PROJECT FINANCED BY
EUROPEAN UNION
BY TRANSITION FACILITY
PROGRAMME

MANUAL ON RISK BASED APPROACH AND SUSPICIOUS TRANSACTIONS INDICATORS

- MANUAL FOR REPORTING ENTITIES IN ROMANIA -

Elaborated and edited by the National Office for Prevention and Control of Money Laundering (FIU Romania), in collaboration with the General Inspector of Financial Information (FIU Poland), within the EU funded Project RO/2007-IB/JH/05 "The fight against money laundering and terrorism financing"

Bucharest
2010

Descrierea CIP a Bibliotecii Naţionale a României
Manual privind abordarea pe baza de risc şi indicatori de tranzacţii suspecte. - Ploieşti: Editura Prahova, 2010
ISBN 978-973-8328-25-9

339.5

The Manual represents the common contributions of the experts from the National Office for Prevention and Control of Money Laundering (FIU Romania) and of the General Inspector of Financial Information (FIU Poland). The working group who participated to drafting this document was formed by:

National Office for Prevention and Control of Money Laundering – FIU Romania: *Mrs. Laura Lică-Banu, Mrs. Carmen Babiciu, Mr. Alexandru Codescu, Ms. Corina Dragomir, Mrs. Daciana Dumitru, Mrs. Maria Frățilă, Mr. Nicolae Fuiorea, Mr. Florin Ion, Mr. Mircea Pascu, Mrs. Ileana Totolici*

General Inspector of Financial Information - FIU Poland: *Mrs. Elwira Patsiotos, Mrs. Katarzyna Borkowska, Mr. Wieslaw Jasinski*

MANUAL ON RISK BASED APPROACH AND SUSPICIOUS TRANSACTIONS INDICATORS

-Contents-

Foreword

During the period 2004-2005, within the PHARE Project RO2002-IB/JH-08, the National Office for Prevention and Control of Money Laundering – The Financial Intelligence Unit of Romania (N.O.P.C.M.L.), together with the European experts, participated to drafting manuals and guidelines meant to support reporting entities, as well as competent authorities in the specific anti-money laundering and countering terrorism financing activities, respectively *the Suspicious Transactions Guidelines (2004), Training Manual for Combating Money Laundering and Terrorism Financing (2005) and Manual for judges, prosecutors and police entitled "The Fight against Money Laundering and Terrorism Financing – theoretical and practical aspects" (2005).*

Starting with December 2009, N.O.P.C.M.L. implements together with the General Inspector of Financial Information (the Financial Intelligence Unit of Poland), the current twinning project entitled, *"The Fight against Money Laundering and Terrorism Financing"(RO-2007/IB/JH/05)*, a project funded by European Union, by Facility Transition programme, one of the main project objectives being drafting, publication and dissemination of *the Manual on Risk Based Approach and Suspicious Transactions Indicators* addressed to the reporting entities. Inserting this objective in the Project Fiche was motivated by the need to fulfil the Moneyval recommendations included in the Assessment Report of Romania on 2008, making reference, among others, to increasing the awareness of the non-financial reporting entities and to drafting some guidelines, in order to assist them in implementing the risk approach and in elaboration of adequate procedures for reducing the money laundering and terrorism financing risks.

In order to emphasise this, I would like to mention that the first main actions performed within the project were related to setting up the working group for drafting the manual of the reporting entities. Under coordination of the Polish experts, the Romanian partner, based on its previous experience, prepared exhaustive materials dedicated, theoretically and practically, to anti-money laundering and terrorism financing issues. The Manual includes several typologies related to money laundering and terrorism financing and some practical examples, which describe the methods used by launderers during the ML process, especially in the non-financial sector. Above this, the Manual includes useful information of the national and international legislation, in particular, those in force in Romania, after its accession to the European Union, as well as of new communitarian regulations in the AML/CTF field.

I would like to express my hope that the *Manual on Risk Based Approach and Suspicious Transactions Indicators* – addressed to the reporting entities – will be a practical tool supporting the specific national legislation provisions, especially, those of the Law no. 656/2002 on prevention and sanctioning money laundering, as well as for setting up some measures for prevention and combating terrorism financing, consequently amended and completed.

I would also like to use this opportunity to thank to the President of the Financial Intelligence Unit of Romania, to the working group members who elaborated the Manual and to all specialists within this institution involved in the project's activities, in particular, in the action under which auspices this publication has been made.

Elzbieta Frankow-Jaskiewicz
Resident Twinning Advisor

PART I
INTRODUCTORY CONCEPTS

1.1. MONEY LAUNDERING IN THE CONTEXT OF GLOBALIZATION

Ever since its emergence in the modern variant, the money laundering phenomenon has acquired an international character through the rapid dissemination both of the idea that in order to prevent the detection of illegal activities the proceeds coming from such activities should be concealed as better as possible through means liable to confer on them a lawful appearance for the purpose of being introduced easier into the economic circuit without the risk of being detected, as well as of the finding that one of the most efficient way of concealment is money laundering by means of international financial transactions. Criminal proceeds are easier to launder if they are converted into a foreign currency, and are brought again under such form in the country with a view to being capitalized as laundered amounts.

At present these operations are being highly facilitated due to the modern technology in the field of means of communication and of financial systems globalization. Close relationships among financial and bank institutions at a global level allow offenders, for example, to transfer millions of dollars from one country to another in a few seconds using their personal computer and satellite paraboloidal antennas[1].

But the international content of the money laundering offence is also determined by the serious damage that illegal activities cause to the world economy. Due to integrated capital markets and the fast movement of values – the offenders being able to reinvest almost immediately all the dirty money in businesses that would confer on them a lawful appearance – the affluence of illegal proceeds may adversely influence exchange and capital interest rates at a global level undermining international economic relations. These negative consequences are amplified subject to the modern technology of capital movement that is limitless in the entire international financial system becoming a unique and huge market both of clean money, and of dirty money, consequence of the interconnection of national markets due to modern communication networks, that work at a planetary level (on the entire planet and 24 hours a day).

This close connection among capital markets does not exclude the existence within their interior of areas with different tax regimes, real attractions of capitals and financial heavens for those who seek to launder money resulted from illegal business. Specialised literature[2] gives the example of the island of the Grand Cayman with a population of 24,000 inhabitants, 18,000 companies, 300 insurance companies and the highest density of telex devices in the world. Also the Guernsey Island with a population of 140,000 inhabitants has 50 banks whose deposits exceed the amount of 50 billion dollars. No taxes are imposed on incomes on these islands

[1] Iosef E. Stiglitz, Globalization, Hopes and Illusions, Editura Economică, Bucharest, 2003, pages. 213-258 ;
Jean Louis, Herail, Patrick, Ramela, Le blanchiment de l'argent et la crime organisee (Money laundering and organized crime), P.U.F., Paris, 1996, page.250.

[2] Max Clanet, op.cit., pages. 187-195; Marie Cristine Dupuis, Finance criminelle (Criminal finance), Presses Universitaire de France, Paris, 2004, p.5.

and there is no obligation to communicate the name of the beneficiary of a bank account.

At the level of the Romanian society, the transition from the communist economy to the market economy lead to favorable conditions for new types of criminality, such as money laundering, mostly, as result of illegal import, due to the defective legislation in certain areas. Moreover, a "modernization of criminality" was also found, as result of its adaptation to the new social conditions. Therefore, classic property offences or classic methods of operation – such as: bank robbery, conventional swindles – are of less interest for new offenders. They realized that they could gain much greater amounts of money, with lower risks, using more complicated methods, such as: money laundering, fraudulent achievement of grants or facilities, embezzlement of funds, tax frauds or frauds regarding online commercial transactions.

At a global level, the end of the last millennium was marked by important geopolitical transformations that have accelerated the phenomenon of economic globalization, which was also facilitated to the same extent by the merger of national financial markets.

Also, the shift to a computerized society, through an unprecedented expansion of information systems, has been another premise that facilitated capital movement, practically eliminating geographical boundaries, that any operator can acquire information regarding exchange quotes or price fluctuations on important capital markets, being able to order – by means of information networks – any operations and transactions from various regions of the world.

The main effect of economic globalization is the extremely fast capital movement all around the world causing a real dematerialization of money[3], although coins and banknotes still circulate, most monetary transactions involve electronic transfers, the global information network serving both to perform conventional financial transactions, but very fast and extremely hard to track, and especially to introduce the concept of "electronic money". By means of a complex protocol implemented in the computer network, ordinary money is turned into virtual currency, subsequent transactions being impossible to track, an absolutely anonymous character being ensured.

Under such conditions, it can be concluded that huge amounts of money are circulated, including dirty money resulted from drug and arms trafficking, smuggling, embezzlement of funds, which are completed by amounts resulted from important acts of corruption, tax evasion, human trafficking, racketeering in the financial-banking field or via the computer, that are integrated in financial circuits so that their origin is disguised and they are placed in legal businesses. This statement is supported by the finding that money laundering has become the third business in the world from the standpoint of value[4].

In most cases, the complex mechanism of money making and laundering works with the support, consultancy and expertise of specialists in the financial-banking field, of investments and of the stock exchange. Money laundering is carried

[3] Costică Voicu –Dirty Money Laundering, Editura Sylvi, Bucureşti, 1999, page.11
[4] C.Adochiței, I.Adochiței, op.cit., page. 98

out at the border between illegal and legal activities[5].

According to the statements of certain legal analysts, the term of "money laundering" has its origin in the 1920s, when Al Capone and Bugsy Moran established laundries in Chicago to wash their "dirty money". Nowadays, fast-food restaurants, casinos and other types of trade companies whose activity is based on cash transactions are used for such purpose.

Maybe it could be argued that the name given to this offence in the legal environment – namely, "money laundering" – does not fully express the diversity and complexity of the deeds through which a person takes measures to give a lawful appearance to values acquired through offences in order to put them into circulation easier. This formula has a rather metaphorical character because in fact the respective activity is not carried out only in the form of cash laundering, but also of objects (movable or immovable goods), of legal acts and rights on the goods, generally on any value of economic interest and that may come from offences, values that the perpetrator is interested to conceal or to convert them into some other values with a view to erasing the tracks of their illegal origin and to putting them into circulation with a lawful appearance. That is why certain authors[6] have proposed to replace the above mentioned phrase with that of "laundering of proceeds of crime" or "laundering of values resulted from crime", phrases also used in certain international documents and that might be more consistent with the mentioned facts.

The concept of money laundering implies the existence of another dirty money generating offence, the primary offence; therefore it consists in any act related to the incomes resulted from such primary offence.

Starting from the above specification, money laundering can also be defined as any deed of concealing, disguising, purchasing, possessing, using, investing, moving, keeping or transferring property that is expressly conferred by law the statute of offence and that refers to gains resulted from other offences.

This definition is detailed in art. 23 par. 1 of the current Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures to prevent and counter terrorist financing, with subsequent amendments and supplementations, namely:

„Art. 23 *- (1) The following deeds are considered money laundering offences and are punished with prison from 3 to 12 years: a) the exchange or transfer of goods, knowing that such goods are derived from offences, for the purpose of concealing or disguising the illicit origin of such goods or of assisting the person who committed such offences to evade prosecution, trial and punishment execution; b) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of the goods or rights over the goods, knowing that such goods are derived from offences; c) the acquisition, possession or use of goods, knowing that such goods are derived from offences."*

At the same time, it is worth to mention that, in compliance with par. 3 of the same article, the attempt to commit the money laundering offence is punished in Romania.

---

[5] Costică Voicu, op.cit, page.12

[6] Valerică Dabu, S. Cătinean, About "laundering" of proceeds of crime, Dreptul nr.12/2002, pages.133-134; Valerică Dabu, A.M. Guşanu, Notes on the law for the prevention and sanctioning of money laundering, RDP, nr.4/2001, pages.103-104.

Money laundering is a complex process that goes through several stages, often involving various persons and institutions. Recycling of funds is a complex process through which incomes believed to come from criminal activity are transported, transferred, transformed or merged with legitimate funds for the purpose of concealing or disguising the true nature, origin, disposition, movement or ownership of such incomes. The purpose of the money laundering process is to make funds derived from or related to a criminal activity seem legitimate. The need to recycle money comes from the desire to conceal a criminal activity.

Thus, the ways in which money launderers act can be materialized in the three known stages of the phenomenon, such as:

I. Placement – is the process by which a person places money derived from criminal sources into the financial-banking system for the purpose of eliminating the money mass from the illegal source.

Example: placement of cash derived from offences into bank accounts held by offenders or intermediaries; making of time deposits with small amounts of money derived from selling amounts of drugs.

Being the initial stage in the process of money laundering, placement implies the placement of illegally derived funds, usually, by means of a financial institution. Large amounts of money, predominantly in cash, are structured in smaller amounts ("smurffing" phenomenon) in order to avoid transaction reporting due to the attainment of a preset minimum threshold[7]. Also, another operation which is often met within this stage is related to currency exchange, as well as to the exchange of certain high value banknotes for low value banknotes.

II. Layering – is the process by which a person or several persons perform(s) a series of financial-banking transactions using money derived from illegal sources (with no economic justification) in order to make impossible the determination of a connection between the money and the illegitimate origin. This stage takes place when the illegal goods enter the financial system, a moment when assets are converted into payment instruments and they are transferred to other institutions/jurisdictions.

Example: repeated crediting and debiting operations through various bank accounts; periodic swift transfers justified by advances for the import of goods, payment of fictitious pro-forma invoice, payment for service provision pursuant to fictitious consultancy contracts etc., activities that are not consistent with the economic profile of the customer.

III. Integration – is the moment when laundered money is entered into the legal real economy with a determined economic purpose. This stage involves the reinsertion of illegally derived funds in the real economy investing them in assets, such as real estate, movables, luxury goods etc. Funds seem to be clean and they can be taxed. The offender can make use of these funds without being suspected of money laundering.

Example: purchase of a movable or immovable good with money obtained from proceeds resulted from fictitious exports; payment for various studies abroad.

[7] According to the provisions of the Directive 2005/60/EC, the value threshold is of EUR 15,000 for cash payments, irrespective of the fact that the transaction is made through a single operation or through various operations that seem to be related.

1.2 THE CONCEPT OF TERRORISM FINANCING

In the field of countering terrorist financing, the level and direction of development of means/mechanisms of support of terrorist entities undergo a continuous change and record specific evolutions. Difficulties of identifications are not generated only because legal sources/channels are accessed by terrorist entities, but also because they coalesce with the illegal ones. Those who intent to prepare terrorist attacks will try to identify new channels characterized by vulnerabilities of the legal system and limited monitoring capacities.

The sizes of the financial attack are modest, quite and represent a small part pf the whole financial effort. Most of financial transactions are neutral and become signals only when related to suspicious persons – marriage between transaction and person. There are only a few cases when the proper transaction supplies critical indicators that help identify the involvement in terrorist financing actions. In most of the cases, the financial transaction will become a part of the ample picture, adding elements for the understanding and general evaluation of what is happening. In some of the cases, the financial transaction is the element that clarifies and lightens the insecure part of this material, and in other cases it will be a part of the ample picture that stays diffused and ambiguous. Modifications, deviations or abnormalities in the payment models could supply operational and support planning indicators within the critical challenge of passing from warning to offensive measures on the terrorists' funds. Terrorist groups are not interested in profit, but only in being able to subsist and finance their actions, so that transferred amounts of money obtained from illegal or legal activities are often found in very low values, hard to identify as terrorist financing.

Risk analysis in the field of terrorist financing[8] involves three different activities:

- ❖ Funds raising;
- ❖ Transfer (money movement);
- ❖ Spending them.

1. *Funds raising* activities involve three main sources:

- Illegitimate sources (often in connection with organized crime activities);
- Legitimate sources (donations, gifts etc.);
- Provision of logistic support (accommodation, transportation, training etc.) as a complex form of ensuring – with or without sight costs – the necessary support for terrorist activities, where both the legitimate source and the illegitimate one can be used.

The classification of the risks and vulnerabilities of the activities of prevention and countering of terrorist financing can be developed, on one hand, starting from the connections with a legislative frame in the field, and, on the other hand, from the connections with direct or indirect operational activities, for the implementation of the three activity benchmarks, namely prevention and

[8] In international practice, there are differences regarding the definition or reference to this phenomenon, because the term „terrorism" was not clearly defined in the international legislation, but only that of „terrorist act".

countering of money laundering, terrorist financing and implementation of the regime of international sanctions.

Thus, the classification of risks in the field, starting from potential financing sources, may take into consideration the following categories:

❖ Terrorist financing starting from illegitimate sources – Financing terrorist activities from illegitimate sources often occurs in direct connection with activities of organized crime, money laundering, drug trafficking, human trafficking etc. Field risks are moderated, provided the multitude of institutions with attributions of field law enforcement, fact that ensures a relative control on the phenomenon, on one hand, as well as the fact that the analysis of financial circuits in the field indicate Romania as a transition country for potential operations in areas with a high degree of vulnerability and not as final destination, on the other hand. Another area that could develop risks in the field is the presence of a lot of trade companies whose shareholding is held by citizens who come from countries where extremist movements have a pronounced dynamics, citizens that could represent a mass with a high vulnerability in being directly or indirectly co-opted for potential terrorist financing activities.

❖ Terrorist financing starting from legitimate sources – Financing terrorist activities from legitimate sources is an area of activity that involves risks and vulnerabilities, particularly in the field of organization and functioning of non-profit organizations (associations and foundations). Specialty analyses may show a high degree of sensitivity in case beneficial owners of the activities of associations and foundations can be politically exposed persons. Another risky element could be the relationship between national non-profit organizations and the branches of international associations and foundations in states that can provide a potential support for terrorist activities.

Another sensitive and risky field is the real estate market. This field is poorly and inefficiently regulated, and the dynamics accelerated by its development may develop risks that can be transferred to the mortgages security system being able to affect the degree of stability of the system operation. In the absence of a stock exchange in the field and subject to a high deficit of lodgings, the overestimation of assets (buildings and lands) can develop as a potential area of risk where analysis mechanisms could identify circuits that involve the use of both financing sources.

❖ Provision of logistic support, as a complex form of terrorist financing – The provision of logistic support (accommodation, transportation, communications, IT systems etc.) is one of the greatest challenges in the field, being at the same time one of the financing activities that involve both sources, both the legitimate, and the illegitimate one. The identification of the means, forms and procedures of development of the provision of the logistic support for terrorist activities, free of charge or in the form of a disguised payment, is a difficult process that requires a multidisciplinary analysis and an efficient cooperation both with other national institutions and authorities with attributions in the field, as well as with similar international institutions.

2. Among the forms of funds raising, followed by the movement process thereof with a view to financing terrorism, the following can be mentioned:

- ✓ multi-methodical collection schemes that comprise compulsory religious donations that are partly embezzled to terrorist networks, sometimes without the donor knowing it;
- ✓ electronic transfers to companies located in countries where there are safe banks and convenient tax systems;
- ✓ transfers between entities' bank accounts related to profit and/or non-profit or charity for less obvious business reasons;
- ✓ the overlap of bank operations and the lack of a visible activity of funds raising.

According to the UE Strategy on Terrorist Financing, alternative funds remittance systems are an important problem that needs to be addressed within the prevention and countering of terrorist financing.

The value transfer system, as a form of funds raising, involves many action forms, such as: physical transportation of values, payment in kind, as a form of provision of logistic support, alternative remittance systems (Hawala etc.), stocked value transfers (telephone cards, other bearer instruments), fast transfer of money using the banking system or approved systems, corresponding accounts, internet payment systems, donations, gifts or barter-type transactions, debit/credit cards, commercial activities.

Alternative funds remittance systems designate services that operate in a conventional manner outside the conventional financial system and enable the transmission of values and funds from one geographic location to another. In general, these systems are tied to specific geographical regions, therefore they are described using certain specific terms. These include Hawala in the Middle East and various regions in Pakistan, Hundi in India and in various parts of Pakistan, Fei Ch´ien in China and Phoe Kuan in Thailand.

In terrorist financing specific activities, banking systems are used with observance of transfer thresholds so that they do not draw attention of field operators.

The instruments used to counter terrorist financing include those used in the case of money laundering: standard regulations for customer due diligence, permanent monitoring of specific transactions (such as the rapid transfer of money and swift transfers) and of the accounts of customers who are partners with persons localized or originating from countries with a high risk of terrorist acts. Under such conditions, it is necessary that banks and other financial intermediaries focus especially on non-profit or charitable organizations or on the operations related to them. Besides, these are added the informational-operational component meant to lead to the establishment of the relationship between suspicious financial operations and terrorism.

3. Funds spending involves <u>two levels of activity</u>:

✓ The macro level (strategic) – operations are expensive, they aim at important targets, the funds being directed towards: the terrorist infrastructure, terrorist training, and the effort for the purchase of weapons of mass destruction, buying of government support.

✓ The micro level (operational) – operations are cheap and the prevention activity involves a complex and multidisciplinary analysis in relation with the implementation of international control and sanction regimes.

Prevention activities involve two major components: freeze and confiscate – at the macro level, and track money – attack indicator at the micro level. Freezing of values deprives terrorist networks of important financial sources for recruiting and training, but also information services of monitoring opportunities.

The efficiency of the measures for the countering of terrorist financing involves – with necessity – an information based approach where the improvement of the exchange of information prevails, both on the interior of the government sector, as well as between it and the private sector, the national and international cooperation in the field of exchange of information and of civil and criminal judicial procedures.

In accordance with the community objectives in the field, it is imposed that instruments for the countering of terrorist financing be adapted to the new vulnerabilities of the financial system and to the new methods of payment used by terrorists, so that national/community capacities for the identification of terrorist financing circuits are consolidated.

In the area of blocking terrorist assets, the following examples can be given:

- ✓ to improve the mechanisms of exchange of information and feedback between information services, law enforcement authorities and financial institutions at a national, European and international level;
- ✓ to facilitate communications in the private sector;
- ✓ to ensure a proper compliance of controls and reporting in the private sector;
- ✓ to ensure a proper feedback in the private sector.

In the area of countering alternative remittance systems:

- ✓ to grant license/registration – jurisdictions should provide them to be granted anonymously, for funds transmission cases (MVT services);
- ✓ to raise awareness and identification of these services;
- ✓ to monitor the activity of these services.

In the area of using non-profit organizations in bad faith:

- ✓ financial transparency (accounting, accounts etc.);
- ✓ scheduled checks;
- ✓ realized management;
- ✓ the more and more important role of supervision bodies.

The fight against terrorist financing has been the object of preoccupations of bodies around the world, including of the International Financial Action Task Force, which - holding an extraordinary session in Washington in October, 2001 – decided to extend their mandate. Thus, FATF adopted 9 Special Recommendations with a view to stopping terrorist organizations to obtain and transfer funds for their criminal activities. Such recommendations provide the new international standards for fighting against terrorist financing. They prohibit countries to use alternative money remittance services, as well as other informal or underground banking systems. In addition, FATF has asked its members to strengthen the measures for identifying customers in the case of wire transfers and to prevent charitable donations from being used in terrorist financing activities. To this effect, FATF has invited countries

to ratify the U.N.O Convention on the Suppression of Terrorist Financing and to implement the Relevant Resolutions of the Security Council. In the end, FATF has called members to align to the new standard by June 2002, warning that FATF itself would take the necessary measures against countries that do not adopt measures against terrorist financing, possibly even subject to incurring economic consequences.

Not lastly, FATF extended for the whole world to take part in this process under the same conditions with FATF members, emphasizing the importance of a global cooperation in this field.

In Romania the terrorist issue is addressed from a prevention-centered perspective, which involves focusing on the supply of terrorist activities with human, logistic and financial resources. As a consequence, institutions with attributions within the National System for the Prevention and Counter of Terrorism (SNCPT) participate actively, according to their competencies, in the activities of stopping flows that finance terrorist groups, cooperating with the Office in identifying certain suspicious terrorist financing operations.

The National Strategy in the field of preventing and countering terrorism (2002) and the Law no. 535/2004 on the prevention and countering of terrorism set the following major objectives that also support actions in the field of preventing and countering terrorist financing:

- ✓ to protect the national territory against terrorism related activities;
- ✓ to protect citizens and Romanian objectives from the exterior against activities subordinated/related to terrorism, irrespective of its origin and forms of manifestation;
- ✓ to prevent Romanian citizens and foreign residents in Romania from involving in activities subordinated/related to international terrorism, irrespective of their scope, objectives or goals;
- ✓ to participate in the international effort for preventing and countering the terrorist phenomenon in various geographical regions.

At the same time, on a national level, "terrorist financing" is criminalized in art. 36 par. 1 of Law no. 535/2004 on the prevention and countering of terrorism, article which is also mentioned by Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for the setting of certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, under art. 2 let. a^1, as follows: *"Making available movable or immovable goods for a terrorist entity, knowing that such goods are used to support or commit terrorist acts, as well as to, directly or indirectly, make or collect funds or perform any financial-banking operations with a view to financing terrorist acts is punished with prison from 15 to 20 years and prohibition of certain rights."*

1.3 THE RELATION BETWEEN MONEY LAUNDERING AND TERRORIST FINANCING

For developed and developing countries, money laundering and terrorist financing are activities that compromise the freedom, transparency and efficiency of financial systems.

Money laundering and terrorist financing are fundamentally simple concepts. Whilst money laundering is the process by which incomes derived from illegal activities are converted with a view to parting them from their illegal origin, terrorist financing is the financial support - under any form – of terrorism or what encourages it or gets involved in it. Often both money laundering and terrorist financing refer to similar transactions, most of them being related to funds concealment. Money launderers send illegitimate funds by legal channels for the purpose of concealing their criminal origin, whilst those financing terrorism transfer funds, which can be legal or illegal, using a method to conceal the source and purpose of their use – that of supporting terrorism.

The techniques used to launder money are essentially the same as those used to conceal the source or purpose in terrorist financing. The funds used to support terrorism may come from legal sources, criminal activities or both. Of no less importance is disguising the terrorist financing source, irrespective of the fact that the source is legal or illegal. If the source can be concealed, it remains available for a future financing of terrorist activities. Similarly, it is important for terrorists to conceal the use of funds so that the financing activity stays concealed.

It is known that terrorism is frequently supported through financing with occult funds, “with dirty money" or laundered money resulted from offences, besides other funds used to prepare and commit criminal acts. The close connection between money laundering and terrorism has properly been proved also by investigations made by American and European authorities in the last few years.

It is known that the offence of money laundering is a derived, correlative offence, conditioned by the perpetration of a felony, that is, of an offence. From this point of view money laundering in the case of terrorist acts could not be legally detained, unless serious offences were previously committed that resulted in amounts following to be laundered. As result, the connection between “terrorist organizations and financial supports” cannot be criminalized as a money laundering offence, firstly because the financial support of terrorist activities often comes from legal activities (donations, sales, acts of commerce), being very difficult to identify funds derived from an illegal activity among legal funds that support the activity of terrorist organizations given the fact that these funds are mixed.

Secondly, in order to avoid unmasking themselves, terrorist organizations need to use values with a lawful appearance, namely values which – if derived from a previous offence – have been laundered. Only after funds derived from offences have been converted into values with a lawful appearance, can they be entrusted (process that takes place frequently) to terrorist organizations so that they can use them for their criminal goals. Terrorist acts aimed at purchasing values that following laundering would be used for other terrorist actions cannot be excluded either. This complex connection between money laundering and the amounts available for terrorist organizations should make the subject matter of thorough investigations.

It is hard to control the origin and the destination of funds used by terrorist organizations investigating the volume of international transfers. In the case of operations that preceded September 11, 2001, individual transactions did not reach ten thousand dollars and were performed by simple transfers by persons with the

statute of students who seemed to receive the money as scholarships from the state or from their parents' funds. Usually, international transfers whose purpose is to finance terrorism do not come from large volume transfers, but from more discrete, repetitive transfers.

Enforcing measures for countering money laundering that would lead also to the countering of terrorist financing is more difficult in the case of legal incomes, in operations of disguise and concealment of ties between terrorist groups and financing entities and of any other correlations.

The effect of terrorist attacks and of the use of new directions of actions in money laundering leads practically to a change and update of the regulations and strategies for countering money laundering and terrorist financing, at a national and international level, exactly for the purpose of limiting risks towards the two criminal phenomena.

PART II
OBLIGATIONS AND RIGHTS OF REPORTING ENTITIES ACCORDING TO REGULATIONS IN FORCE

2.1 LEGAL FRAMEWORK FOR PREVENTION AND COUNTERING MONEY LAUNDERING AND TERRORIST FINANCING

In the Romanian legislation, the term of money laundering has been made known by the provisions of Law no. 21/1999, regulatory act that formed part, at that time, from the ample action of harmonization of the national legislation with the European Union legislation.

Law no. 21/1999 was repealed on the date of December 7, 2002, when the Romanian Parliament adopted Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures to prevent and counter terrorist financing. When preparing Law no. 656/2002, the legislator took into consideration the existing facts at an internal and international level, namely that the financial proceeds derived from committing an offence are laundered for the purpose of becoming legal, by the offenders' use of certain sophisticated methods that involve, especially, the financial-banking system, and also other entities specific for the market economy.

