

## Act No. 253/2008 Coll.

June 5, 2008

### on selected measures against legitimisation of proceeds of crime and financing of terrorism

*as amended by:*

*- Act No. 285/2009 Coll., amending selected acts in relation to the adoption of the Act on Payment Transactions (in effect since November 1, 2009),*

The Parliament of the Czech Republic has adopted this Act:

#### PART ONE INTRODUCTORY PROVISIONS

##### Section 1

##### **Subject of Law**

This Act transposes the relevant European Community legislation<sup>1)</sup> and, in relation to the directly applicable European Community legislation<sup>2)</sup>, shall regulate the following:

- a) selected measures against legitimisation of proceeds of crime and financing of terrorism,
  - b) selected rights and responsibilities of natural and legal persons in enforcing measures against legitimisation of proceeds of crime and financing of terrorism,
- in order to prevent abuse of the financial system for the purposes of legitimisation of proceeds of crime and financing of terrorism and to create appropriate conditions to detect such activities.

##### Section 2

##### **Obligated Entities**

(1) For the purposes of this act, the obliged entity shall be understood as:

- a) a credit institution in a form of:
  1. a bank,
  2. a cooperative savings or credit union,
  3. an electronic money institution,
  4. an issuer of electronic money of small extent<sup>3)</sup>,
- b) a financial institution, which is an undertaking other than a credit institution, such as:
  1. the Central Depository, the entity maintaining a register related to the Central Register of Securities maintained by the Central Depository, the entity maintaining an independent register of investment instruments, the entity maintaining a register related to the independent register of investment instruments<sup>4)</sup>,
  2. an administrator of investment tools market,
  3. a person licensed to provide investment services<sup>5)</sup> with the exception of an investment broker<sup>6)</sup>,

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<sup>1)</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.  
Commission Directive 2006/70/EC of 1 August 2006, laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

<sup>2)</sup> Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community.

Regulation (EC) No 1781/2006 of the European Parliament and of the Council of November 15, 2006 on information on the payer accompanying transfers of funds.

<sup>3)</sup> No. 284/2009 Coll., the Payment Transactions Act.

<sup>4)</sup> Sections 91 to 115, Act No. 256/2004 Coll., on Enterprising on the capital market, as amended.

<sup>5)</sup> Section 4, Act No. 256/2004 Coll., as amended.

<sup>6)</sup> Section 29, Act No. 256/2004 Coll., as amended by Act No. 56/2006 Coll.

4. an investment company, an investment fund, or a pension fund,
  5. a payment institution, a provider of small extent payment services,
  6. a person authorized to provide or trade with leasing, guarantees, credit or loans,
  7. a person authorized to broker savings, leasing, credit or loans,
  8. an insurance or re-insurance company, an insurance agent or an insurance settlement agent performing activities related to life insurance<sup>7)</sup>, with the exception of an insurance agent whose liability for damage is borne by their contracting insurance company,
  9. a person authorised to buy and trade in debt and receivables,
  10. a person licensed to perform foreign currency exchange pursuant to the Foreign Currency Act,
  11. a person not mentioned in 1 to 10, licensed to provide or broker payment services or postal services intended to transfer funds,
  12. a person licensed to provide consultancy services to private business in matters concerning equity, business strategy, merge, or acquisition,
  13. a person providing services of financial brokerage,
  14. a person providing services of safekeeping of valuables,
- c) a holder of a licence to operate betting games in casinos in compliance with the Act on lotteries and other similar games,
- d) a legal or natural person authorised to act as a real estate trader or broker,
- e) an auditor, tax advisor, or chartered accountant,
- f) a licensed executor performing other activities of an executor pursuant to the Executor's rules of procedure as well as safekeeping of money, securities, or other valuables,
- g) a public notary providing notarized safekeeping services<sup>8)</sup>; a lawyer or a public notary offering the service of safekeeping money, securities, or other customer's valuables; or a lawyer or a public notary required by the customer to represent them or to act on their behalf in the following:
1. buying or selling real estate, business entity, or its part<sup>9)</sup>,
  2. managing of customer assets, such as money, securities, business shares, or any other assets, including representation of the customer or acting on their account in relation to opening bank accounts in banks or foreign financial institutions or establishing and managing securities accounts, or
  3. establishing, managing, or operating a company, business group, or any other similar entrepreneurial entity regardless of its status of a natural/legal person as well as receiving and gathering of money or other valuables for the purpose of establishing, managing, or controlling such entity, or
  4. providing services of collection, payments, transfers, deposits, or withdrawals in wire or cash transactions, or any other conduct aimed at or directly triggering movement of money,
- h) a person not regulated by para a) to g), providing the following professional services to another person:
1. establishing legal persons,
  2. acting as a statutory body or its member, or acting as person appointed to act in the name of or on behalf of a legal person, or another person in a similar position, should such service be only temporary and should it be related to establishing and administration of a legal person,
  3. providing a business location, address, and possibly other related services to another legal person,
  4. acting as an appointed shareholder on behalf of another person in case this person is not acting as a company whose securities have been accepted for trading at a regulated market and which is subject to information disclosure requirements equivalent to those laid down by the European Communities law, or
  5. acting in their name of or on their behalf in activities set forth in para g),
- i) a person providing services under para h) in a framework of a trust or any other similar contractual relationship under a foreign law,

<sup>7)</sup> Section 2, para (1v), Act No. 363/1999 Coll., on Insurance industry, as amended.

<sup>8)</sup> Section 81 an on, Act No. 358/1992 Coll., on Notaries and their activities (Notary Act), as amended.

<sup>9)</sup> Section 5, Commercial Code.

- j) a person licensed to trade in items of cultural heritage<sup>10)</sup>, items of cultural value<sup>11)</sup>, or to act as intermediary in such services,
- k) a person licensed to trade in used goods, act as intermediary in such trading, or receive used goods in pawn.

(2) In addition, an obliged entity is:

- a) a foreign legal or natural person as defined in para 1, operating in the territory of the Czech Republic via its branch or subsidiary; such person meets the definition of an obliged entity in the extent of activities performed by such branch or subsidiary,
- b) a foreign national operating in the territory of the Czech Republic should they perform activities set forth in para 1,
- c) the Securities Centre,
- d) entrepreneurs not listed in para 1, should they receive payments in cash in an amount of or exceeding EUR 15,000, or
- e) a legal person which is not a business should it be licensed to provide, in a form of a service, any of the activities stipulated in para 1, or should it receive payments in cash in an amount of or exceeding EUR 15,000.

(3) A person is not considered an obliged entity should it not perform activities stipulated in para 1 as a professional business activity, with the exception of a person listed in para 2(d).

### Section 3

#### Basic Definitions

(1) For the purposes of this Act, legitimisation of proceeds of crime shall mean an activity performed to conceal the illicit origin of proceeds of crime with the intention to present the illicit proceeds as legal income. The above activity may particularly be in the form of:

- a) conversion or transfer of assets, knowing that such assets come from criminal proceeds, for the purpose of concealing or disguising the illicit origin of the assets or of assisting a person involved in the commission of a predicate offence to avoid the legal consequences of such conduct,
- b) concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of assets, knowing that such assets derive from crime,
- c) acquisition, possession, and use or handling of assets knowing that they originate from crime,
- d) criminal association or any other type of cooperation serving the purpose of conduct stipulated in para a), b) or c) above.

(2) Financing of terrorism shall mean:

- a) gathering or providing financial or other assets knowing that such assets will be, in full or in part, used to commit a crime of terror<sup>12)</sup>, terrorist attack<sup>13)</sup>, or a criminal activity intending to facilitate or support such crime<sup>14)</sup>, or to support an individual or a group of individuals planning such crime, or
- b) acting with the intention to remunerate or compensate a person who had committed an act of terror, terrorist attack, or a crime intended to facilitate or support such crime<sup>14)</sup>, or to an individual close to such person as defined by the Criminal Code<sup>15)</sup>; or collecting assets to pay such remuneration or compensation.

(3) For the purposes of this Act, activities set forth in para 1 or 2 may, fully or partially, take place in the territory of the Czech Republic or, fully or partially, outside the territory of the Czech Republic.

<sup>10)</sup> Section 2, Act No. 20/1987 Coll., on Public protection of historical heritage.

<sup>11)</sup> Section 1, para 1, Act No. 71/1994 Coll., on Sale and exportation of items of cultural value, as amended by Act No. 80/2004 Coll.

<sup>12)</sup> Section 93, Criminal Code.

<sup>13)</sup> Section 95, Criminal Code.

<sup>14)</sup> Items 1 to 4, Council Framework Decision of June 13, 2002 on combating terrorism (2002/475/JHA).

<sup>15)</sup> Section 89, para 8, Criminal Code.

## Section 4

### Other Definitions

(1) For the purposes of this Act, a transaction shall mean any interaction of the obliged entity with another person should such interaction lead to attempted handling of the other person's property or providing services to such other person.

(2) For the purposes of this Act, a business relationship shall mean a relationship between the obliged entity and another entity established to handle assets of such other person or to provide services to such other person should it be obvious from the onset of the business relationship that such services will be provided repetitively.

(3) For the purposes of this Act, a customer's order shall mean any action made by the obliged entity to transfer or otherwise handle the customer's assets.

(4) For the purposes of this Act, the beneficial owner shall mean either:

- a) for an entrepreneur:
  - 1. a natural person, having real or legal direct or indirect control over the management or operations of such entrepreneur, indirect control shall mean control via other person or persons,
  - 2. a natural person, holding in person or in contract with a business partner or partners more than 25 per cent of the voting rights of such entrepreneur; disposing of voting rights shall mean having an opportunity to vote based on one's own will regardless of the legal background of such right or an opportunity to influence voting by other person,
  - 3. natural persons acting in concert and holding over 25 per cent of the voting rights of such entrepreneur, or
  - 4. a natural person, who is, for other reasons, a real recipient of such entrepreneur's revenue,
- b) for a foundation or a foundation fund:
  - 1. a natural person, who is to receive at least 25 per cent of the distributed funds, or
  - 2. a natural person or a group of persons in whose interest a foundation or a foundation fund had been established or whose interests they promote in case the beneficiary of such foundation or a foundation fund has not yet been determined,
- c) for an association under *lex specialis*<sup>16)</sup>, public service organization, or any other person and a trusteeship or any other similar legal arrangement under a foreign law, natural person who:
  - 1. holds over 25 per cent of its voting rights or assets,
  - 2. is a recipient of at least 25 per cent of the distributed assets, or
  - 3. in whose interest they had been established or whose interests they promote, should it yet to be determined who is their future beneficiary.

