

Law No. 17/2011

of 28th of December

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

Motives:

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

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

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

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

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

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

CHAPTER I

GENERAL PROVISIONS

SECTION I

OBJECT AND DEFINITIONS

Article One

Object

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

Article Two

Scope

1. The institutions referred to in

article 3 shall be subject to the provisions set out in the present law.

2. Money laundering and financing of terrorism crimes shall be established and punished under the terms of the applicable criminal legislation.

Article Three

Financial and non-financial entities

1. The following shall be considered financial entities by the present law:

- a) Any credit institutions, including microfinance institutions;
- b) Insurance companies, including investment companies and broker's related to them;
- c) Financial and financial leasing companies;
- d) Entities that issue and manage credit and debit cards;
- e) Any individual or legal person who deals with money transactions being involved in the sale and purchase or in the exchange of currency in a professional capacity;
- f) any individual or legal person whose profession is connected with the transfer of funds;
- g) Any person who undertakes other activities or operations to be indicated by the Competent Supervisory Authority.

2. The following shall be

considered non-financial entities by the present law:

- a) Casinos, including online casinos;
- b) Any person whose activity consists in the providing of financial services or who intervenes or assists in financial or real estate operations, in representation of a client, without prejudice to professional secrecy;
- c) Accountants, independent auditors and tax advisors;
- d) Any other activities and professions which come to be determined by law.

SECTION II

FINANCIAL INFORMATION UNIT

Article Four

Creation

The Financial Information Unit shall be created in the Central Bank of Timor, hereinafter referred to as FIU.

Article Five

Nature, Organisation and Operation

The nature, organisation and functioning of the FIU shall be set out by Decree-Law.

Article Six

Powers of FIU

The FIU shall have those powers granted to it under the terms of

the law and other applicable legislation.

CHAPTER II

PREVENTION

SECTION I

GENERAL DUTIES

Article Seven

Obligation to declare the transport of currency and negotiable bearer securities

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

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

SECTION II

DUTIES OF FINANCIAL INSTITUTIONS

Article Eight

Transparency of financial transactions

1. No bank may be established in the territory of Timor-Leste unless it maintains a physical presence on such territory or is part of a registered financial group, subject to efficient and consolidated supervision.
2. Financial institutions shall refuse to enter into or continue commercial relations with banks registered in jurisdictions where they are not physically present, or are not part of a registered financial group, subject to efficient and consolidated supervision.
3. In no case is it permitted to open or operate anonymous accounts, accounts under obviously fictitious names or anonymous bank books.
4. Financial institutions shall not enter into or continue commercial relations with financial institutions registered in a foreign country, if they allow their accounts to be used by shell banks.

Article Five

Transparency of legal persons

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

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

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

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

Article Ten

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

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

- a) they undertake occasional transactions to an amount

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

- b) there are doubts about the truth or appropriateness of the identification of the client;
- c) there are well-founded suspicions of money laundering or financing of terrorism.

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

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

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

- c) The institutions referred

to in article 3 shall identify the actual beneficiary and shall take all the necessary measures to ascertain such beneficiary's identity, including identification of the individuals who have control powers, as well as the identification of the individual responsible for managing the company.

4. In the event there are doubts about whether the client referred to in paragraph 1 above is acting on his/her own behalf the institutions referred to in article 3 shall take the necessary steps to verify the identity/ies of the individual or individuals in whose name and on whose behalf the client is acting.

5. When business relations are established or transactions undertaken with a client who is not physically present, the institutions referred to in article 3 shall take appropriate specific measures to face the added risk of money laundering and financing of terrorism.

6. The institutions referred to in article 3 shall take the necessary measures to ascertain whether the client or actual beneficiary require special procedures resulting from their rank, post or political position, under the terms of the law.

7. Where international banking relationships are concerned, the financial institutions shall:

a) Verify the identity of the

correspondent institutions, with which they have a correspondent banking relationship;

b) Gather information on the nature of the activities of the correspondent institution;

c) Based on the available information, assess the reputation of the correspondent institution and the nature of the supervision to which it is subject;

d) Assess the controls applied by the correspondent institution as regards combating money laundering and the financing of terrorism;

e) In the event of a payment made through an account, ensure that the correspondent institution has verified the identity of the client, has applied continuous control mechanisms with regard to these clients, and has the capacity to gather relevant information under request;

f) Follow instructions issued by the competent authority.

