REPUBLIC OF SENEGAL

One People – One Goal – One Faith
MINISTRY OF ECONOMY AND FINANCE

National Financial Intelligence Unit

National Financial Intelligence Unit

Uniform law 2004-09 of February 6th 2004 on Money Laundering

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Summary

PREAMBLE

Money laundering has mobilised unprecedented attention at international level over the past decade. This mobilisation comes from growing awareness of the grave threats this practice engenders:

- ✓ **ethically**: the influence of criminal organisations infests the social fabric and erodes individual and collective values;
- ✓ **politically**: money laundering gives owners of illicit wealth the leverage to infiltrate democratic systems by corrupt means and to get protection for their criminal acts, thereby posing a threat to public order and democratic values;
- ✓ **economically**: the huge financial resources money launderers possess give them the purchasing power to acquire large sectors of the economy through investment, placing them in good stead to distort market mechanisms, especially by introducing unfair means of competition;
- ✓ **financially**: the use of credit institutions for money laundering purposes may severely undermine the reputation and credibility of banks and financial institutions and eventually cause their destabilization and systemic crises.

In light of this, money laundering not only poses a threat to security at the global level, but it also endangers the stability, accountability and efficiency of financial systems.

The international community, in its efforts to prevent and repress money laundering, has put in place a complex array of international instruments for States to use, such as:

- ✓ the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988;
- ✓ the Council of Europe's Convention of 8 November 1990 on Laundering, detection, Seizure and Confiscation of the Proceeds from Crime;
- ✓ the United Nations Convention against Transnational Organized Crime, adopted on 15 December 2000 in Palermo (Italy);
- ✓ the European Union Council Directive of 4 December 2001, amending the Directive of 10 June 1991, which urges Member States of the European Union to change their national legislation in order to prevent the use of the financial system for the purpose of money laundering;
- ✓ the Basel Directive of 1988, formulated by the Committee on rules of practice for controlling bank transactions of the Bank for International Transactions (BIT);
- ✓ the forty (40) recommendations of the Financial Action Task Force (FATF) against money laundering;

These norms, recommendations and rules now provide the framework of reference that international financial institutions and the Bretton Woods institutions in particular, use to evaluate State efforts against money laundering. They require compliance with the following principles:

- ✓ immediate ratification of the above conventions and unimpeded implementation of their recommendations;
- ✓ the creation of a Financial Intelligence Unit in charge of processing and using the information transmitted by the institutions and individuals specified by the Law;
- ✓ the criminalization of money laundering in conformity with the Vienna Convention;
- ✓ the freezing, seizure and confiscation of the proceeds from money laundering;
- ✓ rules for customer identification and the recording of documents;
- ✓ improved diligence, on the part of financial institutions, in reporting any suspicion of money laundering to control authorities;
- ✓ implementation of adequate internal anti-money laundering programmes in financial institutions;
- ✓ Reinforcement of administrative and judicial cooperation at international level.

In efforts to enforce the provisions of these international instruments, and especially to integrate the above principles in the national legal system, action has been taken at three levels:

- **the franc zone**: the Finance Ministers and Central Bank Governors of Franc Zone Member States, meeting in Abidjan in April 2001, affirmed their will to put in place anti-money laundering legislation as from 2002.

  They emphasized that the fight against money laundering and economic and financial crime is a pre-requisite for international stability, and decided to scale up their efforts in the fight against money laundering.

- **the sub-region**: steps taken in the Economic Community of West African States (ECOWAS) led to the founding, on 3 November 2000, of the Inter-governmental Action Group against Money Laundering in Africa (GIABA), whose role is to promote anti-money laundering legislations and facilitate the coordination of activities in this regard among ECOWAS Member States.

- **the WAEMU framework**: in line with the recommendations of international and regional bodies, the Council of Ministers of the West African Economic and Monetary Union (WAEMU) issued a Directive on money laundering on 19 September 2002.

  The instrument requires WAEMU Member States to enact legislative and regulatory provisions against money laundering within a six-month period.

  To that end, BCEAO proposed a uniform bill against money laundering to WAMU's Council of Ministers and an implementing decree setting the criteria for organising and operationalizing National Financial Intelligence Processing Units (CENTIF).

This law, aimed at translating the above uniform bill into the national legislation, is structured as follows:

- **Part I talks about the definition of money laundering and the key terms used**: this section includes grounds for incriminating participation in, association or conspiracy to commit, and attempts to aid and abet money laundering. It also sets the goal and demarcates the jurisdiction of the law.
- **Part II deals with the prevention of money laundering**: it sets out the modalities financial institutions use to identify their customers (usual and occasional) and defines the conditions for gathering evidence as well as the provisions by which financial institutions establish preventive measures for enhanced detection of money laundering transactions.
- **Part III focuses on the detection of money laundering**: It spells out the terms for detecting money laundering transactions, the procedures for reporting suspicious transactions, the responsibility incumbent on the institutions and individuals specified by the law as well as on the State, and the grounds for waiving professional secrecy during investigations on money laundering.

  This part also stipulates the institution of a National Financial Intelligence Processing Unit (CENTIF), whose mission is to collect, use and process the information transmitted by the institutions and individuals specified by the law.

  CENTIF is a permanent body composed of six (6) members. These members work on a continuous basis for a three-year term, renewable only once. To perform its duties, CENTIF relies on a network of correspondents appointed in the various departments of State involved in the fight against money laundering (Police, Gendarmerie, Customs, Public judicial services) by order from their supervising Ministry. Its composition, organisation and ways of working are set by decree.
- **Part IV addresses punitive measures**: it includes measures for the administrative and penal sanctions applicable to natural persons or legal entities as well as the protective measures that the examining magistrate is empowered to use by law. These refer specifically to the seizure and confiscation of proceeds from money laundering.
- **Part V is on international cooperation**: putting in place a global anti-money laundering strategy is a key step in an efficient national criminal policy.

  This includes the establishment of a normative international framework to set the principles and legal grounds for a collective and coherent criminal policy in this regard with the goal of promoting, coordinating and organising anti-money laundering policies at national level.

  Indeed, the international dimension of money laundering requires States to review their rules of jurisdiction (by instituting quasi-universal jurisdiction) and collaborate actively with other States so as to lift the barriers to legal action that originate from conflicts in jurisdiction, the mobility of criminals, and the dispersal of pieces of evidence.

  With regard to international judicial cooperation, mechanisms to facilitate mutual assistance in investigations on money laundering have been put in place. The

measures taken in this regard make it possible to communicate intelligence and evidence from one Member State to the other as well as to carry out investigative operations.

These measures aim also to promote compliance with the judgements passed across the entire WAEMU framework and thus enable each Member State to enforce the repressive measures taken in the other Member States.