(5) For the purposes of this Act, a politically exposed person shall mean:

- a) a natural person in a prominent public position and with nation-wide responsibilities, such as a head of state, a head of government, a minister and deputy or assistant minister, a member of the parliament, a member of a supreme court, a constitutional court or another high-level judicial body, decisions of which are not subject to further appeal, except in exceptional circumstances, a member of a court of auditors or a central bank board, a high-ranking military officer, a member of an administrative, supervisory, or management board of a state-owned business, an ambassador or *chargé d'affaires*, or a natural person, having similar responsibilities on a Community or international level; all the above for the entire period of the position and for one year after the termination of such position, and provided the person:
  - 1. has residence outside the territory of the Czech Republic, or
  - 2. holds such important public position outside the Czech Republic,
- b) a natural person, who:
  - 1. is the spouse, partner equivalent to the spouse or a parent of the person under a),
  - 2. is a son or a daughter of the person under para a) or a spouse or a partner of such son or daughter (a son or daughter in law),

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<sup>16)</sup> Section 20f et seq., Civil Code.  
Act No. 83/1990 Coll., on Public associations, as amended.

3. is a business partner or a beneficial owner of the same legal person, a trust, or any other business entity under a foreign law, as the person under para a) or is known to the obliged entity as a person in a close business relationship with a person under para a), or
4. is a business partner or a beneficial owner of the same legal person, a trust, or any other business entity under a foreign law known to have been established in benefit of a person under para a).

(6) For the purposes of this Act, an identification document shall mean an identity card issued by the public administration and bearing the holder's name, surname, and date of birth together with an image and potentially other identification features allowing for the identification of the bearer as the true holder.

(7) For the purposes of this Act, correspondent banking shall mean the contractual relationship between a local credit institution or a foreign credit institution having a branch in the Czech Republic, and a credit or similar institution in a foreign country allowing the local credit institution, a foreign credit institution having a branch in the Czech Republic, or a credit or similar institution in a foreign country to make or to receive payments from abroad via the other contractual party.

## Section 5

### Identification Data

For the purposes of this Act,

- a) a natural person's identification data shall mean all names and surnames, a birth identification number (for a person with no birth identification number a date of birth), a place of birth, sex, permanent or other residence and citizenship; for a natural person as an entrepreneur it shall also mean the business name, an appendix to the business name or any other identification features, place of business, and business identification number,
- b) a legal person's identification data shall mean the company name, including its appendices or other identification features, company's official address, business identification number or a business identification number given under foreign law; for individuals acting as statutory bodies or their members, identification data shall mean the data under para a).

## Section 6

### Suspicious Transaction

(1) For the purposes of this Act, a suspicious transaction shall mean a transaction the circumstances of which lead to a suspicion of legitimisation of proceeds of crime or financing of terrorism or any other circumstance supporting such a suspicion, such as:

- a) cash deposits immediately followed by withdrawals or transfers to other accounts,
- b) numerous transactions performed in one day or in a short period of time and not typical for the given customer,
- c) a number of various accounts opened by the given customer which are in obvious discrepancy with their business activities and financial situation,
- d) transfers of assets make no obvious economic sense,
- e) assets handled by the customer which are in obvious discrepancy with their business activities and financial situation,
- f) an account which is not used for the purposes for which it had been opened,
- g) customer's actions which seem to aim at concealing their or the beneficial owner's real identity,
- h) the customer or the beneficial owner who are nationals of a country which does not enforce, or fails to fully enforce, measures to combat legitimisation of proceeds of crime and financing of terrorism, or
- i) customer's identification data the correctness of which the obliged entity has reasons to doubt.

- (2) A transaction shall always be perceived as suspicious, should:
- a) the customer or the beneficial owner be a person against whom the Czech Republic had imposed international sanctions under the Act on Implementation of International Sanctions<sup>17)</sup>,
  - b) the goods or services involved in the transaction fall in the category against which the Czech Republic had imposed international sanctions under the Act on Implementation of International Sanctions<sup>17)</sup>, or
  - c) the customer refuses to reveal identification data of the person they are representing or to undergo the due diligence process.

## PART TWO RESPONSIBILITIES OF THE OBLIGED ENTITIES

### CHAPTER I CUSTOMER IDENTIFICATION AND DUE DILLIGENCE

#### Section 7

#### **The Identification Requirement**

(1) The obliged entity, should it be a party to a transaction exceeding EUR 1,000, shall always identify the customer prior to the transaction, unless stipulated otherwise by this Act.

(2) The obliged entity shall, without regard to the limit stipulated in para 1, always identify the customer in case of:

- a) a suspicious transaction,
- b) an agreement to enter into a business relationship,
- c) an agreement to establish an account; an agreement to make a deposit into a deposit passbook or a deposit certificate; or an agreement to make any other type of deposit,
- d) an agreement to use a safety deposit box or an agreement on custody,
- e) a life insurance contract, should the customer have a right to pay extra premiums above the agreed limit of the one-of or regular premium payments,
- f) a purchase or reception of cultural heritage, items of cultural value, used goods or goods without a receipt of to further trade in such goods, or reception of such items as pawn, or
- g) withdrawal of a cancelled bearer passbook's final balance.

(3) The obliged entity shall, at the latest on the day of the payment, identify the individual entitled to receive the life insurance settlement.

#### Section 8

#### **Identification**

(1) The obliged entity shall perform the initial identification of a customer who is a natural person as well as any natural person acting on behalf of a customer in personal presence of the identified, unless stipulated otherwise by this act.

(2) When identifying a customer who is:

- a) a natural person, the obliged entity shall take identification data of such customer, verify those which are on their identity card, take a record of the type and number of the identity card, country of issue, validity, and, if possible, the issuing body, and make sure that the identity card photo matches that of the holder,
- b) a legal person, the obliged entity shall take a record of and verify such customer's identification data from their business registration documents, and, to the extent stipulated in para a), identify the natural person acting in the transaction on behalf of such legal person; should the statutory body, its member, or the person in control of such legal person be another legal person, the obliged entity shall also record such person's data.

(3) Should the customer be represented by a holder of a power of attorney, such holder's identification shall follow the procedure stipulated in para 2 and the holder shall submit the

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<sup>17)</sup> Section 2, Act No. 69/2006 Coll., on International Sanctions.

respective power of attorney; no power of attorney is required should the holder of a power of attorney be solely depositing cash to the customer's account and submitting to the obliged entity deposit forms that had been completed and signed by an authorized person.

(4) Should the customer be represented by a guardian, such a guardian ad litem shall be identified in accordance with para 2. The guardian ad litem shall present identification data of the represented entity.

(5) In a transaction with a customer, who had already been identified in line with para 2, the obliged entity shall properly verify the identity of the acting natural person. The obliged entity may identify such person even if the customer who is a natural person or the natural person acting on behalf of a legal person is not present.

(6) The obliged entity shall, when in business relationship with the customer or in further transactions, check the validity and completeness of the customer's identification data, information gathered in the course of the due diligence process (Section 9), or reasons for exempting the customer from the due diligence process (Section 13), and shall take record of any changes and modifications.

(7) Should the obliged entity detect or suspect that a party to the transaction is not acting on their own behalf or is attempting to conceal their acting for a third party, it shall require the customer to submit a power of attorney as stipulated in para 3. Everyone is obliged to honor such a request unless stipulated by *lex specialis*. Lawyers or notaries may fulfill this obligation by submitting to the obliged entity copies of the relevant parts of the documents which they had used to gather the identification data.

(8) The customer shall submit to the obliged entity any information necessary to perform identification and to check respective documents. The obliged entity may, for the purpose of this Act, make copies or excerpts from any of the above and process such information to enforce this Act.

## Section 9

### **Customer Due Diligence**

(1) The obliged entity shall, prior to a single transaction amounting to EUR 15,000 or more, a transaction subject to identification under Section 7(2) (a) to (d), a transaction with a politically exposed person, and as part of the business relationship, perform the customer due diligence process. The customer shall submit to the obliged entity any information and documents necessary for the due diligence. The obliged entity may, for the purpose of this Act, make copies or excerpts from any of the above and process such information to enforce this Act.

(2) a customer due diligence process entails the following:

- a) collection of information on the purpose and intended nature of the business or business relationship,
- b) identification of the beneficial owner, should the customer be a legal person,
- c) collection of information necessary for ongoing monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions are consistent with the institution's knowledge of the customer, its business and risk profile,
- d) scrutinizing of the sources of funds.

(3) The obliged entity shall perform customer due diligence under para 2 to the extent necessary to determine the potential risk of legitimisation of proceeds of crime and financing of terrorism depending on the type of customer, business relationship, product, or transaction. The obliged entity shall, vis a vis the persons empowered to supervise compliance of obligations under this Act (Section 35), justify the scope of customer due diligence or exception from the customer identification and due diligence requirements under Section 13, all the above with respect to the above risks.

## Section 10

### **Customer Identification Performed by a Public Notary, or by Regional or Municipal Authority**

(1) Should the initial customer identification by the obliged entity under Section 8(1) be, for serious reasons, impossible, such identification may be, upon request of either the customer or the obliged entity, performed by a public notary, a regional office, or a local authority in a municipality with extended powers.

(2) A public notary or an office in para 1 shall take a record of such identification; the record deed, which becomes an official document, shall include the following:

- a) the name of the person performing the identification, name of the requesting person, and purpose of such identification,
- b) customer's identification data,
- c) a declaration of the identified natural person, the person acting on behalf of the identified legal person or a proxy, on the purpose and correctness of the identification performed, and/or on reservations to such identification,
- d) the place and date of the record and the place and date of the identification, should they differ,
- e) the signature of the identifying person, an official stamp, and a serial number in the log of identification deeds.

(3) As an appendix to the identification deed, the obliged entity shall make copies of relevant parts of documents used for the identification and bearing identification data, type and serial number of the identity card, issuing country and institution, and validity as well as, with requests filed in writing, a copy of the request. Should this procedure be used to identify a proxy, the power of attorney or its certified copy shall be attached as an appendix. All appendices shall be attached to the identification record to make a complete file.

(4) All copies shall be legible and capable of storage for the period stipulated in Section 16. The file of copies shall include a copy of the image of the identified person in their identity card which allows for visual identification.

