

Law on International Criminal Co-operation and fight against the laundering of cash or securities the proceeds of international crime and against the financing of terrorism

At its session held on December 11, 2008 the General Council has passed the following

Law on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency.

Stated purpose

The State of Andorra, by virtue of its history and tradition, has always respected measures for the prevention of, and the fight against the laundering of money and financing of terrorism, without renouncing its sovereignty and the guarantees offered by its legal system on the matter of banking secrecy and security in relations between the institutions of the financial system and their customers.

It is almost five years since the passing of the Law of May 11, 1995 on the protection of bank secrets and the prevention of the laundering of money or securities deriving from crime, and in this period, the internationalisation of the world economy, as well as the internationalisation of crime have led the international community to establish preventive and restrictive rules, the efficiency of which depends on the homogeneity of their simultaneous application in all the countries of the world. Money laundering takes on different forms, according to the development of the legislative system and the level of application of this system in each country. It is true to say that the international instruments employed in the fight against money laundering and financing of terrorism share common principles, but differences in national situations make it very difficult, not only to bring about a process of regulatory uniformity but also to achieve a process of harmonisation and assimilation of the regulations.

With this will for harmonisation in mind, the stated purpose of the law for the protection of banking secrets and the laundering of money and securities deriving from crime already demonstrated the will of the State of Andorra to subscribe to the conventions of Vienna, the United Nations, Strasbourg and the Council of Europe.

The provisions of the Andorran Criminal Code, the Law for the Protection of Banking Secrets and the Laundering of Money and the procedures of Andorran internal law contain an important degree of convergence with the philosophy inherent in the provisions of these conventions. However, it is advisable to adopt these laws to the conventions, as is the usual practice in neighbouring

countries and the directives of the bodies involved in the fight against money laundering and financing of terrorism.

This Law attempts to achieve this aim with the traditional straightforwardness of the Andorran legal texts, but with the reaffirmed desire for efficiency. The recently-signed ratification of the Vienna and Strasbourg conventions requires the amendment of current Andorran legislation in order to adopt it to the precepts of the two aforementioned conventions, and to make sure our rules offer maximum levels of efficiency and are uniform with the rules applied in other countries.

Confiscation, which is the aim of the majority of the provisions of the Strasbourg Convention, has been detailed with Andorran specifications in mind.

The aspect dealing with the prevention of the laundering of money or securities deriving from organised crime is the part requiring the most far-reaching amendments so as to offer greater guarantees of efficiency to the mechanisms for the statement, control and denouncement of suspicious acts, whilst safeguarding the principle of banking secrecy. For this purpose, the Unit for the Prevention of Laundering was created to act as a centralising body for all declarations on matters concerning money laundering and financing of terrorism.

This law has a double purpose. Title 1 refers to the regulation of the organisation of international criminal judicial help by means of rules that are applicable to all procedures relating to this material, irrespective of the offences to which they refer. Title II refers to the fight against the laundering of money or securities deriving from international delinquency and against financing of terrorism. This involves two matters with each covering a different area, whose joint regulation is justified, but being a phenomenon with implications for international delinquency mentioned above, it is the basis for the majority of the possible cases of international judicial co-operation.

Title I. Organisation of international judicial help

Preliminary chapter. Area of application

Article 1

This title applies to all procedures concerning international co-operation on criminal matters.

Chapter 1. Conditions of judicial help

Section One. General conditions.

Article 2

Except for notifications and citations, an international rogatory commission must state:

The transferring authority and the authority to which it is addressed.

A sufficient exposition of the facts covered by the proceedings and an exposition of the grounds for the action.

The offence or offences being investigated or prosecuted together with a translated copy.

Whenever possible, the civil status, address and nationality of the persons affected by the measure and also detailed information concerning the assets affected by the action.

Article 3

If an action does not contain the requirements mentioned in Article 2, and depending on the nature of the shortcomings the bailiff may ask the authority of the claimant country to complete it or refuse the execution of the rogatory commission by motivated order and return the actions to the claimant party.

Article 4

In all cases, the judicial help is subject to the following preliminary conditions:

- a) The proceedings abroad must conform to the constitutional principles of the Principality, making reference to the rights and liberties guaranteed under Chapter III of Title II of the Constitution.
- b) The measure requested must not be contrary to the fundamental principles of the Andorran legal system.
- c) There must be sufficient reasons to ensure that the proceedings have not been taken against a person because of his or her political opinions, membership of a particular social group, race, religion or nationality.
- d) All the offences on which the rogatory commission are based must be criminally punishable as offences under Andorran law.
- e) The person who is the object of the action should not have been convicted by resolute sentence in the Principality and have completed the sentence, nor have been acquitted in Andorra for the same facts.
- f) The facts giving rise to the action should not be of a political nature nor should the action be taken for political purposes.

- g) The facts giving rise to the action, although constituting an offence under Andorran law, should be of sufficient importance as to justify the intervention of the institutions of the Andorran justice system.
- h) The communication of the information should not prejudice the sovereignty, the security, public order or other essential interests of the Principality.