Law no. 656/2002 brought a series of new characteristics in the field of money laundering. To this effect we mention:

- extension of the coverage area of reporting entities;
- elimination of the list comprising offences that generate dirty money;
- enforcement of the obligation to identify customers for all reporting entities, ever since the initiation of the business relationship;
- obligation to report external transfers of more than the equivalent of 10,000 euro to the Office;
- possibility of the Office to perform common checks and controls on the reporting entities together with prudential supervision authorities.

In 2003, through the adoption of Law no. 39/2003 on the prevention and countering of organized criminality, the offence of money laundering was included on the list of serious offences, being punished with the liberty privative sanction.

Starting with 2005, Law no. 65/2002 on the prevention and sanctioning of money laundering has been gradually changed through a series of regulatory acts, which include the as highly important Law no. 230/2005 published in the Official Gazette 618/July 15, 2005, that brought the following main elements:

- to include the attribution to prevent and counter terrorist financing in the object of activity of the Office;
- to adopt the measure of suspending suspicious terrorist financing operations;
- to inform the Romanian Intelligence System with respect to the existence of signs of terrorist financing;

Speaking about the area of prevention and countering of terrorist financing, as mentioned in Part I of the manual, in Romania, Law no. 535/2004 on the prevention and countering of terrorism, under art. 36 par. 1, describes the concept of terrorist financing as follows: *"Making available movable or immovable goods for a terrorist entity,*

knowing that such goods are used to support or commit terrorist acts, as well as to, directly or indirectly, make or collect funds or perform any financial-banking operations with a view to financing terrorist acts is punished with prison from 15 to 20 years and prohibition of certain rights."

Other main amendments brought by Law no. 230/2005 aimed at:

- inserting the concepts of "suspicious transaction", "operations that seem to be linked to each other", "external transfers";
- increasing the period of suspension of suspicious money laundering operations from 48 hours to 72 hours and the period of extension of suspension of suspicious money laundering operations from 3 to 4 working days;
- amending art. 8 of the law supplementing the categories of reporting entities;
- establishing the attributions of compliance officers in enforcing the legal provisions for countering money laundering;
- increasing the threshold of trespassing sanctions with the inflation rate;
- configuring the procedural system of special confiscation and the investigation methods used by the Prosecutors' office with techniques of interception of communication systems, controlled delivery, supervision of bank accounts, notice of legal documents and banking and financial-banking documents, use of undercover agents.

Subsequently, a series of supplementations to Law 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing were also brought by the *Government Emergency Ordinance no. 135/2005*, as follows:

- the persons referred to in art. 8 par. 1 letter e) do not have the obligation to report to the Office the information they receive or obtain from one of their customers during the process of determining the customer's legal status or during defending or representing them in a legal procedure or in connection therewith, including while giving advice with respect to the initiation of a legal procedure, according to the law, regardless of whether such information has been received or obtained before, during or after the closure of the procedures;
- the persons referred to in the art. 8 have the obligation to determine the identity of customers when starting business relationships, opening accounts or offering certain services;
- the persons provided for in the art.8 shall proceed to the identification of customers and of persons on whose behalf or interest they act, even if the value of the transaction is lower than the minimum threshold of 15,000 Euro, as soon as there is a suspicion that the operation is meant to launder money or finance terrorism.

For the purpose of meeting the recommendations included in the European Commission Reports prepared after the mission of assessment in 2005 and 2006, Law no. 36/2006 was issued, that established new attributions of the Office, reflected later in the reorganization of the institution, namely attributions with respect to the supervision and control of non-financial reporting entities that do not have authority of prudential supervision.

As such, the main amendments brought to the law were:

- to establish the confidentiality regime of the information with respect to the notices received pursuant to art. 3 and 4 of Law 656/2002 that is processed and used within the Office. We specify that a data and classified information protection system was

implemented at the level of NOPCML ever since 2005 in full compliance with the legal provisions in the field;

- to establish new methods of enforcement of law provisions by authorities and special structures;

- to establish new attributions in the area of prudential supervision, check and control of persons who do not have prudential supervision authority, as provided at art. 17 par. 1 let. b). Through this legislative amendment, NOPCML became a supervision and control authority for reporting entities who - in compliance with the legislation in force – are not subject to the supervision of an authority.

- to establish for the Office, authorities and structures the obligation to find trespasses and apply sanctions, as the case may be, as provided at art. 17 and 22 of Law 656/2002, with subsequent amendments and supplementations;

- to adopt additional trespassing sanctions;

- to configure the procedural system of special confiscation and the investigation methods that can be used by the Prosecutors' office units by intercepting communication systems, supervising bank accounts, noticing legal documents and banking and financial-banking documents and using undercover agents.

It is worth to mention that in 2006 it was issued the Government Decision no. 531/2006 for the approval of the Regulation for the Organization and Functioning of the National Office for the Prevention and Countering of Money Laundering published in the Official Gazette no. 392/May 8, 2006.

In June 2006, the Office initiated the process of preparation of the secondary legislation. Thus, the following were approved by Decision of the Office Board no. 496/June 11, 2006: the Norms for the prevention and countering of money laundering and terrorist financing, the KYC and internal control standards for non-financial reporting entities that are not subject to the prudential supervision of an authority.

Subsequently, this Norm was amended by Decision no. 778/2009 which - for the purpose of ensuring a dissuasive sanctioning effect – included a new paragraph in art. 32, which specifically refers to the quarterly publication, by the Office, on its site, of *"the enforceable sanctions applied to reporting entities by virtue of law and of the Regulation for the enforcement of the provisions of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, approved by Government Decision no. 594/2008."*

In 2008, by adopting the Government Emergency Ordinance no. 53/2008 regarding the amendment and supplementation of Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, and the Government Decision no. 594/2008 regarding the approval of the Regulation for the enforcement of the mentioned special law, a significant progress was recorded in the national legislation in the field, the necessary measure to completely transpose the provisions of the Third Directive and of the Commission Directive 2006/70/EC regarding politically exposed persons and to implement the recommendations of MONEYVAL experts, included in the Third Detailed Assessment Report of Romania prepared for the onsite mission carried in the period of May 7-10, 2007.

The main amendments refer to:

- Defining the concepts of "beneficial owner", "operations that seem linked to each other", "shell banks", "third parties";
- Strictly defining the concept of "external transfers" that represents all transactions of more than 15,000 Euro between the accounts of a resident and of a non-resident irrespective of the non-resident's location (abroad or in Romania) for monitoring reasons (statistical reports);
- Defining the concept of politically exposed person and of the PEP categories, as well as setting new obligations for reporting entities in relation with these persons;
- Changing the reporting threshold from 10,000 Euro to 15,000 Euro for cash operations and for external transfers in the context of the know your customer standards and reporting obligations;
- Extending the period (from maximum 24 hours to maximum 10 working days) for the transmission of cash reports and external transfer reports
- Establishing the method for FIU Romania to transmit feedback regarding customers, natural/legal persons exposed to the risk of money laundering and terrorist financing;
- Redefining the list of reporting entities;
- Establishing simplified and supplemented KYC measures, as well as prohibiting the opening of anonymous accounts and the initiation and continuation of business relationships with shell banks;
- Clarifying the competence of supervision and control authorities with respect to the activity carried out by the various reporting entities;
- Adopting monitored delivery of amounts of money as a new technical method of investigation disposed by the prosecutor and authorized by motivated ordinance;
- Implementing art. 15 of Regulations EC no. 1781/2006 regarding payer related information that accompany funds transfers, the following being appointed as authorities responsible both for supervising the observance of the provisions on payment related information - that accompany transfers -, as well as for enforcing the trespassing sanctions related to the breach of such provisions: the National Bank of Romania for credit institutions, and the National Office for the Prevention and Countering of Money Laundering for any other legal person providing funds transfer services.
- Establishing new obligations in charge of the National Customs Authority in compliance with the Regulation EC no. 1889/2005 on the control of cash entering or leaving the Community, namely *"The National Customs Authority shall communicate to the Office, on a monthly basis, all the information it holds in relation with the declarations of natural persons regarding cash in foreign currency and/or national currency, which is equal or above the threshold set forth by the Regulation EC no. 1889/2005 held by these persons when entering or leaving the Community. The National Customs Authority shall transmit to the Office, within maximum 24 hours, all the information related to suspicions on money laundering or terrorist financing that are identified during its specific activity."*

These legislative amendments have lead to the adoption of the Government Decision no. 1599/2008 that sets the institutional framework for the organization and

functioning of the National Office for the Prevention and Countering of Money Laundering.

Please refer permanently to the consolidated text of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, published on www.onpcsb.ro, under the legislation section, in order to be up to date with the most recent evolutions of the law.

At the same time, we mention that in 2008, Romania sent to the European Commission the notification regarding the full transposition of the Directive 2005/60/EC and of the Directive 2006/70/EC into the specific national legislation for the prevention and countering of money laundering and terrorist financing, meeting, thus, one of the obligations of our country, as a UE Member State, that of fully harmonizing the acquis communautaire in the field.

Furthermore, considering the amendments of the primary legislation for the prevention and countering of money laundering and terrorist financing, the secondary legislation enforceable at a sectorial level was harmonized through regulatory acts adopted by financial supervision authorities and by F.I.U., namely:

- Regulation of the National Bank of Romania no. 9/2008 regarding the knowledge of customers for the purpose of preventing money laundering and terrorist financing;
- Regulation of the National Securities Commission no. 5/2008 regarding the setting of measures for preventing and countering money laundering and terrorist financing by means of the capital market, approved by Order of the National Securities Commission no. 83/2008;
- Order of the Insurance Supervisory Commission no. 24/2009 for the enforcement of the Norms on the prevention and countering of money laundering and terrorist financing by means of the insurance market;
- Norm no. 9/2009 of the Private Pension System Supervisory Commission regarding the knowledge of customers for the purpose of preventing money laundering and terrorist financing in the private pension system;
- As mentioned above, in 2009, the Office brought several supplementations to the Decision of the Office Board no. 496/June 11, 2006, and the Norms on the prevention and countering of money laundering and terrorist financing, and the KYC and internal control standards for non-financial reporting entities that are not subject to the prudential supervision of an authority were approved by the adoption of the Decision no. 778/2009.

Other regulatory acts that form part of the secondary legislative framework enforcing the provisions of the new amendments brought to Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, are:

- Government Decision no. 1437/2008 on the approval of the List of third countries imposing similar requirements as those provided by Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting up certain measures for preventing and countering terrorist financing;

- Decision of the Office Board no. 673/2008 for the approval of the Working Methodology for submitting cash transaction reports and external transfer reports;
- Decision of the Office Board no. 674/2008 regarding the form and the content of the Suspicious Transactions Report, of the Cash Transactions Report and of the External Transactions Report.

At the same time, important steps were made through the enforcement of the Government Emergency Ordinance no. 202/2008 on the enforcement of international sanctions (adopted by the Romanian Parliament through Law no. 217/2009). By means of the G.E.O. no. 202/2008, the Interinstitutional Council was created under the coordination of the Ministry of Foreign Affairs made up of law enforcement and prudential authorities (including N.O.P.C.M.L.).

The act provides for obligations for natural and legal person set forth in the legislation for the prevention and countering of money laundering and terrorist financing and for public authorities in charge with enforcing international sanctions. (refer to Section - Enforcing the regime of international sanctions).

Among the main regulations issued at a sectorial level for the enforcement of the G.E.O. 202/2008 we mention:

- Order of the Insurance Supervisory Commission no. 13/2009 for the enforcement of the Norms on the supervision procedure of the enforcement of international sanctions in the field of insurances;
- Order of the National Securities Commission no. 70/2009 for the approval of Regulation no. 9/2009 on the supervision of the enforcement of international sanctions of the capital market;
- Regulation of the National Bank of Romania no. 28/2009 on the supervision of the enforcement of international sanctions for funds blocking;
- Norm no. 11/2009 on the supervision procedure of international sanctions in the private pension system, approved by Decision of the Private Pension System Supervisory Commission no. 14/2009;
- We mention that the Internal procedures on the implementation within NOPCML of the regulations on the regime of international sanctions were adopted at the FIU level.

We mention that this brief presentation of the national legal framework in the field of prevention and countering of money laundering and terrorist financing could not be deemed as complete without reference to and observance of the treaties and conventions for which the Romanian state has assumed to meet its obligations, these acts, ratified by the Parliament, that form part of the internal law, being presented in detail in Part V – International Aspects of Countering Money Laundering and Terrorist Financing.

The texts of the international instruments referred to in this manual can be accessed on www.onpcsb.ro – International legislation section.

2.2 COMPETENT AUTHORITIES

2.2.1 THE ROLE OF THE NATIONAL OFFICE FOR THE PREVENTION AND CONTROL OF MONEY LAUNDERING, THE ROMANIAN FINANCIAL INTELLIGENCE UNIT

Financial Intelligence Units (FIUs) play a more and more important role in the fight against money laundering and terrorist financing. Financial investigations carried out by FIUs are supported to a great extent by the comprehensive system of a country by:

a) requesting the report of a certain piece of information and the maintenance of the documentation for a definite period of time,

b) facilitating the disclosure of information among competent authorities, both at an internal level, and at an international level.

The primary purposes of a financial investigation performed by the Financial Intelligence Unit are to identify, track and document funds movement, to identify and localize the assets that make the subject matter of law enforcement measures, and to support criminal prosecution.

The necessity of establishing and operating a Financial Intelligence Unit (FIU, UIF) is set forth in the provisions of art. 21 of Directive 2005/60/EC of the European Parliament and of the Council as of October 26, 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, fully implemented by Romania, as an E.U. Member State, into the Romanian legislation, that provides for the following: *"Art. 21 (1) Each Member State shall establish a FIU in order to effectively counter money laundering and terrorist financing. (2) Such Financial Intelligence Unit shall be established as a national central unit. It shall be responsible for receiving (and to the extent permitted, requesting), analysing and communicating to competent authorities disclosed information which concern potential money laundering, potential terrorist financing or is required by the national legislation or regulations. The unit shall be provided with adequate resources in order to perform its tasks. (3) Member States shall ensure that the FIU has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that it needs in order to properly perform its tasks."*

Also, the necessity of creating a Financial Intelligence Units in each country is outlined in the 40 Recommendations of the Financial Action Task Force (GAFI/FATF) which are made up of global international standards for which every national system is assessed by profile international bodies as regards compliance at a legislative and international level: *"Competent authorities, their powers and resources – Recommendation 26* - Countries should establish a FIU that serves as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of STR and other information regarding potential money laundering or terrorist financing. The FIU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR."*

Romania's experience in the fight against money laundering started in 1999, and in suppressing terrorist financing in 2005, experience that has accumulated

during these 10 years by achieving certain strategic goals at the level of the whole national system. Established through Law no. 21/1999 for the prevention and sanctioning of money laundering, pursuant to the requirements of Directive 91/308/EC for the prevention of the use of the financial system for the purpose of money laundering, the National Office for the Prevention and Countering of Money Laundering operates as a Financial Intelligence Unit in Romania, being an administrative-type specialized body with legal personality under the subordination of the Government.

The object of activity of the Office is to prevent ad counter money laundering and terrorist financing, for which purpose it receives, analyses, processes information and notices – pursuant to the law – the Prosecutors' Office attached to the High Court of Cassation and Justice, and in case suspicious operations of terrorist financing are found, The Prosecutors' Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service, being managed by a president, appointed by the Government from the members of the Office Board, a deliberative and decision making structure, made up of one representative of the Ministry of Public Finance, Ministry of Justice, Ministry of Interior, the Prosecutors' Office attached to the Supreme Court of Justice, the National Bank of Romania, the Court of Accounts and the Romanian Banking Association, appointed for a period of 5 years by decision of the Government.

The Office staff is mainly made up of financial analysts with legal or economic higher education and experience in the financial, banking or legal field, of junior analysts with secondary education, but also of contract staff that hold positions specific for the public sector.

During these 10 years of activity, the Office has become a fully functional institution, having a good economic condition and an efficient information system (including a modern database), capable of efficiently contributing to the fight against money laundering and terrorist financing, reason for which it efficiently exercises the role of a connector between reporting entities and law enforcement authorities.

The main duties of the National Office for the Prevention and Countering of Money Laundering, as a Romanian Financial Intelligence Unit, are the following:

- *To collect, process and analyse financial information.* In case that reasonable grounds of Money laundering result from analyzing the data and information processed at the institution level, the Office notices immediately the Prosecutors' Office attached to the High Court of Cassation and Justice, and in case terrorist financing is found, our institution notices immediately the Romanian Intelligence Service with respect to suspicious terrorist financing operations, in compliance with the provisions of the special law, thus taking shape the duty to disseminate information to competent authorities;
- To supervise, check and control reporting entities that are not supervised by another prudential supervision authority whose implementation consists in the sum of activities of assessment and systematic monitoring of money laundering risk indicators carried out at the Office's office (offsite) and at the reporting entities' office (onsite);
- The Office's function of a responsible factor in the implementation of the international sanctions regime, as result of the enforcement of Law no. 217/2009 for the approval of the G.E.O. no. 202/2008 on the enforcement of the international

sanctions regime, taking into consideration its capacity of a supervisor for those reporting entities that do not have a prudential supervision authority, according to the special law;

- To prevent and counter terrorist financing. Through its duties conferred by the pertinent legislation, the Office has an important role in preventing and countering terrorist financing, fact that made the institution be a part of the National System for the Prevention and Countering of Terrorist Financing (N.S.P.C.T.F.), participating actively – according to its powers – both in the activity of stopping potential terrorist groups financing flows, and in the activities of analysing and assessing the risks to which reporting entities are exposed.
- To receive, process and analyze requests for information. For the purpose of performing complex analyses as thorough as possible that imply financial transactions with elements of extraneity, FIU Romania operates at an international level, laying stress on enhancing the exchange of information with foreign institutions that have similar duties, for the purpose of preventing and countering money laundering or terrorist financing, in compliance with the legal provisions.
- To cooperate with national and international competent authorities with a view to operatively carrying out its specific activity.
- To manage human, financial and accounting resources and carry out the activity of internal public audit.

Having regard to the duties conferred on the Office through Law no. 656/2002, with subsequent amendments and supplementations, the structure and operating regime of the FIU in Romania has been regularly improved. Thus, the current Government Decision no. 1599/2008, adopted in December 2008, sets the institutional framework for the organization and operation of the National Office for the Prevention and Countering of Money Laundering.

In compliance with these provisions, the institution has the following main duties:

- it receives data and information from the natural and legal persons provided for at art. 3 par. (11), art. 8 and art. 17 par. (1) let. a) - c) of Law no. 656/2002, with subsequent amendments and supplementations, (reporting entities and prudential supervision authorities), regarding RON and/or foreign currency operations and transactions;
- it analyses and processes data and information received pursuant to the law in order to identify the existence of reasonable grounds of money laundering or terrorist financing;
- it requests any public authorities and institutions, as well as any natural and legal persons to submit data and information that they possess and that are necessary with a view to attaining its object of activity; these data and information are processed and used within the Office, according to the legal provisions regarding the processing of personal data and to those regarding classified information;
- it collaborates with public authorities and institutions, as well as with natural or legal persons that can supply useful information, with a view to attaining its object of activity;
- it takes notice by own initiative when it acknowledges, by any means, any suspicious transaction, pursuant to the law;

- it may exchange information, based on mutuality, with foreign institutions that have similar duties and are under the secrecy obligation under similar conditions, if such communications are made for the purpose of preventing money laundering and terrorist financing;
- it issues, pursuant to the law, decisions for the suspension of transactions that are suspected of having the purpose of money laundering and/or terrorist financing;
- it notices the Prosecutors' Office attached to the High Court of Cassation and Justice in the cases provided by law;
- it immediately notices the Romanian Intelligence Service with respect to suspicious terrorist financing operations, in case indications of terrorist financing are found after analyzing and processing the information;
- it immediately notices the competent body in case reasonable grounds are found that other offences than those of money laundering or terrorist financing are committed;
- it draws up and updates lists of natural and legal persons suspected of having committed or financed terrorist acts that are transmitted to the Ministry of Public Finance according to the legal provisions in force;
- it submits to the Government and bodies of the central public administration proposals for the adoption of measures for the prevention and countering of money laundering and terrorist financing, it endorses draft regulatory acts related to its field of activity;
- it organizes and performs the specialized training of own staff and can participate in the special training programs of other institutions;
- it decides on the form and content of the reports provided for at art. 3 par. (1), (6) and (7) of the law, as well as on the working methodology regarding the reports provided for at art. 3 par. (6) and (7) of the law;
- it prepares own operating procedures through specialized directorates and draws up the annual activity report;
- it prepares, negotiates and concludes conventions, protocols, agreements with institutions in the country that have duties in the field and with similar foreign institutions, pursuant to the law; it may be a member of specialized international bodies and it may participate in their activities.

In compliance with the legal provisions, the Office receives from reporting entities three types of reports:

- **Suspicious Transactions Reports,**
- **Cash Transactions Reports, for RON or foreign currency operations whose minimum threshold is the equivalent of 15,000 Euro,**
- **Reports of external transfers in and from accounts for amounts whose minimum threshold is the RON equivalent of 15,000 Euro.**

The Decision of the Office Board no. 674/2008 sets the form and content of the Suspicious Transactions Report, of the Cash Transactions Report and of the External Transfers Report.

For an efficient fight against money laundering, an exhaustive system both of prevention, and countering should start from the premise of the existence of a

variety of financial and non-financial intermediaries in the capacity of *information providers* that should responsibly cooperate with the Office and react pro-actively against the danger of being involved in money laundering and terrorist financing activities.

From the same point of view, in the same area of Office information providers are also financial control authorities, as well as prudential supervision authorities that have the obligation to notice the Office whenever suspicious money laundering and terrorist financing activities are detected.

As a consequence, the National Office for the Prevention and Countering of Money Laundering is the *central authority* of the national system for the prevention and countering of money laundering and terrorist financing, that receives, analyses, processes information and notices, subject to the existence of reasonable grounds for money laundering, the Prosecutors' Office attached to the High Court of Cassation and Justice, it also notices the Prosecutors' Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service with respect to the existence of terrorist financing operations. These institutions are the unique and exclusive *beneficial owners* of these notices.

2.2.2 OTHER LAW ENFORCEMENT AUTHORITIES

1. Prosecutors' Office attached to the High Court of Cassation and Justice – Directorate for the Investigation of Organized Crime and Terrorism Offences

The extension of the law-breaking phenomena, especially the development of organized crime, has imposed the establishment of an entity specialized in countering the forms of manifestation of crime, especially under its organized form.

Thus, the *Directorate for the Investigation of Organized Crime and Terrorism Offences* was established through Law no. 508/November 17, 2004, with subsequent amendments, within the Prosecutors' Office attached to the High Court of Cassation and Justice through a reorganization of the Department of Countering Organized Criminality and Anti-drugs, as a structure specialized in countering and investigating organized crime and terrorism offences.

According to the legal provisions, the powers of this structure include criminal prosecution and money laundering cases. In addition, it is legally authorized to cooperate with other structures of authorities with duties in the area of preventing and countering money laundering namely with the Romanian Intelligence Service (S.R.I.) and the Foreign Intelligence Service (S.I.E.) and obviously with specialized bodies of the criminal police carrying out the activities disposed by the prosecutor through delegation ordinance.

Specialized prosecutors within the Directorate for the Investigation of Organized Criminality and Terrorism Offences compulsorily carry out criminal prosecution for the offences falling under their competency pursuant to the law.

At the level of prosecutors' offices attached to courts of appeals there are territorial services that operate, and at the level of prosecutors' offices attached to general courts there are territorial bureaus that operate, managed by chief prosecutors having duties of investigating organized criminality and terrorism offences.

The Directorate for the Investigation of Organized Criminality and Terrorism Offences coordinates and controls the activity of the territorial services and bureaus established within the prosecutors' offices attached to courts of appeals and the prosecutors' offices attached to general courts; it also supervises, manages and controls criminal investigation documents prepared, through disposition of the prosecutor, by criminal police officers and agents who are under the coordination of the Directorate for the Investigation of Organized Crime and Terrorism Offences.

2. Prosecutors' Office attached to the High Court of Cassation and Justice – National Anticorruption Directorate

The National Anticorruption Directorate is a structure within the Prosecutors' Office attached to the High Court of Cassation and Justice specialized in countering corruption offences, and operating by virtue of the Government Emergency Ordinance no. 43/2002, with subsequent amendments and supplementations.

Considering the complexity of the corruption phenomenon, the scope of competence of the specialized prosecutors' office comprises not only corruption offences, or those related or in direct connection with them, but also serious offences considered to be in close connection with corruption, such as the money laundering offence.

The material competence of the directorate refers to corruption offences, similar offences or related to corruption – provided for in Law no. 78/2000, with subsequent amendments and supplementations – considered as exceeding the low corruption level, whether through an extension of the damage (more than the RON equivalent of 200,000 Euro), or through the value of the amount or good that made the subject matter of the corruption offence (more than the RON equivalent of 10,000 Euro).

3. Ministry of Administration and Interior - General Inspectorate of the Romanian Police

The General Inspectorate of the Romanian Police is the central unit of the police, having legal personality and general territorial competence, that manages, guides and controls the activity of subordinated police units, carries out activities of investigation and inquiry of very serious offences, related to organized crime, and economic-financial or banking criminality, of other offences making the subject matter of the criminal cases supervised by the Prosecutors' Offices attached to the High Court of Cassation and Justice, as well as any other duties falling under its competence by virtue of law.

The organizational chart of the General Inspectorate of the Romanian Police comprises general directorates, directorates, departments and offices established through order of the minister of interior and administrative reform.

Among the structures that carry out certain activities related to the process of preventing and countering organized criminality we mention: Criminal Investigation Directorate; Directorate for Fraud Investigation; Directorate for Weapons, Explosives and Toxic Substances; Directorate for Transport Police; Forensics Institute; The Independent Department for Interventions and Special Actions; Institute for the Research and Prevention of Criminality, National Office for Witness

Protection; Central Unit for Intelligence Analysis, Directorate for European Integration, Programs and International Cooperation, as well as territorial units subordinated to these.

In the area of preventing and countering money laundering and terrorist financing, we mention the following investigational structures at the level of the General Inspectorate of the Romanian Police:

- The Department for the Countering of Money Laundering and Terrorist Financing within The Directorate for the Countering of Organized Criminality, that carries out investigational and criminal prosecution activities to counter offences that finance terrorist acts, complex offences in the financial macro-criminality area, money laundering operations, counterfeit currency, credit cards and traveller's cheques.
- The Directorate for Fraud Investigation that carries out informational and investigational activities draws up preliminary and criminal prosecution documents, in compliance with the legal provisions, having competence in the frauds committed in various fields, including in money laundering.

4. Romanian Intelligence Service

The Romanian Intelligence Service is the institution of the Romanian State having duties in the field of collecting and using information that is relevant for the national security of Romania. Its activities are mainly carried out on the national territory, but also outside the borders, in cooperation with other responsible institutions in the field of monitoring and preventing cross-border threats.

The Romanian Intelligence Service was established on March 26, 1990, through Decree no. 181, due to the need for a specialized and competent institution in the field of collecting information regarding national security. One of the most important steps of the democratization of the Romanian State was the fact that the organization and operation of the Romanian Intelligence Service were regulated by law by the first Parliament elected following the 1989 Revolution (Law no. 51/1991). S.R.I. operates by virtue of Law no. 14/1992 that regulates its tasks, competencies and duties. The existence of the institution is also acknowledged in the Romanian Constitution (art. 62, let. g) that states that the two Chambers of the Parliament meet in joint meeting with a view to appointing the manager of the Romanian Intelligence Service and to exercising control over this service.

By means of specialized structures, S.R.I. carries out informational and technical activities for the prevention and countering of terrorism, as well as the antiterrorist intervention on the objectives attacked or occupied by terrorists for the purpose of capturing or annihilating them or of releasing hostages.

2.2.3 SUPERVISION AUTHORITIES

The risk of money laundering and terrorist financing is the risk determined by internal factors, such as inadequately carrying out certain internal activities, the existence of inadequate staff or systems, or by external factors, such as the economic conditions of regulated entities as result of failing to enforce or wrongly enforcing legal or contract provisions, as well as of the public's lack of confidence in the integrity of the concerned entity.

In the specific area of preventing and countering money laundering and terrorist financing, in compliance with art. 17 par. 1 of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, the enforcement of the provisions of the special law is checked and controlled – within the service duties – by the following authorities or structures:

a) prudential supervision authorities for persons subject to such supervision, pursuant to the law;

b) the Fraud Squad, as well as any other authorities having financial-fiscal control duties, pursuant to the law;

c) management structures of liberal professions for the persons provided for at art. 8 let. e) and f);

d) the National Office for the Prevention of Money Laundering for all persons provided for at art. 8, except for those for which the enforcement of the provisions of this law is checked and controlled by the authorities and structures provided for at let. a).