(5) Both public notary and an institution under para 1 shall keep an internal log of identification deeds, in which it shall document the following:

- a) a serial number and date of the record,
- b) the following identified person's data:
  1. a natural person or persons acting on behalf of the identified legal person,
  2. in case of an identification of a legal person, its business or corporate name, an appendix to the business name or any other identification features, a business identification number, and a registered address,
- c) the purpose of identification.

(6) The identification deed log shall be kept on a calendar year basis and complete logs shall be stored for a period of 10 years.

## Section 11

### **Transfer of Identification**

(1) The obliged entity may decide not to identify a customer or seek information on the purpose and nature of a transaction or a business relationship under Section 9(2) (a) and to identify a beneficial owner under Section 9(2) (b), provided these steps have already been performed by:

- a) a credit or financial institution, with the exception of a person licensed to perform foreign currency exchange pursuant to the Foreign Currency Act, a holder of a postal licence pursuant to Act on Postal Services, a payment institution whose activity consists usually of providing payment services where for such transfer of funds neither the payer nor the payee use any account with the payment service provider of the payer, and a payment service provider of small extent pursuant to Payment Act, or
- b) a foreign credit or financial institution, with the exception of a foreign person licensed to exchange foreign currency, foreign payment institution primarily providing transfers of funds, or a foreign provider of payment services having a similar status as the provider of small extent as

regulated by the Payment Act, should it be located in the territory of a country, which enforces equivalent identification, customer due diligence, and record keeping requirements and should it be subject to compulsory business licensing or registration and supervision to perform on and off-site control of its general performance as well as of its individual transactions.

(2) The obliged entity acting in accordance with para 1 shall make sure that it will receive, from the credit or financial institution, or a foreign credit or financial institution which had performed the identification, all relevant documents, including copies of all documents used in the customer identification, all data indicating the purpose and nature of the business transaction, and information on the identity of the beneficial owner. The credit or financial institution shall, upon consent of the person identified and without undue delay, submit all information including copies of the document hereinabove, to another obliged entity should such person decide to rely on it for the customer identification.

(3) The obliged entity shall refuse such customer identification information, data indicating the purpose and nature of the business transaction, and information on the identity of the beneficial owner under para 1 and 2, should it have a reason to doubt the correctness or completeness of such information.

(4) In case of a remote agreement on financial services under the Civil Code, the obliged entity shall identify the customer as follows:

- a) the first payment from this agreement shall be made via an account kept on the customer's name in a credit institution or a foreign credit institution operating in the European Union or the European Economic Area,
- b) the customer shall submit to the obliged entity a copy of a document verifying the existence of an account under para a) above together with copies of the relevant parts of their identity card and at least one more identification document from which the obliged entity may determine the customer's identification data, type and serial number of such identity cards, issuing country or institution, and validity. Such copies shall be made in line with requirements under Section 10(4).

(5) The credit or financial institution is not obliged to perform the customer identification and seek data indicating the purpose and nature of the business transaction under Section 9(2) (a) and information on the identity of the beneficial owner under Section 9(2) (b) should these steps had been performed prior to the transaction by a person acting on its behalf and on its account and bound by its internal regulations, and should such credit or financial institution bear responsibility for damages caused by such person. All information including copies of documents under the first sentence hereinabove shall be, if made, kept at the obliged entity.

(6) The credit or financial institution, when providing investment services, is not obliged to perform the customer identification and seek the data indicating the purpose and nature of the business transaction under Section 9(2) (a) and information on the identity of the beneficial owner under Section 9(2) (b) should these steps had been performed by an investment broker in line with this Act and its internal regulations. The obliged entity shall bear responsibility for such steps as if it had performed such steps itself.

(7) In cases under para 1, 4, 5 and 6, the obliged entity shall verify that all conditions required had been met and that none of the customers, products, or transactions represent a risk of legitimisation of proceeds of crime or financing of terrorism. In case of doubt, no exceptions shall be applied.

## Section 12

### **Common Provisions on Identification under Section 10 and Section 11**

In case of identification and other steps under Section 10 or Section 11(4) and 11(6), all identification data and other information and documents listed therein shall be deposited with the obliged entity prior to the transaction.

## Section 13

### Exceptions from the Identification and Due Diligence Requirement

(1) The obliged entity is not obliged to perform any identification or due diligence should the customer be:

- a) a credit or financial institution,
- b) a foreign credit or financial institution operating in the territory of a country imposing and enforcing anti-money laundering and financing of terrorism measures equivalent to those imposed by the European Communities *acquis*<sup>1)</sup> and supervised to that respect,
- c) a company whose securities are traded at a regulated market and which is subject to reporting requirements equivalent to those enforced by the European Communities *acquis*,
- d) a beneficial owner of assets deposited with a public notary, lawyer, licensed executor, or court,
- e) a central Czech public authority, the Czech National Bank, or a higher self-governing territorial entity, or
- f) a customer:
  1. holding important public positions under the European Communities *acquis*,
  2. whose identification data are publicly available and there is no reason to doubt their correctness,
  3. whose activities are transparent,
  4. whose books show a true and real picture of their accounting and financial situation,
  5. who is accountable either to a European Union body or bodies of a European Union or European Economic Area member state and who is subject to other relevant control mechanisms.

(2) The obliged entity is not obliged to perform any identification or due diligence should the product involved be:

- a) a life insurance agreement or government subsidized pension insurance contract and should its one-off premium or deposit be below EUR 2,500 or should the annual premium or the total of regular premiums in a calendar year be below EUR 1,000,
- b) employee pension insurance operated in the territory of the Czech Republic by institutions registered in the European Union or European Economic Area member state under their law<sup>18)</sup>, should the premiums be paid as direct wage deductions and there is no option to assign the member's interest within the given system,
- c) electronic money under other law<sup>19)</sup>, should the highest sum deposited to a non-rechargeable electronic money device not exceed EUR 150, or, with rechargeable electronic money devices, should there be an annual limit of EUR 2,500, with the exception of cases when the owner converts back, in a calendar year, more than EUR 1,000, or
- d) other products, should they pose low risk of abuse for the purposes of legitimisation of proceeds or financing of terrorism and meet the following conditions:
  1. are accompanied by a written contract,
  2. payments are made solely via an account held on the customer's name at a credit institution or a foreign credit institution operating in the territory of a country imposing and enforcing anti-money laundering and financing of terrorism measures equivalent to those imposed by the European Communities *acquis*<sup>1)</sup> and supervised to that effect,
  3. the product or individual payments are not anonymous and are transparent enough to readily detect a suspicious transaction,
  4. the product has a pre-set maximum value of transaction, which does not exceed EUR 15,000; savings products do not exceed the sum of EUR 2,500 in a single deposit or a total of EUR 1,000 in regular deposits,
  5. the final product balance cannot be transferred to a third party, with the exception of death, disability, certain contractually stipulated age limit, or other,
  6. the final balance of products allowing for investments into equity or receivables, including insurance or other types of conditional receivables, may be transferred only after a long

<sup>18)</sup> Act No. 340/2006 Coll., on Employee pension insurance companies registered in the EU and operating in the territory of the Czech Republic and on the amendment of Act No. 48/1997 Coll., on Public medical insurance, as amended.

<sup>19)</sup> Act No. 124/2002 Coll., as amended.

period of time, cannot be used as guarantee, speeding up of payments is not allowed, there are no provisions on withdrawal and in the course of the business relationship there is no move possible for its preliminary termination.

(3) In cases stipulated in para 1 and 2 above, the obliged entity shall verify that all conditions required had been met and that based on the information available to the obliged entity none of the customers, products, or transactions represent a risk of legitimisation of proceeds of crime or financing of terrorism. In case of doubt, no exceptions under para 1 and 2 above shall be applied.

(4) No exceptions under para 2 shall be applied to a customer, who is a politically exposed person.

#### Section 14

### **Exception from the Obligation to Record Information on the Payer in Connection with Transfers of Funds**

Obligations under the directly applicable European Communities Regulation stipulating the obligation to accompany transfers of funds with information on the payer<sup>20)</sup> shall not apply to those payment services or transfers of funds which are used to make payments for goods and services provided that:

- a) the transaction is made in the Czech Republic,
- b) the payment service provider is always able to determine, via the payee, the individual payer and the reason for payment,
- c) the transferred sum does not exceed EUR 1,000.

#### Section 15

### **Rejection of Transaction**

(1) The obliged entity shall refuse to make a transaction or to enter into a business relationship should there be an identification requirement under Section 7(1) or 7(2) and should the customer refuse the identification process or fail to submit the power of attorney under Section 8(3), should they fail to assist the due diligence process under Section 9, should the customer identification or due diligence be impossible for other reasons, or should the person performing the customer identification or due diligence have a reason to doubt the correctness or authenticity of documents submitted.

(2) The obliged entity shall refuse a transaction for a politically exposed person should the origin of assets used in the transaction be unknown.

(3) No employee of the obliged entity shall make a transaction for a politically exposed person without consent of their direct supervisor or the statutory body of such obliged entity.

## CHAPTER II RECORD KEEPING

#### Section 16

### **Obliged Entity's Record Keeping**

(1) The obliged entity shall, for the period of 10 years after having terminated its business relationship with the customer, keep record of all identification data taken under Section 8(1) and 8(2) or in accordance with the directly applicable European Communities Regulation stipulating the obligation to accompany transfers of funds with information on the payer<sup>20)</sup>, copies of documents submitted for identification (if any), records of the first identification (name and date), documents justifying potential exception from identification and due diligence under Section 13, and, in case of representation, the original or a certified copy of the power of attorney.

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<sup>20)</sup> Regulation (EC) No 1781/2006 of the European Parliament and the Council.

(2) The obliged entity shall, for the period of 10 years after the transaction or after having terminated its business relationship with the customer, keep record of all data and documents on transfers requiring identification.

(3) The obliged entity stipulated in Section 2(1j) and 2(1k) shall keep record of all data and documents for the period of at least 10 years after the transaction or after having terminated its business relationship with the customer should such transaction or relationship reach or exceed EUR 10,000; in other cases it shall keep its records for a period of 5 years.

(4) The statutory period under para 1 to 3 shall commence on the first day of the calendar year following the calendar year in which the obliged entity performed the last transaction.