Article 5

No information obtained from the Andorran authorities through judicial help may be used in the claimant state for purposes other than those that have been expressed in the rogatory commission, and more especially, should not be used for punishable offences or facts other than those that have been indicated and whose origin the Andorran judge has been able to evaluate in the context of Andorran law.

Article 6

Considering the nature of the request for help, the Andorran judicial authorities may condition their co-operation upon the claimant state previously offering guarantees to respect the principle laid down in article 5.

Article 7

If the act charged against a person is punishable under various criminal provisions of the law of the country making the request, the rogatory commission may only be executed using the aspects referring to the infractions for which there is no cause of inadmissibility in the context of the Law herein.

Article 8

In any case, in the opinion of the judicial authority it is possible to agree to judicial help with the agreement of the person being charged, when the requested acts are intended to acquit the person who has been charged.

Section 2. Procedure.

Article 9

It is the responsibility of the Ministry for Foreign Affairs to receive the petitions and to send them back as soon as they have been formalised. When the Ministry for Foreign Affairs receives a petition, it sends it to the President of the Bailiffs Court, sending a copy to the Attorney General's Office for purposes of formality.

Article 10

In cases of urgency, the petitions of the judicial authorities of the claimant state may be addressed to the Andorran judicial authorities, either directly, through diplomatic channels, or through the International Police Organisation (Interpol).

The Andorran judicial authorities return the rogatory commissions, whether they have been carried out or not according to the case, through the diplomatic channels and in urgent cases and without prejudice it may also be transferred through Interpol or handed over in person to the authorities of the claimant state which has expressly stated powers to this effect.

Article 11

When the purpose of the rogatory commission implies a summons to court as a defendant, expert or witness, the commission may be made directly by rogatory letters addressed to the bailiff, or by registered letter if the legislation of the claimant state so allows.

Article 12

Any person detained provisionally, or under arrest in Andorra, and whose appearance is requested by a foreign state to serve as a witness, may be transferred temporarily to the territory of that state, provided that the interested person agrees to this, and that his or her presence is not required in Andorra for reasons relating to criminal proceedings in progress, and the transfer does not cause unnecessary prolongation of his or her detention, and neither should there be practical reasons or reasons of substance to oppose it in the opinion of the Andorran judicial authority.

The Andorran judicial authorities may require guarantees for the return of the person whose appearance is required by the requesting state.

It is necessary to have the consent of the interested person as indicated in the provisions of article 207.3, paragraphs 1, 2 and 4 of the Code for Criminal Procedure.

Article 13

The rogatory commissions are carried out free of charge, except where a procedural requirement of the claimant state causes extraordinary expenses.

Article 14

Travel expenses and other concepts of the witnesses and those giving expert evidence, as well as the transfer charges outlined in article 12 are always the responsibility of the claimant state.

Section 3. Applicable law

Article 15

The procedures followed in compliance with the rogatory letters, rogatory commissions and other petitions must follow Andorran procedural laws. Requests for sittings must be received by the Andorran authority at least one month before the indicated date, except where there is a stated urgency.

Article 16

On the matter of oaths taken by witnesses and persons giving expert evidence who have been expressly requested by the claimant state, the promise will resemble the oath taken under Andorran law.

Article 17

The procedures followed by the judicial authority or any other evidence requested by a rogatory commission are issued as certified photocopies that have been authenticated by the Secretariat of the Bailiff, except in cases where a claimant state puts in a motivated request for the transfer of originals, to be considered by the bailiff.

Article 18

The Andorran judicial authority may allow the agents of the foreign authority to attend the execution of the rogatory commission.

Article 19

Notwithstanding the provisions of article 15, when a request mentions a procedural obligation required by the legislation of the claimant state, the Andorran judicial authority will satisfy this imperative provided the requested act does not go against the fundamental principles of Andorran law and there are no important practical reasons to oppose it.

This article applies to requests that require the presence of defence and prosecution counsel as well as a representative of the foreign Attorney General's office and the power to ask questions or counter-questions through the bailiff.

Section 4. Special procedure.

Precautionary measures

Article 20

At any moment during an internal procedure, the bailiff may adopt the resolutions that he or she considers necessary to guarantee the return of stolen objects and the preservation of evidence, and also to ensure the civil and criminal responsibilities arising from the offence.

At the petition of a foreign state which has commenced criminal proceedings and formulated a request for freezing, seizure or confiscation, the bailiff may also order the adequate precautionary measures, such as the blocking of accounts or preventive confiscation, prohibition of any operation or the alienation of any asset that may be subject to subsequent confiscation under Andorran or foreign legislation.

The Bailiff must notify the resolutions taken on matters concerning all affected persons within a maximum period of 30 working days and decide on the requests to lift the measures within a maximum period of fifteen working days after hearing the Attorney General and the parties. The decision of the bailiff may be appealed in keeping with the provisions of article 194 of the Code for Criminal procedure.