By virtue of regulatory acts of organization and operation, the legislator has given responsibilities of supervising and controlling the compliance of entities included in the financial system with the legal provisions to the following prudential supervision authorities:

- **The National Bank of Romania (BNR)** Pursuant to the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy approved by Law no. 227/2007 and subsequently amended and supplemented by the G.E.O. no. 26/2010 for the purpose of protecting deponents' interests and ensuring the stability and durability of the whole banking system, the National Bank of Romania ensures the prudential supervision of credit institutions, Romanian legal persons, including their branches established in other Member States or third states, and of payment institutions. Also, pursuant to Ordinance no. 28/2006 on the regulation of certain financial and tax measures for the purpose of achieving its goals regarding financial stability, the National Bank of Romania performs the prudential supervision of non-banking financial institutions that carry out activities on the Romanian territory and are registered in the Special Register. Further information can be accessed on www.bnro.ro, in the Supervision section.
- **The Romanian National Securities Commission (CNVM)** supervises and controls investment fund companies, investment companies, investment management companies, security companies (financial institutions, as well as branches of foreign financial institutions located in Romania). The primary legislation in the field is Law no. 297/2004 on capital market, with subsequent amendments and supplementations. Further information can be accessed on www.cnvmr.ro.
- **The Insurance Supervisory Commission (CSA)** supervises and controls insurance and reinsurance companies, and insurance and/or reinsurance brokers, as well as branches located in Romania of insurers, reinsurers and insurance and/or reinsurance intermediaries authorized in other Member States. The primary

legislation in the field is law no. 32/2000 on insurance and the supervision of insurances. Further information can be accessed on www.csa-isc.ro.

- **Private Pension System Supervisory Commission (CSSPP)** supervises and controls administrators of private pension funds, on its own behalf and for the private pension funds that it administrates, marketing agents authorized/certified in the private pension system. The primary legislation in the field is Law no. 204/2006 on voluntary pensions, with subsequent amendments and supplementations, and Law no. 411/2004 on privately administered pension funds, as republished, with subsequent amendments and supplementations. Further information can be accessed on www.csspp.ro.

The National Office for the Prevention and Countering of Money Laundering, appointed as an authority with role of supervision and control of entities that are not subject to the supervision of another authority.

Thus, we mention that in terms of provisions of Law no. 656/2002, with subsequent amendments and supplementations, and of other related regulatory acts (the Government Emergency Ordinance no. 26.2010 for the amendment and supplementation of the Government Emergency ordinance no. 99/2006 on credit institutions and capital adequacy, and of other regulatory acts), ONPCSB is the authority that supervises, checks and controls the enforcement of the provisions of the special law by the following reporting entities:

- non-banking financial institutions registered in the General Register and in the Record Book and mail service providers that provide payment services according to the applicable national legislative framework;
- casinos;
- auditors, natural and legal persons that offer tax or accounting advice;
- other persons that practise independent legal professions;
- service providers regarding trade companies or other entities, other than those provided for at, art. 8 let. e) or f) of Law no. 656/2002, with subsequent amendments and supplementations;
- persons with duties in the privatization process;
- real estate agents;
- associations and foundations;
- other natural or legal persons that market goods and/or services based on cash, RON or foreign currency operations, whose minimum threshold is the RON equivalent of 15,000 Euro, irrespective of the fact that the transactions is performed through a single operation or several operations that seem to be linked to one another.

Further information can be accessed on www.onpcsb.ro.

The prudential supervision of the (non-financial) legal profession sector in the area of preventing and countering money laundering and terrorist financing – pursuant to the provisions of Law no. 656/2002, with subsequent amendments and supplementations – is provided by the two professional associations in the field, namely:

✓ **The National Union of Romanian Notaries Public (UNNPR)** is a non-patrimonial professional organization with legal personality, established by law. UNNPR coordinates at a national level the activity of notaries public and checks their compliance with the provisions of Law no. 36/1995 on the organization of notaries public's activity, with subsequent amendments and supplementations, and with the UNNPR Statutes adopted within the 8th Congress of Romanian Notaries Public through Decision no. 12/November 12, 2008. All Notaries Public in Romania are members of the Union.

The union operates by virtue of the following principles: self-financing through contributions from its members and from other sources, pursuant to the law and statutes; political non-involvement of the Union and Chambers through their members' actions; defense of its members' professional interests; the obligativity and enforceability of acts issued within the limits of its legal and statutory competencies; functional independence; collaboration with internal and international independent profession organizations; the responsibility of notaries elected in the management bodies of the Chambers, Union and the International Union of Latin Notaries; equal treatment for all notaries public; continuous improvement of notaries public's professional education. **Further information can be accessed on www.uniuneanotarilor.ro**

Pursuant to art. 17 par. 1 lit. c) of the Law no. 656/2002, with subsequent amendments and supplementations, UNNPR is also a supervision and control body for notaries public, with respect to observing the norms for preventing and countering money laundering and terrorist financing. In this context, UNNPR adopted Decision no. 44/2006 that outlines the obligations that notaries have in terms of observing the provisions of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations. In the same area we also emphasize the conclusion of the collaboration protocol between UNNPR and ONPCSB on September 16, 2009.

✓ **The National Union of Romanian Bars (UNBR)** is a public interest legal person with its own patrimony and budget; UNBR is the sole successor of the Romanian Lawyer Association. In compliance with the provisions of Law no. 51/1995 for the organization and practice of the lawyer profession, with subsequent amendments and supplementations, the lawyer profession is practiced by lawyers recorded on the current list of the Bar members they belong to, and all bars established in Romania should be members of UNBR.

Pursuant to the Status of the lawyer profession published in the Official Gazette no. 45 as of January 13, 2005 and to Law no. 51/1995, with subsequent amendments and supplementations, in the capacity of a representative and deliberative body of Romanian bars providing the permanent activity of the Union, the U.N.B.R. Council has the following main duties:

✓ to meet the decisions of the Congress of lawyers;

✓ to settle any issues related to the lawyer profession between sessions of the Congress of Lawyers, except for those falling under the competence of the Congress of lawyers;

✓ to control the activity and decisions of the Permanent Commission of U.N.B.R.;
✓ to organize the examination for the evaluation of foreign lawyers' knowledge of Romanian law and Romanian language;
✓ to organize and manage the activity of the National Institute for the Training and Improvement of Lawyers established as a non-profit private law legal person that does not form part of the national educational system and is not subject to authorization/accreditation procedures;
✓ to adopt decisions with respect to all the issues related to the professional training and improvement of lawyers, as well as recommendations regarding relationships between bars;
✓ to organize and supervise the general statistical service of U.N.B.R.;
✓ to draw up the draft budget of U.N.B.R. and to submit it for approval of the Congress of Lawyers, as well as the budget execution of the U.N.B.R. budget;
✓ to draw up the annual activity report and the U.N.B.R. patrimony management report and submit them for approval of the Congress of Lawyers.

Further information can be accessed on www.unbr.ro.

Pursuant to art. 17 par. 1 let. c) of Law no. 656/2002, with subsequent amendments and supplementations, UNBR is a supervision and control body for lawyers, regarding the observance of the norms for preventing and countering money laundering and terrorist financing.

As regards the collaboration between UNBR and ONPCSB in the area of preventing and countering money laundering and terrorist financing, the collaboration is set up through the protocol concluded between the two institutions in November 2005.

We specify that art. 8 let. f) refers only to those persons that make the subject matter of Law no. 656/2002, with subsequent amendments and supplementations – namely independent legal professional –in case they give advice to their clients in preparing or concluding operations regarding the purchase or sale of movable property, (stock company) shares and (limited liability company) shares or stock-in-trade items, the administration of financial instruments or other goods of their clients, the opening and administration of bank, savings or financial instrument accounts, the organization of the process of subscription of the contributions required for the establishment, operation or administration of a trade company, security collective placement bodies or of other similar arrangements, or for the carrying out – pursuant to the law – of other fiduciary activities, as well as in case they represent their clients in any financial or real estate property operations.

By way of exception, pursuant to art. 3 par. 8 of Law no. 656/2002, with subsequent amendments and supplementations, the persons referred to in art. 8 let. e) and f) do not have the obligation to report to the Office the information they receive or obtain from one of their customers during the process of determining the customer's legal status or during defending or representing them in a legal procedure or in connection therewith, including while giving advice with respect to the initiation of a legal procedure, according to the law, regardless of whether such information has been received or obtained before, during or after the closure of the procedures.

2.2.4 PROFESSIONAL ASSOCIATIONS OF CATEGORIES OF REPORTING ENTITIES

In this section, we would like to talk about professional associations established for professions listed as entities with reporting obligations, pursuant to art. 8 of Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing.

Which is the role of these professional associations?

A professional association is a non-patrimonial legal organization established by natural persons – called members – who practice the same profession or connected professions, having a well determined activity and statutes of organization and operation. The professional association is established by free will of association of its members who – based on an agreement – put together with no right to restitution their material contribution, knowledge or labour contribution for the purpose of carrying out general or collective interest activities or, as the case may be, activities for their personal non-patrimonial interest.

In compliance with the provisions of the Government Ordinance no. 26/2000 on associations and foundations, as subsequently amended and supplemented by Law no. 38/2010, the association acquires legal personality when registered in the Register of Associations and Foundations of the registry of the court under whose jurisdiction is the office of the association.

Depending on the status and mandate, professional associations generally have the following main objectives:

- to develop the industry/sector they represent;
- to promote cooperation among their members;
- to set norms on the organization and operation of professional associations;
- to prepare and monitor the observance of a deontological regulation that would comprise both professional rights and duties, and sanctions for being breached;
- to set professional ethical rules for their members;
- to supply and organize professional training programs for their members;
- to coordinate professional activity with regulating and supervision authorities.

We mention that in Romania the following institutions (presented in alphabetical order) operate as professional associations of categories of the reporting entities provided for at art. 8 of Law no. 656/2002, with subsequent amendments and supplementations:

✓ **The Romanian Casino Association (ACR)** was established in 2007 by three international companies that operate in the area of casinos. The purpose of this Association is to promote the interests of casinos, including those of the European Casino Association whose member is ACR, and to participate in the improvement of casino standards. **Information about the Association can be accessed on www.casinoassociation.ro.**

✓ **The Romanian Casino Organizers Association (AOCR):** The organization and operation of gambling activities are regulated in Romania through

the Government Emergency Ordinance no. 77/2009, and the authorization for the organization and operation of gambling activities is performed by the Ministry of Public Finance through the Gambling Authorizing Commission, that is organized and operated within the said ministry subject to the conditions set forth by the above mentioned G.E.O., by its enforcement implementing regulations, as well as by other regulatory acts in the field. In its activity, the main goal of the Romanian Casino Organizers Association is that of actively and efficiently contributing to the development of gambling activities within casinos operated in Romania, to the protection of interests and investments of casino organizers in Romania, to the improvement of existing relationships with competent authorities, to the strengthening of efforts for the implementation of technical and legislative novelties existing in casinos at a global level in the field of gambling activities, as well as to the promotion of professional competence in this sector. Through activities carried out by AOCR – according to its statutes – AOCR monitors the casino sector, including in terms of preventing and countering money laundering and terrorist financing. To this effect, we mention that AOCR has issued procedures and internal policies at the sector level in the field of CML/CTF. In the same area we also mention that AOCR and ONPCSB signed a collaboration protocol in December 2004. **Further information can be accessed on www.romaniancasinoassociation.com.**

✓ **The Association of Automotive Manufacturers and Importers (APIA)** includes the largest companies in the automotive industry, namely national manufacturers, automotive importers, as well as other companies in the field of vehicle parts and accessories or lubricants. Among the main objectives sought by APIA within its activity, we mention the following: to represents its members before authorities and public institutions; to promote legislative initiatives with a view to supporting automotive production and trade; to represent Romanian manufacturers and importers before international competent forums; to publish and make public statistical data in the automotive industry; to organize conferences, seminars and other meetings related to automotive issues; to give specialized advice both to its members, and to other Romanian or foreign companies that carry out activities in the automotive industry. As regards the collaboration between APIA and ONPCSB in the area of preventing and countering money laundering and terrorist financing, this relation is set up through the protocol signed by the two institutions in December 2005. **Further information can be accessed on www.apiasoftnet.ro.**

✓ **The Professional Association of Romanian Real Estate Agents (APAIR)** is the newest professional association of real estate agents established in Romania. The objectives of the Professional Association of Romanian Real Estate Agents (APAIR) include the following: to provide educational, research and information exchange services for persons that carry out their activity in the real estate field, with the purpose of raising the standards of practice in the real estate field, and of protecting real estate ownership for the interest of the public at large; to promote and maintain high ethical standards in real estate transactions; to draw up a code of ethics for its members; to initiate, support and promote legislative initiatives in the real estate field etc. As regards the collaboration between APAIR and ONPCSB in the area of preventing and countering money laundering and terrorist financing, the

relation is set up through the recent protocol signed by the two institutions in May 2010. **Further information can be accessed on www.apair.ro.**

✓ **The Romanian Association of Real Estate Agencies (ARAI)** is a non-governmental, professional, apolitical, non-profit organization that brings together economic agents whose object of activity falls within the real estate field and related areas of activity. According to its statutes, the objectives of A.R.A.I. include the following: to represent its members before bodies of the government and of state central and local administration; to represent the interests of its members in relations with national and international associations and organizations of interest for A.R.A.I.; to guarantee and defend democracy, freedom of speech and action among A.R.A.I. members; to promote and ensure collaboration relationships among its members; to continuously improve the quality of services provided by its members to customers; to attract potential investors in the domain of activity of A.R.A.I. members etc. As regards the collaboration between ARAI and ONPCSB in the area of preventing and countering money laundering and terrorist financing, the relation is set up through the protocol signed by the two institutions in November 2005. **Further information can be accessed on www.arai.ro**.

✓ **The Romanian Banking Association (ARB)** is the professional association that represents and defends the professional interests of its members – credit institutions – for the purpose of promoting cooperation of its members with the Romanian competent authorities, especially with the National Bank of Romania, of informing the association members and the public, and of organizing common interest services of the association. The main duties of ARB are the following: to organize and provide communication among credit institutions; to promote banking policy principles in the general interest fields of members; to study issues of interest for credit institutions; to promote cooperation; to inform association members and the public, as well as to organize common interest services; to participate in the publication of specialized magazines, studies, books or other material that can help or promote banking activities; to collaborate with the centre for professional training and improvement in the banking sector in the area of organizing specialty courses for employees working in the banking system; to provide and organize the association's relationships with the press, radio, television, and in general with any other mass-media means of communication. **Further information can be accessed on www.arb.ro.**

As regards the collaboration between ARB and ONPCSB in the area of preventing and countering money laundering and terrorist financing, the relation is set up through the protocol signed by the two institutions in February 15, 2005.

✓ **The Financial Companies Association in Romania (ALB)** is a professional, non-governmental, non-profit and apolitical association established under the Romanian laws for an indefinite period of time. The purpose of the Association is to develop financial and operating leases, and to create a balanced and safe market from the perspective of all involved parties, namely financial/leasing companies and their customers. In order to achieve its purpose and meet its goals – provided for in the Statutes – the Association decided to achieve the following objectives: to promote services, best practices and highest standards in carrying out its activity; to support and protect its members' interests; to educate and develop the business community in the service sector in terms of ethics; to prevent, to

stop/curtail, to sanction economic-financial offences, including terrorist financing, and to counter fraud in the sector of financial services. **The Financial Companies Association in Romania (ALB)** is organized in five specialized Working Committees (the Marketing Committee, the Legal Committee, the Fiscal Committee, the Risk Committee and the Logistic Committee) dedicated both to leasing, and to consumer credit or to factoring and to mortgage credit. These committees are consultative bodies that submit to the Leasing and Credit Council decisions that are to be forwarded later to the General Assembly. **Further information can be accessed on www.alb-leasing.ro.**

✓ **The Chamber of Financial Auditors in Romania (CAFR)** is an independent non-patrimonial legal person, pursuant to the law, that operates as a public utility professional organization. The Chamber is also the competent authority that organizes, coordinates and authorizes the financial audit activity in Romania. It was established for the purpose of performing a sustainable development of the profession, and of strengthening it with Audit Standards and the Code of ethical and professional conduct in the field of financial audit by completely assimilating the International Standards and IFAC Code of ethics in order to enable financial auditors – CAFR members – to provide high quality financial audit services in the public's interest. Financial auditors' activity and the competence and activity of the Chamber of Financial Auditors in Romania are regulated through the Government Emergency Ordinance no. 75/1999, as recently amended and supplemented by Law no. 26/2010. In the area of preventing and countering money laundering and terrorist financing, the CAFR Council adopted Decision no. 91/2007 on the enforcement of the specific legislation regarding the prevention and countering of money laundering and/or terrorist financing operations by financial auditors. In compliance with the said decision, financial auditors carry out audit activities paying attention to the fact that it is possible that trade companies contracting audit services make business contact with persons suspected of carrying out money laundering and terrorist financing operations. Also, in the same area we mention the protocol concluded between CAFR and ONPCSB in March 2007. **Further information can be accessed on www.cafr.ro.**

✓ **The Body of Chartered and Certified Accountants of Romania (CECCAR)** is a public utility and independent legal person that brings together chartered accountants and certified accountants, as well as accounting expertise companies and accounting companies, pursuant to the law. Due to the delegation received from the public authority, the Body gives and suspends the right to exercise the chartered accountant and certified accountant profession, and has the right to control the competence and morality of its members, as well as the quality of their services. According to the regulatory act of establishment, the Body members elect the management bodies that should represent them before the public authority, as well as in their relations with natural and legal persons in the country and abroad. CECCAR was established through the Government Ordinance no. 65/1994 on the organization of chartered accountants' expertise and activity, and has branches without legal personality in residential towns and in Bucharest. CECCAR operates by virtue of the regulation on the organization and operation of the Body of Chartered and Certified Accountants of Romania, document approved through Decision of the National Conference of Chartered Accountants and Certified

Accountants in Romania no. 1/1995. In its professional activity and in relation with the prevention and countering of money laundering, the Body of Chartered Accountants and Certified Accountants in Romania issued the Deontological Norms of Accountants applicable to all the accountants in the economic field with a view to being used by them, as well as the Guide for Chartered Accountants and Certified Accountants in the Activity of Prevention and Countering of Money Laundering and Terrorist Financing (published in 2009 by CECCAR). We also mention that the collaboration between CECCAR and ONPCSB is set up by the protocol signed by the two institutions in October 2004. **Further information can be accessed on www.ceccar.ro.**

✓ **The National Union of Real Estate Agencies (UNAI)** is an association that brings together professionals activating on the real estate market, being a CEPI (*Conseil Européen des Professions Immobilières*) representative in Romania. As provided for in the Statutes, UNAI was established for the purpose of achieving the following objectives: to support, represent and protect its members' interests and rights before other natural and legal persons or the state, including before competent authorities based on special mandates when the case may be; to discourage monopolist or discriminating agreements and practices in the real estate field, as well as other actions or deeds committed by a trader to the prejudice of another trader falling under the scope of unfair competition, such as: denigrating, embezzling customers, corrupting the staff of another trader, committing infidelity etc.; to curtail and even eradicate unskilled practice of activities in the real estate field; to promote the legal system of acknowledgement and certification in the real estate field both of trade companies with specific activity, and of natural persons who work in the real estate sector etc.

As regards the collaboration between UNAI and ONPCSB in the area of preventing and countering money laundering and terrorist financing, the relation is set up through the protocol signed by the two institutions in October 2004. **Further information can be accessed on www.unairomania.ro**

✓ **The National Union of Romanian Bars (UNBR)** – presented in the previous section, considering also the Union's capacity of a supervision authority in the field. **Further information can be accessed on www.unbr.ro**

✓ **The National Union of Romanian Notaries Public (UNNPR)** – presented in the previous section, considering also the Union's capacity of a supervision authority in the field. **Further information can be accessed on www.uniuneanotarilor.ro**

2.3 REPORTING ENTITIES

2.3.1 DEFINING REPORTING ENTITIES

Reporting entities are provided for at art. 8 of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, the following natural and legal persons falling under the scope of the said regulatory act:

a) credit institutions, and Romanian branches of foreign credit institutions;

b) financial institutions, as well as Romanian branches of foreign financial institutions;

c) administrators of private pension funds, on their own behalf and for the private pension funds that they administer, marketing agents authorized/certified in the private pension system;

d) casinos;

e) auditors, natural and legal persons that provide tax or accounting advice;

f) notaries public, lawyers and other persons who practice independent legal professions, in case they give advice to their clients in preparing or concluding operations regarding the purchase or sale of movable property, (stock company) shares and (limited liability company) shares or stock-in-trade items, the administration of financial instruments or other goods of their clients, the opening and administration of bank, savings or financial instrument accounts, the organization of the process of subscription of the contributions required for the establishment, operation or administration of a trade company, security collective placement bodies or of other similar structures, or for the carrying out – pursuant to the law – of other fiduciary activities, as well as in case they represent their clients in any financial or real estate property operations;

g) service providers regarding trade companies or other entities, others than those provided at let. e) or f);

h) persons with duties in the privatization process;

i) real estate agents;

j) associations and foundations;

k) other natural or legal persons that market goods and/or services only through cash, RON or foreign currency operations, whose minimum threshold is the RON equivalent of 15,000 Euro, irrespective of the fact that the transactions is performed through a single operation or several operations that seem to be linked to one another.

Following the amendments and supplementations brought to the national regulatory framework in the field of preventing and countering money laundering and terrorist financing, a process of review of reporting entities was initiated, new categories being inserted, outlined in the European directives in the field, namely Directive 2005/60/EC (also called the Third Directive) and Directive 2006/70/EC. Such categories of reporting entities – in the current form – were regulated in Law through the enforcement of the Government Emergency Ordinance no. 53/2008 that transposed the said directives into the Romanian legislation.

2.3.2 THE ROLE OF REPORTING ENTITIES

Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, set a series of specific obligations for the natural and legal persons provided for at art. 8 of the said regulatory act.

These legal obligations set by the legislator for the natural and legal persons provided for at art. 8 of the Law have a quite high degree of complexity being actually certain measures meant to mitigate the risk of money laundering and terrorist financing.

The high risk of money laundering or terrorist financing can be mitigated identifying and determining the commercial profile of all reporting entities'

customers. Thus, reporting entities set up a customer profile based on the procedures for checking and monitoring their financial circuits.

For the purpose of preventing money laundering and terrorist financing, reporting entities have the obligation to not allow money launderers to use the financial-banking system for the purpose of recycling illegal funds or for other criminal purposes.

2.3.3 REPORTING ENTITIES' OBLIGATIONS

2.3.3.1 DESIGNATION OF PERSONS HAVING RESPONSIBILITIES IN THE APPLICATION OF THE LAW AND DESIGNATION OF THE COMPLIANCE OFFICER

Considering the objectives of reporting entities – in compliance with art. 14 of the Law – they have the obligation to appoint, within the company, one or several persons with responsibilities in enforcing the said law, whose name shall be communicated to the Office together with the type and limits of the duties.

Until the date of issuance of the G.E.O. no. 53/2008 that amended and supplemented the Law, all the persons referred to in art. 8 had this obligation, namely to appoint one or several persons with responsibilities in enforcing the said Law.

Starting from the enforcement date of the G.E.O. no. 53/2008, the provisions of art. 14 of the Law have been amended and supplemented, the obligation arising in this case only for the persons provided for at art. 8 let. a)-d), g), j), namely:

- ✓ credit institutions, and Romanian branches of foreign credit institutions;
- ✓ financial institutions, as well as Romanian branches of foreign financial institutions;
- ✓ administrators of private pension funds, on their own behalf and for the private pension funds that they administer, marketing agents authorized/certified in the private pension system;
- ✓ casinos;
- ✓ service providers regarding trade companies or other entities, others than those provided at let. e) or f);
- ✓ persons with duties in the privatization process;
- ✓ real estate agents;
- ✓ associations and foundations;

Also, the new provisions of art. 14 of the Law sets this obligation for management structures of independent professions of auditors, accountants, notaries public and lawyers with a view to appointing one or several persons with responsibilities in enforcing this law.

It is important to keep in mind that the name of these persons should be communicated to the Office together with the type and limits of their duties.

Due to the fact that management structures are the ones that appoint the independent professions (the National Union of Romanian Bars, the Body of Chartered and Certified Accountants in Romania, the National Union of Notaries Public in Romania and the Body of Financial Auditors in Romania) of persons who have responsibilities in enforcing the law, the legislator has allowed auditors, accountants, notaries public and lawyers to maintain the identity and confidentiality of their rapporteurs.

To this effect, in compliance with the legal provisions, management structures of independent professions concluded collaboration protocols with the National Office for the Prevention and Countering of Money Laundering by which auditors, accountants, notaries public and lawyers receive a reporting code, the identity of rapporteurs being thus maintained.

The person with responsibilities in enforcing the Law is appointed by reporting entities through an internal document that should comprise the identification data of the company (reporting entity), of its representative, its object of activity, the name and surname of the person commissioned for the relationship with the Office, as well as the identification data and duties thereof for the purpose of preventing money laundering in the trade company.

When having prepared and drawn up such internal document, the reporting entity shall transmit it directly to the Office or by mail services with acknowledgment of receipt.

The trade company shall communicate this document to the O.N.P.C.S.B. office only once and it may perform the communication again only in case the appointed person is replaced by another employee or the entity is subject to certain changes that involve new organizational schemes and/or delegations of responsibilities, as well as in case legal provisions are amended for this purpose.

The appointed person should have a direct and permanent access to the operational management of the entity (managerial system) and to all the records drawn up based on the economic-financial activity of the entity.

Also, the appointed person has direct obligations in enforcing the provisions of the legislation in the field of money laundering in trade companies, in order to mitigate the risk of money laundering setting proper policies and procedures with respect to the following:

- ≡ knowledge of customers to be reported,
- ≡ maintenance of secondary or operational records,
- ≡ internal control,
- ≡ risk assessment and management,
- ≡ compliance and communication management,

in order to prevent operations suspected of money laundering or terrorist financing ensuring the proper training of employees.

The internal procedures for the enforcement of the legislation in the field of preventing money laundering prepared by appointed persons shall comprise, within minimum limits:

Chap. I – General provisions. (definitions and concepts provided for by regulatory acts for the prevention and countering of money laundering)

Chap. II – Customer acceptance policy. (defining the customer, categories of customers and related risks, gradual acceptance procedures)

Chap. III – Identification and permanent monitoring of customers (normal customer due diligence measures, enhanced customer due diligence measures, simplified customer due diligence measures)

Chap. IV – Permanent monitoring of operations performed by customers and reporting them to ONPCSB (identifying and reporting transactions suspected of money laundering and terrorist financing, reporting external transfers and cash, RON

or foreign currency operations whose minimum threshold is the RON equivalent of 15,000 Euro)

Chap. V – Methods for drawing up and keeping secondary or operational records of all documents (methods for keeping documents after closing the relationship with customers, staff's access to such documents, preparing and communicating answers to competent authorities as result of requests for information)

Chap. VI – Measures for checking the enforcement of internal procedures and for assessing its efficiency. (means of performing internal control, staff training standards in the field of customer due diligence and the legislation for the prevention and countering of money laundering and terrorist financing).

Considering the economic-financial importance of credit and financial institutions, as well as their vulnerabilities before the risk of money laundering and terrorist financing, the provisions of art. 14 of Law no. 656/2002, with subsequent amendments and supplementations, set the additional obligation of appointing a compliance officer subordinated to the executive management who coordinates the implementation of the policies and internal procedures for the enforcement of the legislation in the field of preventing money laundering.

Also, credit institutions and financial institutions should inform their subsidiaries and branches located in third countries with respect to the policies and procedures prepared and implemented in this field.

The internal procedures for the enforcement of legislation in the field of preventing money laundering should be approved by the company management and acknowledged to all employees that enter into contact with customers.

Another obligation of the appointed person or, as the case may be, of the compliance officer, is to properly train employees in the field of preventing money laundering and terrorist financing, drawing up training reports to this effect. In the same train of ideas, employee training programs should comprise:

≡ all the aspects related to the prevention and countering of money laundering;

≡ the name and surname of the staff members who participate in such programs,

as well as their positions;

≡ the schedule and contents of the training that should be adapted to the needs of each entity;

The object of the training activities should include at least:

≡ training of new staff regarding the importance of the internal program for the prevention and countering of money laundering and related requirements;

≡ training of first line staff with respect to checking the identity of new customers, monitoring them, as well as checking the financial operations performed by new and existing customers;

≡ permanent update of existing customers related data;

≡ detecting operations that apparently do not have an economic or legal purpose or that, by their type and/or unusual character in relation to the customer's activities.

≡ regular staff responsibility update trainings, including informing the staff on the new trends in the field.

All the above legal obligations being fulfilled, the appointed persons with responsibilities in enforcing the legislation for the prevention and countering of money laundering and terrorist financing shall be liable for and shall fulfil the obligations set by the provisions of the Law.

Breaching the above mentioned provisions – provided for at art. 14 of Law no. 656/2002, with subsequent amendments and supplementations – entails an administrative liability being punished by art. 22 par. (2) by a fine between 15,000 RON and 50,000 RON.

2.3.3.2 REPORTING OBLIGATIONS

In order to prevent money laundering and terrorist financing, the reporting entities provided for at art. 8 of the Law or the persons appointed under art. 14 have the direct obligation to inform – pursuant to art. 3 par. (1), (6) and (7) – the Office regarding transactions suspected of money laundering and terrorist financing, operations with cash amounts exceeding the threshold, and external transfers.