8. Should the institutions referred to in article 3 not be able to fulfil their due diligence requirements, as referred to in the paragraphs above, they should not proceed with a business relationship.

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

Article Eleven

Special Identification Procedures

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

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

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

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

concern the sale and purchase for resale of real estate.

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

Article Twelve

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

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

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

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

Article Thirteen

Obligations concerning

electronic transfers

1. Financial institutions, whose activities include electronic transfers, shall acquire and verify the full name, the account number, or in the event there is no account number, the reference number of the transfer, or the address, or when there is no address, the national identification number or date and place of birth, including, whenever necessary, the name of the financial institution, the payer of such transfers, the information being included in the payment message or form attached to the transfer;
2. The institutions to which the paragraph above refers shall gather all the information and convey it, when they act as intermediaries in a chain of payments.
3. The Central Bank may issue instructions concerning transborder transfers, included in one single transfer file.
4. Paragraphs 1 and 2 above shall not apply to transfers made by credit or debit cards, whenever the number of the debit or credit card accompanies the transfer, nor shall they be applicable to transfers between financial institutions where either the payer or the beneficiary are financial institutions acting on their own behalf.
5. If the institutions to which paragraph 1 above refers receive cash or transfer for values which do not contain complete information concerning the payer, they shall take the necessary

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

Article Fourteen

Special control of certain transactions

1. The institutions referred to in article 3 shall pay special attention to those of abnormally high amounts and all those unusual types of transactions, which do not appear to have an economic or licit cause.
2. The institutions referred to in article 3 shall pay special attention to business relationships and transactions with persons, including legal persons and centres of collective interests without legal personality, from or to countries or territories not subject to efficient and consolidated supervision.
3. The institutions referred to in article 3 shall keep records of specific information on the transactions referred to in paragraphs 1 and 2 above and the identity of all parties involved, the report being kept as specified in Article Fifteen (15) which should be provided to FIU whenever requested or to another supervisory authority established by law.

Article Fifteen

Record keeping

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

- a) Copies of identification documents of clients, owners or representatives of the actual beneficiaries, acquired under the terms of the provisions set out in the present Chapter, accounts files and correspondence for a period of at least five (5) years upon termination of business relationship;
- b) Information acquired under the terms of the provisions of the present Chapter, which will allow for the transactions carried out by the clients to be reconstructed and the written reports drawn up under the terms of the previous article for a period of at least five (5) years after the transaction has taken place;
- c) Archives of all reports sent to the FIU for a period of at least five (5) years from the date the report was sent;
- d) A return copy of the information provided by the FIU in response to the reports on suspicious transactions for five years from the date of receipt of this information.

2. The competent supervisory authority may, through regulations or rules of procedure, determine the type and scope of the measures to be taken by the financial institutions to fulfil the obligations established in this article, taking into account the risk of money laundering and the financing of terrorism and the turnover.

Article Sixteen

Prevention of money laundering and financing of terrorism in financial and non-financial institutions

1. The institutions referred to in article 3 shall devise and implement programmes aimed at the prevention of money laundering and financing of terrorism which include the following:

- a) Guidelines, internal policies, procedures and controls, including appropriate provisions to ascertain their fulfilment and appropriate procedures to ensure there are demanding criteria for the hiring of employees;
- b) Continuous training for executives and employees in order to improve the identification of transactions and actions which may be connected with money laundering or financing of terrorism and instruct them on the procedures to be adopted in such cases;
- c) Internal audit regulations

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

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

Article Seventeen

Fulfilment of obligations by subsidiaries and branches

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

Article Eighteen

Casinos

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

Article Nineteen

Non-profit organisations

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

CHAPTER III

DETECTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

SECTION I

Duties of the Financial Intelligence Unit

Article Twenty

Confidentiality

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

Article Twenty-One

Access to information

1. FIU may request any entity or person subject to the obligation to inform, under the terms set out in article Twenty-two (22), any additional information which is considered necessary for the performance of their duties.

2. FIU shall be authorised to access and pursue information in places which belong to or are under the custody of the institutions referred to in article 3, which is necessary to perform its duties, by way of prior judicial authorisation, under the terms set out in criminal procedure legislation.