Article 21

At the request of the claimant state the instruments, objects, documents and securities may be embargoed by the Andorran judicial authorities and sent to the claimant state if conviction evidence is involved, or if there is an obvious interest in the criminal case being prepared abroad. The claimant state is informed previously that in all cases where the criminal proceedings lead to the filing or dismissal of the case, or the acquittal of the person concerned, these objects must be returned to their owners by the claimant state when the resolution closing the proceedings is established.

Article 22

Other objects, documents or securities resulting from a criminal infraction, including those for criminal proceedings brought abroad, may be returned immediately by the Andorran judicial authorities to their owners or holders.

Article 23

When any rogatory commission received by the Andorran judicial authorities leads to the appearance of assets, money or securities deriving from a criminal infraction or which do not have identified legitimate owners, the bailiff orders their preventive confiscation.

Article 24

In cases concerning the carrying out of a request for preventive confiscation resulting from open criminal proceedings, the Andorran judicial authorities may condition this measure to the confiscation not lasting more than a reasonable period, taking the seriousness of the infraction and the complexity of the affair into consideration, and the claimant state must be informed of the term set by the bailiff at the moment of the return of the rogatory commission, without this preventing the claimant state from requesting an extension of the term for serious reasons. In this case the bailiff takes the matter into account.

Reporting an offence or delegation of a criminal action.

Article 25

At the request of the state where a criminal infraction has been committed, the Andorran judicial authorities may commence criminal proceedings against any person responsible for the infraction, if the person suspected of the infraction is on Andorran soil and if the extradition of the person is not possible, or if the person has already been arrested in Andorra for more serious offences.

Article 26

In any case, the claimant state guarantee that it will not bring a criminal action for the same acts after a firm decision has been passed in Andorra; or else it must justify the existence of legal texts to this effect.

Article 27

The request of the claimant state is always sent through diplomatic channels, although if there is an urgency this should not prevent a copy being sent simultaneously to the Attorney General's Office together with the useful elements for the proceedings that are to be brought.

If the legal requirements coincide, the Attorney General then exercises the criminal action in conformity with the Code for Criminal Procedure, and if not, returns the request stating the reasons for refusal.

Article 28

Andorran criminal law is applicable to facts reported, and the sentences passed are those laid down in the Andorran Criminal Code.

Article 29

Under no circumstances may criminal proceedings be commenced or continued by delegation of another state if the person against whom the proceedings are addressed is in contempt of court.

Article 30

Where there is evidence of criminal behaviour for an offence committed in Andorra against a person who can not be located in the Principality, and especially when his or her extradition is not possible for reasons relating to the internal law of the foreign country, the Attorney General, with the prior agreement of the instructing bailiff, or if necessary, that of the appropriate Court, may send the action to the claimant state so that the person may be tried there.

C) Records of previous convictions

Article 31

At the request of the foreign judicial authorities, the Andorran judicial authorities issue certificates showing the records of previous convictions of persons residing in Andorra under the following conditions:

When the person has been tried or called to trial as a defendant

When the request is for an offence criminally punishable in Andorra

Where there is no reason to suppose an eventual infraction of the rights of the person as established under article 5 of this Law.

Where the record of previous convictions has not been subject to a judicial decision exempt from registration or cancellation.

Requests affecting the right to intimacy

Article 32

Rogatory commissions that refer to bank accounts and the interception of personal means of communication such as telephone or telewriters and other analogue means are executed by the competent Court bailiff, upon hearing the Attorney General, and following prior verification of the conformity of the request with Andorran law, without prejudice to the preservation of banking secrets.

Article 33

Requests must contain sufficient elements to indicate that the control that has been requested is legal under Andorran law, and the decision of the judicial authority of the claimant state ordering the measures mentioned in the previous article must be attached.

Article 34

In view of the object and the reasons for the request, and before communicating the recordings or transcriptions to the claimant state, the bailiff must destroy or cause to be destroyed by an agent of the judicial authority designated for that purpose, the parts of those recordings or transcriptions that are of no interest to the criminal proceedings for which the measures have been requested.

Article 35

If, in addition to the information that may be communicated abroad, a written document contains elements within the scope of the secrets contained in articles 190, 191 and 192 of the Criminal Code, the bailiff may make, or cause to be made by a judicial police agent delegated for that purpose, an authenticated copy or photocopy which should omit any indications that may

affect persons alien to the proceedings, or which may affect the person concerned, but which bears no relation to the request, provided they do not reveal criminal actions punishable under Andorran criminal law.

Enforcement of foreign sentences

Article 36

In the absence of a specific international treaty, foreign sentences passed by criminal courts are not enforceable in Andorra under any circumstances, and petitions for the enforcement in Andorra of criminal provisions of this type of sentences are not admitted except in the case of decisions involving the confiscation of the instruments or products of the offence that has been committed abroad which are located in Andorra, as provided for in Paragraph A of Chapter II.

Resources

Article 37

Any opposition or incident in the course of judicial help proceedings must be resolved immediately by writ of the judicial authority in charge of the measure. This writ is immediately enforceable, provided that in the opinion of the judge its enforcement does not bring about irreparable consequences such as the transfer of information abroad.

An appeal may be presented against this writ in the manner and terms outlined in article 194 of the Code for Criminal Procedure.