#### Section 17

### **Cooperation in Record Keeping**

Should more obliged entities take part in a single customer transaction, the record keeping may be shared. Data under Section 16 may be kept by one of these obliged entities provided the other involved obliged entities have access to all necessary information including copies of all documents.

## CHAPTER III SUSPICIOUS TRANSACTION

#### Section 18

### **Suspicious Transaction Report**

(1) Should the obliged entity, in the course of its activities, detect a suspicious transaction, it shall, without undue delay and no later than 5 days after such detection, report such suspicious transaction to the Ministry of Finance (hereinafter the "Ministry"). Should circumstances require so, in particular should there be a danger of delay; the obliged entity shall submit a suspicious transaction report to the Ministry immediately after having uncovered such suspicious transaction.

(2) In its suspicious transaction report, the obliged entity shall report the identification data of the person concerned, identification data of all the parties to the transaction, available to the obliged entity upon the disclosure, information on all relevant features of the transaction and any other facts which may be important for an analysis of the suspicious transaction and potential application of measures against legitimisation of proceeds from crime and financing of terrorism.

(3) The suspicious transaction report shall not reveal any information about the obliged entity's employer or contractor who had identified the suspicious transaction.

(4) The Ministry shall receive the suspicious transaction report via the Financial Analytical Unit, which is a part of the organizational structure of the Ministry. In a remote-access fashion, the Ministry shall inform all obliged entities about its mailing address and other channels to be used to submit suspicious transaction reports.

(5) Should the suspicious transaction report under para 2 also concern assets which are subject to international sanctions declared with the purpose of keeping or building international peace and security, the obliged entity shall notify the authorities of such facts in the suspicious transaction report. The suspicious transaction report shall include a short description of given assets, information on its location and owner, should they be known to the disclosing entity, together with information on whether there is an immediate risk of damage,

(6) The disclosing entity shall communicate to the receiving authority the name, surname, and position of the contact person (Section 22) or the person who, on behalf of the contact person, drafted the suspicious transaction report, together with relevant telephone numbers or email addresses.

(7) Should a suspicious transaction be disclosed simultaneously by more obliged entities based on the information sharing provision under Section 39(2), the reporting obligation under para 2 to 4 shall be regarded as fulfilled by all obliged entities once at least one of them submits its suspicious transaction report listing the other obliged entities on whose behalf it reports.

## Section 19

The suspicious transaction report may be submitted in writing via registered mail or orally in the form of a recorded statement at a previously agreed place. Suspicious transaction reports may also be submitted via the electronic mail provided the data transferred is properly protected.

## Section 20

### **Suspension of a Transaction**

(1) Should there be a danger that an immediate execution of a transaction would hamper or substantially impede securing of proceeds of crime or money intended for financing of terrorism, the obliged entity may execute the customer's transaction recognized as suspicious no earlier than 24 hours after the Ministry had received the suspicious transaction report. The obliged entity shall make sure that the respective assets will not be handled in violation of this Act. The obliged entity shall inform the Ministry in the suspicious transaction report that the transaction has been suspended.

(2) The para above shall not be enforced, should the suspension of the customer's transaction be rendered impossible, especially in transactions made via electronic means of payment, or should the obliged entity be aware of the fact, that suspension would hamper or otherwise pose a threat to the investigation of such suspicious transaction. The obliged entity shall inform the Ministry of such transaction immediately after it has been made.

(3) Should there be a threat under para 1 and the investigation of such suspicious transaction requires a longer period of time, the Ministry shall decide:

- a) to extend the period of suspension of the customer's transaction for no more than 72 hours after having received the suspicious transaction report, or
- b) to suspend the customer's transaction or to freeze the assets in such transaction for 72 hours in the obliged entity where the assets are located.

(4) The decision on suspension of a customer's transaction or on freezing of assets under para 3 shall become binding upon its declaration. The declaration is either oral, or by means of a telephone, fax, or electronic mail, all the above must be followed by a hard copy. There is no appeal against a decision on suspension of a customer's transaction or on freezing of assets and the only party to the proceedings is the obliged entity disclosing the suspicious transaction or holding the assets believed to be involved in such a transaction.

(5) The obliged entity shall notify the Ministry of the enforcement of its decision under para 3(b) and of the time of commencement of the period under para 3(b). The obliged entity shall inform the Ministry of all important facts related to the assets concerned.

(6) Should the Ministry not inform the obliged entity, prior to the end of the period under para 3, about having filed a criminal complaint, the obliged entity shall release and execute the transaction.

(7) Should the Ministry file a criminal complaint in the period stipulated in para 1 or 3 to the law enforcement body as stipulated in Section 32(1), the obliged entity shall perform the transaction in 3 calendar days after the criminal complaint had been filed unless the law enforcement bodies have decided to seize such transaction. The Ministry shall inform the obliged entity of the criminal complaint prior to the expiration of the period under para 1 or 3.

## CHAPTER IV ADDITIONAL OBLIGATIONS OF OBLIGED ENTITIES

### Section 21

#### **Internal Procedure**

(1) To fulfill the obligations under this Act, the obliged entity shall establish and enforce adequate and appropriate procedures of internal control and communication.

(2) The obliged entity mentioned in Section 2(1a), (1b) to (1d), (1h) and (1i) shall create, to the extent of its activities regulated by this Act, written internal procedures, policies and compliance checks to fulfill its obligations under this Act (hereinafter only „internal procedures“).

(3) The obliged entity mentioned in Section 2(1b) to (1d), (1h) and (1i) may decide not to create any written internal procedures provided, in the scope of activities regulated by this Act, it does not employ or contract any other persons.

(4) The obliged entity mentioned in Section 2(1b) to (1d), (1h) and (1i) contracted by another obliged entity to perform services regulated by this Act, is not obliged to have its own internal procedures provided it enforces internal procedures of the other obliged entity which adequately describe its activities.

(5) Internal procedures under para 2 shall include the following:

- a) a detailed checklist of suspicious transaction indicators relevant for the given obliged entity,
- b) a description of customer identification, including provisions to determine a politically exposed person and to recognize entities subject to international sanctions under the Act on Implementation of International Sanctions,
- c) a description of the customer due diligence process and the system of determining the scope of such due diligence based on the type of customer and the nature of the business relationship, product, or service and the respective risk of legitimisation of proceeds of crime and financing of terrorism,
- d) adequate and relevant methods and procedures to assess and manage risks and perform internal controls and supervision of compliance with this Act,
- e) a procedure for reporting of data kept under Chapter II to the relevant authorities,
- f) a description of steps taken by the obliged entity from the moment of the disclosure of the suspicious transaction to its reporting to the Ministry so that the statutory period under Section 18 (1) is complied with and so are rules of processing such suspicious transaction and appointment of persons to evaluate the transaction,
- g) rules and procedures regulating the performance of persons offering services or products on behalf of or on the account of the obliged entity,
- h) measures to prevent any immediate carrying out of a customer order which may substantially hamper or even render impossible the subsequent seizure of proceeds of crime,
- i) logistical and HR measures to defer the customer order under Section 20 and to comply, in a statutory period, with all obligations under Section 24,
- j) a description, in cases regulated by Section 25(4), of additional measures taken for the purpose of efficient management of risk of legitimisation of proceeds and financing of terrorism.

(6) A credit institution, financial institution under Section 2, (1) (b), points 5, 6, 10, and 11, and an obliged entity under Section 2(1) (c) shall submit their internal procedures to the Ministry within 60 days after having become an obliged entity. Changes of internal procedures shall be submitted to the Ministry in writing within 30 days after adoption. An obliged entity under Section 2, (1) (b), point 1 to 4 shall report to the Czech National Bank.

(7) A foreign credit or financial institution operating in the territory of the Czech Republic via its branch or a subsidiary may opt not to have separate internal procedures provided that operations of the branch or subsidiary are regulated by internal procedures of the mother foreign credit or financial institution; such internal procedures shall meet requirements at least equivalent to those stipulated by this Act and shall be available in Czech.

(8) Should the Ministry or the Czech National Bank reveal any deficiencies in the internal procedures submitted in accordance with para 6, they shall set a date for correction. The obliged entity shall, within the prescribed period, remove the deficiencies and report its steps in writing to the above authorities.

(9) An implementing regulation has been adopted determining, in accordance with para 5(c) and 5(d), requirements for implementing and enforcing internal procedures by selected obliged entities supervised by the Czech National Bank<sup>21)</sup>.

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<sup>21)</sup> Section 44, Act No. 6/1993 Coll., on the Czech National Bank, as amended.

## Section 22

### **Contact Person**

(1) The obliged entity shall appoint one of its employees to report under Section 18 and to maintain regular contacts with the Ministry, unless it is decided to entrust such responsibilities on its statutory body. The Ministry shall be, with no undue delay, notified of such appointment and informed of the name, surname, position, and telephone number and email address of the appointee.

(2) No credit or financial institution shall appoint a member of its statutory body as a contact person unless it was necessary with regards to its size, management structure, or number of employees.

(3) No credit or financial institution shall appoint as a contact person a member of staff responsible for performing or settlement of its transactions or an employee participating in the performance of internal audit.

(4) The obliged entities which decide not to entrust the contact responsibilities on its statutory bodies shall provide for a direct contact in between the appointed contact person on one side and its statutory and supervisory bodies on the other.

## Section 23

### **Staff Training**

(1) The obliged entity shall organize, at least once every 12 calendar months, training of all members of its staff who may, in the course of their professional obligations, come in contact with suspicious transactions. All appointees to such positions shall be trained prior to taking their appointment.

(2) The obliged entity shall provide the training under para 1 above to all its contractors who may, in the course of their activities, come in contact with suspicious transactions.

(3) The training shall concentrate on types and features of suspicious transactions and steps to be taken in detecting such transactions. The obliged entity shall regularly update such training.

(4) The obliged entity shall keep record of participants and training agenda for a period of at least 5 years.

## Section 24

### **Obligation to inform**

The obliged entity shall, upon request and within a given period of time, report to the Ministry all information on transactions requiring identification or transactions investigated by the Ministry together with documentation and information on persons taking part in such transactions. Should the Ministry request so, the obliged entity shall provide access to documentation on site.