Such is the goal of this anti-money laundering bill.

After Parliament adopted the bill at its session on Tuesday 27 January 2004;

The President of the Republic promulgated it into the law, as follows:

INTRODUCTION: DEFINITIONS

Article One: Use of terms

For the purposes of this law, the following terms are hereby defined as follows:

Regional Financial Market Players: The Regional Securities Market (BRVM), Central Trustee/Bank for Settlements, Management and Intermediary Financing companies, Capital management companies, stock market investment consultants, Trust and company service providers.

Offender: Any person who commits a crime or offence of any sort.

Control authority: National or WAEMU community bodies with legal or regulatory authority to control natural persons and legal entities.

Public authorities: National administrations or local authorities of the Union, and their public establishments.

Competent authorities: Body with legal or regulatory authority to enact or enforce acts or measures as provided for by the law.

Judicial authority: Body with legal authority to take proceedings against, conduct preliminary inquiries on, or to pronounce a penalty against somebody.

The Prosecution: Entity with legal and regulatory authority to enforce action pursuant to a sentence, even on an occasional basis.

Economic beneficiary: The customer, meaning the person on whose behalf action is taken or a transaction is performed by proxy.

BCEAO or Central Bank: The Central Bank of West African States.

Property: All types of property, including corporeal or incorporeal, movable or immovable, tangible or intangible assets, fungibles, as well as deeds or documents that constitute proof of ownership of property or the rights thereto.

CENTIF: National Financial Intelligence Processing Unit.

Confiscation: Definite dispossession of property pursuant to an order issued by a competent jurisdiction, a control authority or any competent authority.

Member State: A State party to the West African Economic and Monetary Union Treaty.

Third-party State: Any State other than a Member State.

Original offence: Any crime or breach of the law, including those committed on the territory of another Member State or a third-party State, by which proceeds in cash or commodities are secured for the offender.

OPCVM: Agency for Collective Investment in Stocks and Securities.

Financial institutions: these include:

- banks and financial establishments;
- the financial services of post offices, as well as Public and Investment organisations or equivalent entities in Member States;
- Insurance and reinsurance companies, insurance and reinsurance agents;
- mutual insurance companies or credit/loan cooperatives, and savings and/or loan agencies or organisations not established originally as mutual insurance companies or cooperatives;
- Regional Stocks and Securities Markets, Central Trustee/Bank for Treatment, Management and Intermediary Financing companies, Capital management companies;
- OPCVMs;
- Fixed asset investment companies;
- Registered foreign exchange corporations.

WAEMU: West African Economic and Monetary Union

WAMU: West African Monetary Union.

Union: West African Economic and Monetary Union.

Article 2: Definition of money laundering

For the purpose of this law, money laundering is defined as an offence whereby one or more of the following acts are committed deliberately:

- ✓ the conversion, transfer or manipulation of property acquired through a criminal activity or an offence; or involvement in such a crime or offence with the intention of concealing or disguising the illicit source of the property; or assistance to any person that commits the crime or offence to elude the judicial consequences of such acts;
- ✓ the concealment of the nature, origin, location, disposition, movement or true ownership of property, or rights to property, acquired through a criminal source or an unlawful act; or involvement therein;
- ✓ the acquisition, custody or use of property when the offender knows, at the moment such property is received, that it comes from a criminal source or was acquired through an unlawful act; or involvement in this crime or offence.

A money laundering offence is established even where the acts committed to acquire, keep and transfer money from illicit sources, occur on the territory of another Member State or that of a third-party State.

<u>Article 3</u>: Participation in, association, conspiracy to commit and attempts to aid and abet money laundering

Other acts that constitute a money laundering offence include association or participation in an act of money laundering, conspiracy to commit such an act, attempts to aid and abet perpetrators of this act, or advice to a natural person or legal entity to perpetrate this act or facilitate perpetration thereof.

Unless otherwise amnestied, the perpetrator of the original offence is considered guilty of money laundering even if:

- ✓ no law suit has been filed or sentence passed in relation to such crimes or offences;
- ✓ no legal grounds exist for bringing legal action against such crimes or offences.

PART ONE: GENERAL PROVISIONS

CHAPTER I: Goal and jurisdiction of law

Article 4: Goal of law

The goal of this law is to set the legal framework for combating money laundering in Senegal in order to prevent the use of the Union's economic, financial and banking channels to launder money or other property from unlawful sources.

Article 5: Jurisdiction of Law

The provisions in articles II and III of this law applies to all individual persons or legal entities whose activities consist in performing, controlling or giving advice on transactions involving the deposit, exchange, investment, conversion or other movements of capital or other property, such as:

a) the Public Treasury;

b) BCEAO;

c) financial institutions;

d) members of independent legal professions, when they represent or assist their clients outside all legal procedure, especially in the:

- ✓ purchase and sale of property, commercial enterprises or businesses,
- ✓ handling of money, deeds or other assets belonging to the client,
- ✓ opening or management of bank accounts, savings accounts or deeds,
- ✓ constitution, management or direction of companies, trustees or similar structures, and the execution of other financial transactions

e) the other institutions and individuals specified by the law, including:

- ✓ trust and company service providers in financial institutions;
- ✓ auditors;
- ✓ real estate agents
- ✓ dealers in valuable objects such as works of art (paintings, masks, especially), precious stones and metals;
- ✓ conveyors of funds;
- ✓ proprietors, directors and managers of casinos and gambling establishments, including national lotteries;
- ✓ travel agencies;
- ✓ Non-Governmental Organisations (ONG)

PART II: PREVENTING MONEY LAUNDERING

CHAPTER I: Regulating Exchange

Article 6: Compliance with exchange regulation measures

Exchange transactions, movement of capital and settlements of all sorts with a third-party State is conducted in conformity with the provisions of the current regulation on exchange.

CHAPTER II: Identification measures

Article 7: Customer identification by financial institutions

Financial institutions verify and record the identity and address of their customers before accepting to open bank and other accounts, handle deeds, shares or bonds, assign a safe-deposit box, or establish any other business ties with them.

For identification purposes, the customer presents a national identity card or another valid and authentic official document that contains a photograph. Copies thereof are recorded in the financial institution. The institution verifies the customer's professional and home addresses using any document that constitutes a credible piece of evidence. Where the customer is a businessman, he or is expected to submit a copy of his/her business licence.

Identification of companies or their subsidiaries is processed upon the presentation of an original or certified true copy of the business license or other genuine documentation bearing the company's title and legal status, its headquarters and the names and positions of the authorities purporting to act on the company's behalf.

Financial institutions verify, under the same conditions as in paragraph two, article seven above, the true identity and address of the management, employees and other officials purporting to act by proxy. These latter are required in turn to submit attestations of duly accorded power of attorney, showing the economic beneficiary's identity and address.