Chapter II. Special provisions on matters of criminality

A) Confiscation

Article 38

In cases of requests made by a foreign judicial authority for the confiscation of the instruments of the offence or their products, money, securities, or assets acquired with these or their equivalent as referred to in article 147 of the Criminal Code or deriving from any other major offence, the request is presented by the Attorney General's office to the Criminal Court, which after previously hearing the interested parties, decides by writ which may be appealed before the Superior Court of Justice.

The Tribunal may not revise or amend a foreign confiscation decision, although it must decide on the claims of bona fide third parties, which have not been decided upon in the aforementioned decision.

The same procedure applies generally, officially or at the petition of the claimant state to the assets, money or securities deriving from any criminal infraction that have no identifiable legitimate owners.

Article 39

Without prejudice to international conventions or agreements that provide to the contrary, the confiscation will always be to benefit of the state of Andorra.

B) Special forms of police co-operation

Article 40

Within the framework of international judicial co-operation, the bailiff may agree to the circulation or supervised entry of drugs or other products or objects as well as the participation of an undercover agent, under the terms described in the Code for Criminal Procedure.

Title II. Fight against money laundering and the financing of terrorism

Chapter III. Scope of application

Article 41

For the purposes of this Law, the following terms shall be understood as having the following meanings:

- a) The crime of money laundering or financing terrorism: the commission of any of the acts defined as such in the Criminal Code.
- b) FIU: *Unitat d'Intel·ligència Financera* – Financial Intelligent Unit of Andorra.
- c) Financial parties under obligation: natural and legal persons bound by the obligations set out in this Law and belonging to any of the following categories:
 1. Operative components of the financial system.
 2. Insurance companies authorised to operate in the life assurance sector.
 3. Money remittance institutions.

d) Shell bank: Credit entity, or an entity engaged in similar activities, incorporated in a country in which it has no physical presence that enables it to exercise true direction or management power, and that is not a subsidiary of a financial group regulated by legislation equivalent to this Law.

e) Politically exposed person: Individuals who carry out or have carried out prominent public functions, as well as their immediate family members and persons known to be close associates.

The scope of the terms “prominent public functions”, “immediate family members” and “persons known to be close associates” will be determined by regulation.

f) Fiduciary arrangement and company service suppliers: Any individual or legal person which by way of business provides any of the following services to third parties:

- forming companies or other legal persons
- acting as or arranging for another person to act as a director or secretary of a company, a member of an association, or a similar position in relation to other legal persons
- providing a registered office, business address, correspondence or administrative address
- acting as a contractual fiduciary agent (*fideicomisari*) in transactions involving contractual fiduciary arrangements (*fideicomisos*) and other fiduciary arrangements that are valid under Andorran law

g) True right-holder or beneficial owner: natural persons or individuals who ultimately control the customer and/or individual on whose behalf a transaction or activity is being conducted. The right-holder includes, at least:

- In the case of legal persons in the form of a company, the individual or individuals who ultimately control the legal person through direct or indirect ownership or control of a sufficient percentage of its shares or voting rights. For these purposes a percentage of over 25% will be considered sufficient.
- In the case of other legal entities, contractual fiduciary arrangements and other fiduciary structures which administer and distribute funds, the individual or individuals who control over 25% of the funds.

Article 42

Apart from the provisions specifically applicable to the parties under obligation pursuant to article 45, this law applies to all natural or legal persons whose economic activities may channel or facilitate a money laundering operation or terrorism financing.

Article 43

Any persons acting on behalf of third parties are obliged to find out the origin of the funds they receive, and the identity of their true right-holder, in order to avoid money laundering terrorism financing operations.

Article 44

The obligated financial parties must ensure that their branches, subsidiaries in which they hold majority interests and delegations located abroad that conduct commercial or financial transactions, apply measures equivalent to those provided in this Law for the prevention of money laundering and terrorism financing.

If there is a significant difference between Andorran regulations on money laundering and terrorism financing and those of another country, the entities mentioned in the previous paragraph must apply the more stringent regulations, provided that local law so permits.

In the event that the said entities cannot comply with the Andorran regulations on money laundering and terrorism financing due to incompatibilities with local rules, they must inform the FIU.

Article 45

The obligations defined in this Law are incumbent upon financial parties under obligation and other natural and legal persons who, in the exercise of their professions or business activity, undertake, control or advise on transactions involving cash or securities movements which could be used for money laundering or terrorism financing, and in particular:

- a) professional external accountants, tax advisers, auditors, economists and business agents (*gestories*)
- b) notaries, lawyers and members of other independent legal professions when they take part in assisting the planning or execution of transactions for their customers in the framework of the following activities:
 - a) buying and selling real property or business entities;
 - b) managing of customer money, securities or other assets;
 - c) opening or management of bank, savings or securities accounts;
 - d) organisation of contributions necessary for the creation, operation or management of companies;
 - e) creation, operation or management of companies, contractual fiduciary arrangements (*fideicomisos*) or similar structures; or when acting for their customers in financial or real estate transactions.

