1. written warnings;
2. an order to comply with specific instructions;
3. ordering the financial institution and designated non-financial businesses and professions to make regular reports on their actions;
4. prohibiting the employment of certain persons in the relevant industry or profession;
5. replacement or limitation of the powers of controlling officers, directors or shareholders, including the appointment of a special administrator;
6. the placing under supervision or suspension, or the withdrawal of prior authorization to practice and the prohibition to continue to practice the business or profession concerned.

In addition to the above measures and sanctions, the disciplinary or supervisory authorities may apply other measures provided for by the laws and regulations establishing them.

Art. 55 - Persons and entities targeted by the United Nations Security Council resolutions on terrorism

The State shall designate by regulation an authority in charge of establishing procedures and mechanisms to identify and propose the designation of persons and entities referred to in the resolutions of the Security Council of the United Nations on terrorism and its subsequent resolutions, in accordance with the obligations established in these resolutions, in particular, resolution 1267 of 1999, resolution 1373 of 2001, resolution 1989 of 2011.

Section III Predicate offence and statutory limitations for public prosecution

Art. 56 - On the predicate offence

The provisions of the Title IV are applicable even if the perpetrator of the predicate offence is neither prosecuted nor convicted, or if it is not possible to take legal action regarding the predicate offence. The offender of the predicate offence may also be prosecuted for the money laundering offence.

Predicate offences of money laundering are extended to acts committed in a foreign country, which constitute an offence according to the Malagasy law, and would constitute a predicate offence if they have been committed in the national territory.

Art. 57 - On the statute of limitations for public prosecution

Without prejudice to the application of Articles 3 and 4 of the Malagasy Code of Criminal Procedure, the statute of limitations for money laundering and terrorist financing offences runs from either:

- the date of discovery of the offence ;
- or the date on which the offence was discovered;
- or the date on which the perpetrator, the holder or the beneficiary separated from the incriminated funds or property.

Section IV: Confiscation

Art. 58 - Confiscation

(1) In case of conviction for a money laundering offence or predicate offence, or financing of terrorism, or attempted commission of such an offence, the competent court shall pronounce a decision of confiscation of:

a) the funds or property and instruments that constitute the proceeds of the crime, including those mixed with those proceeds or obtained from or exchanged with the proceeds, or whose value corresponds to such proceeds;

b) the funds or property, instruments of funds or property, and instruments that constitute the object of the offence;
c) the funds or property and instruments that constitute the income and other advantages gained from those funds or property, or from the proceeds of the criminal activity;
d) the funds or property and instruments suspected to be used or intended to be used for money laundering or for financing of terrorism;
e) the funds or property and instruments specified in the above paragraphs a) to d) that have been transferred to another party, except if their owner can establish using factual and objective criteria the licit origin of these funds, property or instruments;
f) funds or property belonging to, directly or indirectly, a person convicted of a money laundering or financing of terrorism offence.

(2) In addition, in the event of an offence recognized by the competent court, where conviction cannot be pronounced against its perpetrator(s), this court may nevertheless order the confiscation of property on which the offence has been made.

Confiscation of property may, furthermore, be pronounced wherever they may be, entered, directly or indirectly, in the property of the convicted, his/ her spouse, his/ her cohabitee, and his/ her children, from the date of the oldest acts justifying his/her conviction, unless the people in question establish their licit origin.

Some seized property or proceeds may be confiscated due to their nature or the relations or connection with the incriminated offences. The same applies to property, securities, objects or materials having been used to commit the offence or to facilitate its commission.

Where there is confusion of property deriving directly or indirectly from the offence with those acquired legally, the confiscation of such property is ordered only up to the extent of the value estimated by the jurisdiction of the resources and property mentioned above.

Where the property to be confiscated cannot be represented, the confiscation may be ordered in value.

The mechanism of seizure and confiscation of proceeds of crime related to money laundering offence and/or financing of terrorism shall be defined by acts and regulations.

Art. 59 - Confiscation order

Where the acts may not lead to a prosecution, the Public Prosecutor's office may request to the Chamber of Seizure and Confiscation of assets in the competent courts that the confiscation of funds or property and seizure of instruments be ordered. To this end, the enforcing court may make an order of confiscation on the following grounds:

1) if the evidence is reported that such property or funds, instruments constitute proceeds of crime or an offence according to this Law;

2) if the perpetrators of the offence that generated the proceeds could not be prosecuted either because they are unknown, or because there is any legal impossibility of prosecution of the predicate offence, except in case of statute of limitations.

Art. 60 - Confiscation of funds or property, instruments of a criminal organization

Shall be confiscated the property or funds and instruments over which a criminal organization has power of alienation, when such funds or property and instruments are related to the offence.

Art. 61 - Nullity of certain acts

Shall be considered as absolutely null and void any act executed for a fee or free of charge between living persons or following death for the purpose of retaining funds or property or instruments from the confiscation measures as specified in Articles 58 to 60. Such invalidity may be noticed before any civil or criminal court regularly referred.

In case of cancelling a contract for a fee, the price is redelivered to the buyer only if it has been effectively deposited.

Art. 62 - Treatment of confiscated funds or property and instruments

Confiscated resources or funds or property, instruments, are vested to the State which may allocate them according to the provisions on treatment of seized or confiscated illicit property and assets. Management and use of such funds shall be determined by regulation. They remain burdened at their value of the real rights lawfully incorporated for the benefit of third parties.

In case of confiscation pronounced *in abstentia*, funds or property and instruments confiscated are vested to the State and liquidated according to the procedures provided in this regard. However, if the court rules on appeal and acquits the prosecuted person, it shall order the refund in value by the State of funds or property and instruments confiscated, unless it is established that such property is a proceed of crime or offence, or has been used to commit an offence or crime.

TITLE V
FINAL PROVISIONS

Art. 63 –

Provisions of the Criminal Code and the Code of Criminal Procedure that are not opposed to the provisions of this Law are and remain applicable.

Art. 64 –

All previous provisions contrary to this Law are and remain repealed, in particular Law No. 2004-020 of August 19, 2004 on money laundering, detection, confiscation and international cooperation concerning proceeds of crime and the Article 11 on the financing of terrorism of Law No. 2014-005 of July 17, 2015 on countering financing terrorism and transnational organized crime.

Art. 65 –

Regulatory texts will be issued as needed for the implementation of this Law.

Art. 66 –

The present Law will be published in the Official Gazette of the Republic.

It will be executed as a Law of the State.

Promulgated in Antananarivo, February 13, 2019

Seen To be annexed To Decree By the Prime Minister, Head of The Government NTSAY Christian,	ANDRY Nirina Rajoelina