For wired transactions, the financial institutions perform individual identification in conformity with the principles annexed to this law.

Article 8: Identification of occasional customers

Occasional customers are identified in relation to the provisions in paragraphs 2 and 3 of article 7 for cash transactions equal to, or in excess of five million (5.000.000) CFA francs or equivalent in another currency.

The same conditions apply to a series of transactions processed with sums below those stated above, or where the source of the money transacted is unknown.

Article 9: Identification of beneficiaries

For customers purporting to act on behalf of others, the financial institution use all legal means to gather information on the entities represented.

Where, upon verification, if the beneficiary's identity remains doubtful, the financial institution, in conformity with article 26, reports the suspicious nature of the transaction to the National Financial Intelligence Processing Unit (CENTIF), instituted in article 16 under the conditions set in article 27.

No customer, under the cover of professional secrecy, refuses to disclose the identity of a beneficiary.

Financial institutions are not required to process the identification obligations provided in the above paragraphs, if the customer is a financial institution itself, subject to the present law.

Article 10: Particular supervision of some transactions

The persons specified in article 5 pays particular attention to:

- Any payments equal to or in excess of fifty million (50.000.000) CFA francs made in cash or property, and under normal conditions to the bearer;
- Any transaction equal to or in excess of ten million (10.000.000) CFA francs processed under abnormally complex conditions and/or without economic apparent or legal motives.

In the cases referred to in the paragraph above, these persons are required to gather information from the customer and/or enquire about the source and destination of the money in question, as well as the purpose of the transaction and the identity of the transacting parties, in conformity with paragraphs 2, 3 and 5 of article 7.

The main characteristics of the transaction, the identity of the principal and the beneficiary, and if need be, of the transacting parties, is recorded on a confidential register for subsequent verification.

CHAPTER III: Record Keeping and communication of documents

Article 11: Record keeping of identity papers and documents

Without prejudice to measures enacting for more binding obligations, financial institutions keep records of customer identity papers and documents for at least ten (10) years from the date when accounts are closed, or relations ended. They also maintain and keep records of all transactions for at least ten (10) years from the date when they were closed.

Article 12: Communication of identity papers and documents

Upon the request of judicial authorities, public anti-money laundering officials covering judicial enquiries, control authorities and CENTIF, the persons covered in article 5 communicate the identification papers and documents under articles 7, 8, 9, 10 and 15, for which recording requirements are provided in article 11.

This obligation facilitates tracking of all acts committed by natural persons or legal entities in relation to suspicious transactions reported in compliance with article 26, or recorded confidentially as stipulated under article 10, paragraph 2.

Article 13: Internal anti-money laundering programmes

Financial institutions design harmonised anti-money laundering programmes that especially include:

- centralized information systems on the identity of customers, principals, proxies, and beneficiaries;
- mechanisms for processing suspicious transactions;
- appointment of internal anti-money laundering compliance officers;
- ongoing training of staff;
- Establishment of internal supervisory measures for efficient application of the provisions adopted within the framework of this law.

In their respective areas of expertise, control authorities is expected to design the content and modalities for applying anti-money laundering programmes and pursue on-site investigations on the smooth delivery of these programmes as appropriate.

CHAPTER IV: Measures applicable to certain particular transactions

Article 14: Currency exchange corporations

Certified currency exchange corporations pay particular attention to transactions without regulatory limits, where such transactions, equal to or in excess of five million (5.000.000) CFA francs, are likely to be exploited for money laundering purposes.

Article 15: Casinos and gambling institutions

The managers, proprietors and directors of casinos and gambling institutions are subjected to the obligations of:

- giving demonstrable evidence to the public authorities, in respect to authorization requirements, that their corporate funding comes from legal channels;
- verifying and recording the identity of gamblers that buy, take, and trade chips equal to, or in excess of a million (1.000.000) CFA francs or equivalent, and requesting them to submit a valid national identity card or authentic equivalent;
- recording chronologically all transactions covered in the previous paragraph, specifying the nature and amount of the transactions and the transacting party's names and identification details for at least ten (10) years from the date they were closed;
- recording chronologically all money transfers between casinos and gambling institutions for at least ten (10) years from the date they were closed.

Where casinos or gambling institutions have subsidiaries, chips from each subsidiary is identified and recorded, such that no chips from one subsidiary are cashed in another, whether on national territory, another Union Member State, or a third-party State.

PART III: DETECTING MONEY LAUNDERING

CHAPTER I: the National Financial Intelligence Processing Unit

Article 16: Creation of CENTIF

A National Financial Intelligence Processing Unit (CENTIF is set up and placed under the authority of the Minister of Finance.

Article 17: Jurisdiction of CENTIF

CENTIF is a financially independent administrative service with decision-making authority on matters within its limit. CENTIF's mission is to gather and process financial intelligence on money laundering channels.

On this account, CENTIF:

- is in charge of, among other things, receiving, reviewing and processing intelligence to establish the origins of suspicious transactions reported by the institutions and persons specified by the law;
- receive all information useful for the discharge of its duties, particularly reports from control authorities and the judicial police;
- request the institutions and individuals bound by law as well as other individuals or legal entities to communicate information likely to substantiate reports of suspicious transactions;
- conduct or commission periodic studies on money laundering trends and techniques on the national territory;

CENTIF advises the State on its anti-money laundering policy roll-out process. It, on this account, proposes all reforms, as are necessary, for more efficient anti-money laundering measures.

CENTIF draws up periodic reports, quarterly and annually, on progress in national and international efforts to combat money laundering, and process the reports it receives for submission to the Minister of Finance.

Article 18: Composition of CENTIF

CENTIF is composed of six (6) members:

- One (1) top-ranking civil servant, placed on secondment to CENTIF by the Finance Minister from the Directorate General for Public Accounts and Treasury or the Directorate General for Taxation and Public Property. This official, with the rank of a Director in the Central Administration, is the chairperson of CENTIF;
- One (1) magistrate, with proven expertise in finance, placed on secondment to CENTIF by the Ministry of Justice;
- One (1) top-ranking civil servant from the judicial police, placed on secondment to CENTIF by the Ministry of Inland Security;

- One (1) investigating officer serving as a customs inspector, placed on secondment to CENTIF by the Finance Minister;

- One (1) investigating officer from the judicial police, placed on secondment to CENTIF by the Minister of Inland Security;

- One (1) BCEAO representative that serves as the secretary of CENTIF;

CENTIF members serve for a three-year term, renewable only once.

Article 19: CENTIF correspondents

CENTIF, in the discharge of its duties, uses correspondents in the police, gendarmerie, customs, judiciary and other departments involved in the fight against money laundering.