- c) sellers of high value goods, such as precious stones or precious metals, when payment is made in cash in an amount of EUR 30,000 or more, or the equivalent in any other currency.
- d) suppliers of services to companies, contractual fiduciary arrangements (*fideicomisos*) or any other legal structure not referred to in any other section of this article.
- e) gambling establishments
- f) real estate agents carrying out activities related to buying and selling property;

Notwithstanding the foregoing, the parties under obligation referred to in sections a) and b) of this article are not bound by the obligations established in this Law with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

Article 46

The parties under obligation must declare to the FIU, for the relevant purposes, any transaction or planned transaction relating to cash or securities that they suspect may involve an act of money laundering or terrorism financing. The declaration must be accompanied by all the necessary documentation.

Having made such declaration, the party under obligation must send the FIU any new information of which it becomes aware relating to the declaration.

Article 47

The obligation to declare must be met regardless of the country where the alleged crime of money laundering or terrorism financing has been committed or could have been committed, or where the funds come from or are destined.

The declaration must be made before the party under obligation has carried out the financial or economic transaction in question. In this case, if the FIU considers that there are sufficient indications, it will order the provisional suspension of the transaction.

The suspension may not exceed five days, which is the maximum term that the FIU has to clarify whether or not the indications have been proved and to authorise the execution of the transaction, or otherwise send the file to the public prosecutor's office (*Ministeri Fiscal*).

Under no circumstances will the FIU be liable for any loss or damage suffered as a result of the freezing of assets ordered in the ambit of its functions.

The issuance of a declaration of suspicion and of any other supplementary information will not entail any liability for the issuer, even when it is made without exact knowledge of the type of crime or illegal activity that has been committed.

The FIU will take all appropriate measures to protect the parties under obligation against any threat or hostile action arising from their compliance with the obligations imposed by this Law. In particular, the identity of the issuer of the declarations of suspicion will be kept confidential in all administrative and legal proceedings originating from or related to the declarations made.

Article 48

Under no circumstances can the person or persons affected by the declaration, or any third party, be informed of its existence, nor may they be given information as to the proceedings underway. Nor may they be informed of the existence or content of any type of communication from the FIU, unless the FIU has given express written consent to the same.

The managers, directors and employees of the financial parties under obligation must keep secret all information affecting their customers within the context of their activity. To this end, they must adopt all prudent and precautionary measures that are appropriate with a view to safeguarding customer confidentiality. A breach of the duty of professional privilege or secrecy in the employment context without legal cause is a crime in the terms defined in the Criminal Code.

The financial parties under obligation may only provide information regarding their dealings with customers in the framework of legal proceedings and upon written instruction from a judge in the cases specifically established in Andorran legislation.

The declaration of transactions that are suspected of involving money laundering or terrorism financing made to the FIU by the financial parties under obligation are not in any way incompatible with the obligation of preserving the duty of professional secrecy that protects the confidentiality of the financial affairs of their clientele. Consequently, the communication of information to the FIU exempts the parties under obligation and their personnel from any liability of any kind, both general and contractual, even when the notification of an illegal activity based on suspicions is not in fact confirmed.

The secrecy obligation mentioned in paragraph two of this article may not be argued as grounds to refuse information to the FIU. In the event a refusal or incident occurs in the performance of the FIU's investigations or the exercise of its prerogatives, the FIU submits the case to the duty magistrate, who will issue an immediately enforceable ruling thereon following a hearing to be held with the public prosecutor's office and the interested parties within 48 hours.

Article 49

Due diligence measures

1. The parties under obligation must also abide by the following obligations:
 - a) The parties under obligation must be particularly vigilant in relation to transactions which, although not suspicious, are typified as susceptible of involving money laundering or terrorism financing and classified as requiring special vigilance by the FIU in technical communiqués.
 - b) Deliver to the FIU all the information requested by that Unit in the exercise of its powers.
 - c) The parties under obligation must ascertain the identity of their customers and of their beneficial ownership by requiring them to present an official document when establishing any business relationship.
 - If the customer is an individual, the party under obligation must verify the customer's identity, address and professional activity. To this end, the customer must be asked to show an official identity document with a photograph, a copy of which must be kept.
 - If the customer is a legal person, the party under obligation must require:
 - * An authentic document accrediting its name, legal form, registered office and corporate purpose.
 - * Justification, in the same way as provided in section c)i. of this article, of the identity of the individual who, according to the documentation presented, has powers to represent the entity, and of the powers granted.
 - d) Obtain information on the purpose of the business relationship with the customer.
 - e) The data collected must be updated so that the customers can be correctly identified when establishing the business relationship or carrying out a transaction susceptible of involving money laundering or terrorism financing.
2. The parties under obligation will adopt the measures detailed in the previous section on customer due diligence, but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship, product or transaction. The parties under obligation must be in a position to demonstrate to the FIU that the extent of the measures adopted is appropriate in view of the risks of money laundering and terrorism financing.