3. The application of paragraphs 1 and 2 above shall be subject to the constraints set out in paragraph 23.2.

4. FIU may request any additional information which it considers useful for the performance of its duties:

- a) From the police authorities;
- b) From the supervisory authorities;
- c) From other State services;
- d) Under the terms of the applicable provisions, from the judiciary.

Article Twenty-Two

Violation of the obligation to inform

The competent supervisory authorities shall be informed by the FIU of non-fulfilment by the institutions referred to

in article 3 of the obligations set out in paragraphs 21.1 and 21.2.

SECTION II

SUSPICIOUS TRANSACTIONS

Article Twenty-Three

Duty to communicate

1. Whenever there are well-founded suspicions that certain funds or assets are proceeds of criminal activities, or are related to, or will be used for the financing of terrorism, or have knowledge of a fact or activity which may indicate the practice of money laundering or financing of terrorism, the institutions referred to in article 3 shall immediately submit, under the terms set out in Article Twenty-Five, a report describing their suspicions to FIU, even when it is an attempt to undertake a transaction.

2. Lawyers, legal advisers and other independent legal professions shall not be obliged to provide FIU with information received from a client, or when defending or representing such client, even in those cases of advice on the way to initiate or avoid a legal case, whether the information was received before, during or after a process..

3. Traders in precious metals and precious stones shall inform FIU of suspicious transactions of a value equal to or higher than USD 10,000.00.

4. Real estate agencies and real estate brokers shall inform FIU of suspicious operations when involved in purchase and sales or the purchase for resale

transactions on behalf of a client.

Article Twenty-Four

Suspension of transactions

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

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

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

Article Twenty-Five

Prohibition to disclose confidential information

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

Article Twenty-Four

Mandatory duty to inform

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

the appropriate proceedings.

CHAPTER III

SUPERVISORY AUTHORITIES AND SANCTIONS

SECTION I

SUPERVISORY AUTHORITIES

Article Twenty-Seven

Duties and Powers

1. The competent supervisory authorities shall ensure that financial institutions and non-financial activities and professions fulfil the requirements set out in Chapter II of the present law.

2. Under the terms of the present law, the supervisory authorities shall:

a) Adopt the necessary measures to establish appropriate criteria of reputability and competence for the possession, control or a direct or indirect participation in the administration, management or activities of a financial institution or casino;

b) Regulate and supervise financial institutions and casinos in the fulfilment of their obligations referred to in Chapters II and III, it being possible to carry out audits on the site;

c) Issue instructions, guidelines or recommendations which guarantee the fulfilment of the obligations set out in Chapters II and III by financial institutions and non-financial activities and professions;

d) Cooperate and share information with other competent authorities and provide assistance in investigations and legal proceedings and processes concerning cases of money laundering, underlying crimes and financing of terrorism;

e) Ensure that financial institutions, their subsidiaries and branches, in which foreigners hold a majority share, adopt and apply appropriate measures to fulfil the terms set out in the present law;

f) Immediately inform FIU of any suspicious transactions or facts which may be related to money laundering or financing of terrorism;

g) Promote cooperation with foreign counterpart authorities, under the terms of the law;

h) Keep statistics on the measures adopted and sanctions imposed within the scope of this Chapter.

Article Twenty-Eight

Special provisions on remittances or transfer of values service

Any person or entity that intends to professionally carry out services concerned with the remittance or transfer of money or values shall request respective registration with the Central Bank of Timor-Leste, which shall establish the minimum conditions for the performance of this activity.

Article Twenty-Nine

Registration of other non-financial activities and professions

The performance of a non-financial activity or profession shall be subject to registration, under the terms of the law.

SECTION II

SANCTIONS

Article Thirty

Offences

The non-fulfilment of obligations or duties or the non-compliance with the procedures established in Chapters II and II of the present law shall constitute an offence.

Article Thirty-One

Administrative sanctions

1. The offences established in article 31 above shall be punished with a fine of between USD 5,000.00 and 500,000.00.

2. The law shall define the powers which may initiate administrative proceedings and apply the application of fines to the institutions referred to in article 3.