These correspondents, designated in an ex officio capacity by their supervising Ministers, work with CENTIF in the discharge of its duties.

Article 20: Confidentiality

CENTIF members and correspondents take the oath of office before assuming duty and be bound to secrecy in regard to all information they gather in the discharge of their duties, it's being understood that such information is confined to the purposes specified by this law.

Article 21: Organisation and operation of CENTIF

The specifications on organizing and operating CENTIF are set by decree.

The Finance Minister approves the rules and regulations of CENTIF.

Article 22: Financing of CENTIF

CENTIF resources are raised from the State, WAEMU institutions and development partners.

Article 23: Relations among Financial Intelligence Units in WAEMU Member States

CENTIF is required to:

- communicate information and data on investigations, gathered from reports of suspicious transactions at the national level, to other CENTIFs based in WAEMU Member States, upon their request, to support their investigations on similar cases;
- Transmit detailed periodic activity reports, drawn up quarterly and annually, to BCEAO headquarter which summarizes and submits the reports from CENTIFs to the WAEMU Council of Ministers for information purposes.

Article 24: Relations between CENTIF and Financial Intelligence Units of Third-party States

Where reciprocity is guaranteed, CENTIF exchanges information with the financial intelligence services of third-party States in charge of receiving and processing reports of suspicious transactions, it being understood that those services are subjected to the same requirements for professional secrecy.

All agreements concluded between CENTIF and the intelligence service of a third-party State cannot be sealed without the prior authorization of the Minister of Finance.

Article 25: Role of BCEAO

BCEAO promote cooperation among the CENTIFs, coordinate CENTIF efforts to combat money laundering and summarize the information reported by them. BCEAO attends, along with the CENTIFs, the meetings of international anti-money laundering bodies.

BCEAO summary reports are communicated to the CENTIFs in Union Member States for recording in their databases. These reports serve as a means of providing information on anti-money laundering trends to the Union's Council of Ministers.

A version of these periodic reports is drawn up to inform the public and the institutions and individuals specified by the law.

CHAPTER II: Reporting of suspicious transactions

Article 26: Obligation to report suspicious transactions

The institutions and persons specified in article 5 file reports to CENTIF, under the conditions set by the present law, and in relation to the reporting framework approved in the Finance Minister's order, with reference to:

- sums of money and property in their custody originating apparently from money laundering;
- transactions on property acquired apparently with the proceeds from money laundering;
- Sums of money and property in their custody, where these, suspected as being intended for the financing of terrorism, originate apparently from the proceeds of money laundering.

The officials of the institutions and persons mentioned above inform their superiors about such transactions once they know about them.

The institutions and individuals mentioned above report these transactions to CENTIF in all cases, even where they could not obtain deferment of the said transaction, or if they realized only afterwards that money and property from illicit sources had been transacted.

Such reports are filed confidentially without hinting the money owner or transacting parties.

All information likely to alter the reporting party's judgement, and confirm or invalidate their suspicions, is to be transmitted speedily to CENTIF.

According to the provisions of the present article, no report filed to an authority, pursuant to a law different from the present law, shall waive the obligation to report incumbent upon the institutions and persons specified in article 5.

Article 27: Transmission of reports to CENTIF

The institutions and individuals specified in article 5 report suspicious transactions to CENTIF in writing. Reports filed by wire, telephone or electronic mediums are confirmed in writing within 48 hours. The reports give:

- the reasons why the transaction has already been processed;
- the time period when the suspicious transaction has to be processed;

Article 28: Processing reports transmitted to CENTIF and freezing transactions

CENTIF acknowledges receipt of all reports of suspicious transactions filed to CENTIF in writing. CENTIF immediately processes and analyses the information received and proceed, as appropriate, to request more information from the reporter or any other public and/or supervising authorities concerned.

Under exceptional conditions, and upon custody of strong, corroborating and reliable evidence, CENTIF freezes execution of the said transaction before the reported execution period expires. This freeze order is notified to the reporting party in writing and block execution of the transaction for no more than forty-eight (48) hours.

Where no objection is issued or if, after forty-eight (48) hours, the reporter receives no ruling from the examining magistrate, he or she can pursue the transaction.

Article 29: Proceedings pursuant to reports of suspicious transactions

Where transactions conceal facts apparently constituting a money laundering offence, CENTIF reports these facts to the State Prosecutor to refer the matter immediately to the examining magistrate.

All useful evidences are annexed to this report except the report filed on the suspicious transaction. The identity of the reporting official is not disclosed in the said report, considered authentic unless otherwise proven.

CENTIF in due course notifies the reporting institutions and individuals of the findings of its investigations.

Article 30: Waiving liability for reports of suspicious transactions made in good faith

The persons or superiors and officials of persons specified in article 5 who, in good faith, transmit information or file reports as provided by the present law, are exempt from all sanctions for breach of confidentiality.

No civil or criminal suit shall be filed, and no disciplinary action brought against the persons or superiors and officials of institutions or individuals specified in article 5 that acted under the same conditions as those provided in the previous paragraph, even if no court sentence was passed in relation to the reports covered in this same paragraph.

Furthermore, no civil or penal action shall be brought against persons specified in the previous paragraph for any material or indirect damage caused by the freezing of a transaction, pursuant to the provisions of article 28.

The provisions of the present article apply by law, even if evidence of the unlawful nature of the facts prompting the report is not presented or if pardon, dismissal, discharge or acquittal has been issued by court order in relation to the facts.

Article 31: State responsibility for reports of suspicious transactions made in good faith

The State assumes responsibility for any damage caused by a report of suspicious transactions done in good faith, where the facts related in the report are proved to be inaccurate.

Article 32: Exemption from liability for the execution of certain transactions

Upon processing of a suspicious transaction, where collusion to fraud with the offender(s) is not established, no suit for money laundering may be filed against the persons specified in article 5, their superiors or officials, if the report on the suspicious transaction was filed according to the provisions of the present law.

The same provisions apply where a person specified in article 5 has processed a transaction upon the request of judicial authorities, public anti-money laundering officials processing a judicial enquiry, or CENTIF.

CHAPTER III: Investigating evidence

Article 33: Investigative measures

To gather evidence of money laundering offences and crimes, the examining magistrate may, in accordance with the law, order several actions for a given period. These actions, which are not to be opposed on the grounds of professional secrecy, shall include:

- placing bank and other similar accounts under watch, where there is conclusive evidence to suspect that these money instruments are used, or may be used for money laundering or related crimes covered by the present law;
- accessing systems, networks and servers used, or likely to be used by persons on whom there is conclusive evidence of involvement in the original offence or in the crimes covered by the present law;
- Communicating official or private agreements as well as banking, financial and commercial documents.