3. The financial parties under obligation must adopt constant monitoring measures with regard to new technology in order to prevent any action that could lead to the false identification of the customer in transactions carried out at a distance.
4. Anonymous accounts and anonymous passbooks are prohibited.

Article 49 bis

1. The parties under obligation must diligently verify the identity of the customer and, if necessary, the beneficial owners, before establishing any business relationship or carrying out a transaction,
2. Notwithstanding what is established in paragraph 1, the identity of the customer and the beneficial owner may be verified after the first business relationship if this is necessary not to place obstacles to the carrying out of the transaction, provided that the risk of money laundering or terrorism financing is slight. The identification process must be conducted as soon as possible thereafter.
3. In the ambit of life assurance, the verification of identity can be done after the policy is contracted, provided that it is done before the payout or at the time the beneficiary intends to exercise rights vested under the policy.
4. Bank accounts may be opened prior to the identification of the customer provided that there are safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until the identification duties have been fully complied with.
5. Cross-border transfers for amounts of more than EUR 1,000 made by the financial parties under obligation must include full details of the ordering party. These details must include the following:

(a) the ordering party's name

(b) number of the account from which the transfer is made. In the absence of the account number, the financial party under obligation must accompany the transfer with a transaction identification number that allows it to be traced back to the ordering party.

(c) the ordering party's address. The address can be replaced by the ordering party's place and date of birth, customer number or national ID number.

In national transfers, regardless of the amount, the details to be provided can be limited to the number of the account from which the transfer is made or a transaction identification number, provided that the financial party under obligation executing the transfer can provide full details of the ordering party to the entity receiving the transfer or to the FIU within three working days.

The financial parties under obligation must duly inform the parties ordering the transfers about the data transfer rules before implementing the transfer orders.

The financial parties under obligation must adopt the enhanced due diligence measures referred to in article 49 fourth on the basis of a risk analysis when they are the recipients of transfers that do not include the information on the ordering party required by this article.

6. In the event that the customer cannot be identified in accordance with article 49, the financial parties under obligation may not establish a business relationship or carry out transactions for the customer.
In the case of relationships that have already started, the business relationship must be ended and consideration given to sending a communication to the FIU.
7. The financial parties under obligation must also follow the due diligence procedures with respect to existing customers, at the appropriate moment in terms of their risk analysis.

Article 49 third

Simplified due diligence measures

1. Notwithstanding what is established in the previous articles, the parties under obligation will not be bound by the obligations established in article 49 of this Law when the customer is a financial party bound by this Law, or a credit or financial entity established in an OECD country that imposes requirements equivalent to those of this Law and is supervised in order to guarantee compliance with these requirements.

2. Notwithstanding what is established in the previous articles, the financial parties under obligation will not be bound by the obligations established in article 49 in the following cases:

(a) Life assurance policies with annual premiums not exceeding EUR 1,000 or a single premium not exceeding EUR 2,500.

(b) Insurance policies for pension plans, provided that they do not include a surrender clause and they cannot be used as collateral for a loan.

(c) Pension and similar plans which include the payment of retirement benefits to employees, where the contributions are made by way of deductions from the salary and the rules of the plan do not permit the assignment of the participation in the plan.

(d) Electronic money when the maximum amount stored is not more than EUR 150, if not rechargeable, or the total amount available in any calendar

year is limited to EUR 2,500, except when the bearer demands the redemption of a sum of EUR 1,000 or more in the same year.

(e) Other products or transactions representing a low risk of money laundering or terrorism financing in accordance with the technical communiqués of the FIU.

Article 49 fourth

Enhanced due diligence measures

1. Besides the measures established in article 49, the parties under obligation must apply, in accordance with a risk analysis, enhanced due diligence measures in those situations which by their nature can represent a higher risk of money laundering or terrorism financing and at least in the following situations:

(a) When the customer was not physically present for identification, specific and adequate measures must be adopted to compensate for the increased risk, for example through one or several of the following measures:

- ensuring that the customer's identity is established by additional documents, data or information.

- adopting supplementary measures to verify or certify the documents supplied, or requiring a certificate of confirmation issued by a credit or financial entity subject to this Law or an entity from any OECD country that imposes equivalent measures to those of this Law and monitors fulfilment of the same.

(b) In cross-border correspondent banking relationships with respondent foreign entities, the Andorran credit entities must:

- gather sufficient information about the respondent entity to understand the nature of its activity and determine, from publicly available information, its reputation and the quality of its supervision.

- assess the respondent entity's anti-money laundering and anti-terrorism financing controls.

- obtain approval from management before establishing new correspondent banking relationships.

- document the respective responsibilities of each entity.

- with respect to payable-through accounts, there must be guarantees that the respondent credit entity has verified the identity of and performed ongoing due diligence on the customers who have direct access to the accounts of the correspondent Andorran entity.

(c) In relation to transactions or business relationships with politically exposed persons who reside abroad, the financial parties under obligation must:

- have appropriate risk-based procedures to determine whether the customer is a politically exposed person.

- obtain approval from management to establish business relationships with these customers.

- adopt adequate measures to determine the source of wealth and funds that are involved in the business relationship or transaction.