3. The competent supervisory authority which detects a violation of the obligations established in Chapters II and III by the institutions referred to in article 3 may apply one or more of the following measures or sanctions;

a) Written warning;

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

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

Article Thirty-Two

Violation of duties by financial

and non-financial institutions

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

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

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

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

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

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

law;

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

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

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

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

j) Not refusing to undertake a transaction when this is required under the terms of Article Twenty-Four (24);

k) Disclosing the information referred to in Article Twenty-Five (25) to a client or third party.

2. The people considered guilty of violating one of the duties described in the paragraph above may also suffer a further sanction of being forbidden to carry out an activity or profession for a period of between six (6) months and three (3) years.

3. Sanctions imposed due to violation of paragraphs 1 and 2 above do not preclude the application of other sanctions and measures established by law.

4. The application of any of

the sanctions set out in paragraph 1 above shall be preceded by regular administrative proceedings, *audiatur et altera pars*.

CHAPTER IV

INVESTIGATION AND PROFESSIONAL SECRECY

SECTION I

INVESTIGATION

Article Thirty-Three

Special investigation techniques

1. With the purpose of obtaining proof of money laundering or financing of terrorism and discovering the proceeds of the crime, the judicial authorities may order, for a given period of time:

- a) That bank accounts and other similar accounts be controlled;
- b) That computer systems, IT networks and servers be accessed;
- c) That communication be placed under vigilance or be intercepted;
- d) That video or audio recordings be made or photographs of acts or conversations be collected;
- e) That correspondence be intercepted.

2. These techniques shall be subject to authorisation by the competent judicial authority and shall only be used when there exist grounds to suspect that such accounts, telephone lines, computer systems and IT networks or documents are or may be used by people suspected of taking part in money laundering or financing of terrorism activities, and shall be subject to the fulfilment of the requirements established in Articles from One Hundred and Sixty-Eight (168) to One Hundred and Eighty (180) of the Code of Criminal Procedure.

Article Thirty-Four

Obscuring identity and protecting the witness

1. On its own initiative or at the request of Public Prosecutor's Office or by the witness, the court may determine that:

- a) The identity shall not be included in the statements if there are grounds for fear that the witness may suffer serious damage if his/her identity is revealed;
- b) The identity of a witness be kept confidential if it is concluded that the witness, one of his/her relatives or one of his/her associates may be running a risk because of his/her testimony.

2. The identity of the witness shall only be obscured if the investigation of the crime so requires and the other methods of

investigation prove to be inadequate to uncover the truth.

3. In the case set out in paragraph 1, the statement shall be heard under the terms of article two hundred and thirty (230) of the Criminal Code of Procedure or by video-conference with the witness's face obscured.

4. The statements referred to in the paragraph above shall always be heard in absentia, under the terms of paragraph 76.1 of the Criminal Code of Procedure.

5. The provisions set out in the present article shall not preclude those established in the Criminal Code of Procedure and Law no. 2/2009 of 6th May on the protection of witnesses.

Chapter V

MEASURES

Title V

PROVISIONAL AND DEFINITIVE MEASURES

Article Thirty-Five

Provisional measures

1. The court may, on its own initiative, or at the request of the Public Prosecutor's Office, impose provisional measures including the freezing or the seizure, with the intention of preserving the funds in the bank or assets which may be subject to loss under the terms of Article Forty-Three (43).

2. The provisions set out in paragraph 35.1 above shall apply without prejudice to the rights of third parties in bona fide.

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

Article Thirty-Six

Freezing of assets associated with the financing of terrorism

1. The funds and other economic assets of terrorists, of those who finance terrorism and those terrorist organisations listed by the United Nations Security Council, under the terms of Chapter VII of the United Nations Charter, or designated in Resolution no. 1373 (2001) of the United Nations Security Council and subsequent resolutions, shall be frozen in accordance with the instructions of the Central Bank or with any other form established by law.

2. The instructions referred to in paragraph 36.1 above shall define the terms, conditions and time limits for freezing assets and shall be published in the Official Journal of the Republic.

3. The institutions referred to in article 3 where such funds and other economic assets are found shall immediately proceed to freezing such funds and assets.

4. The institutions referred to in article 3 shall immediately inform FIU and, in the case of financial institutions regulated by the Central Bank, this entity shall also be informed of the existence of capital linked to terrorists,

terrorist organisations or associated individuals or entities or such capital belonging to those individuals or organisations listed by the United Nations Security Council or Resolution no. 1373 (2001) of the United Nations Security Council and subsequent Resolutions.

