

Law No. 17/2011

of 28th of December

**LEGAL REGIME COVERING
THE PREVENTION OF AND
COMBAT AGAINST MONEY
LAUNDERING AND FINANCING
OF TERRORISM**

Motives:

In the last two decades, money laundering and related crimes, among which, drug trafficking, corruption, abduction and terrorism have become crimes whose impact can no longer be measured only at a local scale. If in the past this practice was limited to certain regions, its pernicious effects now reach beyond national borders, thus promoting instability in financial systems and compromising economic activities.

There are no doubts that money laundering is a growing global threat and that the measures to control this problem have become the target of a huge international effort. During the last ten years, numerous States and international organisations have been involved in the struggle against money laundering and the financing of terrorism, by promoting national and international cooperation to ensure that financial institutions and non-financial professions take the necessary measures to mitigate the damaging effects of this criminal practice.

The Democratic Republic of Timor-Leste cannot ignore this great international effort, give that money laundering and financing of terrorism, besides permitting that, among others, traffickers, arms smugglers, terrorists or corrupt public servants ,continue with their criminal activities, thus

facilitating access to illegal profits, and that they may stain the reputation of national financial institutions and, if not controlled, undermine public trust in the integrity of the national financial system, thus jeopardising the actual democratic Rule of Law.

In this framework, the Democratic Republic of Timor-Leste wishes to create normative instruments appropriate to guarantee that there is constant surveillance by the regulatory bodies, banks, financial centres and other vulnerable institutions to prevent money laundering and financing of terrorism from compromising the stability and integrity of the financial system and/or the trust of Timorese institutions.

Therefore, the National Parliament hereby, under the terms of no. 1 of Article 95 of the Constitution of the Republic, decrees that the following prevail as law:

CHAPTER I

GENERAL PROVISIONS

SECTION I

OBJECT AND DEFINITIONS

Article One

Object

The present law shall approve the legal regime covering the prevention of and combating against money laundering arising from illicit activities and financing of terrorism.

Article Two

Scope

1. The institutions referred to in

the law and other applicable legislation.

CHAPTER II

PREVENTION

SECTION I

GENERAL DUTIES

Article Seven

Obligation to declare the transport of currency and negotiable bearer securities

1. Any individual who, when entering or leaving Timor-Leste, transports money or negotiable bearer securities to an amount equivalent to or higher than USD 10,000.00 shall declare the amount transported to the customs authorities.
2. The copies of the declarations submitted are immediately forwarded to the FIU by the customs authorities.
3. The customs authority shall seize the whole or part of the amount of the money or the negotiable bearer securities whenever there is suspicion of money laundering or financing terrorism or when a false declaration is submitted.
4. The competent legal authority shall within a period of three (3) working days assess the seizure of values made under the terms of art 3 above.
5. The decision taken by the competent legal authority confirming the seizure shall include the characteristics of the

values seized and the circumstances in which the seizure took place.

SECTION II

DUTIES OF FINANCIAL INSTITUTIONS

Article Eight

Transparency of financial transactions

1. No bank may be established in the territory of Timor-Leste unless it maintains a physical presence on such territory or is part of a registered financial group, subject to efficient and consolidated supervision.

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**and centres of collective
interests without legal
personality**

1. Without prejudice to the duty to register, declare and advertise as set out under the Commercial Companies Law and Commercial Companies Code and other applicable legislation, the Legal persons established in Timor-Leste shall, whenever requested by the competent authority, provide adequate and necessary information on the actual beneficiaries and their control structure.

2. In those cases where, under the terms of the law, bearer shares have been issued, the holders of such shares shall undertake to deposit them with the legal person that issued them with a stock registry, whenever there is one.

3. The law shall determine the way to record such information regarding the actual beneficiaries and control centres of collective interest without legal personality.

Article Ten

**Identification of clients by
financial and non-financial
entities**

1. The institutions referred to in article 3 shall identify their clients and actual beneficiaries and ascertain their respective identities by way of documents from independent sources, data and information, when:

a) they undertake occasional transactions to an amount

equal to or greater than USD 10,000.00 in one or several transactions which appear to be connected;

b) there are doubts about the truth or appropriateness of the identification of the client;

c) there are well-founded suspicions of money laundering or financing of terrorism.