## CHAPTER V

### SPECIAL PROVISIONS RELATING TO SELECTED OBLIGED ENTITIES

## Section 25

### **Special Provisions Relating to Credit and Financial Institutions**

(1) A credit institution shall not enter into a corresponding bank relationship with a foreign credit or similar institution (hereinafter a "correspondent institution")

- a) which is incorporated in the commercial or similar register in a country where it does not have a physical presence and its management is not physically located in that country, and which is not affiliated with any regulated financial group;
- b) which is known for allowing the use of its account by an institution referred to in para a) above, or

c) which does not apply measures against legitimisation of proceeds of crime and financing of terrorism of the standard that is at the least required by the law of the European Communities<sup>1)</sup>, and, if it had already entered into such a relationship, it must terminate it in the shortest practicable period.

(2) Prior to entering into a corresponding bank relationship with a correspondent institution, the credit institution shall

- a) accumulate sufficient information about the correspondent institution and about the nature of its operations;
- b) use public sources of information to establish the quality of supervision overseeing the correspondent institution;
- c) evaluate measures applied by the correspondent institution against legitimisation of proceeds of crime and financing of terrorism.

(3) A statutory body of the credit institution or the director of the branch of the foreign credit institution with operations on the territory of the Czech Republic shall consent to the establishment of the corresponding bank relationship.

(4) A credit and financial institution shall, in its branches and subsidiaries which it has a controlling interest in and which are located in countries that are not members of the European Union or the European Economic Area, apply the practice of customer due diligence and record keeping in the scope that is at the least required by the law of the European Communities<sup>1)</sup>. To this end, it shall provide them with relevant information of the practice and procedures to be applied. Should the law of the country not allow for the application of the same practice as in the other countries, the institution shall inform the Ministry; in such a case, the obliged entity shall adopt appropriate supplementary measures to effectively mitigate the risk of exploitation for the legitimisation of proceeds of crime or financing of terrorism, and to prevent the transfer of these risks to the territory of the Czech Republic and other member states of the European Union or the European Economic Area.

(5) The statutory body of the credit or financial institution shall approve the system of internal rules of the institution.

(6) Upon request from the Ministry and by the deadline granted by the Ministry, the credit or financial institution shall disclose the information whether it maintains, or has in the previous 10 years maintained, commercial relations with a specific natural or legal person, whom it was obliged to identify, and any details of the nature of the relations. To this end, the credit or financial institution shall implement an effective system, whose scope is commensurate to the size of the institution and the nature of its business operations.

(7) Rights and obligations which are laid down herein and are binding on the institution are also binding on the Czech National Bank in its process of maintaining accounts and providing other banking services.

## Section 26

### **Special Provisions Relating to Auditors, Chartered Accountants, Licensed Executors and Tax Advisors**

(1) The provisions of Section 18(1) and Section 24 shall not apply to an auditor, chartered accountant, licensed executor or a tax advisor if the information is obtained from or about the customer during the process of establishing of the customer's legal standing, during the representation of the customer in court, or in connection with court proceedings, including the giving of advice to instigate or avoid such proceedings, regardless of whether the information was obtained prior to, during or after the proceedings.

(2) Should the auditor, chartered accountant, licensed executor or tax advisor suspect that the customer is seeking counsel for the purpose of legitimisation of proceeds of crime or the financing of terrorism, para 1 shall not apply.

(3) A suspicious transaction report in accordance with Section 18 shall be made by

- a) an auditor to the Chamber of Auditors of the Czech Republic;

- b) a licensed executor to the Chamber of Licensed Executors of the Czech Republic;
- c) a tax advisor to the Chamber of Tax Advisors of the Czech Republic.

(4) The relevant professional chamber shall examine the suspicious transaction report made under para 3 as to whether it is not in conflict with para 1 or Section 18(1), and check whether it has all the particulars required by this Act. Should the suspicious transaction report not include all information required by this Act, the chamber shall notify the disclosing person. Should the suspicious transaction report meet all the conditions set out in the first sentence, the chamber shall refer the disclosure to the Ministry without undue delay, but no later than in 7 days from learning of the suspicious transaction.

## Section 27

### **Special Provisions Relating to Lawyers and Public Notaries**

(1) The provisions of Section 9, Section 18(1) and Section 24 shall not apply to a lawyer should the information pertaining to the customer be obtained from the customer or in any other way during or in connection with:

- a) providing legal advice or the later determination of the customer's legal standing;
- b) defending the customer in criminal law proceedings;
- c) representing the customer in court proceedings, or
- d) providing any legal advice concerning the proceedings referred to in para b) and c), regardless of whether the proceedings commenced or not, or were concluded or not.

(2) The provisions of Section 9, Section 18(1) and Section 24 shall not apply to a public notary should the information pertaining to the customer be obtained from the customer or in any other way during or in connection with:

- a) providing legal advice or the later determination of the customer's legal standing<sup>22)</sup>,
- b) representing the customer in court proceedings subject to the mandate conferred on the public notary by law or any other legal statute<sup>23)</sup>, or
- c) providing any legal advice relating to the proceedings referred to in para b), regardless of whether the proceedings commenced or not, or were concluded or not.

(3) A suspicious transaction report under Section 18 shall be made by a lawyer to the Czech Bar Association, and by a public notary to the Chamber of Notaries of the Czech Republic. The Czech Bar Association or the Chamber of Notaries of the Czech Republic, whichever may apply (hereinafter the "Chamber"), shall examine the suspicious transaction report made by a lawyer or a public notary as to whether it is not in conflict with para 1 or 2, Section 2(1g) or Section 18(1), and check that it has all the particulars required by this Act. Should the suspicious transaction report not contain all the information required by this Act, the Chamber shall notify the disclosing lawyer or notary. Should the suspicious transaction report made by the lawyer or the notary meet all the conditions set out in the first sentence, the Chamber shall refer the disclosure to the Ministry without undue delay, but no later than in 7 days from the detection of the suspicious transaction.

(4) The Ministry shall request further detail, documents or information under Section 24 from the lawyer or the public notary via the Chamber. The lawyer or the notary shall supply to the Ministry the requested details, documents or information via the Chamber.

(5) For the purpose of this Act, lawyers shall also include European lawyers according to the Legal Profession Act.

## Section 28

### **Special Provisions Relating to Persons Accepting Cash in the Value of EUR 15,000 or Higher**

A business and a legal person as per Section 2(2) (e) becomes an obliged entity only if it accepts a cash payment in the value of EUR 15,000 or higher and in such instance, the person is obliged to:

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<sup>22)</sup> Section 3(1a) of the Act No. 358/1992 Coll.

<sup>23)</sup> Section 3(1b) of the Act No. 358/1992 Coll.

- a) identify the customer according to Section 8; it may substitute this identification with identification according to Section 10 or 11, provided the transaction or customer in question is not exempt under Section 13,
- b) refuse to make the transaction if it doubts the veracity of the identification details supplied by the customer about themselves, or if the customer refuses to be subjected to the identification or fails to produce a power of attorney according to Section 8(3); the obliged entity shall at the same time inform the Ministry,
- c) perform customer due diligence according to Section 9(2),
- d) retain data according to Section 16(1) and 16(2),
- e) make a suspicious transaction report of the suspicious transaction according to Section 18,
- f) inform under Section 24,
- g) maintain professional confidentiality according to Section 38.

## Section 29

### **Special Provisions Relating to the Operation of Money Remittance Services**

(1) Activities whose purpose is to deliver a remittance of money based on a postal contract and under conditions laid down in the Postal Services Act, shall be performed only by a person authorized by the Ministry. The authorization shall be issued upon request of the person seeking to perform this activity.

(2) The Ministry shall issue the authorization as per para 1 on the condition that the applicant, the person who is the partner, statutory body, member of the statutory body of the applicant, the person who will managed the business of the applicant and the beneficial owner are persons with integrity.

(3) For the purposes of this law, a person of integrity shall be a person who has not been lawfully convicted of a crime committed

- a) with intent, or
  - b) due to negligence, and the fact of the crime relate to the nature of the business,
- unless the person shall be deemed as not having been lawfully convicted.

(4) For a natural person permanently or otherwise domiciled

- a) in the territory of the Czech Republic, the integrity is verified on the basis of an extract from the Criminal Register, which shall not be older than 1 month; this provision shall not apply if the Ministry is able to procure the extract under some other legal regulation;
- b) outside the territory of the Czech Republic and for a person who, in the period of the last 5 years stayed without an interruption outside the territory of the Czech Republic for a minimum of 6 months, on the basis of a document approximate to an extract from the Criminal Register issued by the competent authority of the country of permanent or other domicile of this person, or by countries where the person had stayed for a minimum of 6 months during the last 5 years; unless the country of permanent or other domicile of the person is not the same as the country where the person is a citizen, a document issued by the country where the person is a citizen shall also be required.

## PART THREE

### **ACTIVITY OF THE MINISTRY AND OTHER AUTHORITIES**

#### CHAPTER I

### ACTIVITY OF THE MINISTRY AND OTHER AUTHORITIES

## Section 30

### **Obtaining of Information**

(1) The Ministry may request information necessary for the compliance with obligations under this Act from the Police of the Czech Republic, intelligence services and other public authorities.

(2) When investigating a suspicious transaction, the Ministry may, pursuant to the Tax Administration Act, request from the authorities competent under other laws governing tax administration information obtained in the course of tax administration; the authorities shall inform the Ministry immediately of any suspicion that a taxpayer is exploiting the tax administration system for the legitimisation of the proceeds of crime or financing of terrorism.

(3) In order to perform its responsibilities under this Act, the Ministry shall be provided with the following:

- a) reference data from the Central register of inhabitants,
- b) data on inhabitants from the inhabitant information system,
- c) data on foreigners from the foreigners information system,
- d) data on natural persons who have received a birth identification number but appear in neither b) nor c), from the Register of birth identification numbers.

(4) Technical circumstances permitting, the Ministry of Interior shall provide the information specified in para 3 to the Ministry in electronic format in a form allowing for remote access.

(5) Out of all the information provided, only the information which is necessary in the case in question shall be used.

(6) Based on a suspicious transaction report from an intelligence service, the Ministry shall commence investigation of the suspicious transaction; the Ministry shall notify the intelligence service of the conclusion.

## Section 31

### **Processing of Information**

(1) The Ministry collects and analyses information obtained in the course of performing its tasks under this Act. It shall have the right to store the information obtained in the course of performing its tasks under this Act in an information system, on the condition that all the requirements set out in the Personal Data Protection Act have been met. The Ministry shall have the right to collate the information and information systems serving different purposes.

(2) While complying with the Personal Data Protection Act, the Ministry shall not provide information to the affected person in respect of the information kept about the person in the information system maintained under this Act.