The examining magistrate may also order the seizure of the agreements and documents mentioned above.

Article 34: Waiving of professional secrecy

Notwithstanding contrary legislation or regulations, the persons specified in article 5 are not be allowed, on grounds of professional secrecy, to refuse to provide information to control authorities and CENTIF or to file the reports covered by the present law. The same provision applies in respect to information required for an investigation on money laundering, ordered by the examining magistrate or conducted under his authority by public anti-money laundering officials.

PART IV: PUNITIVE MEASURES

CHAPTER I: Administrative and disciplinary measures

Article 35: Administrative and disciplinary sanctions

Where, by grave default in vigilance or failure in organisation of internal control procedures, the persons specified in article 5 ignore the obligations incumbent upon them under part II and articles 26 and 27 of the present law, the control authority with disciplinary power acts without consultation as specified by the specific legislative and regulatory provisions in force.

The control authority informs CENTIF and the State Prosecutor on all matters related thereto.

CHAPITER II: Protective measures

Article 36: Protective measures

The examining judge may, upon prescription, issue protective measures in conformity with the law by ordering, at the expense of the State, the seizure or confiscation of property in relation to the offence subject to investigation and all identification items useful thereto, as well as by issuing a freeze order on sums of money and financial transactions on the said property.

The withdrawal of these measures may be ordered by the examining judge under the conditions provided by the law.

CHAPTER III: Applicable sentences

Article 37: Penal sanctions applicable to natural persons

The natural persons guilty of a money laundering offence are punished by three (3) to seven (7) years in prison and a fine equal to three times the value of the property or funds subject to the money laundering transactions.

Attempts to commit money laundering are punished under the same measures.

Article 38: Penal sanctions applicable for participation in, association, conspiracy to commit money laundering

Association or participation in an act of money laundering, conspiracy to commit such an act, attempts to aid and abet perpetrators of this act, or advice to a natural person or legal entity to perpetrate this act or facilitate perpetration thereof, is punished under the same sentences provided in article 37.

Article 39: Aggravating circumstances

1. The sentences provided for in article 37 are doubled:

- when the money laundering offence is committed regularly or by using the facilities provided for the discharge of duty;
- when the offender is charged with a second offence; in this case, the sentences passed abroad are used to establish the second offence;
- when the money laundering offence is committed in organised gangs.

2. Where the original crime or offence of money or commodity laundering is subject to a prison sentence longer than the penalty under article 37, money laundering is punished by sentences related to the original offence the offender knew about and, if this offence was committed under aggravating circumstances, the offender is sentenced to penalties related only to the circumstances he or she knew about.

Article 40: Penal sanctions for certain money laundering schemes

A prison sentence of between six (6) months and two (2) years and a fine between one hundred thousand (100.000) and one million five hundred thousand (1.500.000) CFA francs, or either of these two (2) penalties, are levied on the persons and the superiors or officials of the natural persons or legal entities specified in article 5, where these latter have intentionally:

1. divulged information, to the money owner or transacting party specified in article 5, on the report they are expected to file or the consequences related thereto;
2. destroyed or concealed papers or documents for the identification obligations specified in articles 7, 8, 9, 10 and 15, on which recording requirements are stipulated under article 10 of the present law;
3. performed or attempted to undertake, under a false identity, one of the transactions specified under articles 5 to 10, 14 and 15 of the present law;
4. informed, by any means, the person(s) placed under investigation for acts of money laundering they may know about, on account of their profession or their functions;
5. transmitted deeds and documents covered in article 33 of the present law that they knew were false or incorrect to the judicial authorities or competent public servants for use in establishing the original and subsequent offences;
6. disclosed intelligence or documents to persons other than those specified in article 11 of the present law;
7. Omitted to report suspicious transactions, as provided for in article 17, whereas circumstances warranted they deduce those might have been proceeds from money laundering, as stipulated under articles 2 and 3.

A fine of between fifty thousand (50.000) to seven hundred and fifty thousand (750.000) CFA francs are levied on the person or natural persons or legal entities specified in article 5, where they intentionally:

- omitted to report suspicious transactions, as stipulated under article 26 of the present law;
- Infringed the provisions of articles 6, 7, 8, 9, 10, 11, 12, 13, and 26 of the present law.

Article 41: Complementary optional penal sanctions applicable to natural persons

The natural persons found guilty of the offences covered in articles 37, 38, 39, 40 may also incur the following complementary penalties:

1. banishment from the country for a period of one (1) to five (5) years for non-nationals;

2. local banishment from one or more administrative districts for a period of one (1) to five (5) years;
3. prohibition to leave the country and seizure of passport for a period between six (6) months and three (3) years;
4. deprivation of civic, civil and family rights for a period between six (6) months and three (3) years;
5. prohibition to drive, pull and pilot motored vehicles, vessels and aircraft by land, sea and air, and seizure of permits or licenses for a period of three (3) to six (6) years;
6. prohibition, or suspension for three (3) to six (6) years, from exercising the profession or activity during which the offence was committed and prohibition to hold public office;
7. prohibition to issue cheques other than certified cheques or cheques used by the drawer to withdraw money from the drawee, or to use credit cards for a period of three (3) to six (6) years;
8. prohibition to hold or carry authorized arms for a period of three (3) to six (6) years;
9. confiscation of all or part of the offender's property acquired through unlawful means;
10. confiscation of the property or instrument used or intended for use in committing the offence or the proceeds from the offence, with the exception of objects that may be restored.

CHAPTER IV: Penal responsibility of legal entities

Article 42: Penal sanctions applicable to legal entities

Legal entities other than the State, on whose behalf or for whose benefit an organ or representative commits a money laundering offence or one of the offences covered by the present law, are sentenced to a fine five times the size of those levied on natural persons, without prejudice to the sentence of these latter as perpetrators of, or accomplices to these same acts.

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

1. exclusion from public contracts, either definitely or for a period no longer than five (05) years;
2. confiscation of the instrument used, or intended for use in committing the offence or the proceeds therefrom;
3. imposition of legal restrictions for a period no longer than five (5) years pending trial;
4. prohibition or suspension for a period of five (05) years from exercising, directly or indirectly, one or more professional or social activities whereby the offence was committed;

5. closure, or suspension for a period of five (05) years, of subsidiaries or one of the subsidiaries of the business, used in committing the penalized acts;
6. dissolution, where they have been set up for use in committing unlawful acts;
7. Posting of the court sentence or circulation thereof by print media or any other means of broadcast at the expense of the legal entity that incurs the penalty.

The penalties covered in points 3, 4, 5, 6, and 7 of the second paragraph of the present article do not apply to financial institutions operating under a control authority with disciplinary powers.

The competent control authority may, upon the submission of any suit filed against a financial institution by the State Prosecutor, take sanctions as appropriate, in conformity with the specific legislative and regulatory provisions in force.