The Office shall analyze and process the information, and if the existence of reasonable ground for money laundering or terrorist financing is ascertained, it shall immediately notify the Prosecutors' Office attached to the High Court of Cassation and Justice.

In case terrorist financing is ascertained, it shall immediately notify the Romanian Intelligence Service regarding suspicious terrorist financing operations.

In case that after analyzing and processing the information received no reasonable grounds for money laundering or terrorist financing are found, the Office shall keep the information in the records.

After receiving suspicious transactions reports, in case reasonable grounds are found that other offences than money laundering or terrorist financing were committed, the Office shall immediately notify the competent body.

Thus, in compliance with art. 3 par. (1), (6) and (7) of the Law, reporting entities have the following obligations:

"(1) As soon as an employee of a legal person or one of the natural persons provided for at art. 8 has suspicions that a transaction following to be performed has the purpose of money laundering or terrorist financing, they shall inform the person appointed according to art. 14 par. (1), who shall immediately notify the National Office for the Prevention and Countering of Money Laundering, hereinafter referred to as the Office. The appointed person shall analyze the received information and shall notify the Office about the reasonably motivated suspicions. The Office shall acknowledge the receipt of the notice.

(6) The persons provided for at art. 8 or the persons appointed according to art. 14 par. (1) shall report to the Office, within maximum 10 working days, the carrying out of operations with cash, RON or foreign currency amounts, whose minimum threshold is the RON equivalent of 15,000 Euro, irrespective of the fact that the transaction is performed through one or several operations that seem to be linked to one another.

(7) The provisions of par. (6) shall also apply to external transfers in and from accounts for amounts whose minimum threshold is the RON equivalent of 15,000 Euro."

As regards the issue of fulfilling the obligation to report cash, RON or foreign currency operations whose minimum threshold is the RON equivalent of 15,000 Euro, the entities that fall under the scope of the law shall transmit (report) operations performed via own cashier's office to the National Office for the Prevention and Countering of Money Laundering.

Cash operations are recorded in accounting through payment/collection orders and receipts and are performed for various purposes, such as company crediting, dividends payment or any other payment or collection performed by natural/legal persons that have their offices abroad, irrespective of the economic reason.

External transfers are performed via credit institutions, which are the only reporting entities regarding such operations, transmitting to the Office the amount transferred to the beneficiary, and the identification data of residents and non-residents.

Reporting of cash operations or external transfers to the National Office for the Prevention and Countering of Money Laundering is performed by reporting entities or by the appointed persons responsible for enforcing the Law by preparing a report set through Decision no. 674/2008 of the Office Board on the form and contents of the Suspicious Transactions Report, of the Cash Transactions Report and of the External Transfers Report.

The method for drawing up such reports is prepared by the entities in compliance with Decision no. 673/2008 of the Office Board for the approval of the Working Methodology regarding the transmission of cash transactions reports and external transfers reports.

Reports are sent to the National Office for the Prevention and Countering of Money Laundering within maximum 10 working days after the reported transaction is performed (daily/cumulated for maximum 10 working days). In the case of maximum 10 working days, the reporting entity draws up a report of each type comprising all the operations performed in the reported period.

The National Customs Authority shall communicate to the Office, on a monthly basis, all the information it holds in relation with the declarations of natural persons regarding cash in foreign currency and/or national currency, which is equal or above the threshold set forth by the Regulation (EC) no. 1889/2005 held by these persons when entering or leaving the Community. The National Customs Authority shall transmit to the Office, within maximum 24 hours, all the information related to suspicions on money laundering or terrorist financing that are identified during its specific activity.

The following operations, performed on their own behalf, are excluded from the reporting obligations provided for at art. 3 par. (6): between credit institutions, between credit institutions and the National Bank of Romania, between credit institutions and the state treasury, between the National Bank of Romania and the state treasury. Other exclusions from the reporting obligations provided for by par. (6) may also be established for a definite period of time by Governmental Decision on the request of the Office Board.

Failure to observe the obligations set forth by art. 3 par. (6) and (7) of the Law no. 656/2002, with subsequent amendments and supplementations, entails the

administrative liability of reporting entities, being thus punished by art. 22 par. (2) by a fine between 10,000 RON and 30,000 RON.

Concerning the issue of fulfilling the obligation provided for at art. 3 par. (1) of the Law, the person appointed by the trade company, pursuant to art. 14 par. (1) of the same regulatory act, shall immediately notify the National Office for the Prevention and Countering of Money Laundering regarding the suspicions about the operation following to be performed for the purpose of money laundering or terrorist financing.

For the purpose of Law 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, suspicious transaction means the operation which apparently has no economic or legal purpose or, by its nature and/or its unusual character in relation with the activities of the customer of one of the persons provided for at art. 8, casts suspicions of money laundering or terrorist financing.

Reporting of cash operations or external transfers to the National Office for the Prevention and Countering of Money Laundering is performed by reporting entities or by the appointed persons responsible for enforcing the Law by preparing a report set through Decision no. 674/2008 of the Office Board on the form and contents of the Suspicious Transactions Report, of the Cash Transactions Report and of the External Transfers Report.

The suspicious transactions report sent to the Office should comprise general information about the commercial relationship – by identifying the reporting entity – , customer identification data, information about the customer’s accounts and subaccounts, information about the customer’s relationships with other natural or legal persons, the person that manages the transaction, data about the transaction and related involved accounts, and a description of unusual/suspicious elements.

In compliance with the provisions of art. 3 par. (1) corroborated with art. 15 of the Law, the persons appointed according to art. 14 par. (1) and the persons provided for at art. 8 shall draw up a written report for each suspicious transaction in the form established by the Office, report that shall be immediately transmitted to the Office.

An important characteristic of the suspicious transactions report that is sent to the Office is that the said document should also include information about how the suspicious operation was performed. In case such operation of the customer is not performed, the entity has the obligation to immediately notify the Office with a view to suspending the operation for 48 hours.

The amount for which instructions for suspension were given shall remain blocked in the account of the holder until the suspension period expires or, as the case may be, until the Prosecutors' Office attached to the High Court of Cessation and Justice gives further instructions, pursuant to the law.

If the Office considers that the 48 hour-period is not enough, before this period has expired, it may justifiably require to the Prosecutors' Office attached to the High Court of Cassation and Justice to extend the suspension of the operation for another period of up to 72 hours. In case the 72 hour-period ends in a non-working day, the deadline extends up to the first working day. The Prosecutors’ Office

attached to the High Court of Cassation and Justice may authorize the required extension only once or, as the case may be, may order the cessation of the suspension of the operation. The decision of the Prosecutors' Office attached to the High Court of Cassation and Justice shall be immediately notified to the Office.

Within 24 hours the Office should communicate to the persons provided for at art. 8 the decision of suspending the operation or, as the case may be, the measure of extending it ordered by the Prosecutors' Office attached to the High Court of Cassation and Justice.

In case the Office does not make the communication within the 24 hours the persons provided for at art. 8 shall be allowed to perform the operation.

In this context, the procedure of suspending the suspicious operation of money laundering by blocking the holder's account refers strictly to credit institutions that act as reporting entities provided for at art. 8 let. a) of the law.

Failure to observe the obligations set forth by art. 3 par. (1) of Law no. 656/2002, with subsequent amendments and supplementations, entails the administrative liability of reporting entities, being thus punished by art. 22 par. (2) by a fine between 10,000 RON and 20,000 RON.

Another important obligation related to notifying the Office regarding money laundering suspicions is provided for at art. 5 of the Law, namely the possibility of reporting entities – who know that an operation is to be performed for money laundering purposes – to perform the operation without previously notifying the Office unless the transactions is required immediately or if failing to perform it baffles the efforts of tracking the beneficiaries of the suspicious transaction.

The beneficiary of the suspicious transaction may be a natural or a legal person or an entity with no legal personality on whose behalf or in whose interest one or several operations is/are performed via the financial system.

In compliance with the provisions of art. 4 of the Law, reporting entities have the obligation to immediately inform the office, but not later than 24 hours, about the performed suspicious transaction, specifying also the reason for not having sent the notification.

At the same time, art. 4 par. (2) of the said regulatory act emphasizes the fact that, by means of internal customer identification procedures, reporting entities have the possibility to find whether one or more of the operations performed on their behalf show signs of abnormality for the specific activity of the respective customer or for the type of the concerned operation.

In case significant deviations from performed financial circuits are found or in case the operations were performed for money laundering or terrorist financing purposes, the reporting entities have the obligation to immediately notify the National Office for the Prevention and Countering of Money Laundering with a view to taking the proper measures for such cases. To this effect, in order to report operations suspected of money laundering or terrorist financing, the persons provided for at art. 8 of the Law have a series of obligations (art. 3 par./art. 4 and art. 15) that should be met simultaneously.

Failure to fulfil the obligations set forth by art. 3 par. (1), art. 4, and art. 15 of Law no. 656/2002, with subsequent amendments and supplementations, entails

the administrative liability of reporting entities, being thus punished by art. 22 par. (2) by a fine between 10,000 RON and 30,000 RON.

The reports may be drawn up in a printed form – on paper – or in an electronic form – on a magnetic or optical support. The reports shall be transmitted to the Office whether by submitting the documents to the registration office, or by mail or express mail services with acknowledgment of receipt (keeping the acknowledgment documents is very important, being a proof that the obligation was fulfilled).

Credit institutions and Romanian branches of foreign credit institutions may send the reports in an electronic form via the inter-banking communication network pursuant to the protocols concluded to this effect with the National Office for the Prevention and Countering of Money Laundering.

Reporting entities, other than credit institutions and Romanian branches of foreign credit institutions, may send the reports in an electronic form by means of the dedicated application made available by ONPCSB on its internet portal.

Electronic reports shall be files called cccczzllaaaa_N.dbf – only for cash reports –, and cccczzllaaaa_T.dbf – only for external transfers reports -, and shall be drawn up in compliance with the structure approved for each type of file by Decision of the Board of the National Office for the Prevention and Countering of Money Laundering no. 674/2008 on the form and contents of the Cash Transactions Report and External Transactions Report.

Electronic formats transmitted by any of the said means shall be accompanied by a submission address whose template is shown in the annex to this methodology. The submission address shall compulsorily contain the file characteristics: the name, the date and time when it was created and the size in KB. The submission address may also include other notes deemed necessary by the reporting entity.

It is prohibited to send reports by fax or e-mail. Credit institutions and Romanian branches of foreign credit institutions may send the reports in an electronic form via the inter-banking communication network pursuant to the protocols concluded to this effect with the National Office for the Prevention and Countering of Money Laundering. In such case the reports shall be accompanied by the submission address.

The responsibility of ensuring the confidentiality of the data included in the reports during the whole period of transmission is solely of the reporting entity.

Reporting entities that find errors in a report after transmitting it shall immediately draw up a correction report that shall replace the original one.

Irrespective of the fact that the correction report is printed or electronic it shall include the entries that were correct in the original version, and the entries corrected by the reporting entity.

Printed reports shall contain notes on corrected operations under the "Notes" column, and electronic reports should have the reporting date updated only for corrected entries.

In the case of the reports referred to at par. (1) – in an electronic form – correction files shall be called cccczzllaaaaX_N.dbf, cccczzllaaaaX_T.dbf, respectively.

In case the reporting entity finds that an already sent file is incomplete, it shall immediately communicate the missing data, in a distinct report that shall contain the reasons for sending the new report under the "Notes" column.

In the case of electronic reports, correction files shall be called cccczzllaaaaY_N.dbf, cccczzllaaaaY_T.dbf, respectively.

SUBMISSION ADDRESS
- template -

Reporting entity: Registration no. at issuer:
Name: Reporting date:
Sole Registration Code (tax code):
Registration no. at the Trade Register:
Address and telephone/fax no.:

To
The National Office for the Prevention and Countering of Money Laundering

Please find enclosed, on an electronic support (no. of floppy disks, no. of CDs) containing:
1. Cash Transactions Report, called cccczzllaaaa_N.dbf, for the day/period of ....., created on the date of ....., at ....., with the size of ..... KB.
2. External Transfers Report, called cccczzllaaaa_T.dbf, for the day/period of ....., created on the date of ....., at ....., with the size of ..... KB.
3. Correction/Under completion Cash Transactions Report, called cccczzllaaaaX_N.dbf/cccczzllaaaaY_N.dbf, for the day/period of ....., created on the date of ....., at ....., with the size of ..... KB.
4. Correction/Under completion External Transfers Report, called cccczzllaaaaX_T.dbf/cccczzllaaaaY_T.dbf, for the day/period of ....., created on the date of ....., at ....., with the size of ..... KB.

We certify that the data in the file are complete, correct and compliant with the provisions of the regulatory acts in force.

Name and surname of the authorized person
.....
(Signature of the authorized person and
stamp of the reporting entity)

_____

2.3.3.2 PROCEDURE FOR SUSPENDING TRANSACTIONS SUSPECTED OF MONEY LAUNDERING OR TERRORIST FINANCING

In the case of money laundering and terrorist financing offences the legislator provided a previous administrative procedure in the case of which customers are identified and offence related information is processed.

Thus, in compliance with the provisions of art. 3 of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent

amendments and supplementations, as soon as the employee of a legal person or one of the persons provided for at art. 8 of the said law - established as reporting entities – has suspicions that a certain financial operation following to be performed is intended to confer a legal appearance, which forms an integral part of the objective part of the money laundering offence, they shall inform the person appointed according to art. 14 par. 1 within the respective institution, and such person shall immediately notify the National Office for the Prevention of Money Laundering (ONPCSB).

We mention the fact that ONPCSB is notified in such case through a Suspicious Transactions Report (RTS) in the form and contents set by Decision no. 674/2008 on the form and contents of the Suspicious Transactions Report (STR), of the Cash Transactions Report (CTR) and of the External Transfers Report (ETR).

As result of the received request, if ONPCSB – by means of the Specialty Directorate – considers being necessary and justified and if it identifies elements specific for a typology related to money laundering, it may justifiably order the suspension of the transaction for a period of 48 hours.

If after this 48 hour-period the same institution considers that the period was insufficient to perform the check and specialized research, it may justifiably require only once, to the Prosecutors' Office attached to the High Court of Cassation and Justice, an extension of maximum 72 hours.

Pursuant to the law, the Office has the obligation to inform, within 24 hours, the persons provided for at art. 8 on the decision to suspend the transaction considered suspicious or, as the case may be, to extend it, decision made by the Prosecutors' Office attached to the High Court of Cassation and Justice. If the Office does not communicate such information the operation is performed, and – pursuant to the law – the reporting entity does not have the right to inform the customer that it made the subject matter of an administrative procedure related to money laundering.

Thus, the procedure for suspending the operation suspected of money laundering or terrorist financing by blocking the holder's account refers only to credit institutions that act as reporting entities provided for at art. 8 let. a) of the law.

Failure to observe the obligations set by art. 3 par. (1) of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, entails the administrative liability of reporting entities, being thus punished by art. 22 par. (2) by a fine between 10,000 RON and 30,000 RON.

Regarding the "24 hour-period" when the decision of suspending or, as the case may be, extending the operation should be communicated, we believe that it should be replaced by "immediately", because the practice has proven the fact that reporting entities encounter difficulties when they have to explain holders of suspended operations the reason for not performing the suspicious operations. Furthermore, there is the risk that the operation should be performed within the period of time between making the decision and the effective elapse of the 24 hour-period.

Also, this period of time gives the possibility to networks specialized in money laundering operations to deposit or withdraw significant amounts of money in/from financial circuits, on one hand, and it makes troubles to authorities with

duties in the field for being informed in due time about these operations and which, thus, find themselves in the impossibility to apply the imposed operational measures, on the other hand.

2.3.3.4 CUSTOMER DUE DILIGENCE

When carrying out their activity within the reporting entity, the persons provided for at art. 8 of the Law have the obligation to take proper measures to prevent money laundering and terrorist financing and, for such purpose, to adopt, on a risk-based approach, normal, simplified and/or enhanced customer due diligence measures that would allow them to also identify the beneficial owner on whose behalf and in whose interest one or several operations were performed.

When fulfilling customer identification obligations, reporting entities apply normal or enhanced customer due diligence measures depending on the customer. Applying these customers due diligence measures is a technical instrument through which reporting entities can classify customers based on their exposure to the money laundering risk.

Exposure to the money laundering or terrorist financing risk is identified through the risk determined by internal factors, such as inadequately carrying out certain internal activities, the existence of inadequate staff or systems, or by external factors, such as the economic conditions of regulated entities as result of failing to enforce or faultily enforcing legal or contract provisions, as well as of the public's lack of confidence in the integrity of the concerned entity.

Evaluating the degree of exposure related to the money laundering and terrorist financing risk is the systematic approach of the main categories of risk in the field, without being limited, such as: geographic risk and country risk, reporting entity risk and customer risk, product risk and transaction risk.

To this effect, the following categories of risk can be identified:

- *geographic risk* – predominance of a certain type of activity exposed to the money laundering and terrorist financing risk in a certain geographic area;
- *country risk* – exposure to countries that have a poor legislative system or improper internal policies for the prevention and countering of money laundering and terrorist financing, countries with a high ratio of organized criminality and corruption or countries sanctioned by international bodies;
- *reporting entity risk* – existence of an improper system for the prevention and countering of money laundering and terrorist financing within the entity, the absence of proper programs for employee training for the purpose of recognizing operations that could be related to money laundering or terrorist financing;
- *customer risk* – persons represented by commissioners, politically exposed persons, persons that perform transactions apparently unimportant from a commercial point of view;
- product risk – sensitivity of an economic-financial product to money laundering or terrorist financing, specific for the activity of the checked reporting entity or to internal factors related to the reporting entity's object of activity;
- *transaction risk* – sensitivity of an operation determined by internal or external factors, namely: mainly cash operations, repeated operations with amounts below the threshold in RON or foreign currency of the equivalent of 15,000 Euro or other operations.

The presentation of these risks is not limitative, the risks being also differentiated through a different prudential approach depending on the specificity of the sector in which the reporting entity carries out its activity.

Having regard to the legal provisions in this field, customer identification data should comprise:

a) in the case of natural persons – marital status data mentioned on the identity documents provided for by law;

b) in the case of legal persons – data mentioned in the registration documents provided for by law, as well as the proof that the natural person coordinating the transaction is the representative of the legal person.

In the case of foreign legal persons, upon opening bank accounts they shall be asked for documents that show the identity of the company, the headquarters, the type of company, the place of registration, the power of attorney of the person who represents the company in the transaction, as well as a translation in Romanian of the documents authenticated by an office of the notary public.

In compliance with the provisions of art. 9 par. (1) of the Law, reporting entities have the obligation to apply the normal customer due diligence measures under the following circumstances:

a) when establishing a business relationship;

b) when performing occasional transactions in value of at least 15,000 Euro or the equivalent, irrespective of the fact that the transaction is performed through a single operation or several operations that seem linked to one another;

c) where there are suspicions that the concerned operation is performed for money laundering or terrorist financing purposes, irrespective of the scope of provisions for exceptions from the obligation to apply the normal customer due diligence measures set in such law and by the operation value;

d) when there are doubts regarding the veracity or adequacy of identification information already owned by the customer;

e) when purchasing or exchanging in casinos tokens whose minimum value is the RON equivalent of 2000 Euro.

Also, in compliance with the provisions of art. 9^1 of the Law, reporting entities have the obligation to apply normal customer due diligence measures to all new customers, as well as to all existing clients, as soon as possible, depending on the risk.

A different obligation for credit institutions and financial institutions regarding customers' identity is provided for at art. 9^2) par. (1) of the Law by which they are obliged not to open and operate anonymous accounts, namely accounts for which the holder or beneficiary's identity is unknown and is not properly recorded.

When fulfilling the obligations regarding customer identification, reporting entities apply normal or enhanced customer due diligence measures depending on the customer.

In compliance with the provisions of art. 12^1 par. (1), reporting entities have the legal obligation of establishing – besides normal customer due diligence measures – additional KYC measures for the following circumstances that, by their nature, may pose a high risk of money laundering or terrorist financing:

a) in the case of persons that are not physically present when performing the transactions;

b) in the case of correspondent relationships with credit institutions from states that are not European Union Member States or do not belong to the European Economic Area;

c) in the case of transactions or business relationships with politically exposed persons, which are residents in another Member State of the European Union or of the European Economic Area or in a third country.

The reporting entities referred to in art. 8 shall apply enhanced due diligence measures also for other cases than the ones provided for above, that, by their nature, pose a high risk of money laundering or terrorist financing.

Failure to fulfil the obligations provided for at art. 9, 9^1, 9^2, 12, art. 12^1 par. (1) of Law no. 656/2002, with subsequent amendments and supplementations, entails the administrative liability of the reporting entities, being thus punished by art. 22 par. (2) by a fine between 15,000 RON and 50,000 RON.

2.3.3.5 BENEFICIAL OWNER

The concept of beneficial owner was introduced in the national regulatory framework for the prevention and countering of money laundering and terrorist financing together with the transposition of Directive 2005/60/EC through the enforcement of the G.E.O. no. 53/2008.

In order to be interested by the basis of this concept, we consider that it is important to stress on the documents (recommendations) prepared for this field by international forums, especially by FATF – Financial Action Task Force.

In fact, the implementation of customer due diligence measures into international legislations lead to the identification of the necessity of enhancing them, in order to mitigate the possibility of using intermediaries in performing financial circuits, as well as of determining the effective identity of the persons (groups) that perform transactions.

As regards the Romanian legislation in the field, the concept of *beneficial owner* was introduced in order to implement the international standards, in order to present more precise and more detailed dispositions related to the identification of the customer and of any beneficial owner and to the verification of their identity.

To this effect, when the individual beneficiaries of a legal person or arrangement, such as a foundation or trust, are yet to be determined, and it is therefore impossible to identify an individual as the beneficial owner, it was also necessary to identify the category of persons designated to be the beneficiaries of the foundation or trust.

Regulated institutions and persons should identify and verify the identity of the beneficial owner. To fulfil this requirement, the institutions and persons should decide on their own whether they shall make use of the public records of beneficial owners, ask their clients for relevant data or obtain the information otherwise, taking into account the fact that the extent of such customer due diligence measures relates to the risk of money laundering and terrorist financing, which depends on the type of customer, business relationship, product or transaction. To the extent that persons who contribute with goods to a legal person or arrangement hold a significant control over the use of such goods they should be identified as beneficial owners.

As regards the derogations specific for independent legal professionals, the derogation concerning the identification of beneficial owners of pooled accounts held by notaries or other independent legal professionals should not bring prejudice to the obligations that those notaries or other independent legal professionals have pursuant to the specific legislation.

These obligations include the need for such notaries or independent legal professionals themselves to identify the beneficial owners of the pooled accounts held by them. Also, when registering or licensing a currency exchange office, a trust and company service provider or a casino, competent authorities should ensure that the persons who effectively manage or will manage the business of such entities and the beneficial owners of such entities are suitable and proper persons. The criteria for determining whether or not a person is suitable and proper should be established in compliance with the national law.

As a minimum condition, such criteria should reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal purposes.

By means of the norms provided for by Decision of the Office Board no. 496/2006, O.N.P.C.S.B., as a supervision authority, introduced specific requirements long before the transposition of Directive 2005/60/EC into the national legislation in the field.

The beneficial owner is determined at art. 2:

"h) "beneficial owner" - the natural or legal person or the entity without legal personality on whose behalf or to whose interest one or more of the operations referred to at let. e) is performed.

e) customer – any natural or legal person or entity without legal personality with whom regulated entities initiate business relationships or for whom they provide services or with whom they conduct other permanent or occasional operations. For the purpose of this norm, customer also means:

1. the beneficial owner of the operation;
2. national or foreign correspondent entities of regulated entities;
3. any natural or legal person of entity without legal personality that operated on behalf or to the interest of another person."

The enforcement of the G.E.O. no. 53/2008 that amended and supplemented Law no. 656/2002 defined the beneficial owner as being any natural person that ultimately own or control the customer and/or natural person on whose behalf or in whose interest a transaction or operation is directly or indirectly performed. To this effect, the concept of "beneficial owner" includes:

a) in the case of trade companies:

1. the natural person(s) who ultimately own(s) or control(s) a legal entity through direct or indirect ownership or control over the whole stock or over a number of shares or voting rights sufficient to ensure control in that legal entity, including bearer share holdings, the owned or controlled legal entity being other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to international standards. A percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

2. the natural person(s) who otherwise exercise(s) control over the management of a legal person;

b) in the case of legal persons, other than those provided for at let. a), or of other entities or legal arrangements that administer and distribute funds:

1. in case future beneficiaries have already been determined, the natural person who is the beneficiary of at least 25% of the assets of a legal person or legal arrangement or entity;

2. in case the individuals that benefit from the legal person or entity have yet to be determined, the class of persons in whose main interest the legal person or entity is established or operates;

3. the natural person(s) who exercise(s) control over at least 25% of the assets of a legal person or a legal entity or arrangement.

2.3.3.6 POLITICALLY EXPOSED PERSONS

Just as in the case of the beneficial owner, the concept of politically exposed person was initially emphasized through documents (recommendations) prepared for international forums in the field, especially by FATF – Financial Action Task Force. Also, Directives 2005/60/EC and 2006/70/EC identified directly the categories of customers that fall under the scope of politically exposed persons, specific requirements being prepared, including the enforcement of enhanced customer due diligence measures.

In concentrating the measures related to business relationships with politically exposed persons, it was necessary for reporting authorities to apply – based on sensitive risk (vulnerability/exposure) – enhanced customer due diligence measures in relation with transactions or business relationships with the said persons.

In the context of such risk analysis, the resources of reporting entities should be focused on products and transactions that pose a high risk of money laundering.

In order to ensure a proper enforcement of the concept of politically exposed person, when the classes of involved persons are determined, it is critical that social, political and economic difference among the countries be taken into consideration.

In the same line of ideas, the above mentioned directives stated that differences between public functions lower than the national level should not be taken into consideration. When their political exposure is comparable with that of similar national positions, institutions and persons involved in financial circuits should consider – based on sensitive risk – whether persons exercising their public functions should be considered politically exposed persons.

Also, it was considered advisable that natural persons that fall under the scope of the concept of politically exposed persons, would not be considered as such after having ceased to exercise important public positions, subject to a minimum period.

As regards transactions or business relationships with politically exposed persons residing in another Member State or in a third country, regulated institutions and persons were required the following:

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

(b) to have senior management approval for establishing business relationships with such customers;

(c) to take adequate measures to establish the source of patrimony and the source of the funds involved in the business relationship or transaction;

(d) to conduct enhanced ongoing monitoring of the business relationship.

This is valid especially in the case of business relationships with natural persons who hold or held important public functions, especially in countries where corruption is widespread. This kind of relationships can expose the financial sector to significant reputational risks and/or legal risks. The international effort of countering corruptions also justifies the need to pay special attention to such cases and to apply full and normal customer due diligence measures in relation with politically exposed persons at an internal level and normal customer due diligence measures in relation with politically exposed persons residing in another Member State or in a third country.

Setting up specific requirements regarding the implementation of certain norms in the area of customer due diligence, including related to enhanced customer due diligence for high risk customers or business relationships, internal procedures and policies should be prepared with a view to finding de facto whether a person is politically exposed, as well as whether additional more detailed identification requirements are needed.

The enforcement of the G.E.O. no.53/2008, that amended and supplemented Law no. 656/2002, defined politically exposed persons as being any natural persons who exercise or have exercised important public functions, immediate family members, as well as persons known to be close associates of the natural persons exercising important public functions.

In direct connection with the definition of the concept within the above mentioned directives, the Law provides for at art. 2^1 the natural persons included in the class of politically exposed persons: *"a) heads of state, heads of governments, members of parliaments, European commissioners, members of governments, presidential councils, state councils, state secretaries;*

b) members of constitutional courts, members of supreme courts, as well as members of the high courts whose decisions are not subject to further appeal, except by exceptional rights to actions;

c) members of courts of accounts or similar bodies, members of the boards of central banks;

d) ambassadors, charges d'affaires and high-ranking officers in the armed forces;

e) managers of public institutions and authorities;

f) members of the administrative, supervisory and management bodies of State-owned enterprises, trade companies with state capital and national companies."

Similar persons, such as immediate members of politically exposed persons also fall under the scope of this definition:

a) spouse;

b) children and their spouses;

c) parents.

Persons publicly known to be close associates of the natural persons who are entrusted with prominent public functions are the natural persons well known for the following facts:

a) together with one of the politically exposed persons have a significant influence over a legal person or have a close business relationship with these person;

b) have a significant influence over a legal person or legal entity or arrangement established for the benefit of a politically exposed person;

As regards the limited period mentioned by directives in the field, the national legislations (Law no. 656/2002, with subsequent amendments and supplementations) states that *"notwithstanding the enforcement, based on risk assessment and the enhanced customer due diligence measures, after one year after the date on which the person ceased to hold a prominent public function (...), the institutions and persons provided for at art. 8 shall not consider the respective persons as being a politically exposed person".*

Based on risk assessment procedures, reporting entities may cease to consider the monitored person as being politically exposed when the period of one year has been met from the date when that person ceased to hold a prominent public function.