(3) The Ministry shall archive data and documents relating to suspicious transactions and the investigation of the suspicious transactions for a period of 10 years, commencing at the end of the year when the investigation was concluded. Registration of a new report or a renewal of an investigation pertaining to the same matter or the same person or entity, the period referred to in the first sentence is suspended pending the conclusion of the new investigation.

(4) The Ministry shall maintain, and publish at least once a year on its website, statistical reports on effectiveness and results of measures against the legitimisation of proceeds of crime and financing of terrorism. Law enforcement authorities shall provide the Ministry on a regular basis with summary statistics on matters relating to the legitimisation of proceeds of crime and financing of terrorism.

(5) The Financial Analytical Unit is technically separate from the other departments at the Ministry; it has implemented measures in the area of organisation and personnel to ensure that unauthorised persons do not come into contact with information obtained under this Act.

## Section 32

### **Handling of Investigation Results**

(1) Should the Ministry find facts suggesting that a crime had been committed, it shall lodge a criminal complaint under the Code of Criminal Procedure and provide the law enforcement authority with all the information that the Ministry had found in the course of its investigation.

(2) Should the Ministry find circumstances that may be of importance to regional tax or customs authorities, it shall inform the competent financial directorate or the General Directorate of Customs immediately of these circumstances, and provide these authorities with the results of its investigation, unless the disclosure of the information is in violation of the Act or the Ministry had acted under para 1.

### Section 33

#### **International Co-operation**

(1) In the scope set out by an international treaty by which the Czech Republic is bound, or on the principle of reciprocity, the Ministry shall co-operate with third country authorities and international organisations of the same jurisdiction, in particular in the provision and obtaining information to deliver on the purpose of this Act.

(2) Provided that the information is used exclusively for the purpose of this Act and is protected at least in the scope laid down in this Act, the Ministry may co-operate also with other international organisations.

### Section 34

#### **Granting of Exemptions**

(1) Upon request, the Ministry may decide that an obliged entity performing any of the activities listed in Section 2(1) only occasionally or in a very limited scope, and in a way that precludes or significantly reduces the risk of such person being exploited for the legitimisation of proceeds of crime and financing of terrorism, shall not be considered an obliged entity under this Act.

(2) The exemption as per para 1 shall be granted on the condition that:

- a) the activity is a non-core activity directly relating to the core activity of the obliged entity, which otherwise under the exemption according to Section 2(2d) is not an obliged entity under this Act, and the activity is provided only as a sideline to the main activity of the obliged entity,
- b) the total annual revenue from this activity do not exceed 5% from the total annual revenue of the obliged entity, and at the same time the total annual revenue from this activity does not exceed the limit set by the Ministry in its decision for the type of activity in question,
- c) it is ensured that the value of an individual transaction or of multiple transactions with one customer of the activity referred to in point a) shall not exceed the amount of EUR 1,000 in the period of 30 consecutive days.

(3) The obliged entity shall attach a proof of compliance with the conditions set in para 1 and 2 to the application for an exemption.

(4) An exemption as per para 1 may be granted only for a definite period of time. In its decision, the Ministry shall specify any other obligations within the scope of obligations of obliged entities, in order to prevent the exploitation of the exemption for the legitimisation of proceeds of crime and financing of terrorism.

(5) The Ministry shall grant the exemption only on the condition that the risk of exploitation of the exemption for the legitimisation of proceeds of crime and financing of terrorism on the part of the obliged entity is eliminated or significantly reduced.

(6) For the period of validity of the exemption as per para 1, the obliged entity shall enable the supervisory authority (Section 35(1)) to control the compliance with the specified conditions, and to control that the exemption is not exploited for activities that would facilitate legitimisation of proceeds of crime and financing of terrorism. Supervisory authorities hold the same powers in this respect as they do for controlling obliged entities.

(7) The obligation of the obliged entity stipulated in Section 18, and the steps taken by the Ministry in respect of the obliged entity during an investigation of a suspicious transaction under Section 24, shall not be affected by the decision to grant an exemption as per para 1.

(8) The Ministry shall revoke the exemption granted under Section 1 when:

- a) the risk of exploitation of the activity for the legitimisation of proceeds of crime and financing of terrorism has materially changed, or
- b) the holder of the exemption had violated the specified conditions.

(9) An administrative remedy lodged against the decision in para 8 shall not suspend the given decision.

## CHAPTER II ADMINISTRATIVE SUPERVISION

### Section 35

#### **Performance of Administrative Supervision**

(1) The Ministry shall act as the supervisory authority performing the administrative supervision of the compliance with obligations set out in this Act on the part of the obliged entities; the Ministry shall, at the same time, control whether obliged entities do not legitimize the proceeds of crime and finance terrorism. Compliance with obligations set out in this Act is in addition supervised by the following institutions:

- a) the Czech National Bank in respect of persons subject to its supervision<sup>21)</sup>,
- b) administrative authorities with powers to supervise the compliance with the legislation regulating lotteries and other similar games, and in respect of holders of licences to operate betting games listed in Section 2 (1) (c),
- c) the Czech Trade Inspection in respect of persons listed in Section 2 (1) (j) and (k).

(2) The Ministry also exercises control of the compliance with obligations according to the directly applicable instrument of the European Communities, which stipulates the obligation to attach the payer's details to any transfer of funds transaction<sup>20)</sup>; the Czech National Bank exercises control of the compliance with obligations under the same instrument in respect of persons subject to its supervision<sup>21)</sup>.

(3) The Ministry shall provide information about its own activities, in the scope necessary for the performance of state control or supervision, to the other supervisory authorities.

(4) At its request, the other supervisory authorities shall provide to the Ministry their opinions or any other co-operation as per the request.

(5) Should the supervisory authority as per para 1, para (a) to (c) find facts that may be related to the legitimisation of proceeds of crime and financing of terrorism, it shall immediately inform the Ministry of these findings and provide it with all information in the scope as per Section 18(2).

### Section 36

#### **Motion to Revoke a Business Licence or a Licence to Perform another Independent Gainful Activity**

Should the Ministry learn that a legal or a natural person with an income from business or other independent gainful activity had materially, grossly or repeatedly violated any of its obligations specified in this Act or in a decision issued under this Act, the Ministry shall lodge a motion to terminate or revoke a licence for business or other gainful activity to the authority, which, under another law, has the power to decide on the revocation. This authority is obliged to notify the Ministry of the steps it had taken and the result within 30 days from the making of the motion.

### Section 37

#### **Special Provisions Relating to Administrative Supervision of a Lawyer, Public Notary, Auditor, Licensed Executor, and a Tax Advisor**

(1) Provisions of this Chapter do not apply to lawyers, public notaries, auditors, licensed executors, and tax advisors.

(2) Based on a written motion from the Ministry, the relevant professional chamber shall be obliged to check compliance with the obligations imposed by this Act on a lawyer, public notary,

auditor, licensed executor or a tax advisor, and notify the Ministry of the results within the deadline specified by the Ministry.

## PART FOUR CONFIDENTIALITY

### Section 38

#### **Obligation of Confidentiality**

(1) Unless provided otherwise in this Act, the obliged entities and their employees, employees of the Ministry, employees of other supervisory authorities as well as natural persons working for an obliged entity, the Ministry or another supervisory authority on a basis of a contract other than an employment contract shall be obliged to keep confidential the facts relating to suspicious transaction reports and investigation, the steps taken by the Ministry or the obligation to report a suspicious transaction stipulated by Section 24.

(2) The obligation of confidentiality shall not expire should the persons referred to in para 1 above transfer to another job, terminate their employment or other contractual relationship to the obliged entity, the Ministry or other supervisory authority, or should the obliged entity cease to perform activities listed in Section 2.

(3) Any person who may learn facts referred to in para 1 shall be obliged to keep them confidential.

### Section 39

#### **Exemptions from Confidentiality**

- (1) The obligation of confidentiality stipulated in Section 38 cannot be invoked in respect of:
- a) a law enforcement authority if it is conducting criminal proceedings related to the legitimisation of proceeds of crime and financing of terrorism, or if the matter concerns the compliance with the obligation to report a suspicious transaction in connection with any such crime,
  - b) specialised Police units involved in the identification of the proceeds of crime and financing of terrorism, provided the information had been obtained according to Section 42(3),
  - c) an authority of a third country referred to in Section 33 in the process of provision of information intended for the purpose of delivering on the intention of this Act, unless prohibited by another legal instrument,
  - d) the competent financial directorate or the General Directorate of Customs in relation to facts which are a part of information referred to in Section 32(2),
  - e) supervisory authorities referred to in Section 35(1), and the competent bodies of professional chambers of lawyers, public notaries, auditors, licensed executors or tax advisors,
  - f) administrative authorities performing tasks in the system of certification of raw diamonds subject to another legal instrument,
  - g) the administrative authority competent to perform state control or conduct an administrative procedure in the area of implementation of international sanctions;
  - h) an authority mandated by another law to decide on the revocation of a licence for business or other independent gainful activity upon the lodging of a motion filed by the Ministry,
  - i) a financial arbitrator deciding, according to another law, in a dispute of the claimant against an institution,
  - j) a person who could raise a claim for damages incurred as a result of the implementation of this Act, provided facts conclusive for the making of the claim are communicated ex post; the obliged entity may, in this instance, inform the customer that steps had been taken under this Act, but only after the decision of the competent law enforcement authority to secure or seize the subject of the suspicious transaction, or for which the period as per Section 20(7) had expired, was enforced; in all other instances only after the Ministry has granted its written consent,
  - k) a court adjudicating civil law disputes concerning a suspicious transaction or a claim for compensation for damages incurred as a result of complying with obligations under this Act,

- l) the National Security Office, Ministry of Interior or an intelligence service in the process of a clearance procedure in accordance with to another legal instrument<sup>24)</sup>,
- m) the competent intelligence service, provided the information is material for the meeting of the statutory tasks specified for the intelligence service.