CHAPTER V: Reasons for waiving and attenuating penal sanctions

Article 43: Reasons for waiving penal sanctions

Any person found guilty, on one hand, of connivance in association, participation or conspiracy to commit one of the offences covered in articles 37, 38, 39, 40 and 41, and on the other hand, of attempts to aid and abet, or to give advice to a natural person or moral entity to perpetrate this act or facilitate perpetration thereof, shall be exonerated from penal sanctions if, they reveal this association, participation, aid or advice to the judicial authority for identification of the other suspects and interruption of the offence.

Article 44: Reasons for attenuating penal sanctions

Penalties are halved for any person, offender or accomplice to one of the crimes stipulated under articles 37, 38, 39, 40 and 41, who, before the filing of any suit, identifies or facilitates the identification of other suspects, or permits or eases the arrest of these latter. In addition, the said person is exonerated from the payment of fines, and, if need be, from other incidental measures and optional complementary penalties.

CHAPTER VI: Additional obligatory penalties

Article 45: Obligatory confiscation of proceeds from money laundering

In all sentences for money laundering or attempts thereto, the courts issues a confiscation order in favour of the Public Treasury for proceeds from the offence, the movable and immovable property these proceeds have been transformed or converted into and, up to the limit of their value, the property acquired legitimately to which the said proceeds have been mingled, as well as the income and profits drawn from these proceeds, the property into which they have been transformed or invested or property to which they have been mingled, whoever these proceeds and property belong to, unless the owner(s) prove(s) they had no knowledge of the fraudulent origin of such proceeds or property.

PART V: INTERNATIONAL COOPERATION

CHAPTER I: International jurisdiction

Article 46: Crimes committed outside the national territory

National courts are competent to judge offences under the present law, committed by any natural person or legal entity, whatever be their nationality or the location of their headquarters, even where this is outside the national territory, once the place where the offence was committed is situated in one of the WAEMU Member States.

The courts may also judge the same offences committed in a third-party State once an international convention gives them competence to.

CHAPTER II: Transfer of judicial proceedings

Article 47: Requesting transfer of judicial proceedings

Where the prosecution in another WAEMU Member State reckons, for whatever reason, that the pursuit or continuation of ongoing proceedings is impeded by major obstacles and that appropriate penal procedure can be taken on the national territory, it may request the competent judicial authority to take proceedings as necessary against the presumed offender.

The provisions of the previous paragraph do also apply where the request is submitted by an authority in a third-party State, and the laws in force in this State authorize the national prosecutor to submit a request for the same purpose.

The request for transfer of judicial proceedings is substantiated with documents, identity papers, dossiers, instruments and information in the custody of the prosecutor of the requesting State.

Article 48: Refusal to take judicial proceedings

The competent judicial authority may not process the request for transfer of judicial proceedings coming from the competent authority in the requesting State if, on the date the request was issued, the public prescription to take legal action had been issued in conformity with the law of this State, or if a final ruling had been passed on the lawsuit filed against the person concerned.

Article 49: Acts performed in requesting State prior to transfer of judicial proceedings

All acts performed to take judicial proceedings or for procedural purposes on the territory of the requesting State have the same value as if they had been performed on the national territory, in as much as they are compatible with the legislation in force.

Article 50: Preliminary inquiry of requesting country

The competent judicial authority notifies the Prosecution of the requesting State of the decision taken or the ruling passed at the end of the proceedings. To that end, it transmits to them, copies of all absolutely final decisions.

Article 51: Notice to persons facing prosecution

The competent judicial authority notifies the persons concerned that a summons order has been issued against them and prepares the arguments considered appropriate to make the case before a final judgement is passed.

Article 52: Protective measures

The competent judicial authority may, upon the demand of the requesting State, take all protective measures, including detention on remand and confiscation compatible with the national legislation.

CHAPTER III: International judicial cooperation

Article 53: Modalities for international judicial cooperation

Upon the request of a WAEMU Member State, the requests for international cooperation in relation to the offences covered under articles 37 to 40 are executed in conformity with the principles stipulated in articles 54 to 70.

The provisions of the previous paragraph are applicable to requests originating from a third-party State, where the legislation of this State obliges it to take action pursuant to similar requests emanating from the competent authority.

International cooperation may include, inter alia:

- gathering testimonies or evidence;
- supporting efforts to place detainees or other persons at the disposal of the judicial authorities of a requesting State with the goal of providing evidence or assisting with inquiries;
- handing over judicial instruments;
- searches and confiscation;
- inspecting objects and premises;
- providing intelligence and exhibits;
- providing originals or certified true copies of relevant files and documents, including bank statements, accounting vouchers, registers with records of a company's business transactions or its business activities.

Article 54: Contents of request for international judicial cooperation

All requests for international judicial cooperation are addressed to the competent authority in writing, including:

a) the name of the requesting authority

b) the name of the competent authority and the authority in charge of the investigation or the procedure pertaining to the request;

c) identification of the requested measure;

d) a presentation of the facts that constitute the offence as well as applicable legal provisions, unless the sole objective of the request is to submit pleadings or court sentences;

e) all known elements for identifying the person concerned and, inter alia, civil status, nationality, address and occupation;

f) all necessary intelligence for locating the instruments, resources or property targeted;

g) a detailed presentation of all procedure or particular request that the requesting State wishes to see pursued or executed;

h) mention of the time period the requesting State wishes its request to be served;

i) Any other information useful for the smooth execution of the request.

Article 55: Denial to execute request for international judicial cooperation

The request for international judicial cooperation may be refused only where:

- it is not issued by the competent authority according to the legislation of the requesting country or if it was not transmitted accordingly;
- execution of the request may cause a breach of the peace, sovereignty, security or the fundamental principles of law, order and rights;
- legal proceedings are being taken on the facts addressed, or judgement has already been passed and a final sentence pronounced thereto on the national territory;
- the measures pursued or all other measures having similar effects are not authorized or applicable to the offence covered in the request, in pursuance of the legislation in force;
- the measures requested may not be pronounced or executed because of statutes of limitation on the money laundering offence, in pursuance of the legislation in force or the law of the requesting country;
- the decision requested is not enforceable according to the legislation in force;
- the court sentence was pronounced under conditions not offering adequate guarantees for the rights of the defendant;
- Serious reasons exist to think the measures requested or the decision sought are targeting the person concerned only because of their race, religion, nationality, ethnic origin, political views, sex or status.

Confidentiality may not be invoked to refuse execution of the request.

The Public Prosecutors may lodge an appeal on the decision to refuse execution, passed by a court in Senegal.

The Government of Senegal shall communicate speedily to the requesting country the reasons for refusing to execute its request.