- conduct enhanced ongoing monitoring of the business relationship.

(d) Establishing or continuing correspondent banking relationships with shell banks is prohibited. Appropriate measures must be taken to ensure that no correspondent banking relationships are established or maintained with banks that are known to permit their accounts to be used by shell banks.

(e) Appropriate measures must be taken to prevent products or transactions that might favour anonymity being used for money laundering or terrorism financing purposes.

Article 49 fifth

1. The parties under obligation must adopt the necessary measures so that their personnel have sufficient knowledge of the legal provisions on the prevention of and the fight against money laundering and terrorism financing.

2. The parties under obligation must have specific ongoing training programmes for their personnel to help them to detect transactions that could be related to money laundering and terrorism financing.

3. The FIU, either through training programmes or through technical communiqués, informs the parties under obligation about the current practices of the perpetrators of money laundering and terrorism financing and about the indicators that lead to the detection of suspicious practices.

4. The FIU informs the parties under obligation, whenever possible, about the effectiveness and follow-up of their declarations of suspicions.

Article 50

For the purposes of complying with the obligations referred to in article 49 of this Law, the financial and non-financial parties under obligation may delegate their application to third parties under obligation. Nevertheless, the delegating party under obligation will continue to be responsible for compliance with these obligations.

Article 51

Without prejudice to compliance with the general rules on the obligation to keep accounting and contractual documents, the parties under obligation must preserve the documentation referred to in this article for a minimum period of five years, from:

- a) The date their commercial relations end with habitual customers.
- b) The date of a transaction carried out for occasional customers.
- c) The date on which any declaration of suspicion was made to the FIU.

These documents must include information on the customer's identity, the nature and date of the transaction, the currency, the amount of the transaction, and the purpose and intention of the commercial relationship with the customer.

The parties under obligation must ensure that this documentation and information is made available to the competent authorities as soon as it is requested.

The parties under obligation must also monitor the accuracy of the documents, information and any other details requested from their customers to comply with this Law.

Article 52

1. The financial parties under obligation must:

- a) Contract an independent external audit each year to verify compliance with this Law and send the FIU a copy of the report issued for this purpose.
- b) Appoint an internal control and communication body in charge of organising and monitoring compliance with the rules on the fight against money laundering and terrorism financing and notify this appointment to the FIU.
- c) Establish internal audit and control procedures.

The FIU will establish through technical communiqués the criteria to be followed in audits.

2. Non-financial entities under obligation that are legal entities must appoint an internal control and communication body in charge of organising and monitoring compliance with the rules on the fight against money laundering and terrorism financing and notify this appointment to the FIU.

Non-financial entities under obligation who are individuals that conduct activities which mean they must abide by this Law will be considered to be their own internal control and communication body.

3. Notwithstanding the previous section, the FIU, through a technical communiqué, may appoint the self-regulatory body or professional association of the profession concerned as the body to be reported to in first instance, instead of the FIU. In this case, the self-regulatory bodies must make the corresponding communications to the FIU.

Section seven. Body for the prevention of money laundering and terrorism financing

Article 53

1. The FIU is an independent body whose aim is to promote and coordinate measures for the prevention of money laundering and terrorism financing; its budget is funded by the State.

2. The FIU has the following examination, decision-making and proposal functions:

a) Directing and promoting prevention activities and those aimed at preventing entities in the financial system or of any other nature in the country being used for money laundering or terrorism financing, through the necessary instrumental procedures and technical rules. To that end, the FIU will issue technical communiqués that are of mandatory compliance.

b) Requiring information and documents from the parties under obligation to verify that this Law is being applied.

c) Carrying out *in situ* inspections to verify that this Law is being applied.

d) Requesting and obtaining from the competent legal authorities certificates of criminal records.

e) Collecting, gathering and analysing declarations from parties under obligation, as well as all written and verbal communications received, to evaluate the facts.

f) Requesting and obtaining information from the police and any official body within the scope of its aim.

g) Cooperating with other equivalent foreign organisations in accordance with the rules set out in section eight.

h) Sanctioning minor administrative infringements pursuant to this Law.

i) Sending the competent administrative authority the investigation dossiers in which facts have been uncovered that could constitute a serious or very serious administrative infringement, accompanied by a sanction proposal.

j) Submitting to the public prosecutor's office, for the appropriate purposes, cases in which there are reasonable suspicions that a criminal offence has been committed.

k) Filing the remaining cases and keeping the dossiers for a minimum of ten years.

l) Advising the financial system disciplinary body of all transfers of dossiers, be they to the public prosecutor's office or to the Government, when financial system entities are involved. This information must include the name of the financial entity, a list of the facts observed and the accounts listed in the dossier.

- m) Submitting legislative and regulatory proposals to the Government relating to the fight against money laundering and terrorism financing.
- n) Preparing sufficient statistics to be able to evaluate the effectiveness of the measures taken to prevent and fight against money laundering and terrorism financing.
- o) Appointing the self-regulatory body or professional association of a given sector as the body to be reported to in first instance by non-financial parties under obligation.