(2) Provided that the disclosed information is used exclusively for the prevention of legitimisation of proceeds of crime and financing of terrorism, the obligation of confidentiality stipulated in Section 38 cannot be applied to the sharing of information between:

- a) credit or financial institutions, including foreign credit and financial institutions, if they operate in the territory of the state which obliges them to comply with obligations in the area of legitimisation of proceeds of crime and financing of terrorism, which are equivalent to the requirements of the European Communities law, provided these institutions are part of the same group as per the act governing financial conglomerates<sup>25)</sup>,
- b) obliged entities referred to in Section 2(1) (e) and (f), or persons of the same type, which operate in the territory of the state which obliges them to comply with obligations in the area of legitimisation of proceeds of crime and financing of terrorism, which are equivalent to the requirements of the European Communities law, provided these persons carry out their profession as employees or in a similar relationship within the same legal person and between legal persons which are related, either on the basis of a contract, or through persons,
- c) credit or financial institutions, or between obliged entities referred to in Section 2(1) (e) and (f), or persons of the same type, which operate in the territory of the state which obliges them to comply with obligations in the area of legitimisation of proceeds of crime and financing of terrorism, which are equivalent to the requirements of the European Communities law, provided the disclosed information relates to the same customer and the same transaction, which two or more persons of the same professional category are a party to, and which persons are bound by equivalent obligations to keep a professional secret and protect personal data.

(3) The obligation of confidentiality cannot be invoked in a procedure under the Act on Implementation of International Sanctions.

#### Section 40

### **Special Provisions Relating to Confidentiality by a Lawyer, Public Notary, Auditor, Licensed Executor and a Tax Advisor**

(1) The provisions of this Part shall not apply to lawyers and public notaries.

(2) With the exception of the provisions of Section 39(2), the provisions of this Part do not apply to auditors, licensed executors and tax advisors.

(3) A lawyer, public notary, auditor, licensed executor and a tax advisor shall be obliged to keep confidential, in respect of the customer, the facts referred to in Section 38(1); the foregoing does not apply if the facts, if disclosed to the customer, could prevent the customer from involvement in a criminal activity.

(4) para 1 to 3 shall apply to other persons who are obliged by other laws to keep the same confidentiality as lawyers, public notaries, licensed executors and tax advisors.

## PART FIVE CROSS-BORDER TRANSIT

#### Section 41

### **Obligation to Declare in Cross-border Transit**

(1) Upon entry to the territory of the Czech Republic from a third country which is not the territory of the European Communities, and on exit from the Czech Republic to any such territory, a natural

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<sup>24)</sup> Act No. 412/2005 Coll., on the protection of classified information and on security clearance, as amended.

<sup>25)</sup> Act No. 377/2005 Coll., on supplemental supervision of banks, savings and credit co-operatives, electronic money institutions, insurance companies and securities traders in financial conglomerates, and on the amendment of some other laws (Financial Conglomerates Act), as amended.

person shall be obliged to declare to customs authorities in writing any transport of currency of the Czech Republic or another country, travel cheques or money orders convertible into cash, bearer or registered securities or any other investment instruments which are signed, but do not contain the name of the beneficiary, or any commodities of high value, such as precious metals or stones, in the value of EUR 10,000 or higher.

(2) The obligation as per para 1 shall apply also to a legal person transporting any of the items referred to in para 1. The natural person bearing these items upon crossing of the border of the European Communities shall be liable to make the declaration on behalf of the relevant legal person.

(3) Any person sending a postal or other consignment from the Czech Republic to a third country outside the territory of the European Communities, or accepting a postal or other consignment therefrom, which contains items referred to in para 1 in the value of EUR 10,000 or higher, shall declare the consignment to the competent customs authority and make it available for inspection by the customs authority.

(4) The obligation to declare stipulated in para 1 to 3 shall also be binding on a person who imports to the territory of the European Communities or exports therefrom, or receives or sends during a period of 12 consecutive months, items referred to in para 1 in the value of EUR 10,000 or higher. The obligation to declare shall begin to apply as of the person learning that the aforementioned limit will be reached.

(5) A declaration as per para 1 to 4 shall contain the declarant's identification details, the identification details of the owner and the intended recipient of the transported item, if known to the declarant, a description of the transported item, and a proof of origin of the exported or imported item, the intended route and means of transport.

(6) The declaration shall be made using a form which forms an Appendix to this Act. The form shall be available at the customs authority; the Ministry shall also publish the form in a way which allows for remote access. The declarant shall be liable for the veracity and completeness of the declared information.

(7) The exchange rate published by the Czech National Bank for whole calendar month, as valid on the last but one Wednesday of the previous calendar month, shall be used for the conversion of another currency to Euro for the purposes of para 1, 3 or 4. Upon verbal enquiry, the customs authority shall inform potential declarants of the applicable exchange rate for the purposes of compliance with the obligation to report a suspicious transaction as per para 1 to 4. The value of securities and commodities of high value shall be construed as their fair market value, or the value determined based on official market rates.

## Section 42

### **Activities of Customs Authorities**

(1) Customs authorities supervise the compliance with the obligation to declare as per Section 41.

(2) Customs authorities record and process declarations referred to in Section 41, including personal data contained therein. For the purposes of exercising control as per para 1, customs authorities may record and store information concerning the transport or delivery as per Section 41(1), whose value is lesser than EUR 10,000.

(3) Customs authorities shall forward to the Ministry immediately the information concerning the compliance with the obligation to declare under Section 41, including all cases of violation thereof.

(4) A customs authority may, upon learning of a violation of obligations set out in Section 41(1) to 41(4), seize items which were concerned by the violation. No appeal is permitted against the decision to seize the item made by the customs authority; the decision is enforceable as of the moment of its verbal promulgation, against the person bearing the items. A written execution of the decision shall be delivered to the bearer from whom the items were seized; the seizure shall also be notified by way of an original counterpart of the decision sent to the importer or exporter and the owner, provided these persons are different from the bearer and are known to the customs authority.

(5) The person who receives the decision of seizure as per para 4 shall relinquish the items to the customs authority. Should the items not be relinquished on demand, they shall be officially possessed. The customs authority shall issue a receipt to that effect to the person who had relinquished the items or from whom they were possessed.

(6) Should the seized items not be required for further procedure, a forfeiture or expropriation order is not issued in respect of them, and they cannot be used for the payment of a fine, cost of the procedure or enforcement, the customs authority shall return them without undue delay to the person who had relinquished them or from whom they were possessed.

## PART SIX ADMINISTRATIVE OFFENCES

### Section 43

#### **Violation of the Obligation of Confidentiality**

(1) An employee of an obliged entity, employee of the Ministry or other supervisory authority, or a natural person who, based on other than an employment contract with an obliged entity, the Ministry or another supervisory authority, commits a minor offence by breaking the obligation of confidentiality stipulated in Section 38(1) or 38(2).

(2) A natural person who is not a person as per para 1 commits a minor offence by breaking the obligation of confidentiality stipulated in Section 38(3).

(3) An obliged entity commits an administrative offence by breaking the obligation of confidentiality stipulated in Section 38(1) or 38(2).

(4) A fine up to CZK 200,000 may be imposed for committing the minor offence according to para 1 and 2, and a fine up to CZK 200,000 shall be imposed for committing the administrative offence according to para 3.

(5) A fine up to CZK 1,000,000 may be imposed for committing the minor offence according to para 1 and 2, and a fine up to CZK 1,000,000 shall be imposed for committing the administrative offence according to para 3, if the violation had prevented or made more difficult the identification or seizure of the proceeds of crime, or made the financing of terrorism possible.

### Section 44

#### **Failure to Comply with the Requirement to Perform Customer Due Diligence**

(1) An obliged entity commits an administrative offence by

- a) failing to perform the customer identification procedure described in Section 7,
- b) repeatedly failing to perform the customer's due diligence process as per Section 9,
- c) realising a transaction or entering into a commercial relationships in violation of the ban stipulated in Section 15, or
- d) failing to comply with the obligation of record keeping stipulated in Section 16.

(2) A fine up to CZK 1,000,000 shall be imposed for the administrative offence as per para 1(a) and (b).

(3) A fine up to CZK 10,000,000 shall be imposed for the administrative offence as per para 1(c) and (d).

(4) Should any action referred to in para 1(a), (b) or (d) prevent or make more difficult the identification or seizure of the proceeds of crime, or make the financing of terrorism possible, a fine up to CZK 50,000,000 shall be imposed.

### Section 45

#### **Failure to Comply with the Obligation to Inform**

(1) An obliged entity commits an administrative offence by

- a) failing to comply with the obligation to inform stipulated in Section 24, or

b) in a case according to Section 25(4), by not adopting the supplemental measures to effectively mitigate the risk of abuse for the legitimisation of proceeds of crime or terrorism financing, and the risk of transfer of these risks to the territory of the Czech Republic and other countries of the European Union or the European Economic Area.

(2) A credit or financial institution commits an administrative offence by

- a) not informing, in breach with Section 25(4), its branch or majority-controlled subsidiary company in the country which is not a member state of the European Union or the European Economic Area, about the practices and procedures of customer due diligence and about the requirements of record keeping in those countries, or
- b) not disclosing information as per Section 25(6).

(3) A fine up to CZK 10,000,000 shall be imposed for the administrative offence as per para 1 and 2.

(4) Should any action referred to in para 1 prevent or make more difficult the identification or seizure of the proceeds of crime, or make the financing of terrorism possible, a fine up to CZK 50,000,000 shall be imposed.

#### Section 46

##### **Failure to Comply With the Obligation to Report a Suspicious Transaction**

(1) An obliged entity commits an administrative offence by failing to report a suspicious transaction to the Ministry.

(2) A fine up to CZK 5,000,000 shall be imposed for the administrative offence as per para 1.

(3) Should any action referred to in para 1 prevent or make more difficult the identification or seizure of the proceeds of crime, or make the financing of terrorism possible, a fine up to CZK 50,000,000 shall be imposed.

#### Section 47

##### **Failure to Comply with the Obligation to Suspend a Transaction**

(1) An obliged entity commits an administrative offence by violating the obligation to suspend a transaction of the customer as per Section 20(1).

(2) An obliged entity commits an administrative offence by violating the obligation to suspend a transaction of the customer or to seize assets based on a decision issued by the Ministry under Section 20(3).

(3) A fine up to CZK 1,000,000 shall be imposed for the administrative offence as per para 1.

(4) A fine up to CZK 10,000,000 shall be imposed for the administrative offence as per para 2.

(5) Should any action referred to in para 1 prevent or make more difficult the identification or seizure of the proceeds of crime, or make the financing of terrorism possible, a fine up to CZK 50,000,000 shall be imposed.

#### Section 48

##### **Failure to Comply with the Obligation of Prevention**

(1) An obliged entity referred to in Section 2(1) (a) to (d), (h) and (i) commits an administrative offence by failing to elaborate a system of internal rules as per Section 21(2) to (5).