The enhanced customer due diligence measures provided for by art. 12^1 par. (1) let. c of the Law regarding politically exposed persons are clear dispositions regarding the identification of the customer and of any beneficial owner. Besides the obligation to identify politically exposed persons, reporting entities should also monitor their operations and, as well as to include PEPs in specific risk categories.

On the same time, as it is mentioned under art. 12 para 4 of the Governmental Decision no. 594/2008, in respect of occasional transactions or business relations with politically exposed persons, the reporting entities shall apply the following measures:

"a) to have in place risk based procedures which allow the identification of the customers within this category;

b) to obtain executive management's approval before starting a business relationship with a customer within this category;

c) to set up adequate measures in order to establish the source of income and the source of funds involved in the business relationship or in the occasional transaction;

d) to carry out an enhanced and permanent supervision of the business relationship."

2.3.3.7 RECORDKEEPING

In compliance with art. 13 of the law, reporting entities have the obligation to identify the customer, keeping a copy of the document – as a proof of identity - , or identity references, for a period of 5 years, starting from the date when the relationship with the customer was closed.

Reporting entities shall keep secondary or operating records of all financial operations making the subject matter of the law, for a period of 5 years after performing each operation, in a proper form so that they can be used as evidence in court.

Failure to observe the obligation provided for by art. 13 of Law no. 656/2002, with subsequent amendments and supplementations, entails the administrative liability of reporting entities, being thus punished by art. 22 par. (2) by a fine between 15,000 RON and 50,000 RON.

2.3.3.8 REQUESTS FOR INFORMATION SUBMITTED BY THE FIU

In order to meet the object of activity of the National Office for the Prevention and Countering of Money Laundering, with a view to analyzing and processing financial information, the legislator also set up the obligation of reporting entities to answer in due time to all the requests for information about financial circuits performed by their customers.

Thus, in compliance with art. 5 par. (2) of the law, reporting entities have the obligation to transmit requested data and information to the Office within 30 days after receiving the request.

Failure to fulfil the obligation provided for at art. 5 par. (2) of Law no. 656/2002, with subsequent amendments and supplementations, entails the administrative liability of reporting entities, being thus punished by art. 22 par. (2) by a fine between 15,000 RON and 50,000 RON.

2.3.3.9 SECRECY, INFORMATION CONFIDENTIALITY, TIPPING-OFF AND LIABILITY OF THE REPORTING ENTITY FOR BREACHING THE LEGAL PROVISIONS

In compliance with art. 18 par. (2) of the Law, entities and their employees are not allowed to transmit information regarding money laundering and terrorist financing and to warn customers regarding the notice sent to the Office. Also, pursuant to par. (3) of the same article, it is prohibited for employees to use such information for personal purposes both during their activity, and afterward.

Thus, all the persons within reporting entities who participate in the economic activity have the obligation to keep the professional secret concerning the operations performed by their customers for money laundering and terrorist financing purposes.

Entity employees may not use for personal purposes the economic information processed in connection with money laundering and terrorist financing or the information acknowledged otherwise.

The staff of reporting entities has the legal obligation of not warning customers regarding the following issues:

≡ transmitting to the Office notices regarding the suspension of operations following to be performed for money laundering or terrorist financing purposes;

≡ transmitting to the Office the reports on transactions suspected of money laundering or terrorist financing;

≡ the requests for information of the Office regarding operations performed by customers suspected of money laundering or terrorist financing;

Failure to observe the obligations provided for at art. 18 of Law 656/2002, with subsequent amendments and supplementations, is an offence and is punished with prison from 2 to 7 years.

Committing the following deeds in performing service duties is not a breach of the interdiction provided for at art. 18 par. (2) of the Law:

≡ providing information to competent authorities pursuant to the law and supplying information in the cases expressly provided for by law;

≡ transmitting information between financial institutions located in Member States of the European Union or of the European Economic Area or from third countries that belong to the same class and apply customer due diligence measures and record keeping measures equivalent to those provided in this law and are supervised concerning their enforcement to the same extent as those regulated by this law;

≡ transmitting information among entities located in Member States of the European Union or of the European Economic Area or third countries that impose requirements equivalent to those imposed by this law, in cases related to the same customer and the same transaction performed through two or more of the said persons, provided that they come from the same professional category and they are applied the same equivalent requirements regarding professional secret and personal data protection.

2.3.3.10 CONTRAVENTIONS AND SANCTIONS

The infringement is the deed committed by guilt showing a social danger less serious than the offence and being provided and punished as such through acts issued by competent bodies.

This legal definition reveals the features that characterize the infringement, namely:

a) It is a deed committed by guilt;
b) It is a deed that shows a degree of social danger lower than the offence;
c) It is a deed provided for by regulatory acts issued by competent bodies.

With a view to preventing money laundering and terrorist financing, in compliance with art. 22 of the law, the legislator set up the main and complementary infringements and punishments for legal and natural persons' failure to observe legal obligations provided for by such regulatory act, namely:

„Art. 22 - (1) The following deeds are infringements:

a) failure to observe the obligations provided for at art. 3 par. (1), (6), and (7) and art. 4;

b) failure to observe the obligations provided for at art. 5 par. (2), art. 9, 91, 92, 12, art. 121 par. (1), art. 13 - 15 and 17.

(2) Infringements provided for at par. (1) let. a) shall be punished by a fine between 10,000 RON and 30,000 RON, and infringements provided for at par. (1) let. b) shall be punished by a fine between 15,000 RON and 50,000 RON.

(3) Infringements provided for at par. (2) apply also for legal persons.

(3^1) Besides the punishments provided for at par. (3) the legal person may also be subject to one or more of the following complementary administrative punishments:

a) confiscation of goods intended, used or derived from the infringement;

b) suspension of the approval, permit and license to carry out an activity or, as the case may be, suspension of the economic agent's activity for a period of minimum one month and maximum 6 months;

c) withdrawal of the license or permit for certain foreign trade activities, for a period of minimum one month and maximum 6 months or forever;

d) blocking of the bank account for a period between 10 days and one month;

e) cancellation of the approval, permit or license to carry out an activity;

f) closure of the unit. [….]

The infringements provided for by Law are supplemented by the general provisions concerning the legal regime of infringements, namely by the G.E.O. no. 2/2001 approved with amendments and supplementations by Law no. 180/2002.

From a social point of view, the infringements provided for by the Law are deeds that bring prejudice to authorities, namely to the National Office for the Prevention and Countering of Money Laundering by jeopardizing its compliant carrying out of object of activity, that of analyzing and monitoring operations suspected of money laundering, external transfers and cash, RON and foreign currency operations whose minimum threshold is the RON equivalent of 15,000 Euro, irrespective of the fact that the transactions is performed through a single or several operations that seem linked to one another.

Thus, by reporting entities' failing to fulfil the obligations, namely natural and legal persons that do not apply properly the legislation in the field of preventing money laundering and terrorist financing, massive flows of dirty money can harm the stability and reputation of state authorities, financial sector, and terrorism – the basis of our society.

Money laundering and terrorist financing are usually carried out in an international context and the measures adopted only at a national level would have very limited effects.

In order to mitigate such social danger of money laundering and terrorist financing, the national legislation in the field was harmonized with the provisions of the Third Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The European Community Action extended in 2006 regarding the Recommendations of the Financial Action Task Force (F.A.T.F.) and is the most important international body acting in the field of preventing money laundering and terrorist financing.

The importance of the fight against money laundering and terrorist financing should persuade Member States to set up efficient, proportionate and discouraging punishments in the national legislation for non-compliance with the national provisions adopted as result of the Third Directive of the European Parliament and of the Council 2005/60/EC.

Characteristics of finding infringements

In compliance with the provisions of art. 22 par. 4 of the law, the infringements and punishments provided for by the above mentioned regulatory act hall be applied by empowered representatives of the National Office for the Prevention and Countering of Money Laundering or by another competent authority authorized to perform the control, pursuant to the law.

In case the control is performed by the supervision authorities, infringements shall be found and punishments shall be applied by the empowered representative appointed for such purpose by the respective authorities.

Considering the fact that law provisions are consistently supplemented by the G.O. no. 2/2001 on the legal regime of infringements, approved with amendments and supplementations by Law no. 180/2002, with subsequent amendments, except for art. 28 and 29, the National Office for the Prevention and Countering of Money Laundering shall perform controls in the area of preventing money laundering and terrorist financing by means of appointed persons that act as official examiners.

Thus, the official examiners of the National Office for the Prevention and Countering of Money Laundering perform checks and controls at the offices of reporting entities, having the procedural possibility to find the infringements and to apply proper punishments.

When checking and controlling, the official examiners of the Office request the representatives of entities to submit the following:

- ✓ the check register from the head/secondary office where the control is performed;
- ✓ documents by which one or more persons with law enforcement responsibilities were appointed, as well as the proof of sending them to the Office together with the type and limits of the said responsibilities. The internal documents of credit and financial institutions by which the compliance office under the executive management was appointed, office who coordinates the implementation of the internal policies and procedures in the field of preventing money laundering.
- ✓ the proper internal control procedures and methods for the prevention and countering of money laundering and terrorist financing, and the documents concerning employee training with a view to recognizing operations that could be related to money laundering or terrorist financing, and to taking immediate compulsory measures for such circumstances;
- ✓ the internal audit report regarding the system for the implementation of the measure for preventing and countering money laundering and terrorist financing, as the case may be:
- ✓ efficient / political methods / customer identification procedures;
- ✓ copies of documents or references on the customer's identity, as well as copies regarding secondary or operating records and entries of all financial operations and the proof of being kept, in a suitable form, for a period of 5 years, starting from the date on which the relationship between the reporting entity and the customer is ended, namely the date of the operation;
- ✓ answers sent to the Office with requested data and information, within 30 days after receiving the request;
- ✓ accounting documents where operations are recorded;
- ✓ cashier documents – receipts, pay slips, collection/payment orders;
- ✓ cashier records in RON/foreign currency;
- ✓ sales/purchase tax invoices;
- ✓ analytic/synthetic balance sheet;
- ✓ check balances;

- ✓ witness roll of the electronic fiscal cash register;
- ✓ contracts/preliminary contracts that provide for a cash payment;
- ✓ reports of cash, RON or foreign currency operations whose minimum threshold is the RON equivalent of 15,000 Euro, irrespective of the fact that the transactions is performed through a single or more operations that seem linked to one another, pursuant to art. 3 par. (6) of the law, as well as the acknowledgment of being sent to the Office;
- ✓ reports for external transfers in and from accounts for amounts whose minimum threshold is the RON equivalent of 15,000 Euro, pursuant to art. 3 par. (7) of the law, as well as the acknowledgment of being sent to the Office;
- ✓ reports of suspicious transactions, as well as the acknowledgment of being sent to the Office, pursuant to art. 15 of the law;
- ✓ sent notices as well as the acknowledgment of being sent to the Office, subject to art. 3 par. (1) of the la;
- ✓ the notifications and notices sent, as well as the acknowledgment of being sent to the Office, pursuant to art. 4 of the law;
- ✓ any other documents relevant for the carrying put of the check and control action.

After performing controls over the office of a reporting entity provided for at art. 8 of the law, with a view to fulfilling their service duties, compliance officers of the National Office for the Prevention and Countering of Money Laundering shall draw up a finding note describing the abnormalities found.

The finding note shall accompany the infringement finding and punishment report in case the reporting entity is subject to administrative punishments.

The infringement finding and punishment report issued by the National Office for the Prevention and Countering of Money Laundering shall include compulsory elements provided for by art. 16 of the G.O. no. 2/2001 on the legal regime of infringements, namely:

- ✓ the date and place of its conclusion
- ✓ the name and surname, position and institution of the compliance officer;
- ✓ personal data on the ID card, including the personal number code, occupation and place of work of the offender;
- ✓ a description of the infringement specifying the date, time and place where it was committed, as well as a description of all the circumstances that could serve to assess the seriousness of the deed and to assess potential damages;
- ✓ specification of the regulatory act by which the infringement is determined and punished, the deadline of the legal remedy, and the body where the complaint is submitted.

The findings report shall be signed on each page by the official examiner and by the perpetrator. In case the perpetrator is not present, refuses or is not able to sign, the official examiner shall specify the said fact which should be acknowledged by at least one witness. In such case the report shall also include the witness' personal data on the ID card, and its signature. In the absence of a witness, the official examiner of the National Office for the Prevention and Countering of Money

Laundering shall specify the reasons that caused the conclusion of the report in such a way.

As result of the conclusion of the infringement finding and punishment report by the official examiners of the National Office for the Prevention and Countering of Money Laundering, the perpetrator shall be present when the document is concluded and they shall receive it against signature, the fact being specified in the report.

In case the perpetrator is not present or, although present, they refuse to sign the report, the latter and the payment notice shall be communicated by the official examiner within maximum one month after conclusion.

The report and the payment notice shall be made by mail, with acknowledgment of receipt, or by presentation at the perpetrator's domicile or office. The presentation shall be recorded in a report signed by at least one witness.

The infringement finding and punishment report may be contested within 15 days after it is handed over or communicated.

The complaint accompanied by a copy of the infringement finding report shall be submitted to the court of jurisdiction of the area where the infringement was committed.

The court decision on the complaint may be remedied by appeal within 15 days after its communication with the administrative litigation department of the general court.

It is not mandatory to justify the appeal. The appeal reasons may be presented orally before the court. The appeal suspends the execution of the judgment.

A non-contested report within 15 days and the final judgment by which the complaint was settled are an executory title without any other formality.

The enforcement of the administrative fine punishment shall be performed as follows:

a) by the National Office for the Prevention and Countering of Money Laundering whenever the legal remedy is not exercised against the infringement finding report within the period provided for by law;

b) by the trial court, in all other cases.

With a view to enforcing the fine the National Office for the Prevention and Countering of Money Laundering shall communicate – pursuant to the legal provisions regarding the enforcement of budget debts – to specialized bodies in whose jurisdiction the perpetrators has their office, the infringement finding and punishment report, not contested within 15 days after being handed over or communicated or, as the case may be, the decision of the final judgment by which the complaint was settled.

The enforcement shall be performed pursuant to the legal provisions regarding the enforcement of budget debts. Acts of enforcement can be contested upon enforcement, pursuant to the law.

In compliance with the provisions of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, for the purpose of removing found deficiencies and their causes, the National Bank of Romania, the National Securities Commission, the Private

Pension Supervisory Commission, authorities with financial-fiscal control duties – by means of appointed inspectors – shall perform checks and controls over the reporting entities they supervise.

Fur such purpose, the persons empowered by prudential supervision authorities exercise duties of supervision, investigation and control of observance of legal provisions and regulations applicable to the banking, capital and pension market.

Besides administrative punishments, supervision authorities may also punish reporting entities by specific punishments – according to their competence – for failing to observe their legal obligations.

As a conclusion, breaching the provisions of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, entails, as the case may be, civil, disciplinary, administrative or criminal liability.

Competent authorities that find infringements

In compliance with art. 17 par. (1) of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, the enforcement of the provisions of the above mentioned regulatory act shall be checked and controlled, pursuant to their service duties, by the following authorities or arrangements:

a) prudential supervision authorities, for the persons subject to such supervision, pursuant to the law;

b) the Fraud Squad, as well as any other authorities with financial-fiscal control duties, pursuant to the law;

c) managements of independent professions, for the persons provided for at art. 8 let. e) and f);

d) the Office, for all the persons provided for at art. 8, except for those for which the enforcement of this law is checked end controlled by the authorities and structures provided for at let. a).

As result of the controls performed by the competent authorities – by virtue of the above mentioned legal provisions – in case money laundering or terrorist financing suspicions or other breaches of law are found, the authorities and structures provided for at art. 17 par. (1) let. a) - c) shall immediately inform the Office.

Also, for the purpose of preventing money laundering and terrorist financing, by virtue of art. 17 par. (3) of Law no. 656/2002, with subsequent amendments and supplementations, the Office may conduct checks and controls together with the Fraud Squad, with managements of independent professions and other authorities with financial-fiscal control duties.

The National Office for the Prevention and Countering of Money Laundering shall check and control the enforcement of law provisions by the natural and legal persons provided for at art. 8 of the law and that are not subject – pursuant to the law – to the prudential supervision of any public authority.

By virtue of art. 17 of Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for setting certain measures for preventing and countering terrorist financing, with subsequent amendments and supplementations, and by virtue of the Government Decision no. 1599/2008 for the approval of the Regulation on the organization and operation of the National Office for the Prevention and Countering of Money Laundering, the Supervision and Control Directorate was established within the institutions with the following main duties:

a) it prepares, in compliance with the legal regulations in force, norms, working methodologies and/or procedures regarding risk-based supervision and control of the entities provided for at art. 8 of the law that are not subject, pursuant to the law, to the prudential supervisions of a public authority;

b) it prepares notes regarding the check of risk exposure of the entities provided for at art. 8 of the law that are not subject, pursuant to the law, to the prudential supervisions of a public authority, notes that serve to organize control activities;

c) it prepares the schedule of checks and controls for the entities provided for at art. 8 of the law that are not subject, pursuant to the law, to the prudential supervisions of a public authority , and it ensures that the schedule is observed;

d) it may request from competent institutions, pursuant to the law, data and information required to conduct risk-based supervisions and controls;

e) it conducts the operating and on the spot control of the persons provided for at art. 8 of the law, by virtue of the permanent service order issued by the Office president, it finds committed infringements and applies legal punishments by means of an infringement finding and punishment report, in compliance with the legal provisions in the field, duty performed by persons appointed from the Office, generically called official examiners;

f) it draws up proposals, based on the risk analysis, regarding the preparation of training programs for the persons provided for at art. 8 of the law and it may participate in such programs;

g) it prepares and implements the operating procedure of the directorate and may participate in the preparation of methodologies, studies or analyses related to the specific activity of the Office, drawn up by other specialized directorates within the Office.

2.4 SUPERVISION AND CONTROL ACTIVITY

The supervision and control prerogatives of the Office are fulfilled based on the working procedure for the carrying out of supervision, verification and control of the natural/legal persons stipulated in art. 8 of the Law (internal procedures).

These working procedures for the carrying out of supervision, verification and control of the natural/legal persons stipulated in art. 8 of the Law are the technical-legal tool, harmonized with European legislation (the 3rd Directive of the European Parliament and of the Council and the 40+9 FATF Recommendations), which are used by the financial analysts of the Supervision and Control Directorate in carrying out their office prerogatives, namely the supervision, verification and control of reporting entities.

The working procedures for the carrying out of supervision, verification and control of the natural/legal persons stipulated in art. 8 of the Law were conceived in

order to detect the high degree of money laundering by entities which are not subjected to the prudential supervision of certain authorities and are structured as follows:

≡ supervision carried out at the Office's premises, named off site supervision;

≡ verification and control carried out at the premises of reporting entities, named on site supervision.

The off-site supervision is carried out through inquiries in the data bases administered within the Office, in order to identify potential infringements of legal obligations in the area of preventing and combating money laundering, as well as terrorism financing by the regulated authorities.

The on-site supervision (control activities) is carried out through activities conducted by the official examiners based on the plan of verification and control, as well as through inquiries/notifications sent to the Office by third parties, in order to ascertain how are implemented the provisions of law no. 656/2002, subsequently amended and supplemented at the premises of the reporting entities stipulated in art. 8 of the above-mentioned law;

In this regard, the supervision, verification and control of reporting entities are all activities of systematic assessment and monitoring of money laundering risk indicators conducted at ONPCSB's premises (off site) and at the premises of reporting entities (on site).

The assessment of exposure to the money laundering and terrorism financing risk is conducted within the off site supervision, through the MAINSET system.

Through this scoring system, according to certain general indicators of risk (identified in the databases accessible by the Office) is established the level of exposure to the risk of money laundering or terrorism financing for each supervised entity.

In essence, the MAINSET system performs for the entities stipulated at art. 8 of the law a weighted average of the scores obtained, establishing thus the levels of risk:

The off-site supervision of reporting entities followed all the procedural stages within D.S.C (Directorate of Supervision and Control), being conducted in a very clear and transparent system, irrespective of the will of the appointed analyst.

In this regard, the identification of companies to be proposed for the on-site supervision activity is beyond the will of the financial analyst who carries out the off-site supervision, as the latter enters data in the system and the calculations, i.e. the quantization and assessment of risk indicators are made automatically by mathematical formulas which make up the MAINSET system, through clearly made and transparent working stages within the Directorate of Supervision and Control.

Also, the control activity of reporting entities is conducted based on the same supervision system implemented in D.S.C. ‘s specific activity, specialized in order to assess exposure and vulnerability to the money laundering risk through the level of compliance with legal obligations in the area of prevention of money laundering and terrorism financing.

After calculating the weighted average of the scores got by the entities stipulated in art. 8 of the law, according to the levels of risk mentioned above, the Supervision and Control Directorate draws up the Plan of verification and control actions.

The plan of verification and control actions is approved by the President of the Office and contains reporting entities that obtained a high level/partly high level of exposure to money laundering.

The risk of money laundering and terrorism financing is determined by internal factors, such as the inadequate performance of internal activities, the existence of inappropriate personnel or systems or external factors, such as the economic conditions of regulated entities as a result of the non-application or incomplete application of the legal or contractual provisions and of the lack of public confidence in the integrity of the entity in question.

2.5 OTHER ELEMENTS OF INTEREST

2.5.1 CASH CONTROL AT ENTRANCE OR EXIT FROM EUROPEAN COMMUNITY

Cash smuggling is an attractive mechanism, especially for terrorist entities, as currency can be easily converted on international informal markets, leaves no evidence on paper, there is no external third party to detect the suspect transaction and terrorists may have full control over the movement of money.

Cash couriers are those “professionals” who physically carry cash or other financial instruments abroad, standing opposite to the electronic system of payments. Although it has disadvantages, such as the cost of couriers and transport equipments, the risk of informants in the network, seizure at borders following controls carried out by authorities, etc, cash smuggling remains one of the most commonly used methods when seeking to avoid the legal financial system.

In this context, the Group of International Financial Action in Special Recommendation IX calls on governments to take measures to detect physical cash movements, including a system of declaration and other communication obligations, namely:

- Countries should have measures to detect external transports of currency and financial instruments, consisting in declaration systems or other statement obligations.
- Countries should ensure that competent authorities have the legal authority to stop or restrict the transfer of currency or other financial instruments which are suspected to be related to money laundering or terrorism financing or which are not declared.
- Countries should ensure that there are sanctions in force, effective, proportionate and non-discriminatory which can be applied to persons who give false statements. If the currency or financial instruments are related to terrorism financing or money laundering, countries should also adopt

measures, including legislative ones that comply with Recommendation 3 and Special Recommendation III, which would allow the application of seizure procedures of such instruments and amounts of money concerned.

At European level, by adopting Regulation (EC) no. 1889/2005 of the European Parliament and of the Council of 26 October 2005 regarding the control of cash entering or leaving the Community, the EU Member States have been mandated to take measures so that cash transported by any individual who enters or leaves the Community be subjected to the compulsory declaration, a principle which will allow customs authorities to gather information regarding such cash movements and where necessary to transmit these information to other authorities, including Financial Intelligence Units in the state concerned.

Through this Community act, EU described at length the significance of "*cash*", i.e.:

(a) bearer negotiable instruments, including monetary instruments in bearer form, such as travelers checks, negotiable instruments (including checks, promissory notes and money orders), that are either in bearer form, endorsed without restriction, drawn up on the name of a fictitious beneficiary, or in such a form that the title thereto passes upon transmission and incomplete instruments (including checks, promissory notes and money orders), signed, but without beneficiary's name;

(b) currency (banknotes and coins in circulation as a means of exchange)

Any individual that enters of leaves the Community and carries cash of 10,000 EUR or more has the declaration obligation.

The declaration must include real information about the declarant's full name, date and place of birth, citizenship, who owns the cash and who is the intended recipient of the cash as well as information on the amount and nature of cash, the origin and destination of the cash, route and means of transport. This statement is submitted in writing, orally or electronically, depending on the Member State's decision, being notified to the competent authorities of the Member State by which it enters or leaves the Community.

At national level, taking into account Romania's capacity of Member State, (EC) Regulation no. 1889/2005 of the European Parliament and of the Council of 26 October 2005 regarding the control of cash entering or leaving the Community is considered an act of direct applicability.

To ensure that this Regulation is implemented effectively in our country, through **Order of the Vice-President of the National Agency of Fiscal Administration no. 7541 of 6 August 2007** was established the form used to declare cash at the border and instructions for filling in and use.

The declaration form used to declare cash at the border, according to art. 156 par. (1) of the Regulation implementing the Romanian Customs Code, approved through Government Decision no. 707/2006, with subsequent supplements and to Regulation (EC) no. 1889/2005 of the European Parliament and the Council regarding the control of cash entering or leaving the Community is the following:

ROMANIA
AUTORITATEA NATIONALA A VAMILOR/ NATIONAL CUSTOMS AUTHORITY

COMUNITATEA EUROPEANA
EUROPEAN COMMUNITY

1.Referinta de inregistrare/ Registration reference	

2.Data de primire a declaratiei/ Date of receipt of declaration:		3.1 DECLARATIE privind controlul numerarului la intrarea sau iesirea din Comunitate in temeiul Regulamentului 1889/05 art. 3 alin. (2)/ DECLARATION for controls of cash entering or leaving the Community under Reg. 1889/05 art. 3(2):		
4.Autoritatea competenta careia I s-a prezentat declaratia/ Competent authority to which declaration is made:		DA/Y	NU/N	
		3.2 INREGISTRAREA informatiilor (Regulamentul 1889/05 art. 4)/RECORD of information (Reg. 1889/05 art. 4) :		
5.Tara/Country:		Da/Y	Nu/N	
6.Tipul declaratiei (a se bifa mentiunea corespunzatoare)/Type of declaration (please tick as appropriate):	6.1 Intrare in UE/Entering EU ☐	6.2 Iesire din UE/Leaving EU ☐		(Va rugam sa specificati dupa caz)/ (Please specify accordingly)

PARTEA I/PART I

7. Detalii privind declarantul/Details of declarant:		9. Detalii privind proprietarul numerarului dacă este vorba despre o altă persoană decât declarantul/Details of owner of cash if different than the declarant:	
a.Numele persoanei/ Name of person		a.Numele persoanei/ societatii Name of person/ company	
b.Cetatenia/ Nationality		b.Cetatenia/ Nationality	
c.Data nasterii/ Date of birth		c.Data nasterii/ Date of birth	
d.Locul nasterii/ Place of birth		d.Locul nasterii/ Place of birth	
e. Ocupatia/ Occupation		e.Ocupatia/ Occupation	
f.Adresa/ Address		f.Adresa/ Address	
g.Orasul/Town		g.Orasul/Town	
h.Codul postal/ Post code/Zip		h.Codul postal/ Post code/Zip	
i.Tara/Country		i.Tara/Country	
8. Detalii pasaport/ID/Passport/ ID details:		10. Detalii pasaport/ID Passport / ID details (if known by the declarant):	
a.Numar/ Number		a.Numar/ Number	
b.Data eliberarii/ Issuing date:		b.Data eliberarii/ Issuing date:	
c.Locul eliberarii/ Place of issue:		c.Locul eliberarii/ Place of issue:	

PARTEA II: DESCRIEREA NUMERARULUI SAU A INSTRUMENTELOR MONETARE/ PART II: DESCRIPTION OF THE CASH OR MONETARY INSTRUMENTS		
	11. Suma/Amount	12. Moneda/Currency
a.Bacnote/monede/ Banknotes, coins		
b.Cecuri, cecuri de calatorie/ Cheques, traveller cheques		
c. Altele (va rugam sa precizati)/ Other (please specify)		

PARTEA III: PROVENIENȚA ŞI DESTINAȚIA NUMERARULUI / INSTRUMENTELOR MONETARE/ PART III: PROVENANCE & DESTINATION OF CASH / MONETARY INSTRUMENTS	
13.Provenienta/ Provenance	
14. Destinatarul preconizat (in cazul in care este o alta persoana decat dvs.) / Intended recipient (if other than you)	a.Nume/Name: b.Adresa/Address:
15. Utilizarea prevazuta/ Intended use	

PARTEA IV: INFORMAȚII PRIVIND TRANSPORTUL/PART IV: TRANSPORT INFORMATION					
16. Modalitatea de transport/ Means of transport (please tick as appropriate)	☐ Aerian/Air	☐ Maritim/ Sea	☐ Rutier/ Road	☐ Feroviar/ Rail	☐ Altele/Other

17.Ruta de transpor/Transport route					
a. Tara de plecare/ Country of departure:		b. Via:		c.Tara de destinatie/ Country of destination:	
d. Data de plecare/ Departure date	ZZ/LL/AA/ DD / MM /YY	e. Data de sosire/ Arrival date		ZZ/LL/AA/ DD / MM /YY	
f. Compania de transport/ Transport company					
g. Nr. de referinta transport (numarul zborului) /Transport ref. Nr (e.g.flight number)					

18. Aceasta este prima dumneavoastra vizita in Romania ? Is it your first visit to Romania?	☐ Da/Yes	☐ Nu (va rugam sa precizati numarul de vizite)/ No (please indicate number of visits)

Subsemnatul certific faptul ca toate informatiile de mai sus sunt corecte/ The undersigned declares that all above details are correct		
		Mentiuni ale autoritatii competente/ Remarks of the competent authority
Semnatura declarantului/ Signature of declarant	Semnatura si stampila autoritatii competente/ Signature & stamp of competent authority	

We mention that following the receipt of these declarations of individuals, according to art. 3 par. 11 of Law no. 656/2002 on the prevention and sanctioning of money laundering and establishing of some measures to prevent and combat the financing of terrorism, subsequently amended and supplemented, the National Customs Authority communicates monthly to the Office all information it has, according to the law, regarding the declarations of cash in foreign currency or national currency which equals or exceeds the limit established through Regulation (EC) no. 1.889/2005.