2. The institutions referred to in article 3 shall proceed to gather information in what concerns the aims and intentions of the business relationship.

3. The institutions referred to in article 3 shall proceed to identify and verify the identities of their clients in the following fashion:

a) The identification of individuals and the verification of their identities shall include their full name and their national identification number;

b) The identification of legal persons shall include the verification of the name of the company, address of head office, identification of the directors, company records or similar proof of its legal status, type of company adopted, structure and powers of the person directing the company;

c) The institutions referred

9. The provisions of this article shall also be applicable to all the clients of financial institutions existing before the approval of the present law.

Article Eleven

Special Identification Procedures

1. Insurance companies, agents and brokers who perform activities in the area of insurance shall identify their clients and their respective identities under the terms set out in Article Ten above, whenever the amount of the annual premium exceeds USD 1,000.00, if the payment is made in one yearly payment and exceeds USD 2,500.00 or, in the case of insurance retirement policies taken out in relation to a labour agreement or the professional activity of the policy holder, when such policies contain a surrender clause and may be used as a guarantee for a loan.

2. Casinos shall verify the identity of their clients who make transactions of an amount equal to or over 1,000.00 USD, under the terms set out in article ten above.

3. Dealers in precious metals and precious stones shall identify their clients under the terms set out in article ten above, whenever they receive payment in cash to an amount equal to or over 5,000.00 USD.

4. Real estate agents and real estate brokers shall identify the parties under the terms set out in article ten above, when involved in transactions that

concern the sale and purchase for resale of real estate.

5. The institutions mentioned in the paragraphs above shall always identify their clients and verify their identity where there are well-founded suspicions of money laundering and financing of terrorism.

Article Twelve

Internal programmes for the prevention and combat of money laundering and financing of terrorism

1. The institutions referred to in article 3 shall devise and implement programmes aimed at the prevention of money laundering and financing of terrorism, within the scope of their hiring, continuous vocational training and internal auditing

2. The institutions referred to in article 3 above shall appoint an employee who shall be responsible for ensuring the enforcement of the rules and procedures set out in the present law.

3. The competent supervisory authority may, through regulations or rules of procedure, determine that specific measures be taken by the institutions referred to in article 3 adequate for money laundering risk by taking into account the turnover, under the terms of the law.

Article Thirteen

Obligations concerning

electronic transfers

1. Financial institutions, whose activities include electronic transfers, shall acquire and verify the full name, the account number, or in the event there is no account number, the reference number of the transfer, or the address, or when there is no address, the national identification number or date and place of birth, including, whenever necessary, the name of the financial institution, the payer of such transfers, the information being included in the payment message or form attached to the transfer;

2. The institutions to which the paragraph above refers shall gather all the information and convey it, when they act as intermediaries in a chain of payments.

3. The Central Bank may issue instructions concerning transborder transfers, included in one single transfer file.

4. Paragraphs 1 and 2 above shall not apply to transfers made by credit or debit cards, whenever the number of the debit or credit card accompanies the transfer, nor shall they be applicable to transfers between financial institutions where either the payer or the beneficiary are financial institutions acting on their own behalf.

5. If the institutions to which paragraph 1 above refers receive cash or transfer for values which do not contain complete information concerning the payer, they shall take the necessary

measures to obtain and verify the information from the institution which issued the order or from the beneficiary, and should they not provide this information, such institutions should refuse to accept the transfer and send a report to the FIU.

Article Fourteen

Special control of certain transactions

1. The institutions referred to in article 3 shall pay special attention to those of abnormally high amounts and all those unusual types of transactions, which do not appear to have an economic or licit cause.

2. The institutions referred to in article 3 shall pay special attention to business relationships and transactions with persons, including legal persons and centres of collective interests without legal personality, from or to countries or territories not subject to efficient and consolidated supervision.