(2) An obliged entity referred to in Section 2(1) (a), (b) points 1 to 6, 10, 11 and (c) commits an administrative offence by failing to present the system of internal rules or any changes thereto as required by Section 21(6), or by failing to notify in writing of the implementation of remedies to issues found according to Section 21(8).

(3) An obliged entity commits an administrative offence by failing to ensure that its employees undergo regular training as required by Section 23.

(4) A credit institution commits an administrative offence by violating the obligations in the course of entering in a corresponding bank relationship according to Section 25(1), (2) or (3).

(5) An obliged entity referred to in Section 29(1) commits an administrative offence by carrying out activities based on a postal contract, under conditions laid down in the Postal Services Act, which activities serve the purpose of delivering a remittance of money and are carried out without an authorization as per Section 29.

(6) A fine up to CZK 1,000,000 shall be imposed for the administrative offence as per para 1 to 3.

(7) A fine up to CZK 5,000,000 shall be imposed for the administrative offence as per para 4 or 5.

(8) Should any action referred to in para 4 prevent or make more difficult the identification or seizure of the proceeds of crime, or make the financing of terrorism possible, a fine up to CZK 50,000,000 shall be imposed.

## Section 49

### **Failure to Comply with Obligations Relating to a Transfer of Funds**

(1) An obliged entity, being a provider of payment services or an agent provider of payment services, commits an administrative offence relating to transfer of funds if, in contravention to the directly applicable instrument of the European Communities which specifies the content of information accompanying a transfer of funds<sup>20)</sup>, it

- a) fails to ensure that the information on the payer accompany the transfer,
- b) has not implemented effective procedures for identification of missing or incomplete information on the payer,
- c) fails to take action against the provider of payment services of the payer who had failed to ensure that a transfer of funds is accompanied with information on the payer, or
- d) fails to present upon request of the provider of payment services of the recipient information on the payer in cases when the transfer of funds does not include full information of the payer.

(2) A fine up to CZK 10,000,000 shall be imposed for the administrative offence as per para 1.

(3) Should any action referred to in para 1 prevent or make more difficult the identification or seizure of the proceeds of crime, or make the financing of terrorism possible, a fine up to CZK 50,000,000 shall be imposed.

## Section 50

### **Failure to Comply with the Obligation to Declare a Cross-border Transport of Cash**

(1) A natural person commits a minor offence by

- a) failing to comply with the obligation to declare on entry to the Czech Republic from countries outside the European Communities, or on exit from the Czech Republic to such countries as per Section 41(1) or 41(4), or
- b) failing to comply with the obligation to declare a postal or other consignment from the Czech Republic to countries outside the European Communities, or from the Czech Republic to such countries as per Section 41(3) or 41(4).

(2) A legal person commits an administrative offence by

- a) failing to comply with the obligation to declare on entry to the Czech Republic from countries outside the European Communities, or on exit from the Czech Republic to such countries as per Section 41(2) or 41(4), or
- b) failing to comply with the obligation to declare a postal or other consignment from the Czech Republic to countries outside the European Communities, or from the Czech Republic to such countries as per Section 41(3) or 41(4).

(3) A fine up to CZK 10,000,000 or a forfeiture of the item may be imposed for the administrative offence as per para 1.

(4) A fine up to CZK 10,000,000 or a forfeiture of the item shall be imposed for the administrative offence as per para 2.

### **Common Provisions Relating to Administrative Offences**

#### **Section 51**

(1) A forfeiture may be ordered if the item belongs to the offender and

- a) had been used to commit the administrative offence, or
- b) had been acquired by committing the administrative offence or in exchange for an item acquired by committing the administrative offence.

(2) Should a forfeiture of the item as per para 1(a) or 1(b) not be ordered, a decision shall be issued to expropriate the item when it

- a) belongs to an offender who cannot be prosecuted for the administrative offence,
- b) does not belong to the offender in whole or in part, or
- c) its owner is not known.

(3) Forfeiture cannot be ordered or expropriated if the value of the item is grossly disproportionate to the nature of the administrative offence.

(4) The state shall become the legal owner of the forfeited or expropriated item.

#### **Section 52**

(1) A legal person shall not be liable for an administrative offence if it proves that it had expended all reasonable effort to prevent the violation of the legal obligation.

(2) In assessing a fine for a legal person, the seriousness of the administrative offence shall be taken into consideration, especially the way it had been committed, and its consequences and circumstances.

(3) The administrative liability of a legal person shall cease if the competent administrative authority does not commence a procedure within 2 years from learning of the administrative offence, but no later than 10 years from the date it was committed.

(4) Liability for actions taken in the course of business of a natural person or in a direct relation thereto shall be governed by the provisions on liability and sanctions of a legal person.

(5) With the exception of administrative offences committed by an obliged entity as per Section 2(1) (j) and (k), and administrative offences as per Section 50, administrative offences under this Act shall in the first instance be decided upon by the Ministry.

(6) Administrative offences committed by an obliged entity as per Section 2(1) (j) and (k) shall in the first instance be decided upon by the supervisory authority.

(7) Administrative offences under Section 50 shall be decided upon by the customs authority competent on the basis of the offender's permanent domicile

(8) Fines and fees for the cost of proceedings shall be collected by the administrative authority that had imposed them. Fines and fees for the cost of proceedings shall be due in 30 days after the decision becoming final. Revenues from fines and fees constitute revenues of the state budget.

(9) Should a fine be overdue, the competent customs authority may use the seized items as per Section 41(1), 41(3) and 41(4), should any such items have been seized; the applicable provision is the provision on the right of lien under the Customs Act.

#### **Section 53**

Actions taken by a lawyer, public notary, auditor, licensed executor or a tax advisor in the capacity of an obliged entity, which bear the elements of an administrative offence according to Sections 43 to 48, shall be decided upon according to another law<sup>26)</sup>. The supervisory authority

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<sup>26)</sup> Act No. 85/1996 Coll., on the legal profession, as amended.

referred to in Section 35(1) shall immediately refer the matter to the authority competent under such other legal instrument, and shall take all necessary steps to secure evidence, as instructed by such competent authority.

## PART SEVEN COMMON AND FINAL PROVISIONS

### Section 54

(1) The obligations imposed by this Act on the obliged entities shall concern only activities that are the purpose of their business or of the services they provide.

(2) Unless stipulated otherwise in this Act, obliged entities referred to in Section 2(2) (a) and 2(2) (b) shall be bound by the obligations stipulated by this Act for the relevant type of obliged entity according to Section 2(1).

(3) Unless stipulated otherwise in this Act (Section 41(7), the amount in Euro shall, for the purposes of this Act, be computed as an equivalent amount in any currency based on an exchange rate published by the Czech National Bank as for the day when the obligation under this Act is being complied with; if the exchange rate is not available for the day in question, the exchange rate valid on the day preceding shall be used. If a payment is divided into several installments, the value of the transaction shall be the sum of these installments, provided they are related.

(4) Payment in commodities of high value, especially precious metals or precious stones, shall be regarded as payment in cash.

(5) An obliged entity under whose name or on whose account products or services are marketed by third parties shall ensure that these third parties observe all the procedures against the legitimisation of proceeds of crime and financing of terrorism in the same scope as the obliged entity.

### Section 55

(1) Proceedings conducted under this Act shall always be closed to the public.

(2) Based on a received suspicious transaction report or another motion, the Ministry shall investigate without undue delay.

(3) Upon the conclusion of the investigation, the Ministry shall, without undue delay, notify the person who reported the suspicious transaction in a suitable manner. No other person shall be notified of the investigation and its conclusions.

(4) In the course of their activities under this Act, authorised employees of the Ministry identify themselves with a service card issued based on the Act on Implementation of International Sanctions.

### Section 56

#### **Enabling Provision**

The Czech National Bank shall pass a regulation to implement Section 21(9).

### Section 57

#### **Interim Provisions**

(1) Proceedings commenced prior to this Act coming into effect shall be concluded according to this Act, with the exception of proceedings concerning an infraction or another administrative

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Act No. 358/1992 Coll., as amended.

Act No. 254/2000 Coll., on auditors and on the amendment of the Act No. 165/1998 Coll., as amended.

Act No. 120/2001 Coll., on licensed executor, **execution rules**, and on the amendment of some other laws, as amended.

Act No. 523/1992 Coll., on tax advisory and the Chamber of Tax Advisory of the Czech Republic, as amended.

violation committed prior to this Act coming into effect, if the earlier statute is more favourable for the offender.

(2) A person who, on the day of this Act coming into effect, performs activities based on a postal contract, under conditions laid down in the Postal Services Act, which activities serve the purpose of delivering a remittance of money, may continue to perform these activities without an authorisation as per Section 29 for a maximum period of 6 months after this Act becomes effective.

(3) An obliged entity referred to in Section 2(1) (a) – 2(1) (d), 2(1) (h) and 2(1) (i), who has a system of internal rules, procedures and controls compliant with the legislation valid to date, shall elaborate a system of rules, procedures and controls as per Section 21(2) within 60 days after this Act becomes effective.

(4) A credit institution, financial institution referred to in Section 2(1b) points 5, 6, 10 and 11, and an obliged entity referred to in Section 2(1c), which has a system of internal rules, procedures and controls compliant with the legislation valid to date, the person shall deliver to the Ministry a system of rules, procedures and controls as per Section 21(2) within 60 days after this Act becomes effective.

## Section 58

### **Repealing Provisions**

The following are repealed:

1. Act No. 61/1996 Coll., on certain measures against legitimisation of proceeds of crime and on the amendment and supplementation of related laws;
2. Regulation No. 343/2004 Coll., prescribing the format of the form according to Section 5(5) of the Act No. 61/1996 Coll., on certain measures against legitimisation of proceeds of crime and on the amendment and supplementation of related laws;
3. Regulation No. 344/2004 Coll., on compliance with the obligation to report according to Act No. 61/1996 Coll., on certain measures against legitimisation of proceeds of crime and on the amendment and supplementation of related laws;
4. Regulation No. 283/2006 Coll., amending the Regulation No. 344/2004 Coll., on compliance with the obligation to report according to Act No. 61/1996 Coll., on certain measures against legitimisation of proceeds of crime and on the amendment and supplementation of related laws.

## Section 59

### **Effect**

The Act becomes effective as of the first day of the second calendar month following the day of its promulgation.

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