Also, if there are suspicions of money laundering or terrorism financing identified in its specific activity, the National Customs Authority will immediately communicate this information to the Office, but no later than 24 hours.

2.5.2 INFORMATION ON THE PAYER ACCOMPANYING THE TRANSFERS OF FUNDS

The flow of dirty money through transfers of funds could damage the stability and reputation of the financial sector and could be used not only with the purpose of laundering money but also of financing terrorism. To facilitate their criminal activities, those who launder money but also who finance terrorism could

try to take advantage of the free movement of capital that involves an integrated financial area and could threaten the domestic market.

According to Special Recommendation VII of the Group of International Financial Action, countries must take measures to impose to financial institutions and services of money transmission to have accurate and meaningful information on the administrator of the funds transfer (name, address, account number) and associated messages transmitted and this information must remain stored in the payment system.

Also, countries must take measures to ensure that financial institutions, including money transmission services conduct a close monitoring of suspicious transfers of funds which do not contain complete information on the origin/administrator (name, address, account number).

(EC) Regulation no. 1781/2006 of the European Parliament and the Council of 15 November 2006 regarding the information on the payer that accompany transfers of funds establishes rules applicable to the payment services providers in view of transmitting complete and accurate information regarding the payer by using existing systems of payment.

This regulation applies only to transfers of funds, in any currency, which are transmitted or received by a payment services provider established in the Community, in this category not being included transfers of funds using a credit or debit card, provided that:

(a) the beneficiary had concluded an agreement with the payment services provider to enable payment for the provision of goods and services and

(b) these transfers of funds must be accompanied by a unique identifier to enable tracking the transaction to the payer.

According to the provisions of art. 15 of (EC) Regulation no. 1781/2006, the Member States must establish an effective sanctioning regime, proportionate and with deterrent effect in case the Community act is breached, as well as the competent authorities for its application.

Thus, to achieve an effective enforcement of (EC) Regulation no. 1.781/2006 at national level, art. III of Government Ordinance no. 53/2008 amending and supplementing Law no. 656/2002 for the prevention and sanctioning of money laundering, and for establishing measures to prevent and combat the financing of terrorism, in conjunction with amendments to art. V to Government Emergency Ordinance no. 26/2010 amending and supplementing Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy and other norms appoint as supervisory authorities as regards the observance of the provisions on payer information, which accompany the transfers of funds:

a) The National Bank of Romania, for credit institutions and payment establishments;

b) The National Office for Prevention and Combating of Money Laundering, for providers of postal services that offer payment services according to the relevant national legal framework;

At the same time, G.E.O. no. 53/2008 establishes in art. III par. 3 which are the contraventions for violations of the provisions of the Regulation:

a) violation of the provisions of art. 9 par. (2) last thesis of the European Parliament and Council (EC) Regulation no. 1.781/2006 of 15 November 2006;

b) violation of the provisions of art. 4, art. 5 par. (1), (2), (4) and (5), art. 6 par. (2), art. 7 par. (2), art. 8, art, 9 par. (1) and par. (2) first thesis, art. 11, art. 12, art. 13 par. (3), (4) and 5 and art. 14 first thesis of the European Parliament and Council (EC) Regulation no. 1.781/2006.

The contraventions stipulated in par. (3) lett. a) shall be sanctioned with fine between 10.000 lei and 30.000 lei and the contraventions stipulated in par. (3) lett. b) with fine between 15.000 lei and 50.000 lei, being ascertained and applied according to their prerogatives, through contraventional sanctions by the authorized representatives appointed by the National Bank of Romania and the National Office for Prevention and Combating Money Laundering.

2.5.3 THIRD COUNTRIES EQUIVALENCE

Directive 2005/60/EC on the prevention of the use of the financial system for money laundering and terrorism financing leaves the Member States to decide on the permission which may be granted to institutions and regulated persons to resort to third parties in order to fulfil the requirements of knowing their client, but keeping in mind that the ultimate responsibility for meeting those requirements belongs to the institution or person who uses a third party.

Thus, the Member State in question allows institutions and persons within its territory to recognize and accept the result of due diligence requirements imposed on clients by an institution considered third from another members state, except for currency exchange offices, payment institutions and suppliers of postal services which provide payment services, state that meets minimum requirements equivalent to Directive 2005/60/EC.

Considering the provisions of art. 16 par. 2 of the mentioned Directive, is necessary that Member States inform each other and notify the European Commission in cases where they believe that a non-member state meets the requirements of equivalent third country, the same rights granted to Member States being applicable *de jure* to the states of the Economic European Area.

The Directive does not give the European Commission a mandate to develop a list containing these countries, but Member States may develop and agree a Common Understanding, a document that should be kept updated according to the meeting by the states of “eligibility criteria" through inclusion on the list.

There criteria refer to the degree of compliance of states with international standards in the area of preventing and combating money laundering and terrorism financing, focusing on the ratings obtained by countries (except the non-compliance rating which either automatically excludes the state from the list or from being considered for inclusion on the list) in the rounds of assessment of international bodies regarding the implementation of recommendations selected from the list of the 40+9 Recommendations of the Group of International Financial Action, namely of:

- Recommendation FATF 1 –Money laundering crime
- Recommendation FATF 4 –Confidentiality and protection of information

- Recommendation FATF 5 – Know your client standards
- Recommendation FATF 10 – Preservation of records
- Recommendation FATF 13 – Reporting of suspicious transactions
- Recommendation FATF 17 - Sanctions
- Recommendation FATF 23 –Regulation, supervision and monitoring
- Recommendation FATF 29 – Supervision authorities
- Recommendation FATF 30 –Resources, integrity and training
- Recommendation FATF 40 - Other forms of cooperation
- Special Recommendation FATF II - Incrimination of terrorism financing and related money laundering;
- Special Recommendation FATF IV - Reporting of suspicious transaction related to terrorism.

Thus, on 18 April 2008 in Brussels, Belgium, within the meeting of the Committee for Preventing Money Laundering and Terrorism Financing, Member States have agreed the Common Understanding regarding the equivalence of third countries, which was followed by the adoption of each EU state of the list of third countries which they consider as having equivalent systems to combat money laundering and the financing of terrorism to the relevant national legislation, totally harmonized with the provisions of Directive 2005/60/EC.

At national level, through the adoption of Government Decision no. 1437/12.11.2008 was approved the List containing third countries which impose similar requirements with those under Law no. 656/2002 on preventing and sanctioning money laundering and establishment of measures to prevent and combat the financing of terrorism, subsequently amended and supplemented, law that was published both in the Official Gazette of Romania no. 778 of 20 November 2008 and on the web site of the organization (www.onpcsb.ro)

According to the annex to the Decision approved by the Government, are considered as having systems to combat money laundering and terrorism financing equivalent to those in the European Union the following countries:

South Africa,
Argentina,
Australia,
Brazil,
Canada,
Switzerland,
Russian Federation,
Hong Kong,
Japan,
Mexico,
New Zealand,
Singapore,
United States of America,
France's overseas territories (Mayotte, New Caledonia, French Polynesia,
Saint Pierre and Miquelon, Wallis and Futuna),
Netherlands' overseas territories (Netherlands Antilles, Aruba) and
British Crown Dependencies (Jersey, Guernsey, Isle of Man).

We mention that according to the provisions of art. 40 of Directive 2005/60/CE, if the Commission finds that a third country no longer meets the stipulated conditions, it adopts a decision by which it ascertains this fact. Thus, following consultation with the Member States, the List of equivalent third countries can register content amendments.

2.5.4 COUNTRIES ASSESSED WITH DEFICIENCIES IN THE ANTI-MONEY LAUNDERING AND COUNTERING TERRORISM FINANCING REGIME

Money laundering can be exploited in any jurisdiction, no country being immune. Through this ground, the Group of International Financial Action (FATF/GAFI), an organization involved in mutual assessments of its members in the fight against money laundering and subsequently of terrorism financing, identified for the first time in 2000 a number of 15 non-member jurisdictions which it deemed as non-cooperative in international efforts against money laundering.

Thus, under this initiative of listing non-cooperative countries and territories (**Non-cooperative Countries and Territories Initiative**), during 2000-2001 a total number of 23 countries were considered non-cooperative (15 in 2000 and 8 in 2001), which were delisted by the end of 2006, due to the progress in the legislative and institutional area in the field of combating money laundering.

Following the completion of this process, FATF Plenum agreed to establish the Group of Compliance Review for International Cooperation (**the International Co-operation Review Group – ICRG**) which started its activity in January 2007. ICRG is addressed to jurisdictions where international cooperation is difficult or impossible and where were identified severe deficiencies in the regimes of combating money laundering and financing of terrorism which resulted in severe vulnerabilities in this area.

In the first stages of this process, FATF decided to review only a few jurisdictions on which there were suspicions on the lack of effective controls against money laundering and terrorism financing, such as the Comoros, Iran, São Tome & Principe, Turkmenistan and northern Cyprus, which were followed in 2008 by Pakistan and Uzbekistan. Urging the world's financial institutions to consider the risks involved in their business relations with persons/entities of the jurisdictions identified with deficiencies, FATF decided to publish these assessments in the form of official statements.

In accordance with FATF 's priorities for 2008-2009, to ensure flexibility and improve the assessment procedures, this body has analyzed to what extent the FATF system responds to the threats of high risk jurisdictions and how to obtain better working results in this area, which led to the amendment of review procedures in 2009. Within this activity, FATF worked closely with regional FATF type bodies (FSRBs), with IMF and the World Bank, as well as the Basel Committee, IOSCO, IAIS and FSF.

Moreover, in order to develop the assessed systems were issued guidelines on risk-based approach to money laundering and terrorism financing (focusing on the areas identified as having a high risk).

We mention that the most recent FATF assessment was made public on June 25, 2010, as a part of the process of reviewing compliance with the standards of combating money laundering and terrorism financing (PML/PTF) and FATF has identified jurisdictions with strategic PML/PTF deficiencies and which could pose a risk to the international financial system.

Thus, the list of countries with deficiencies, as published by FATF contains: Iran, North Korea and Sao Tome and Principe.

Also, in the same regard we wish to mention that also on June 25, 2010, FATF has released the document entitled "*Improving the global process of PML/PTF compliance, process in progress*" developed within the process of reviewing compliance with the standards for combating money laundering and terrorism financing (ICRG).

In this document, FATF identified other jurisdictions which have strategic deficiencies in PML/PTF, but compared with the first document issued in February this year, each of the identified jurisdictions presented a written political commitment at high level to address deficiencies. The list of jurisdictions presented in the document is published on the website www.fatf-gafi.org (in English) and on the website www.onpcsb.ro (Romanian version).

Another process of assessment of the systems of preventing and combating money laundering and terrorism financing, recently drawn up and released is described in detail in the **Report[9] of the International Strategy to Combat Drugs in 2009** issued by the Office for International Fight against Drugs and Law Enforcement Affairs within USA's State Department, document that contains positive feedback regarding the evolution of our country in this domain. Thus, following measures adopted at national level legally and institutionally, Romania was included in the 2nd category of country risk for money laundering and terrorism financing and the criteria taken into account for establishing the vulnerability of countries and jurisdictions are:

- the extent to which financial institutions in the concerned country or jurisdiction are involved in transactions with large sums of money obtained from the perpetration of serious crimes (for the category I – "*Jurisdictions of first concern*" and
- Assessment of the legal framework to combat money laundering, the role of the country of jurisdiction in terrorism financing issues and the level of international cooperation against money laundering and terrorism financing (for category II –"*Jurisdictions for which there are concerns*" and category III – *Other monitored jurisdictions*").

In this regard, are emphasized the measures adopted by the Romanian Government regarding the incrimination of money laundering having as predicate offence the drug trafficking and other crimes, reporting of transactions with large amounts of money, preservation of recordings, reporting of suspicious transactions, the statute of member of the Egmont Group of Financial Intelligence Units, the

[9] Volume II - Money laundering and financial crimes

existence of a system of identification/seizure of assets, cooperation of law enforcement authorities at international level, international judicial assistance, regulation of non-banking financial institutions, tipping-off, incrimination of terrorism financing, ratification of the UN Convention against illicit traffic of drugs and psychotropic substances adopted in Vienna in 1988 and of the International Convention regarding the Suppression of Terrorism Financing, adopted in New York in 1999.

Also, are presented the sectors in which our country must adopt/strengthen its adopted measures, namely as regards the operation of mechanisms of repatriation of assets and the application of regulations regarding the international cash transport.

The list of analyzed countries/jurisdictions, divided in the three mentioned categories you may find it in Volume II of the report entitled Money Laundering and Financial Offences, as it is accessed to the following link: http://www.state.gov/documents/organization/137429.pdf

2.5.5 IMPLEMENTATION OF INTERNATIONAL SANCTIONS REGIME

The international sanctioning regimes are adopted in order to discourage an attitude which might endanger peace and international security, such as the violation of international law or human rights, or policies which do not observe the rule of law or democratic principles. The measures taken are diplomatic or economic, without involving the use of the armed force.

In Romania, until 2008, Law no. 206/2005 on the enforcement of certain international sanctions provided the general legal framework for applying international sanctions established through resolutions of UN's Security Council, based on Chapter VII of the UN Charter and through autonomous EU restrictive measures established through the Community acts adopted within the Common Foreign and Security Policy.

Since September 2006, the Office has participated to the meetings of the working group established by Law no. 206/2005 on the enforcement of certain international sanctions and to the working group of the European Union in this field. The participation to these working groups allowed both the opening up of new opportunities of cooperation in the area of preventing and combating terrorism financing and the achievement within the Office of a mechanism to implement the international sanctions regime. The activity of the working group led to the drawing up of a draft law in this field, using a similar mechanism to that in the field of preventing and combating money laundering and terrorism financing, draft law which was approved by the Romanian Government through GEO 202/2008, adopted with amendments and supplements through Law no. 217/2009.

We mention that the National Office for the Prevention and Combating of Money Laundering, as part of the Inter-Institutional Council had an active contribution, both nationally, in the process of elaboration and approval of G.E.O. no. 202/2008 on the international sanctions regime and internationally, through the participation to the working group of the International Financial Action Group that developed the guide of good practices in the domains of implementing the international sanctions regime/Special Recommendation III of FATF – Blocking and confiscation of terrorists' assets. .

Through the adoption of Government Emergency Ordinance no. 202 of 4 December 2008 regarding the enforcement of international sanctions, adopted with amendments through Law no. 217/2009 were established certain measures of major importance for the enforcement of the international sanctions regime, among which we note the obligations of natural persons and private legal persons, of public authorities and other public institutions, subjects of internal law to enforce international sanctions and *the prerogatives of public authorities and other public institutions regarding the supervision of the internal enforcement of international sanctions*.

Thus considering the provisions of art. 5 par. (1), art. 15 par. (2), art. 17 par. (1) and par. (6), art. 18 of Government Emergency Ordinance no. 202/2008 on the enforcement of international sanctions, as adopted through Law no. 217/2009 and the provisions of art. 17 par. (1) lett. d) of Law no. 656/2002, subsequently amended and supplemented, since 2008, the National Office for the Prevention and Combating of Money Laundering has new prerogatives regarding the implementation of international sanctions regimes, through its capacity of supervision and control authority for those entities stipulated in art. 8 of Law no. 656/2002, subsequently amended and supplemented which are not supervised by other authorities.

Regarding the enforcement of the provisions of art. 17 par. 1 of G.E.O. no. 202/2008 which stipulates that: "*The supervision of the enforcement of international sanctions of blocking of funds is performed by the regulatory and approval authorities and public institutions, by the authorities of prudential supervision of the financial sector, by the management structures of free professions and by the National Office for the Prevention and Combating of Money Laundering for the natural and legal persons in its field, according to the legislation in force in the field of preventing and combating money laundering and terrorism financing";* the following measures were implemented by NOPCML:

- Publishing of the Resolutions of UN's Security Council, of EU Common positions and Regulations on the official website of the institution, at the address www.onpcsb.ro in a special section ("International sanctions"). **Please visit the site, for information and appropriate application of these international tools.**
- Informing the reporting entities through training sessions and control activities periodically organized by N.O.P.C.M.L.;
- Provision of assistance in the field for the reporting entities;
- Continuous monitoring and control of the enforcement of international sanctions in the area of competence, according to the powers stipulated both in art. 17 of GEO no. 202/2008 and in art. 17 par. 1 lett. d) of Law no. 656/2002, subsequently amended and supplemented;
- Cooperation with all competent authorities to improve the implementation of international sanctions.

As regards the activity of continuous monitoring and control of enforcement of international sanctions in the area of competence, according to the powers stipulated both in art. 17 of GEO no. 202/2008 and in art. 17 par. 1 lett. d) of Law

no. 656/2002, subsequently amended and supplemented, N.O.P.C.M.L. has prerogatives of supervisory authority for the following entities:

- Non-banking financial institutions registered in the General Register and the Register;
- Suppliers of postal services which provide payment services;
- Casinos;
- Auditors, natural and legal persons who provide tax or accounting consultancy;
- Other persons exercising free legal professions ;
- Providers of services regarding companies and other entities, other than those stipulated in art. 8 lett. e) or f) of Law no. 656/2002, subsequently amended and supplemented;
- Persons with prerogatives in the privatization process;
- Real estate agencies;
- Associations and foundations;
- Other natural and legal persons trading goods and/or services, only if they are based on cash transactions, in lei or foreign currency, whose minimum limit is the equivalent in lei of 15.000 Euro, irrespective if the transaction is performed in a single operation or in several operations which seem to be linked.

In the same regard, we mention that within N.O.P.C.M.L. were drawn up norms regarding the mechanism of transmission to the Office of the reports provided in art. 18 of G.E.O. no. 202/2008 regarding the enforcement of international sanctions, approved with amendments and supplements through Law no. 217/2009.

PART III
ASPECTS RELATED TO THE ANALYSIS OF SUSPICIOUS TRANSACTIONS

3.1 VULNERABILITIES REGARDING MONEY LAUNDERING AND TERRORISM FINANCING

Money laundering is one of the most popular facets of international financial crimes and money launderers take advantage of the vulnerabilities of financial and non-financial systems attempting to conceal the origin of money resulting from crimes.

Along with the social danger of the phenomenon, money laundering has an important symbolic dimension, standing at the confluence of crimes and shortcomings of financial globalization, which generated genuine "black holes" through which are targeted massive flows of capital of illicit origin. The objective of criminals is to lose track of money and avoid possible confiscation measures, if the generating crime would be found.

In this context, the identification of risks and vulnerabilities of the economic system to the money laundering and terrorism financing is an active tool in their prevention. For their assessment, we must take into account global progress, current social and economic realities and the general development of phenomena of money laundering and terrorism financing. We must also take into account the large volume of criminal activities and their deployment in time.

To minimize vulnerabilities, the economic system was encouraged to transparently pursue activities of preventing and combating money laundering and terrorism financing designed to maintain the trust of all participants involved in transactions, to make sure that internal activities meet external requirements, not to allow penalties caused by the direct or indirect involvement in managing funds generated by illicit activities and to undertake required measures in view of developing adequate policies to identify risks.

Also, the economic sector must pay attention to politically exposed persons who are especially the subjects of high level corruption deeds, screen for organized crime activities, but also the money laundering crime. In this regard, appropriate procedures must be developed based on risk, to determine if the customer in question is a politically exposed person, to take appropriate measures to establish the source of income and the source of funds involved in the business relation and to conduct the monitoring of the business relation with such a client.

As regards the vulnerable economic sectors, which are subjected to the risk of being used both for money laundering and terrorism financing, were observed vulnerabilities in most fields.

Thus, banks can be used in the process of money laundering, because through them are achieved multiple and varied operations, which often may be based on forged documents, created especially to generate apparently legal transfers and fictitious operations which aim to hide the track of money.

Also, increased attention should be given to persons who receive funds from countries which do not have norms against money laundering and terrorism

financing or have inadequate regulations in this regard, as well as from countries with high levels of crime, corruption or involved in terrorist activities.

Banks should carefully examine the electronic transfers, if there is no sufficient information about the sender's identity and any other transaction that would promote anonymity. In this context, we may talk about the online payments system that has vulnerabilities due to the fact that it obviously reduces the human contact between the client and the bank. The client can regularly get access to his account, having a personal computer with web browsing. Given that this type of access is indirect, financial institutions have no means of verifying the identity of the individual actually accessing the account. Moreover, given the increasingly mobile internet access, a client can virtually access his account from anywhere in the world. In such a situation, money launderers can control any account, even if it was not opened on their behalf, but on behalf of intermediaries. Likewise, the balance of the accounts of intermediaries is subsequently transferred through the method described in the account of the administrator holder and this may continue to collect the money, unembarrassed.

A method of counteracting such a phenomena, that at least experimentally works is to identify the person accessing an account, using their virtual image or fingerprints. The bank that opened the account being in possession of the image of the holder and his fingerprints will automatically compare these images with those transmitted from the internet by the person who accesses the account and should perform the required operation only when these coincide. Basically the current system would be improved, when the computers check a code or a password received from the applicant with the information in the bank, which was archived when the account was open.

In the operations of money laundering and terrorism financing can also be used pre-paid cards. They can be obtained easily and are designed for persons who use cash and internet transactions.

Another target used by the money launderers is the sector of non-banking financial institutions (NFI). For example, in the leasing market there are frauds which sometimes result in money laundering operations. The mechanism of the fraud is the acquisition by a group of criminals of certain developed companies, the identification of the supplier of goods of a NFI to which the above companies should be recommended, as potential users and then leasing contracts are concluded simultaneously, for the same object with several companies. In this regard, it is useful to analyze the transaction in detail, within the NFI, both from the provider’s perspective and from that of the good and means of its acquisition.

Casinos and other gambling entities are vulnerable to being used by money launderers because they offer the possibility of intensive cash use. Moreover, serious problems arise when it comes to online casinos, which allow players to participate in casino games from the comfort of their own home, the only requirement being the internet access, either through a computer or a mobile phone.

They allow players to enjoy highly favorable offers that will help them consolidate their accounts at that online casino. There are different types of bonuses offered, the most important and popular ones being the welcome ones. These casino

bonuses can be received by those players who register for the first time with an online casino. They may take the form of offering a certain percentage of the first sum deposited or of a fixed amount of money. In the first case, it can provide up to 100% or 150% of the initially deposited amount, up to a maximum amount, which at some online casino can reach several hundreds or thousands of dollars or euro. The bonus of this type can be received either instantly after submission of deposit, or in monthly installments, to ensure players' loyalty. The second method is to divide the bonus amount received and offer an installment for each month of the game. Other bonuses for online casino games include certain anniversary bonuses, which are offered to all or some of the players, chosen on the occasion of certain important events. Also, many important casinos have the so-called VIP programs for players who bet large amounts of money. The more a player is considered important by an online casino, the more often and more he will be rewarded.

Speculating the opportunities offered by the system, many members of criminal groups can launder dirty money by depositing in the accounts opened through the internet and after a few gambling sessions they request that the so-called winnings be sent to the account opened on that website.

The insurance sector can also be used for money laundering, due to the following vulnerabilities:

- the products of the insurance industry are easily accessible and their diversity may lead to the achievement of complex transactions that make their following difficult;
- due to its size, this sector is not fully covered by regulations in the field of combating money laundering and the financing of terrorism acts;
- in the interface with the client are used intermediaries from the insurance industry, which hampers the detection of suspicious transactions.

Within this sector, it is necessary to assess the risks that may result in using the system for money laundering operations. In order to prevent the deployment of money laundering operations through this sector, it is necessary to supplement and apply know your client norms.

With regard to insurance products were identified micro-vulnerabilities in the sectors "life insurance", "non-life insurance" and re-insurance".

In the "life insurance" sector vulnerabilities occur within investments related to the product liquidity, the losses in this process not being always the most important concern of the money launderer, the anticipated reimbursement of money for long term products, products which do fall under the scope of confiscation regime (for example in some jurisdictions pensions have no redemption value) or insurance policies which can be used as guarantees to obtain loans.

In the *"non-life insurance"*, there is a market with very high premiums, very attractive for launderers who enable rapid money laundering and hiding their illicit source. The use of brokers (as a third party) in non-regulated jurisdictions in order to avoid the principles of knowing your client is another vulnerability (in some countries, agents/brokers are not regulated or are not obliged to prepare reports of suspicious transactions). Also, risks arise when the investigations related to the insured object are not performed until the moment of the compensation claim.

Money laundering and terrorism financing can also occur in the reinsurance field, either by setting up fictitious companies, or through the intermediaries'' reinsurance or by using usual reinsurance transactions. The main vulnerabilities in the field of reinsurance arise from:

- deliberate placement of the incomes of crimes through the insurer to a reinsurer, in order to hide the illicit source;
- the setting-up of a false reinsurer that can be used for money laundering or to facilitate the financing of terrorism;
- The setting up of a false insurer to facilitate the transfer of dirty money or of funds designed to finance terrorism to a legal reinsurer.

Real estate agents must pay special attention to transactions which are performed when the client is not physically present. There are also risks in situations when transactions are conducted with companies from other countries, which involve cross-border transfers of funds that could have an illicit origin. Thus, in view of not being involved in a transaction which could lead to money laundering operations, the real estate agent must examine the transaction, both in terms of actors involved, so they must ensure that clients' identity is established with additional data, information and documents and in terms of the good involved in the transaction and its acquisition.

The main aspects that may be listed in this area are related to[10]:

a) the geographical location of the property (which involves external transfers of money) or location of the actors involved in the transaction.

In this category can be mentioned the following vulnerabilities:

- the persons involved in the transaction are from countries that are subject to international sanctions, embargo or similar measures;
- the persons involved in the transaction are from countries where legislation in the field of money laundering and financing of terrorism does not exist, is not comprehensive or is not correctly applied;
- the persons involved in the transaction are from countries which are identified as financing or supporting terrorist activities;
- the persons involved in the transaction are from countries where corruption or other criminal activities are high;
- the persons involved in the transaction are from countries where a property registration is not mandatory.

b) vulnerabilities related to customer. These occur due to the use of cash for most transactions, to the use of intermediaries not subject to appropriate legislation in the field of money laundering and terrorism financing or the use of intermediaries not subject to a proper supervision.

c) vulnerabilities related to transaction. Here we can talk about the speed of the transaction (a transaction performed in a very short time without a reasonable explanation), the use of a third party to conceal the real buyer; the use for purchase of a complex credit form or the use of complex sources of financing.

As regards the securities market, the system may be vulnerable when we talk about low price securities and private issuers. Through this sector, assets may be got

[10] FATF –Guide regarding the approach based on risk in the real estate field, 17 June 2008, page 20-22

through the market manipulation and fraud. Actors can use either existing shares, which are publicly rated or can set up a "shell company" for use in illicit activities.

Also, it is well known that criminal groups can use illicit assets that were acquired outside the securities market to manipulate this market.

The alternative systems of funds transfer are a sector which can be involved both in operations of money laundering and of terrorism financing. The alternative systems of funds transfer are services which traditionally operate outside the conventional financial sector, which allow the transmission of values and money from one geographical location to another and most times the identification data of administrators of the transferred funds cannot be found. These systems may offer criminals and terrorist organizations the opportunity to transfer funds without the possibility of tracing.

The exchange houses are vulnerable because through them are conducted operations which intensively involve cash. To prevent the conduct of unlawful transaction, it is important that customer identification is performed within this sector.

Charities or non-profit organization also have features that are attractive for criminals. Thus, they can be used especially in the actions of financing terrorism, because they enjoy public confidence and can collect huge funds in cash. Given that their origin is not so strictly monitored, it gives organizations an increasing vulnerability towards their use for performing terrorist activities. The specialized analysis can reveal an increased level of sensitivity when the beneficiary/owner of the association/foundation may be a politically exposed person.

Non-profit organizations collect hundreds of billions of dollars annually from donors and distribute this money to beneficiaries. Transparency is in the interest of donors, organizations and authorities. However, the actual volume of transactions carried out through the non-profit organizations, combined with the desire to not unduly load legal organizations, in general undermines the importance of risk and proportionality based on size in establishing the adequate level of regulation and supervision in this field.

Another potential element of risk may be the link between national non-profit organizations and the branches of certain international associations and foundations from countries that can provide support for terrorist activities.