Article 54

The composition of the FIU is as follows:

- A maximum of three people of acknowledged standing in the financial sector who are appointed by the Minister of Finance.
- A judge appointed by the National Justice Committee (*Consell Superior de la Justícia*).
- A maximum of three members of the Police Service appointed by the Minister of the Interior following a proposal from the Director of Police.

The Interior and Finance Ministers jointly appoint the person with maximum responsibility from among the members of the FIU appointed by them.

The members appointed by the Minister of the Interior and the Minister of Finance must dedicate themselves full time to the functions entrusted to them, and they may not perform any other public or private activity. The judge, in addition to his or her own jurisdictional functions, has the following tasks in the FIU: oversees the legal integrity of the dossiers presented, facilitates contacts with the legal authorities and other judges, and sends the dossiers on suspicious transactions to the competent authorities.

The Government regulates the organisation and operation of the FIU.

The members of the FIU and its appointed administrative personnel are bound by the duty of professional secrecy and may be found guilty of the offences set out in article 226 of the Criminal Code, both during and after their relations with the FIU.

Section Eight. Co-operation between financial information units (FIU)

Article 55

The FIU co-operates with equivalent foreign bodies.

Article 56

Information concerning transactions, or projects for transactions related to money laundering and international crime, including extracts from the register of previous convictions, may be sent to equivalent foreign bodies by the FIU at its own initiative, or at the request of the foreign bodies, provided that the prior authorisation of the head of the FIU is obtained, and subject to the party receiving the information evidencing prior to receiving the information that it satisfies the following conditions.

- a) reciprocity in the exchange of information
- b) the receiving state must undertake not to use the information for any other purpose than that sought by this Law.
- c) the foreign services receiving the information are bound, under threat of criminal sanction, by the duty of professional secrecy.

Section Nine. Administrative responsibilities

Article 57

The administrative infringements and the serious and very serious sanctions established in this section are imposed by the Government acting pursuant to a proposal from the FIU.

Article 58

Infringements are classified as very serious, serious and minor as follows:

1. The following constitute very serious infringements:
 - a) the breach of the obligation to declare by parties under obligation
 - b) the infringement of the prohibition established in article 48
 - c) the refusal, giving of excuses and resistance to supply information to the FIU pursuant to article 49b, except in those situations covered by the last paragraph of article 45.
 - d) The repetition of a serious infringement in the same year
2. The following constitute serious infringements:
 - a) not verifying the identity of customers in the terms laid down in article 49, or not having requested the documents required under article 51.
 - b) failure to verify sufficiently the true beneficiary of a transaction pursuant to paragraph d of article 49 bis.
 - c) failure to keep documents for the period established in article 51

- d) not having adequate and sufficient internal control and internal communication procedures to prevent and impede money laundering and terrorism financing transactions, and not carrying out the specific audit established in article 52.
 - e) the repetition of a minor infringement in the same year
3. Minor infringements are:
- a) the failure to communicate the names of authorised persons to the FIU pursuant to article 52
 - b) any infringement of the provisions of this Law not covered in the previous paragraphs.

Article 59

The minor infringements are sanctioned with a written warning and a fine of between EUR 600 and EUR 6,000; serious infringements, with a prohibition on carrying out certain types of financial or commercial transactions and/or the temporary suspension of directors of the entity or the professional in question of between one and six months and a fine of between EUR 6,000 and EUR 60,000; very serious infringements carry a temporary suspension for the directors of the entity or of the professional involved of up to three years, or the definitive suspension of directors of the entity or of the professional concerned, and a fine of between EUR 60,000 and EUR 600,000.

In order to classify the sanctions within the established limits, account should be taken of the seriousness of the infringement, the lack of vigilance, the shortcomings or insufficiencies of the measures adopted and the intention or the degree of negligence involved.

Section ten. Additional rules.

Article 60

As a general rule, infringements prescribe after three years. If action is taken to conceal the infringements from the control bodies, they prescribe after ten years.

The prescription term starts on the date the infringement is committed. For infringements resulting from a continuous activity, the start date of the prescription period is that corresponding to the end of the activity or the last act constituting an infringement.

The prescription period is interrupted by the start of the sanction proceedings.

Additional article

Associations and other non-profit-making entities

1. The boards of associations that are subject to the Associations Law of 29 December 2000, and their personnel with management responsibilities, will make sure that they are not used to channel funds or resources to persons or entities related or linked to terrorist groups or organizations.

To this end, all associations will keep records of the identity of all persons that receive funds from the association for five years, as well as the registers referred to in article 28 of the Associations Law. These books and registers must be made available for inspection by the relevant persons from the Association Registry, and also by the administrative and judicial bodies competent in matters relating to the prevention of money laundering and terrorism financing.

2. The duties established in paragraph 1 above will also be applicable to foundations or other non-profit-making organizations, and in this case, it corresponds to the protectorate, patron or corresponding representative managing the interests of the entity to abide by these duties.
3. The obligations contained in this article can be developed further by a Government decree.

Final provision

This Law will come into force three months after its publication in the Official Gazette of the Principality of Andorra.