Article 56: Secrecy on request for international judicial cooperation

The competent authority maintains secrecy on the request for international judicial cooperation, on its contents and the evidence produced, as well as on the issue of judicial cooperation per se.

Where it is impossible to execute the said request without breach of confidentiality, the competent authority informs the requesting State, which decides, in this case, to maintain or cancel the request.

Article 57: Requesting enquiry and preliminary investigation measures

Enquiry and preliminary investigation measures are executed in conformity with the legislation in force, unless the competent authority of the requesting State orders that they be processed in a manner particularly compatible with this legislation.

A magistrate or civil servant, delegated by the competent authority of the requesting State, may witness execution of these measures, depending on whether they are executed by a magistrate or a civil servant.

Where required, Senegal's judicial or police authorities may pursue enquiries and preliminary investigations in collaboration with the authorities of other Member States of the Union.

Article 58: Delivery of pleadings and court rulings

Where the request for judicial cooperation is intended for submission of pleadings and/or court rulings, it includes a detailed description of the acts or rulings pursued, in addition to the indications covered in article 54.

The competent authority proceeds to submit the pleadings and court sentence transmitted to that end by the requesting country.

This submission may be sent simply by transmitting the act or ruling to the addressee. Where an express request is put forward by the competent authority of the requesting country, the submission may take one of the forms provided in the legislation in force for giving formal notice in similar circumstances or a special form compatible with this legislation.

A dated and signed receipt acknowledging delivery of the submission is issued by the addressee, or the competent authority called in to acknowledge the fact, form and date of the submission issues an acknowledgement order. The document established to constitute evidence of the delivery is transmitted immediately to the requesting State.

Where the submission is not delivered, the competent authority reports the reasons for this failure immediately to the requesting country.

The request for delivery of a summons order to appear in court is made at most sixty (60) day before the date of appearance.

Article 59: Appearance of witnesses not in custody

Where, in a lawsuit filed for offences covered in the present law, the personal appearance of a witness residing on the national territory is deemed necessary by the judicial authorities of a foreign country, the competent authority, upon receipt of a request transmitted by diplomatic channel, enjoins the witness to respond thereto.

The summons order for a witness to appear in court includes the identification details of the witness and the items stipulated under article 54.

However, the summons is received and transmitted only on the condition that the witness shall not be sued or detained for acts committed or sentences pronounced prior to his/her appearance and shall not be obliged, without consent, to testify in proceedings or provide assistance in an investigation unrelated with the request for judicial cooperation.

No sanction or warrant of arrest may be used against a witness for refusing to accede to a request for appearance in court.

Article 60: Appearance of detainees

Where, in a lawsuit filed for an offence covered by the present law, the personal appearance of a witness detained on the national territory is deemed necessary, the competent authority, upon receipt of a request addressed directly to the competent prosecutor's office, shall transfer the interested party.

However, the request shall be addressed only if the competent authority of the requesting country pledges to keep the transferred party in prison until the sentence pronounced by the competent national authorities has been served, and to send them back at the end of the proceedings or if their presence no longer seems necessary.

Article 61: Criminal record

Where legal proceedings are taken by a court in a WAEMU Member State on an offence covered by the present law, the prosecutor of the said court may obtain the criminal record and all related intelligence of the person being sued directly from the competent national authorities.

The provisions of the previous paragraph shall apply where the legal proceedings are taken by a court in a third-party State and where this State applies the same regime to requests of the same type coming from competent national courts.

Article 62: Writ of enquiry and seizure

Where the request for judicial cooperation is for enquiry on and seizure of exhibits, the competent authority grants authorization thereto in ways compatible with the legislation in force on the condition that the measures sought do not infringe the rights of third parties acting in good faith.

Article 63: Writ of confiscation

Where the request for international judicial cooperation is intended to obtain a writ of confiscation, the competent court issues a ruling referring the case to the competent authority of the requesting country.

The confiscation order targets the proceeds from or instruments of one the offences covered by the present law and located on the national territory, or include the obligation to pay a sum of money equal in value to such property.

Requests to obtain a writ of confiscation are not processed where the writ seeks to infringe legal rights for third parties to benefit from property in accordance with the law.

Article 64: Request for protective measures to prepare confiscation

Where the request for judicial cooperation seeks to inquire on proceeds from the offences covered in the present law on the national territory, the competent authority may conduct investigations and transmit the findings to the competent authorities in the requesting country.

On this account, the competent authority shall take all measures as necessary to trace the source of the property, inquire on appropriate financial transactions and gather all intelligence or testimonies apparently facilitating the distraint of proceeds from the offence.

Where the investigations stipulated in paragraph one of this article end in positive findings, the competent authority shall, upon a request from a competent authority in the requesting State, take all measures to prevent the negotiation, transfer or disposal of the proceeds at issue, pending a final ruling from the competent court of the requesting State.

Any request aimed at obtaining the measures covered in this article shall, in addition to the indications stipulated under article 54, state the reasons why the competent authority in the requesting State believes the proceeds or financial instruments from the offences are on the its territory, as well as the intelligence by which to locate them.

Article 65: Power of confiscation order pronounced abroad

The competent authority shall, to any measure compatible with current legislation, enforce final rulings issued by a WAEMU Member State court for seizure or confiscation of proceeds from the offences covered under the present law.

Provisions of the previous paragraph shall apply to rulings passed by third-party State courts, where the State handles rulings passed by competent national courts in the same manner.

Notwithstanding the provisions in the previous two paragraphs, the enforcement of rulings passed abroad may not take effect if, by law, they infringe the rights of third parties to property. This rule shall not obstruct application of rulings passed abroad in relation to the rights of third parties, unless these latter are unable, under conditions similar to those in the current law, to enforce their rights before the competent jurisdiction in the foreign State.

Article 66: Confiscated property

The State has the power to dispose of the property confiscated on its territory upon the request of foreign authorities, unless otherwise decided in an agreement sealed with the requesting Government.

Article 67: Request to execute rulings passed abroad

Prison sentences as well as pronouncements on fines, seizures and forfeiture of rights, issued for the offences covered under the present law in pursuance of a final ruling from a court in a WAEMU Member State, may be enforced on the national territory upon the request of the competent authorities of this State.

The provisions of the previous paragraph shall apply to sentences pronounced by courts in a third-party State, where this State handles the sentences pronounced by national courts in the same manner.

Article 68: Enforcement modalities

Sentences pronounced abroad are enforced in conformity with the legislation in force.

Article 69: Cessation of enforcement

Enforcement of sentences ceases where, on grounds of a ruling or legal proceedings emanating from the country of pronouncement, the enforceability of a sentence is no longer valid.