3. The institutions referred to in article datt95585(e)3.74()-280.313(i)-2.1643

1. The institutions referred to in article 3 shall organise and preserve records which contain the following information in an appropriate system of records and available for consultation by the FIU and the competent supervisory authority:

a)

to ascertain the appropriateness and conformity of the internal programmes with the measures set out by law;

2. The competent supervisory authority may issue guidelines concerning the type and scope of the measures appropriate for fulfilment of the provisions set out in the present article, taking into account the risk of money laundering and the financing of terrorism.

Article Seventeen

Fulfilment of obligations by subsidiaries and branches

1. Financial institutions shall request that its major subsidiaries and branches situated abroad comply with the provisions set out in Article Ten (10) and Article Sixteen (16) to the extent that local laws and regulations so permit.
2. If local laws and regulations do not permit the compliance referred to in paragraph 17.1 above, the competent authorities shall be informed by the financial institutions that the latter cannot comply with the aforementioned obligations.

Article Eighteen

Casinos

Casinos may only operate after having been duly licensed by the competent authority, under the terms of the law.

Article Nineteen

Non-profit organisations

Any non-profit organisation which collects, receives, grants or transfers funds as part of their volunteer or social activities shall be subject to the supervision of the Finance Ministry, which may approve regulations to guarantee that these non-profit organisations are not manipulated or used for the purposes of financing terrorism.

CHAPTER III

DETECTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

SECTION I

Duties of the Financial Intelligence Unit

Article Twenty

Confidentiality

1. All FIU employees and agents shall be subject to the duty of confidentiality in relation to any information acquired within the scope of or given their duties, even after termination of such duties, such information only being used for the purposes set out in the present law.
2. Violation of the provisions in the paragraph above implies disciplinary and criminal liability, under the terms of the law.

Article Twenty-One

Access to information

1.

transactions on behalf of a client.

Article Twenty-Four

Suspension of transactions

1. The institutions referred to in article 3 shall abstain from undertaking transactions which they suspect are related to money laundering or financing of terrorism and shall inform FIU of their suspicions.

2. FIU may order that the transaction be suspended for a period of no longer than three (3) working days, whenever justified under the terms of the present law.

3. In those cases where it is not possible not to prevent the undertaking of the transaction referred to in paragraph 1 above the financial institutions shall this fact and all other information regarding the payer and the beneficiary to FIU.

Article Twenty-Five

Prohibition to disclose confidential information

The institutions referred to in article 3, their employees and agents may not disclose to any of their clients or to a third party information that they have provided or are about to provide any information on investigations on the practice of money laundering or financing of terrorism to FIU.

Article Twenty-Four

Mandatory duty to inform

FIU shall forward to the Public Prosecutor of the Republic's Office all relevant information, whenever there are strong indications that there exists the practice of crime in order to initiate

the appropriate proceedings.

CHAPTER III

SUPERVISORY AUTHORITIES AND SANCTIONS

SECTION I

SUPERVISORY AUTHORITIES

Article Twenty-Seven

Duties and Powers

1. The competent supervisory authorities shall ensure that financial institutions and non-financial activities and professions ursiacanct80439o.e

- b) Order the fulfilment of specific instructions;
- c) Order the submission of regular reports on the measures which are being applied;
- d) Prevent individuals from working in a sector or profession for a period of six (6) months to three (3) years;
- e) Replace or restrict the powers of managers, directors or owners in control, including the nomination of an ad hoc administration for a period of six (6) months to three (3) years;
- f) Suspend, restrict or withdraw its licence and forbid the company or profession from continuing for a period of six (6) months to three (3) years;

4. The sanctions which partially or totally forbid the managers of a legal person to totally or partially carry out business in accordance with paragraph 2 above of this article and any lifting of such prohibitions shall be communicated by the competent supervisory authority to the National Department of Registrars and Notaries with the purpose of undertaking the registration in the registry of companies.