Because of the their activity and access to the system, accountants, tax consultants, notaries and lawyers may be used by criminals for business management, setting up of companies, carrying out of complex financial transactions which involve large amounts of illicit origin. These free professions should pay maximum attention to transactions that could be performed in order to launder money and finance terrorist acts, as well as to operations which involve cash.

The vulnerabilities of international trade are exploited by criminal groups which seek to launder money and finance terrorism. Thus, the most commonly used schemes are those which involve over/under-evaluation of invoiced products and services and their expedition thus falsely declared.

The use of transactions through the internet and transfer of goods through these channels increase the vulnerability of international trade. Due to the high

volume of international trade, a transaction aimed at money laundering or financing of terrorism may be unnoticed, facilitating the transfer of significant amounts abroad.

Diamonds, jewellery and precious metals have a unique feature, i.e. they allow the transfer of large values in very small quantities, easy to transport.

Global trade with these goods ranges from modern international transactions, performed through the financial system to unregulated markets. Also, dealers operating on this market range from very poor persons, to the wealthiest people and largest multinational companies located in the largest financial and commercial centres of the world.

This variety is the one that can facilitate operations aimed at money laundering and terrorism financing.

A number of goods which are subject to trade and are stored in free areas are vulnerable because of the amount, size and large excises, or a combination of these elements. Cigarettes, alcohol and other products with high taxes are very often the subject of smuggling, in order to avoid payment of taxes and thus increase profits[11]. The large volume of containers in which are carried such products allow their re-packing and re-labelling, thus avoiding the application of taxes related to sea (for example cigarettes and alcohol) and the lack of supervision in free areas facilitates smuggling.

Also, the use of free areas to trade IT products leads to a carousel type fraud through VAT reimbursements. Thus, the bigger the trade value of products, the higher the value of reimbursed VAT. That is why, the fact that in free areas there isn't a very good supervision of trade operations allows obtaining illicit funds.

We should also mention vulnerabilities in football, field which has a unique feature, i.e. the presence of a complicated network of shareholders, who are linked by interdependencies between them, thus creating an opaque network, which can lead to concealing the source of money circulated through these networks, facilitating the process of money laundering. [12].

The main vulnerabilities in this field are:

- the market is accessible to money launderers because of the lack of entry barriers in this sector;
- the managers' lack of professionalism. The fact that the sector is relatively new did not allow yet to develop standards for the managers in this sector, as these are still swinging between amateurism and professionalism;
- there is a large diversity among football clubs regarding their forms of establishment, these varying from private partnerships to foundations. The lack of regulations (from the club structure to their shareholders) and control in the field may facilitate operations aimed at money laundering and terrorism financing.
- the amounts involved in professional football are very high. Also, the use of cash is a common practice in this sector and the interests are very high. Moreover, financial circuits are multiple and global and the international flow of money may cause avoiding the national control and that of football organizations.

[11] FATF – Vulnerabilities of money laundering in free areas, March 2010, page 17
[12] FATF –Money laundering through football clubs, July 2009, page 14-16

- the prices for the transfer of players are very high (irrational) and hard to control and transfers are carried out worldwide, which facilitates money laundering.
- high financing needs – despite the increasing growth of this field, many football clubs are under-funded and need money, thus accepting all kinds of dubious funding.

Vulnerabilities of the internet[13]

The computers world is found more and more in our daily life and it irreversibly changed our social values, behaviour, language and lifestyle. In terms of business, the internet offers a similar market to the real one, in which are found almost all the elements involved in classic transactions (seller, buyer, offer, price…), which receive however other facets: speed, anonymity, globalization, etc.

It is obvious that bringing in the cyberspace of real world characteristics refers not only to positive and progressive aspects, but also to negative one, making it vulnerable to abuse and crimes. Cyber crimes, including money laundering through computer channels or the financing of terrorism are today a serious threat for society and become increasingly sophisticated and criminals are increasingly specialized and harder to detect.

Most of cyber crimes have similar features to classical crimes, but there are a few properties that make them specific to the cyber field:

- they can be committed simultaneously in several jurisdictions;
- they do not take into account national borders or geographic regions;
- they can have effects a few years after they were launched or planned;
- may or may not be punished by the criminal law;
- can be extremely difficult to investigate and even harder to prove;

As regards money laundering as part of cyber risks, this electronic market offers new opportunities arising on one hand from the alternative payment systems of PayPal type and on the other from the financial services offered through the internet.

Money laundering through the internet, the cyber-recycling gets more and more attention from the professionals in the field, seeking new methods of identification and counteracting of the phenomenon.

Among the vulnerabilities of the internet we mention:

- ✦ The systems of electronic auctions

On-line auctions hosted by commercial sites are those in which supply and demand meet in the cyber space and the seller and buyer are users of that service. Location in space of the two is not very relevant for concluding the transaction and the reality of data with which they identify is sometimes doubtful. This system offers several advantages strictly commercial, due to the transparency of the operation (the price is determined instantly, depending on demand and supply), speed of operation and diversity of demand and supply. On the other hand, the features above may give rise to abuses, from fraud and cheat to money laundering.

[13] Information also contained in the NOPCML's activity report for 2008

The compensation of operations conducted on commercial sites is done through the systems of rapid delivery of funds (Western Union type), using cards or by payment systems hosted by commercial sites (PayPal).

The high volume of transactions conducted through the online auction systems coupled with the lack of certain identification data of participants to auctions and with the speed of the operations offer to those interested a virtual space suitable for recycling money obtained illegally.

A form of laundering assets obtained illegally is to trade them on the internet. In general are sold goods of small dimensions and with relatively high value, such as mobile phones. In such schemes, the goods are rarely obtained by the person who trades them, the rule being that the user of the auction site (the seller) just places them and collects the money for a fee. From this perspective, sellers could be considered professionals in the field, even if the laundering is conducted through small amounts and through simple financial flows. The goods thus sold are either from counterfeit or theft.

Another scheme used in money laundering through electronic auctions is that in which a person operates on a commercial site using two different user names (once as seller and then as buyer). Thus the person offers to tender a fictitious good that he awards to himself under the guise of the two names. The only real operation in this scheme is the settlement, by which takes place the real payment using the PayPal system, offering a justification for the origin of money. The system can be repeated whenever necessary, using multiple user names.

Faced with this phenomena and threats, corporations that manage the most important commercial sites have already begun to set up compliance structures, that operate similarly to those of banks and which supervise large operations or those that contain suspicions of money laundering. A special attention is given to settlements through the PayPal system and the compliance structures inform Financial Intelligence Units regarding the transfers which fall under their legal reporting obligations.

- Virtual communities – SECOND LIFE

Second Life is a 3D virtual world created entirely by its residents, which was brought on the internet on 2003 by the company Linden Lab, an ambitious software developer. Once launched, Second Life had an immediate success, the number of its residents increasing exponentially now amounting to several millions across the globe.

Second Life offers its users a digital continent, with houses, cars, clubs, shops, clothing and landscapes. The surrounding world is animated by the creations of Second Life residents, as they have ownership of their digital products and can transact with other residents. Therefore, Second Life developed its own economy and a market where millions of dollars are traded every month. Transactions are performed only in the “local” currency, i.e. the Linden Dollar. Foreign exchange can be made on-line at exchange offices provided by Second Life. The rate of exchange varies like on the real currency market.

In these circumstances, risks related to possible operations aimed at money laundering are easy to seize and are related firstly to the currency exchange performed from the real currency to Linden Dollars and vice-versa.

As for commercial sites, corporations that manage virtual communities began to be aware of vulnerabilities and risks to which they are exposed and the "opportunities" offered by possible attacks to morals and legality.

Thus, Linden Lab, the developer of Second Life was preoccupied about implementing a system to check the identity of residents, that would increase trust in transactions and players in the virtual world and close, even if only partly, the breaks by which this is exposed.

3.2 METHODS OF MONEY LAUNDERING AND TERRORISM FINANCING

The goal pursued by criminals by using methods and techniques of money laundering is to succeed in the development of complex flows and circuits, as to set off funds from their illicit source so that they finally return to the perpetrators as "white money" seeming to have a legal origin, which can be demonstrated within any investigation by law enforcement bodies. In this context, we mention the fact that according to the Warsaw Convention –ratified by Romania through Law no. 420/20.11.2006, a previous or simultaneous conviction for a predicate crime is not a prerequisite for a conviction for money laundering.

Taking into account these aspects, it is essential that the personnel of reporting entities have sufficient theoretical and practical knowledge in order to determine which of the operations of their clients could have the suspicions of pursuing money laundering or terrorism financing.

Due to the endeavours of authorities to decrease phenomena of money laundering and terrorism financing, by adopting a legal framework that covers all sectors - financial and non-financial - criminals permanently try to identify increasingly sophisticated techniques and methods, in order to hamper or even stop any financial investigation.

That is why currently, methods of money laundering and terrorism financing are extremely diverse, very numerous and can be undertaken in all sectors, an exhaustive enumeration of these procedures being practically impossible. Therefore, we will present in what follows as examples some of the methods of money laundering (ML) and financing of terrorism (TF), as they have been identified in Romanian and international practice:

A method very often used by criminals, which involves the use of cash is the structuring of cash deposits (SMURFING).

This is achieved by dividing cash amounts in smaller amounts and depositing them in several bank accounts, either by the same person (in accounts opened at different banks or branches) or by more persons (in accounts opened at the same bank). Through this procedure, criminals seek to avoid the legal provisions on reporting operations with cash, and then the transaction exceeded a certain value (equivalent of 15.000 EUR in Romanian law).

Another established method of laundering dirty cash or making it available to terrorist groups is the physical transport of money across borders (cash smuggling).

Thus, cash couriers are often used by criminal groups to carry out operations aimed at ML and/or TF. For the fraudulent crossing of the cash over the border, couriers prefer travelling by plane, using mainly short routes or direct flights (which gives them the possibility to always be close to money and rapidly reach the destination), but they also use other means of transport (cars or ships transporting goods in carrying out foreign trade operations, etc). According to FATF, cash smuggling is "one of the main methods of moving illicit funds, laundering money and financing terrorism".

For example, from a financial analysis conducted within the Office, the following aspects arose: the Romanian customs authorities transmitted to FIU Romania certain information that non-resident citizens, bus drivers, tried to avoid control over various amounts in cash, by distributing them to passengers carried abroad. Following the analysis, it resulted that cash came from illicit activities performed on the Romanian territory through the transport company that employed the drivers in question. Before being identified by the law enforcement bodies, the drivers used this technique repeatedly, succeeding for each transport to carry illegally over the border around 100.000 – 200.000 USD / transport, thus reaching a total amount of over 4.000.000 USD.

The preferences of money launderers and those who finance terrorist activities are often directed to the *use of alternative systems of rapid transmission of money (SAT),* which allow money to flow around the world without using the conventional banking system. SAT can be used in legal and illegal purposes and can take various forms including the Hawala system (Indian version), Hundi (used by Pakistani communities), Poey Quan (favored by Thais) and Fie Ch'un (adopted by Chinese communities). Usually, are kept records of all transactions, but these can be made either in dialect, in abbreviated language or in a language unfamiliar to investigators and they may be difficult to interpret.[14].

At the same time SAT (that exists and operates outside the banking system or "traditional" financial channels or in parallel with them) also have other attractive features: they are efficient, rapid, discreet, easy to use and cheap (minimum charges).

Also, regarding the use of services for rapid transfer of money, we mention that several financial analyses performed within the Office led to the identification of certain operations that follow the same pattern: different persons from different localities in the country have taken over a very short period of time, from the same agency (placed in a locality far from the towns in which the beneficiaries lived) amounts between 2.000 – 3.000 EUR (the total returns exceeding however 1.000.000 EUR), the funds in question originating from the same foreign country. All these different beneficiaries were old and always accompanied by a young person that waited for them out of the agency. Thus, the amounts (stemming from crimes perpetrated on the territory of another country) were divided and

[14] www.onpcsb.ro –Training manual regarding money laundering and terrorism financing

transferred in favour of intermediaries (“straw men”, used an interface between criminals and financial operators) that deliver the cash upon leaving the agency to the person who waited for them and who therefore had the role of retrieving the funds from them and of “re-assembling” the entire amount.

Also, it may arise that transfers performed by emigrants trough the entities providing money transfer services to their relatives or other persons in the country, with the explanation "family support" or "donation" may be money obtained from crimes.

Also, we mention that large amounts of cash with an illicit origin can be used *to purchase high value goods* (for example art objects, metals and gems, cars and luxury boats, buildings), in his own name or using intermediaries. These goods can be a long term investment, but they can also be resold and with the funds obtained from these transactions can be performed other investments or operations, so that finally the illicit origin of the money become very hard to detect.

Speculating the variation of the market prices of these goods and concluding successive sale-purchase contracts finally leads to obtaining funds with the appearance of legitimacy.

The conclusion of sale-purchase contracts for immovable assets is made before a notary, where the payment can be made by cash in his presence, which is an advantage for criminals who have cash of illicit origin.

It is important to mention that given the close monitoring of transfers carried out through the financial system, criminals often choose to convert in metals and gems the money designed for financing terrorism.

Another method is *to mix the “dirty” cash of the criminal with money obtained from a legal business which bases its revenues on cash*, such as: restaurants, gas stations, super-markets, exchange houses, etc.

We also mention that cash originating from crimes can also be used *to make payments under a leasing contract,* in this way criminals being able to use certain goods without risking in case their illicit activities were unmasked that the respective goods (which during the course of the contract are under the property of the leasing company) would be confiscated or seized by authorities.

Also, in the specialized practice, *a common method consists in laundering dirty money by depositing sums in cash with the title “crediting company”, “increase of authorized share capital” in the cash-office of certain companies controlled by criminals, directly or through intermediaries*. Later, when the funds are successively transferred, the sums come back to the criminal, seeming to have a legal origin: "reimbursement of company credit"/”refunding authorized share capital”.

The exchange houses are used by money launderers firstly to avoid depositing cash obtained from illicit activities to other financial institutions, but also because they give criminals the possibility to successively change cash in different currencies, with the obvious purpose of losing track of money. As a way of action,

we specify that the amounts changed are relatively small (to avoid drawing the attention of the exchange house employee or the reporting to the Office) and for this reason there are multiple transactions and occurring in consecutive days. In addition, criminals can use false identity data or intermediaries.

Today, *most money transfers are made through bank accounts*.

Although the recycling of funds through bank accounts has the risk of being "in sight", because banks record all transfers and the identity of persons performing them, launderers prefer this method due to the speed and efficiency of the operations and because money can be transferred anywhere in the world. The more distant the money destination, the financial investigation becomes more difficult

In order to hide the true origin of illicit funds, bank accounts can be used – in all money laundering stages (placement, stratification, integration) as well as in terrorism financing – to perform various types of operations. A few examples:

- the use of some bank accounts to provisionally deposit funds which are subsequently transferred externally;
- carrying out of successive transfers between the accounts of several companies (controlled by the same persons), each of them being successively either administrator, either beneficiary (to create the appearance of a normal commercial activity) and finally the involved amounts are withdrawn in cash or transferred externally;
- carrying out of numerous transactions involving the accounts of very many owners, by commencing these complex financial flows aiming to hinder the identification of the true origin of funds and move them off from the criminal source;
- use of some accounts mainly to deposit or withdraw cash;
- use of several accounts with the same owner to carry out numerous transfers between them;
- carrying out of frequent/significant transfers between accounts having different owners, but the same representative;
- depositing smaller amounts in various accounts and then use them to consolidate a collecting account, from where payments are made to external beneficiaries (possibly in off-shore territories);
- use of accounts opened at branches across Romania to collect from abroad sums originating from crimes committed in other states, within cross-border money laundering schemes.

At the same time, as shown above (in the section regarding vulnerabilities), through *Internet Banking* can be carried out transfers without a direct contact with the bank official, aspect which can be also exploited by person pursuing ML/TF.

Also, *bank accounts can be used to launder money obtained from computer crime*, phenomenon which witnessed a special dynamic in recent years. Such an example is given below:

Several Romanian citizens who formed an organized criminal group, moved to another EU country, acting in the following areas:

- hiring several properties and concluding contracts to supply internet services; from those tenancies were posted for sale on specialized sites

goods which did not exist in reality, especially luxury cars, various equipments, ATVs, motorcycles, etc;

- money obtained fraudulently through fictitious auctions organized on the internet were directed to several accounts opened by the group members to various branches which operated in the country in question; subsequently, money was withdrawn, either through ATM's or through online bank transfers.

The concrete methods used to manipulate the virtual space for illicit activities were:

- forging the sites designed for sale of goods and advertising on real sites fictitious announcements of sale of goods; clients were attracted by requiring lower prices than those practiced on the market; criminals requested payment to be made in various accounts opened at banks in several countries; the amounts were then circulated in various bank accounts to lose their track; we also mention that in order to convince the deceived persons regarding the reality of transactions, criminals resorted to an escrow company, presented to the buyer as trustworthy;
- organization through the internet of fictitious transactions on specialized sites, offering for sale goods that they do not detain; thus buyers were given the option of paying for the offered product using specialized services for rapid transfer of money; the sums paid by the victims were raised by the criminals either from the country or from abroad (sometimes through intermediaries) in order to hide their real identity, the group members using most of the times false papers;
- employing the data regarding credit cards obtained through spam and phishing; these data were used at the opening of accounts on various specialized sites of on-line poker, the amounts existing on the defrauded cars being “lost” in favour of one member of the group;
- fraudulently obtaining certain personal data, by posting on specialized sites announcements by which are offered properties for rent, occasion on which the potential clients are requested copies of identity documents, utilities bills or information regarding the branch to which they opened their account; data thus obtained are used to counterfeit identity documents, which are then used by criminals to open bank accounts (at branches where they knew that the person whose identity they use was not a client) in which they deposit various amounts of money; immediately after, they perform money transfers from the account of the victim in the new account opened with the same name; finally, funds are either transferred in other accounts, or withdrawn in cash directly or through cards.

Also, the performance of *certain commercial operations give the possibility that based on some justifications or fictitious documents* (over or under-invoicing, multiple invoicing of some goods/services, false declaration of quantities registered on transport documents, false description of certain goods/services, import or export declarations which contain unreal information), criminals integrate funds in the legal economy, simulating various legitimate commercial operations that would serve as a screen for laundering funds. Thus, money laundering through

commercial operations was defined as "the process of concealing the proceeds of crime and transfer of values, using commercial transactions in an attempt to legitimize their illicit origin"[15].

Dirty money can be used by criminals, directly or through intermediaries *to purchase various insurance products* (life, casualty, goods insurances, etc.).

For example, to give an appearance of legitimacy to illegal funds, a person may resort to payments with a higher value than the insurance premiums, followed by the request to pay the difference in an account opened in another jurisdiction or even by another person. Thus, the amounts available for the final beneficiary have an apparently legal origin (transfer from an insurance company).

Dirty money can be transferred by a tax dodger company in favor of an individual who uses them for payment of additional premiums corresponding to insurance products, followed by the redemption of policies (assuming the penalties provided in the contract). Finally, after successive transfers, laundered funds may become available to the person that controls the tax dodger company or can be withdrawn cash.

Also, within some schemes of money laundering, insurance policies paid with dirty money can be used as guarantee to obtain bank credits.

Also, we consider that frauds in the insurance field are crimes generating funds which later can be subject to a laundering process, through various procedures.

Casinos are vulnerable to use by money launderers, because they offer the possibility of rapidly recycling significant amounts in cash.

An established method is that in which criminals use large amounts in cash to buy chips, but they commit to minimum bets. After a while, they give up the game, change their chips in cash or other payment instruments, assuming potential insignificant losses. In terms of the activity of a casino, this behavior of the client is illogical. In Romania, casinos do not provide evidence of a gain or loss, but this may be in the interest of the criminal as he could claim that his funds come from earnings.

The launderer can also use other persons, either for carrying out cash transactions, or for the actual game to avoid drawing attention over very high amounts available to a single person.

Another way is to attempt to bribe, influence or buy a casino employee to avoid the obligations of reporting suspicious transactions.

In international practice [16] were identified other methods of laundering money through casinos, such as:

- purchase by the money launderers of chips, at a higher price than that of the casino, from various other players with a "clean" past;
- use of the chips as exchange currency for the purchase of prohibited items (for example drugs); later, dealers can go to the casino to convert the chips (received as payment for drugs) in cash.

[15] FATF –Money laundering through the commercial activity – 23 June 2006
[16] FATF – "Vulnerabilities of casinos and of the gambling sector" – March 2009

At the same time, casinos are attractive for organized crime in the meaning of their acquisition by certain criminal groups, which provides the opportunity to launder illicit revenues and to get involved in other types of crimes. In this case, we mention the use of this technique by individuals - recognized members of organized crime groups, who in the process of placing and of stratification of illegally obtained funds transfer the cash amounts to various countries where gambling is authorized, other than the country of origin where they operate illegally, as a destination for money laundering.

The experience of free professionals in fields such as consultancy, negotiation of contracts, legal-fiscal area and the thorough knowledge of the business environment can be very useful to money launderers in optimizing tax reports, conducting more sophisticated transactions (for example: setting up or dividing a company, correspondent accounts, securities' transactions, drawing up of fictitious records, international trade activities involving foreign companies and credit institutions, use of complex financial instruments, simulation of loans, etc), in concluding contracts to legitimize operations that pursue funds recycling, in using various opportunities offered by other jurisdictions and the financial system, etc.

Because of their specific work, free professionals have numerous contacts and relations in the public and private domain, which can be used by criminals to open financial flows, identify new opportunities in the field of investment on the capital market, purchase various goods at competitive prices, set up off-shore companies in order to disguise the origin of goods or other operations which allow them to give an appearance of legality to illicit revenues.

Besides those mentioned, the professional secrecy and confidentiality are well-founded reasons for a money launderer to try using the free professional as an intermediary within operations or transactions aiming to wash funds. Thus, in order to preserve the anonymity of persons, free professionals may be directly involved in operations they actually perform for their clients, such as preservation, employment and management of some properties, carrying out payments for the acquisition of high value goods, organization and management of businesses in country and abroad, etc.

Another way in which illegally obtained funds can be invested is *to purchase properties, both in its own name and by using representatives or various intermediaries* (case in which the purpose can be the attempt to hide the identity of the actual beneficiary of the real estate transaction). Thus, to avoid drawing the attention of authorities and to hide the real source of the money, criminals often prefer to:

- purchase properties by using family members or other persons in their relational circle (friends, trusted partners, etc).
- Invest in properties located in other states.

The variation of prices in the real estate field favour certain speculations of the money launderers who, having significant amounts can take advantage of illicit funds to purchase properties at a time when their price is favourable and later they can re-sell at a much higher price, when the demand on that market is growing. Also, can be purchased at small prices properties that require improvements and then black

money are used for renovations or various other investments, which results in increasing the value of those properties allowing their sale at a price higher than acquisition.

We also mention that the transactions that the money launderers perform on the real estate market can be, depending on their needs, both over-evaluated and under-evaluated (for example, the contract provides a much smaller price than that of the market, the difference to the real price being paid to the seller in cash – from dirty money – thus the criminal obtains an asset with a much higher value than the one declared). The simplest method of money laundering through real estate transactions still remains the over-evaluation of goods, because the difference between the real price and the over-evaluated price provides to the money launderer documents to hide the illicit origin of that sum.

In practice was also found the purchase of property using companies controlled by the money launderers, the firms were then dissolved and criminals redeemed the properties for a higher price. Another technique used is that in which the same property is subject to successive fictitious sales, for different prices carried out between the members of a criminal group.

We also mention that there are sectors of the real estate field which offer many advantages to money launderers. Thus, for example, the purchase of hotels, restaurants or night clubs are as many possibilities to invest black money but also to run specific businesses, which involve significant cash flows.

Also:

- properties purchased with dirty money can be used as guarantees (mortgages) to obtain loans;
- money or other assets having an illicit origin can be submitted as guarantee to a financial institution, in order to get a credit for buying a property;
- a property can be rented by a criminal to an off-shore company he controls and the money thus obtained have the appearance of legal origin.

In concluding this section, we remind that financing of terrorism can take the form of providing a building to a terrorist entity (for example to offer the members of that group shelter or a space for training or instruction; another example would be that the money resulted from hiring that building can be used to finance terrorism or for various expenses of the organization, etc.).

Tax heavens are territories in which operates a legislation which favors attraction of capital, offering special facilities of which the most important is the exemption of tax or their very low level (compared with the countries of origin of the beneficiaries of these facilities). Also, tax heavens offer a high level of confidentiality in the banking or commercial field (the level of secrecy and extent of restrictions vary from country to country). Thus, most tax heavens follow a policy of practicing a distinction between the banking activity of entities of that country and that of foreign ones (the latter enjoying more relaxed regulations).

Tax heavens provide the required anonymity to investors who do not want to disclose their identity or origin of their revenues, adding an element of difficulty to potential investigations from law enforcement bodies from their country of origin.

Tax heavens are characterized by low level of taxes, the required resources to finance public expenses being obtained in these territories especially by:

- collection of taxes of authentication, registration and renewal of companies established in these tax heavens;
- setting up of new jobs in financial and legal consultancy; development of telecommunications and tourism services, etc;

Off-shore companies are those which do not conduct commercial activities in the country in which they were registered and in terms of trade acts performed are considered foreign companies. An offshore company does not have revenues in the country in which it was registered. Theoretically, an off-shore company can be set up anywhere, but not all states offer facilities enjoyed by such companies in tax heavens. Such facilities consist mainly in: anonymity and confidentiality (businessmen want in certain situations to maintain anonymity regarding the activities performed, the revenues gathered, investments, etc), low taxes (use of off-shore entities in order to direct profits towards them and pay lower taxes), in some cases the absence of restrictive currency controls, etc.

The use of tax heavens does not imply the existence of intentions to perform illegal activities, but the features above make their use more attractive for tax dodgers and money launderers.

A tax heaven may be used by a money launderer to complicate and discourage attempts by investigators to document unreported income and analyze the flow of funds involved in such operations.

We present, as examples, some methods of money laundering using off-shore companies:

- acquisition of ready-made companies ("Ready-Made" - .i.e. they were already registered in a tax heaven by an authorized agent and remain waiting "on the shelf" until they are bought by an interested client) to obtain formal documents which may give an appearance of legitimacy to funds of suspect origin (for example, if a person owns fund whose lawful origin cannot be proved, he purchases such a company legally set up a while ago in a tax heaven and they produces backdated documents of this company – contracts, invoices, loans, etc. – to simulate a legal activity, generating clean money;
- carrying out by persons involved in suspect flows of receipts/significant payments and/or frequent to partners (whose address is sometimes just a postal box) from tax heavens; it is often found that documents/contracts submitted as substantiation for these transactions seem to have a formal nature; in such circumstances, given the anonymity ensured by the use of tax heaven, it is very difficult to establish the real beneficiary of certain funds (these successive transaction involve the setting up of an off-shore company, which in turn sets up another, which then proceeds similarly, funds being transferred repeatedly and with various justifications between them and it is finally very difficult to say who is the person that controls all these companies and who is the real beneficiary of funds)
- submitting, as supporting documents certain contracts by which companies registered in tax heaven provide for some persons (natural and legal) services whose real value is very hard to assess (for example: training, consultancy, technical assistance, management, drawing up of various studies, etc); thus, on one hand the expenses for the payment of such services lower the profits that the beneficiary of "services" must declare, while the off-shore company (controlled by the co-contractor directly or through intermediaries) that receives the equivalent value of

services records significant profits, taxed at a low level, according to the laws of the tax heaven; on the other hand, this type of contracts can offer a legal justification to transfer abroad large amounts of money with a suspect origin;

- carrying out by an entity of exports of under-evaluated goods to an off-shore company it controls; later, the off-shore company sells the goods at real price, obtaining profits for which, according to the laws of the tax heaven, pays very small taxes;
- another method is the depositing by money launderers of cash (originating from crimes committed on other states) in accounts opened at banks in tax heavens; after entering the banking system, taking advantage of the anonymity ensured by the laws of tax heavens and the modern communication means available to them, funds can be easily transferred to any other destination; thus, for example, money launderers can use the deposits in tax heavens as guarantee to obtain credits in their own country, credits they do not reimburse, in view of enforcing the guarantee (in this way, funds receive the legal appearance of originating from bank credits); also, money launderers can simulate a trial by which an off-shore company they control (in the account of which were initially deposited the black money) is condemned to pay damages (funds return to criminals with the appearance of lawful origin – damages)

According to the Report published by the Organization for Economic Cooperation and Development on 2 April 2009 and released on the occasion of the G20 Summit in London, there are two lists of tax heavens, a "*black*" one (countries that do not comply with tax regulations) and a "*grey*" one (states that comply only partially).

According to OECD methodology, a country must meet four criteria to fall under the category of tax heavens, namely:

- the level of tax levied, which is very low and in some cases zero;
- lack of transparency of banking operations;
- the existence of regulations that impede the exchange of information related to tax between governments, and
- the lack of conditions for economic activities undertaken by companies to be substantial. This latter criterion may reveal the intention of certain states to attract investments only based on opportunities offered by the tax level – the so-called off-shore centres.