5. The non-fulfilment of the obligations referred to in the paragraphs above by the institutions referred to in article 3 where such funds and economic assets are found shall be punished with a fine of between USD 500.00 and USD 5,000.00 a day.

6. Any person or organisation whose funds or other economic assets are frozen under the terms of this article may, within thirty (30) days upon publication of the list, request that the Central Bank or the competent authority which ordered the freezing of such funds and assets withdraw their name from the list and return their funds or other economic assets.

7. It shall be possible to appeal to the courts in relation to the decision not to rectify the list or return the funds or other economic assets.

SECTION II

Criminilisation

Article Thirty-Seven

Money laundering

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

Article Thirty-Eight

Financing of terrorism

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

Article Thirty-Nine

Aggravating circumstances for the crime of money laundering

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

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

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

Article Forty

Aggravating

circumstances for the crime of financing terrorism

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

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

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

Article Forty-One

Attenuating circumstances

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

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

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

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

Article Forty-Two

Liability of legal persons

1. Any legal person on whose behalf or for whom the benefits of money laundering or through whom the financing of terrorism was committed, by an individual, acting individually or as a member of an organ of the legal person, who has an important position in such organ, based on the power of representation of that legal person, or authority which takes decisions on behalf of that legal person, or who exercises control within the scope of the legal person, in the exercise of such powers, shall be punished by a fine of an amount equal to five times the amount of the money laundered, regardless of the conviction of these individuals as agents or accomplices in the practice of the crime.

2. In addition to the cases established in paragraph 1 above, a legal person may be held responsible when, due to lack of supervision or control, it was possible to practice the crimes of money laundering or financing of terrorism to its benefit and through an individual acting under its authority.

3. Legal persons may also be subject to the following

accessory sanctions:

- a) Be prevented to continue to directly or indirectly carry out certain economic activities for a period of six (6) months to three (3) years;
- b) Be placed under the supervision of the court;
- c) Closure of activities which were used for the practice of the crime for a period of six (6) months to three (3) years;
- d) Be subject to a winding-up process;
- e) Be ordered to publish the sentence at their own expense.

SECTION III

DEFINITIVE MEASURES

Article Forty-Three

Confiscation in favour of the State

1. The court may decree the confiscation of:

- a) Proceeds of the crime, capital and assets, or other assets of an equivalent value;
- b) Funds and property object of the crime;
- c) Instruments of the crime;
- d) Funds or assets with which the criminal proceeds have been

mixed.

2. The measures referred to in paragraph 1 above may be applied to any person who is the owner of the assets, or which are in his possession, with the exception of the cases where the owner can prove that he/she acquired them through the payment of a fair price, in exchange of services provided of equal value or by any other legitimate means and proves that he/she had no knowledge of the illicit origin of such assets.

3. The confiscation order shall identify the assets, funds and property in question in such detail as to allow for their identification and location.

Article Forty-Four

Invalidity of legal transactions

1. The court may declare the invalidity of any legal transaction, which has been entered into with the purpose of preventing the confiscation of the property as defined in the preceding article.

2. If the contract is to be invalidated is already in force, the bona fide party shall only be reimbursed for the amount actually paid.

Article Forty-Five

Use of the confiscated assets

1. The assets and proceeds from the crime which have been declared confiscated under the terms of Article Forty-Three (43) shall revert to the State of Timor-

Leste.

CHAPTER VI

INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article Forty-Six

Duty to cooperate

1. The competent authorities shall promote the broadest cooperation with the competent authorities of other States for the purposes of international judicial cooperation in criminal matters, under the terms of applicable national and international legislation.

Article Forty-Seven

Non-political nature of crimes

The existence of political motives shall not be invoked as a justification for money laundering or financing of terrorism.

CHAPTER VII

FINAL AND TRANSITIONAL PROVISIONS

Article Forty-Eight

Alteration of Decree-Law no. 19/2009 of 8th April

Article 313 of the Criminal Code , approved by Decree-Law no. 19/2009 of 8th April shall have the following wording:

“Article 313”

Money Laundering

1. (...)

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

Article Forty-Nine

Entry into force

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

Approved on 12th December 2011

The President of the National Parliament

Fernando LaSama de Araújo

Promulgated on 15/12/2011

To be published

The President of the Republic

José Ramos-Horta