Article 70: Denial to enforce

The request to execute a sentence pronounced abroad is denied where the penalty is prescribed in relation to the law of the requesting State.

CHAPTER IV: Extradition

Article 71: Conditions for extradition

Extradition measures apply to:

- individuals sued for offences covered by the present law, whatever the duration of the penalty incurred on the national territory;
- Individuals sentenced definitely, for the offences covered by the present law, in the courts of the requesting country, no matter the penalty pronounced.

There is no impairment of the rules of common law for extradition, inter alia, those on double indictments.

Article 72: Simplified procedure

Where the petition for extradition concerns a person who has committed one of the offences covered by the present law, it is addressed directly to the competent public prosecutor of the requested State, with copies sent, for information, to the Minister of Justice.

To this petition is annexed:

- the original or certified true copy of either an enforceable court sentence, or a warrant of arrest or any other document with the same force, delivered in the forms stipulated by law in the requesting State and indicating precisely the time, place and circumstances of the offence and its legal definition;
- a certified true copy of the applicable legal provisions with an indication of the penalty pronounced;
- a document describing, as precisely as possible, the wanted individual and giving intelligence on his identity, nationality and location.

Article 73: Complementary information

Where the information provided by the competent authority is not enough for deciding on a ruling, the State can request more information as necessary and may demand that this

information be delivered within fifteen (15) days, unless such a timeline is incommensurate with the nature of the case.

Article 74: Provisional custody

In an emergency, the requesting country's competent authority may ask that the wanted person be detained provisionally, pending submission of an extradition request. The decision issued thereto shall be in accordance with the legislation in force.

The request of provisional custody shall show the existence of one of the items covered in article 72 and state the intent to petition for extradition. It shall mention the offence prompting the extradition request, the time and place it was committed, the penalty passed, likely to be passed or already pronounced thereto, the wanted person's location, if known, and a description, which is as close as possible, of the person.

The request of provisional custody shall be transmitted to the competent authorities either by diplomatic channel, or directly by postal or telegraphic transfer, or by the international organisation of criminal police, or by any other means in writing or accepted by the current legislation of the State.

The competent authority shall be informed speedily of the decision pertaining to their request.

Provisional custody shall be aborted if, within twenty (20) days, the competent authority has not been petitioned for extradition and the items stipulated in article 72.

However, bail shall be possible at all times, unless for the competent authority to take all the measures they consider necessary to forestall the escape of the wanted person.

Bail shall not impede arrest and extradition, if the request for extradition is received subsequently.

Article 75: Recovery of objects

During extradition proceedings, all objects that may serve as exhibits or are by-products of the crime and are found in the possession of the wanted person at the time of arrest or discovered subsequently, shall be seized and handed over, upon request, to the competent authority of the requesting country.

Such objects may be handed over even if the extradition is aborted upon the escape or death of the wanted person.

However, third party acquired rights to the said objects shall be reserved and, where existent, warrant speedy return of said objects, at no cost to the requested State, as proceedings taken in the requesting country wrap up.

The competent authority may keep seized objects temporarily, where it considers them useful for legal proceedings.

It may, in handing over said objects, reserve the right to retrieve them for the same reason, on the condition that the objects shall be returned as soon as possible.

PART VI: FINAL PROVISIONS

Article 76: Notification to Control Authorities of legal proceedings taken against their workers

The State Prosecutor shall notify any competent control authority of legal proceedings taken against entities under its supervision, pursuant to the provisions of the present law.

Article 77: All contrary provisions prior to the present law are repealed.

Done in Dakar, **6 February 2004**

By the President of the Republic

Abdoulaye WADE

By Proxy
The Minister of State for Homeland Security and Local Government Areas, serving as Interim Prime Minister

Macky SALL

ANNEX: MODALITIES FOR CUSTOMER IDENTIFICATION (NATURAL PERSONS) BY FINANCIAL INSTITUTIONS DURING WIRED FINANCIAL TRANSACTIONS

In the fight against money laundering, the procedures financial institutions use for customer identification during wired transactions consist of the following principles:

1. The procedures ensure appropriate customer identification;
2. The procedures apply where there is no reason to think that direct (face-to-face) contact is avoided in order to conceal the customer's true identity and no money laundering transaction is suspected;
3. The procedures shall not apply to cash transactions;
4. The internal control procedures covered in article 7 of the uniform law on money laundering in WAEMU Member States shall particularly include wired transactions;
5. Where the counterpart financial institution processing the transaction (contracting financial institution) is a customer, the identification may be done using the following procedure:

   a) Identification is done directly by the subsidiary or the representative of the contracting financial institution nearest to the customer.

   Where the identification is done without direct contact with the customer:

   - a copy of the official identity card or the number of the official identity card is recorded. Special attention shall be paid to verifying the customer's address where it is stated on the identity card (e.g. when sending items on the transaction to the customer's address by registered post, with an acknowledgement of receipt attached);
   - the first payment in the transaction is done via an account opened in the customer's name in a bank located in a WAEMU Member State. The Member States may authorize payments by well reputed banks established in third party countries that apply equivalent anti-money laundering standards;
   - the contracting financial institution verifies carefully that the holder of the bank account where payment is made is the same person as the customer, using details on the identity card (or those from the identification number). Where in doubt, the contracting financial institution contacts the account hosting bank to confirm the account holder's identity. If still in doubt, the bank is required to issue a certificate of identity for the account holder, showing the customer has been identified duly and the information on the certificate recorded as required by the present law.
6. Where the counterpart of the contracting financial institution is another institution acting on behalf of a customer:

   a) where the counterpart is based in the Union, customer identification by the contracting financial institution is not required, as stipulated in article 9, paragraph 4 of the uniform law on the fight against money laundering in WAEMU Member States;

b) Where the counterpart is located outside the Union, the financial institution verifies its identity by consulting a reliable directory of financial institutions. Where in doubt in this regard, the financial institution requests confirmation of the counterpart's identity from the control authorities in the Third Party State concerned. The financial institution is also expected to take «reasonable measures» to obtain information on the counterpart's customer, that is, the true beneficiary of the transaction, in conformity with article 9, paragraph 1 of the uniform law on money laundering in WAEMU Member States. These « reasonable measures» may be limited – where the counterpart's country enforces equivalent identification obligations – to the customer's name and address. However, where no equivalent obligations exist, the counterpart may be required to produce a certificate confirming that the customer's identity has been duly checked and recorded.

7. The above-mentioned procedures are without prejudice to the use of other methods which, according to the competent authorities, might offer equivalent guarantees for identification during wired financial transactions.

Done in Dakar, 6 February 2004

By the President of the Republic

Abdoulaye WADE

By Proxy
The Minister of State for Homeland Security and Local Government Areas, serving as Interim Prime Minister

Macky SALL