Article Thirty-Two

Violation of duties by financial

and non-financial institutions

1. Those who intentionally or through gross negligence commit an offence shall be, in the case of individuals, subject to a fine of between USD 250.00 and USD 150,000.00 and in the case of legal persons, a fine of between USD 1,250.00 and USD 750,000.00:

a) Non declaration of cash or negotiable bearer securities of amounts equal to or higher than USD 10,000.00 or equivalent in legal tender or submission of a false declaration;

b) The onset or continuation of commercial relations with banks or financial institutions or are branches of financial institutions registered in a country or territory that is not subject to efficient and consolidated supervision;

c) The onset or continuation with a correspondent financial institution in a foreign country where it is permitted to use accounts through shell banks;

d) Establishing a bank in Timor-Leste where it is not physically present and is not a branch of a regulated financial group;

e) The non-maintenance of appropriate, precise and updated information on the actual beneficiary and the control structure of the legal persons and centres of collective interests without legal personality as defined in the terms set out in the present

law;

f) Not requesting the identification of the clients and not applying suitable risk management measures as set out in the terms of the present law;

g) The non-adoption of the control measures and not-maintenance of the records as defined in the present law;

h) Not providing opportune access to the information or the records when they are requested by the competent authority under the terms of the law;

i) The non-submission of reports to FIU as defined in article Twenty-Three (23);

j) Not refusing to undertake
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2. These techniques shall be subject to authorisation by the competent judicial authority and shall only be used when there exist grounds to suspect that such accounts, telephone lines, computer systems and IT networks or documents are or may be used by people suspected of taking part in money laundering or financing of terrorism activities, and shall be subject to the fulfilment of the requirements established in Articles from One Hundred and Sixty-Eight (168) to One Hundred and Eighty (180) of the Code of Criminal Procedure.

Article Thirty-Four

Obscuring identity and protecting the witness

3. The application of these measures may terminate at any time by order of the court which ordered them, on its own initiative or at the request of the Public Prosecutor's Office, or the people who claim the property right over the funds or assets.

Article Thirty-Six

Freezing of assets associated with the financing of terrorism

1. The funds and other economic assets of terrorists, of those who finance terrorism and those terrorist organisations listed

Article Thirty-Eight

Financing of terrorism

Financing of terrorism shall constitute a crime and be punishable under the terms of article 133 of the Criminal Code.

Article Thirty-Nine

Aggravating circumstances for the crime of money laundering

The penalties referred to in Article 313 of the Criminal Code may be increased by a third of its minimum and maximum limits, under the terms of criminal law:

- a) If prison sentences which exceed the maximum limit set out in the Articles above are applicable to the underlying offence;
- b) If the crime is committed when carrying out a commercial or economic activity;
- c) If the crime is committed as part of the activities of an organised criminal group;
- d) If the amount laundered exceeds USD 500,000.00;
- e) If the intention is to promote the continuation of the criminal activity.

2. No conviction of over 25 years prison sentence may result from the application of the provisions set out in the previous paragraph.

Article Forty

Aggravating

circumstances for the crime of financing terrorism

1. The penalties referred to in Article 313 of the Criminal Code may be increased by a third:

- a) If the crime is committed when carrying out a commercial or economic activity;
- b) If the crime is committed as part of the activities of an organised criminal group.

2. No conviction of over 25 years prison sentence may result from the application of the provisions set out in the previous paragraph

Article Forty-One

Attenuating circumstances

1. The provisions included in the criminal law concerning attenuating circumstances shall apply to the crimes set out in this law.

2. The penalties referred to in Article 313 and 133 of the Criminal Code may be reduced under the terms of article 57 of the Criminal Code if the perpetrator of the crime provides the judicial authorities information which allows:

- a) For the effects of the crime to be prevented or limited;
- b) For other agents of the crime to be identified, pursued or accused;
- c) For proof to be obtained;

- d) For the practice of other money laundering or financing of terrorism crimes to be prevented;
- e) For organised criminal groups to be deprived of their resources and criminal proceeds.

Article Forty-Two

Liability of legal persons

1. Any legal person on whose behalf or for whom the benefits of money laundering or through whom the financing of terrorism was committed, by an individual, acting individually or as a member of an organ of the legal person, who has an

2. (...)
3. (...)
4. (...)
5. (...)
6. (revoked)
7. (...)
8. (...)

Article Forty-Nine

Entry into force

The present law shall enter into force on the day following its publication.

Approved on 12th December 2011

The President of the National Parliament

Fernando LaSama de Araújo

Promulgated on 15/12/2011

To be published

The President of the Republic

José Ramos-Horta