Following developments registered by the states included on these lists, OECD [17]: prepared in June 2010 a Progress Report, updating the lists regarding the implementation of tax standards:

[17] Source: http://www.oecd.org/dataoecd/50/0/43606256.pdf

A PROGRESS REPORT ON THE JURISDICTIONS SURVEYED BY THE OECD GLOBAL FORUM IN IMPLEMENTING THE INTERNATIONALLY AGREED TAX STANDARD[1]

Progress made as at 3rd June 2010 (Original Progress Report 2nd April 2009)

Jurisdictions that have substantially implemented the internationally agreed tax standard			
Andorra	Czech Republic	Japan	St Vincent and the Grenadines
Anguilla	Denmark	Jersey	Samoa
Antigua and Barbuda	Dominica	Korea	San Marino
Argentina	Estonia	Liechtenstein	Seychelles
Aruba	Finland	Luxembourg	Singapore
Australia	France	Malaysia	Slovak Republic
Austria	Germany	Malta	Slovenia
The Bahamas	Gibraltar	Mauritius	South Africa
Bahrain	Greece	Mexico	Spain
Barbados	Grenada	Monaco	Sweden
Belgium	Guernsey	Netherlands	Switzerland
Bermuda	Hungary	Netherlands Antilles	Turkey
Brazil	Iceland	New Zealand	Turks and Caicos Islands
British Virgin Islands	India	Norway	United Arab Emirates
Canada	Indonesia	Poland	United Kingdom
Cayman Islands	Ireland	Portugal	United States
Chile	Isle of Man	Russian Federation	US Virgin Islands
China[2]	Israel	St Kitts and Nevis	
Cyprus	Italy	St Lucia	

Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented					
Jurisdiction	Year of Commitment	Number of Agreements	Jurisdiction	Year of Commitment	Number of Agreements
Tax Havens[3]					
Belize	2002	(4)	Nauru	2003	(0)
Cook Islands	2002	(11)	Niue	2002	(0)
Liberia	2007	(1)	Panama	2002	(1)
Marshall Islands	2007	(3)	Vanuatu	2003	(2)
Montserrat	2002	(3)			
Other Financial Centres					
Brunei	2009	(9)	Philippines	2009	(0)
Costa Rica	2009	(1)	Uruguay	2009	(5)
Guatemala	2009	(0)			

Jurisdictions that have not committed to the internationally agreed tax standard			
Jurisdiction	Number of Agreements	Jurisdiction	Number of Agreements
All jurisdictions surveyed by the Global Forum have now committed to the internationally agreed tax standard			

1. The internationally agreed tax standard, which was developed by the OECD in co-operation with non-OECD countries and which was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.
2. Excluding the Special Administrative Regions, which have committed to implement the internationally agreed tax standard.
3. These jurisdictions were identified in 2000 as meeting the tax haven criteria as described in the 1998 OECD report.

Phantom companies are those that are not operating at the declared premises, being set up only on paper, to be used in transactions aimed at money laundering (simulating usual commercial activities) or at tax-dodger activities (also by demanding illegal VAT reimbursements)

Hundreds of phantom companies set up in Romania aimed to fraud VAT corresponding to intra-Community transactions. For this purpose, phantom companies used by criminals are periodically changed, being either abandoned or assigned many times to fictitious persons, transferring to them all tax obligations

corresponding to transactions. Thus, for a short period of time (a few months) phantom companies perform a very intense commercial activity accumulating significant fiscal obligations which they do not pay, as they cannot be found at the declared premises by control bodies. In this context, we also mention that in most cases the declared associates/administrators of the phantom companies are homeless persons, pupils, people without judgment, foreign citizens who left the country, fictitious persons (being used documents with false identity) as they cannot be held accountable by control or law enforcement bodies. Thus, the real beneficiaries behind phantom companies can freely seize the money obtained from fiscal fraud.

We underline that the VAT fraud "carousel" type is very difficult to detect and has extremely serious consequences due to the significant value of tax that escaped payment. This type of fraud is based on a simple mechanism, at least apparently: the home trader invoices without VAT (since it performs an intra-Community delivery which falls under the category of operations exempt from VAT with deduction right) and the trader in the country of destination will apply the regime of reversed taxation for this operation (since it performs an intra-Community acquisition, calculating and registering VAT corresponding to intra-Community acquisitions, at the tax rate of his country, both as VAT collected and VAT deductible, without effectively paying it). Subsequent to the intra-Community acquisition, the trader disappears without registering (in terms of accountancy), declaring (in terms of tax) and paying the VAT collected corresponding to subsequent deliveries carried out on his internal market (the so-called "container" companies, collectors of fiscal obligations regarding VAT, which will never be paid). This trader (in this case the "container" company) is also named due to its volatile behaviour of "phantom" in fraud investigation practices "carousel" and "the missing link" of intra-Community trade [18].

Another aspect is that persons who control large companies active in construction, advertisement, trade, telecom and even media can take out money from the accounts of these companies by carrying out transfers in favour of phantom companies, from where money can be withdrawn in cash (often with fictitious justifications such as "procurement of grains" "livestock procurement", etc). Those phantom companies are set up especially to serve such transfers and charge for such services fees representing a percentage of the amount withdrawn from the bank. Thus, we note that phantom companies provide fictitious documents to real companies, in view of being accounted for and facilitate the carrying out of bank transfers in their accounts.

We remind that in order to lose the track of some dirty money, criminal use numerous bank accounts whose owners are phantom companies; through such accounts, phantom companies may transfer significant amounts abroad, based on false financial-banking and customs documents.

Also, phantom companies can be used to perform import activities with under-evaluated goods and trade the products such imported.

[18] Dr. Dragoş Pătroi, Carousel type fraud regarding value added tax corresponding to intra-Community transactions (document presented at the Office)

Following several financial analyses conducted within the Office, we have identified a widespread phenomenon, involving trade operations with perishable products, especially fresh fruits and vegetables. Thus:

- through the accounts of newly established companies are circulated very large sums of money, the "circuit" of money being extremely complex, many times that amount passing through the accounts of intermediary firms, to the final beneficiary;
- following the monitoring of the accounts of these companies, it resulted that many of them exchange immediately in foreign currency the sums received (through cash depositing and transfers from other companies) and carry out, in a very short time high-value external payments;
- associates and partners at those companies are non-resident citizens (from non-EU countries);
- persons carrying out the transactions are authorized for the accounts of several companies involved in the financial circuits;
- several companies involved have the same legal representative;
- although they are newly established, through the accounts of these companies are run operations with very large amounts of money;
- the companies involved, that perform intra-Community acquisitions and imports of fresh vegetables and fruits (which they don't register in accountancy) do not report to the legal deadline the recapitulative statements for intra-Community acquisitions, thereby avoiding the payment of VAT to the state budget;
- many of the companies, after carrying out commercial operations of high value were assigned to other persons; thus, the financial analyses performed emphasized that there are certain citizens that act on the Romanian territory only in view of taking over companies with "problems" (by which the pervious administrators had committed crimes).

The capital market is one of the main ways of accessing the financial system, as there are situations in which criminals can take advantage of certain opportunities to invest large amounts of money. Thus, black money is used for the purchase of shares, bonds or other securities which are then employed to obtain funds with an apparently lawful origin.

At the same time, illegalities committed through the capital market (for example market manipulation, fraud and use of privileged information) generate illicit funds which are then subjected to laundering.

For example, an organized criminal group recruited several employees of major institutions operating in the field of capital market, obtaining confidential information from them. Thus, following the illegal trading of shares owned by several individuals (residing in various zones of the country), that group obtained significant revenues. Subsequently, the funds resulted from the perpetration of crimes such as cheat and manipulation of the capital market were transferred to accounts which the group members, using false documents opened at several bank branches in the name of the persons whose shares were illegally traded.

Dirty money can be used by criminals to make payments corresponding to credits contracted with various financial institutions (in their own name or using

other natural or legal persons) or to make up the guarantees needed to obtain those credits.

There is also the possibility that those credits are just a screen to disguise the illicit origin of resources available to the criminal (to create the appearance of obtaining goods/services or performing investments with money obtained from loans).

With regard to *politically exposed persons* (PEP), we mention that there are situations in which these are involved in recycling funds stemming from bribery, receiving of undue benefits or illegally obtained rewards, embezzlement, involvement in organized crime activities and in various businesses hardly legal.

According to legislation in the field, transactions carried out by PEP in country and abroad must be carefully monitored by all categories of reporting entities. Therefore, in order to benefit from anonymity, PEP often use, in order to carry out money laundering operations, different intermediaries (natural and legal persons which they control directly or indirectly, free professionals specialized in commencing and conducting complex and sophisticated transactions or in placing funds in profitable investments, etc). Thus, for example, sums with an illicit origin can be:

- transferred to numerous bank accounts opened at several banks (on the Romanian territory but especially from other jurisdictions) in their own name or in the name of various owners (for example, there are situations in which PEP open accounts in the name of their minor children, suspicious transactions being carried out through them);
- used, through accomplices to carry out complex real estate transactions (for example sale, purchase, building or renovation of buildings) or to purchase some high value goods; a method of money laundering through real estate transactions in which a PEP is involved is that by which a PEP or a person in his relational circle is assisted in buying a property with a lessened value, which he then sells to the real value (and the price difference is likely to disguise the payment of bribery offered to the PEP);
- directed, through intermediaries to non-profit organizations in another country which have the role of screen for recycling some funds (finally, after carrying out several operations of so-called “donations” the beneficiaries will be the members of the PEP’s family or other persons in their relational circle);
- involved in carrying out receipts and payments through shell companies in off-shore territories;
- divided into smaller amounts to avoid drawing attention of reporting entities and authorities;
- used for transactions on the capital market (for example, a corrupt PEP is assisted in trading illegally under very profitable conditions of some securities, as payment for certain "services").
- integrated in legal businesses controlled directly or indirectly by PEP (through various methods such as registering false invoices in accountancy, concluding fictitious contracts, payment of “consultancy” type services whose actual performance is very hard to achieve, etc.).

3.3 TYPOLOGIES OF MONEY LAUNDERING AND TERRORISM FINANCING

3.3.1 MONEY LAUNDERING

1) Laundering money obtained from fraud

Several natural persons Romanian citizens initiated and formed a criminal group which aimed to purchase the equipment used to carry out frauds at ATMs, to be used in several European states.

Some of the group members were detected in other states while they committed ATM fraud. Thus, they used false cards with an ATM, which had inscribed on the magnetic tape the identification data of certain electronic payment instruments belonging to several persons (the real holders of cards). The data were obtained by passing the original card through a machine that reads and registers data on the card's magnetic tape. It was also found that the criminals knew the PIN code of original cards, since, when they used the ATM, they managed to perform the required transactions.

The transmission in the country of the sums resulted from crimes was carried out by the group members (using false identity documents) through:

- a firm in one of the European countries where they conducted their criminal activities, which took over the sums and transferred them to accounts opened at banks in Romania on behalf of persons trusted by the group members (relatives or friends);
- systems of rapid transfer of money.

The techniques of money laundering used by the group members were diverse, from the simplest methods to complex ones.

Thus, the accomplices in the country who had the role of „whitening" the illicit funds received from abroad concealed the real nature of the origin of the money, by using the financial-banking system, namely through accounts they opened at several banks in Romania. The procedures used were the following:

- opening a large number of accounts at the branches of the same bank and ordering repeated transfers of large amounts of money between these accounts;
- unusually high deposits and withdrawals of cash;
- deposits of cash in several accounts, so that each amount is small, but their total is significant;
- frequent cash deposits in the accounts of clients by third persons, without an apparent connection with the account recipient.

The members of the group also focused on investing the money obtained from ATM fraud in a foreign country in pieces of land and houses. Those goods were acquired (directly or through intermediaries) and subsequently resold in view of obtaining profits, but also of justifying the large amounts of money they had, given that none of the group members undertook paid work. Those goods were either:

- acquired for preservation and renovation
- newly built;
- bought and immediately resold (case in which the group aimed only to run several apartments in a short period of time, the selling price being the same or even

smaller than the purchasing one, trying to make lost any trace that would lead to the origin of funds);

- acquired as a result of usury activity (from persons who failed to repay the borrowed money and the interest)

2) **Laundering of sums of money obtained from tax evasion conducted through phantom companies that run businesses with scrap**

Three individuals received (a as a result of a claim for restitution) a property located in the central area of Bucharest.

A few months later, those persons sold the property to SC C SRL for the amount of 250.000 Euro. This company proved to be a „phantom" company that had as declared purpose of business "the recovery of metal scrap". It should be noted that during two years, from the accounts of SC C SRL was withdrawn an amount cash in the equivalent of around 1.000.000 Euro with the justification "payment to individuals for purchasing scrap metal" given that the records of financial bodies did not include statements regarding the company's obligations to the consolidated state budget, VAT reimbursements or the balance sheet corresponding to the commercial activities carried out in that period.

After about a month, SC C SRL sold the property to individual X, with the same price as of acquisition, namely 250.000 Euro, a transaction apparently lacking commercial logic. It is important to note that X has the capacity of representative for the accounts of SC C SRL, in which it claimed in cash the amount of 1.000.000 Euro in equiv. mentioned in the previous paragraph.

After a few other months, X concluded a pre-agreement of sale/purchase with another natural person for the price of 2.500.000 Euro, establishing an advance sum of 70.000 Euro, money that were transferred by the promissory buyer in the open account. In the following period, X concluded pre-agreements of sale/purchase with another nine natural persons in similar conditions, obtaining the total amount of 700.000 Euro, which he finally claimed in cash in several installments. The ten natural persons who had the quality of promissory buyer:

- had the same family name and their residence in the same locality;
- had the quality of partners and administrators at many companies with the purpose of business „recovery and recycling of scrap metal"; from the accounts of these companies was withdrawn in cash over two years the total amount of 8.500.000 Euro in equiv.

After another period of time, X entered into a sale-purchase contract with SC A SRL to buy the same property for the amount of 4.500.000 Euro, which was certified at another notary office.

The analysis of the bank account of SC A SRL emphasized that this was financed through numerous cash deposits carried out by persons of X's family, amounting in total to 4.500.000 Euro with the explanation "returns from sales".

SC A SRL paid in cash a first instalment of the price of the property, namely the equivalent of 1.500.000 Euro at the moment of signing the contract, payment which was made before the notary.

The notary given several reasons required the seller (X) to apply a digital print on the contract. It has to be noted that both before this notary and in subsequent

transactions carried out at bank's pay-desks, X turned up accompanied by two other persons who permanently advised him what to do. X may be an illiterate person.

SC A SRL paid the second instalment of price of the property through bank transfer in one of X's accounts, namely the equivalent of 3.000.000 Euro. On the same day, X turned up at the bank's pay-desk announcing that he will receive that amount in his account from A SRL and that he wants the money cash, the following day. The bank's employees tried to explain both to citizen X and his two attendants that the sum had not been yet received in the account and that given the large quantity of cash required, a prior appointment is needed.

The next morning, X together with his two "advisers" came to the bank and threatened that if the payment is not made instantly, they will transfer the entire amount in an account opened to another bank, which they finally did.

Thus, although he had accounts at other banks, X opened a new account to another bank, got back to the bank that refused the payment, issued a payment order with the amount available in the account and transferred all the money to the new account, from where he withdrew it cash.

3) Typology "Politically exposed person"

A Romanian citizen set up a company (SC X SRL) together with his wife.

After a few years, the Romanian citizen got an important position in the state administration, becoming a PEP and withdrew together with his wife from the company he founded, the shares being taken over by one of his former employees, with whom he was in a distant family relationship.

The assignment of shares was free, although at the time of assignment the company had a stated capital in the equivalent of a few tens of thousands Euro and registered significant profits. These aspects are indications that the assignment had a formal nature and the person who took over the company acted as an intermediary for PEP.

We mention that PEP used his influence so that X SRL illegally got contracts with several public institutions, thus the company obtained significant profits, a large amount of these getting to PEP in various ways.

For example, SC X SRL bought an extra muros piece of land by purchase from various individuals who had their property right reconstituted. Subsequently, SC X SRL sold that land to PEP's wife at a price much lower than the market (around 10 000 Euro against 50.000 Euro the normal price).

Using the influence he had, PEP managed to set aside the land in question (although local authorities refused, on several occasions, such requests made by others.

Shortly thereafter, the couple sold the property at a significantly over-estimated price (around 2.000.000 Euro) to another Romanian company (SC Y SRL) that has as sole proprietor a company from an off-shore jurisdiction.

It was found that the purchase of the property by SC Y SRL had no economic purpose, since the company paid a much higher price than that of the market for a property that later received no productive use (it simply remained the property of SC Y SRL).

Therefore, it is possible that the amount of 2.000.000 Euro received by PEP as payment for the land actually be a part of the profit made by X SRL (controlled by

PEP through an intermediary) following a broad running of contracts with public institutions (whose gaining was facilitated by PEP).

4) Laundering sums of money resulted from drug trafficking

Through a Suspicious Transactions Report, a commercial bank transmitted to the Office information regarding suspect operations conducted through the bank account of natural person A, citizen of a Middle East country, with his residence in Romania. The suspicions concerned the fact that he received various amounts of money as "loan return" from non-resident individuals and then he withdrew those funds in cash through several operations under the reporting limit.

The following aspects emerged from the analysis carried out within the Office:

Individual A was the beneficiary of transfers conducted from an account open in a country in East Asia, as follows: from individual B (citizen of that country) he received the equivalent of around 55.000 Euro and from individual C (Romanian citizen) he received the equivalent of around 40.000 Euro. When carrying out these operations, was used the national currency of the country from which the transfers were conducted.

Within the verifications regarding the origin of funds, the Office requested data and information from the Financial Intelligence Unit (FIU) in the respective country in East Asia. Following this, the partner FIU informed the Office that B, who uses several aliases, is known as perpetrator of the crimes of illegal possession and drug trafficking and C was reported as part of his relational circle.

Regarding individual C, it is important to mention that she is A's current wife and previously she had been married to a citizen of the country from which funds are transferred.

Also, following consultation of the data base of the Office containing the « Situation of external transfers above the reporting limit », were identified:

a) transfers carried out by B as follows: the equivalent of 110.000 Euro in the benefit of D (A's brother) and the equivalent of 145.000 Euro in the benefit of E (A's sister in law), in their accounts opened at banks in Romania. The analysis of the accounts of individuals D and E (both citizens of the same country in the Middle East as A) showed that these exchanged in Euro the funds received from B in the national currency of the Middle East country and transferred the amounts of 110.000 Euro and 145.000 Euro in A's account as "loan return".

b) transfers carried out by C (A's wife) from an account opened at a bank in East Asia in the benefit of the same relatives of his husband, namely D (equivalent of around 68 000 Euro) and E (equivalent of around 35.000 Euro); as in the previous case, the funds get, after being firstly changed in Euro also in A's account opened at the bank in Romania.

The individual A withdrew in cash, through several operations below the reporting limit, a part of the funds received as shown above (in total approx. 110 000 Euro) and another part of these was used to carry out bank transfers with the explanation "purchase of properties" (around 340.000 Euro).

In conclusion, we can consider that were identified indications of laundering of funds which could originate from the crime of drug trafficking.

5) Laundering of money obtained from tax evasion

A company A received from company B the amount of 1 million Euro as "consideration for land". Shortly after buying the land, B SRL received from C SRL the amount of 2.2. million Euro as "payment for land". According to the documents submitted to the bank, it was found that it was same land that B SRL bought from A SRL.

A SRL and C SRL had the same administrator and after the conclusion of the sale-purchase agreement between B SRL and C SRL and the transfer of the 2.2 mill. Euro, the administrator of A and C also became the administrator of B SRL. Therefore, it was not only the same land, but the same natural person who controlled the 3 companies.

Thus, the land that was worth around 1 mill. Euro was sold for the price of 2.2 mills. Euro, which is much over-estimated, this operation having the purpose to "remove" the money from the company and use them without justification (possible predicate offence, stipulated by Law no. 31/1991).

After B SRL bought the land for the price of 1 mill. Euro, he turned to a specialized company that made a re-evaluation of the land to the price of 2.9 mills. Euro, an unjustified re-evaluation.

Following the re-evaluation, the removal from administration of the land in B SRL's accountancy was made, according to the law to the value of 2.9 mill. Euro, the value of re-evaluation, thus following this transaction B SRL registered only a loss in records.

In other words, from the point of view of treasury cash-flows, B SRL registered a profit of 1.2 mill. Euro (the difference between the price of purchase and price of sale), which should have normally become taxable income, but due to the exercise with the re-evaluation, in records B SRL had a loss of 0.7 mill. Euro (the difference between the price of sale and the value of re-evaluation), thus avoiding the tax on profit due to the state budget, therefore the companies were also involved in tax evasion.

Shortly before the transactions with the land described above, C SRL received from company F LTD, with its headquarters in Belize the amount of 2 mill. Euro as "loan". This sum was not registered in accountancy as external credit, but as credit carried out by partners, being registered in account 455, which led to the idea that behind the company in the tax heaven there are the same partners and administrator (of A, B and C SRL).

Then, after carrying out the operations described, A SRL transferred in Belize to F LTD the amount of 1 mill. Euro as "loan return" and B SRL transferred the same amount with the same purpose.

Thus, the dirty money obtained from evasion using a land were transferred to a tax heaven.

Also, were identified some financial flows between F LTD and P, amounting to approx. 0.8 mill. Euro, money which could practically come from the successive transfers described above.

6. Laundering of money obtained from bank card fraud

A Romanian citizen and an American citizen initiated the following financial circuits, through companies controlled by them:

The Romanian citizen received based on fictitious loan contracts in an account opened at a bank in Romania considerable amounts from an American company that had as purpose of business the sale of pre-paid telephone cards and as partner the American citizen. The sums were transferred in Romania from an account opened at a bank in USA, but also from an account opened at a bank in Bermuda, where the American company had another office.

From the information received from the partner of the Office in USA, it emerged that the American citizen was involved in frauds related to bank cards.

The money received by the Romanian citizen in his personal account had the following route:

- a part was withdrawn cash;
- a part was used to purchase a land;
- a part was transferred to a Romanian company controlled by the Romanian citizen as “company credit’.
- the amount of money received by the Romanian company was transferred, based on a fictitious invoice in the account of another company that has as sole partner the American company.

Thus, the money transferred from the accounts of the American company to the Romanian natural person returned to the initial administrator, after being “moved” through the personal accounts of the Romanian citizen and the accounts of certain companies controlled by him.

In these circumstances, it was assumed that all these financial circuits, involving significant amounts made based on possibly false documents (loan contracts, invoices) were conducted in order to hide the illicit origin of the sums of money obtained from crimes related to bank cards, perpetrated by the American citizen and the Romanian citizen, through the companies they controlled.

7. Laundering of money obtained from crimes related to international adoptions

A Cypriot citizen received in an account open at a bank in Romania money from a foreign company, which had its premises in Cyprus. The address of the Cypriot company was a mailbox and it was supposed that it belonged to an office of lawyers or a bank branch that were related to the Cypriot company. Shortly after, the money was withdrawn by a Romanian citizen, which was authorized on the account the Cypriot citizen.

The information obtained by accessing the data base revealed that the Romanian citizen was a suspect person in mediation of international adoptions by Cypriot citizens.

The analysis of the accounts of the Romanian citizens revealed the following:

- he received, before the transfer described above, during a period of two years, large amounts of money from the same Cypriot company;
- a part of the received money was withdrawn in cash;
- a part was transferred to a company of financial investments services as "payment for shares";
- a part was transferred to an insurance company as “consideration for policy”;
- a part was transferred to a Romanian company as “consideration for land”.

The Romanian company had as sole partner the Cypriot company that was the payment administrator for the Cypriot citizen.

Shortly after these operations, the Romanian company made a money transfer to the Cypriot company.

Thus, it was assumed that these financial circuits were conducted in view of concealing the illicit origin of the amounts of money obtained from the crimes related to international adoptions, deeds perpetrated by the Romanian citizen, through a company located in a tax heaven, having as address a mailbox, through a Romanian company he controlled and through a Cypriot citizen that finally proved to be only a "straw man".

8. Laundering money through insurance products

a) The Office received from an insurance company a suspicious transactions report regarding a request of anticipated redemption of a life insurance policy signed by a Romanian citizen (X), only six month ago. Three weeks before the redemption request, X had paid, in consecutive days, two additional premiums of 20.000 Euro each (in total 40.000 Euro).

The financial analysis carried out revealed the following aspects:

- according to the information received from fiscal authorities, the incomes declared by the Romanian citizen X are much lower than the sums he paid as "premiums";
- the analysis of operations run in X's bank account revealed that he received (as "salaries") the amount of 75.000 Euro from a company known as being involved in activities of tax evasion (including illegal VAT reimbursements).
- using a part of the sums so received, X paid the two additional premiums amounting to 40.000 Euro and three weeks later he requested the redemption of the policy and received 25.000 Euro from the insurance company;
- the 25.000 Euro received following the redemption of the policy were used as follows: 9.000 Euro were withdrawn cash and 15.500 Euro were transferred in the account of another individual (Y) – none other than the administrator of the tax dodger company previously mentioned;
- in turn, Y used that money to make a term deposit and to carry out a cash withdrawal.

b) The Office received from an insurance company a suspicious transaction report regarding a life insurance contract amounting to 50.000 Euro for 30 years, negotiated by company 1 SRL for its administrator, Romanian citizen Z. The reported suspicions consisted in:

- the fact that during negotiations the client expressed a keen interest in the assignment or cancellation of the contract;
- the fact that the client requested a derogation from the usual clause that redemption can only be requested after 4 years (the client wanted the period to be reduced to 2 years).

The financial analysis conducted revealed the following aspects:

- the fiscal authorities informed the Office that SC 1 SRL is involved in tax evasion;

- SC 1 SRL is also known as a “slow-payer” therefore it cannot obtain bank loans;
- Z used the insurance policy as collateral to obtain a bank loan amounting to 30.000 Euro;
- Z used the amount of the loan on its own to make a payment in the benefit of SC 1 SRL as "personal contribution".

3.3.2 FINANCING OF TERRORISM

1) Within the Office was conducted an analysis of suspicious operations undertaken by several non-resident individuals, citizens of neighbour European state A, who frequently received various amounts (the administrators being other foreign citizens) through agencies providers of services of rapid transfer of money located on the Romanian territory.

Besides having the same citizenship, the analysis carried out within the Office highlighted a number of common features of the said non-resident beneficiaries: these were young persons (around 20 years), most of them not married and were using several identity cards issued in the same locality of state A.

The Office requested information about these persons to the FIU of state A, that informed us that the beneficiaries conduct the same type of transactions in their country also (receive money from administrators from EU and non-EU countries, through agencies providing services of rapid transfer of money); moreover, following a comparative analysis it was found that some of those administrators were the same with the ones carrying out transactions in Romania.

Also, FIU in A country informed us that many of those beneficiaries had several previous names (which can be considered suspicious given that they were all very young) and that some of them were involved in issuing false documents and in the use of forged banknotes in other states.

The fact that operations like the ones that the said foreign citizens ran in Romania were also undertaken in their country of origin leads to the suspicion that by extending their territory of action, the persons involved tried to remove funds from their real source.

We mention that although each of the sums received on the Romanian territory by the foreign citizens were small, they amounted in total to 200.000 Euro over a period of three months.

The checks conducted within the analysis revealed that the name of the administrators were identical or similar with those of some persons known to be involved in financing of terrorism.

2) Following a financial analysis conducted within the Office, it resulted that the non-resident citizen X holds several accounts opened at bank branches on the Romanian territory, which received money from external source amounting to 550.000 Euro, the sums originating from his home country. The funds mentioned were transferred in Romania from his personal external accounts or from those of certain persons having the same family name with the non-resident citizen (who were possibly his family members). In the same period, the sum was either returned in the accounts of those it came from (500.000 Euro), or transferred in the accounts

opened in X's country in the name of a Romanian company whose partner/administrator is the non-resident citizen (50.000 Euro). This type of operations generate suspicions about the reasons why those sums were transferred in accounts in Romania, so that later most part of them were transferred back to the persons in the foreign state of origin.

As regards one of the Romanian companies controlled by X (SC 1 SRL), we mention that this was erased following the conclusion of the bankruptcy procedure; previous to that, although it was not recorded by NAC (National Customs Authority) with operations of external trade corresponding to the analyzed period, SC 1 SRL transferred funds to foreign firms A LTD (30.000 Euro) and B LTD (20.000 Euro), payments justified to the bank as the equivalent value for imports conducted with those external partners (thus being obvious the intention of hiding to the bank the real justification of the said transfers).

As regards the two external beneficiaries of the payments ordered by SC 1 SRL, we mention that there is information that these had been involved in other suspicious transactions, as follows:

- about A LTD, there are data stating that it was the beneficiary of a sum of money as payment for kidnapping a person.
- about B LTD there are data that it was involved in actions aimed at collecting sums for an extremist terrorist organization.

3) The Office received a suspicious transaction report from a commercial bank in Romania, the suspicions referring to the frequent cash deposits in the personal accounts of certain non-resident citizens, who controlled two Romanian companies (SC X SRL and SC Y SRL).

Following the financial analysis carried out, the following aspects emerged:

- the mentioned non-resident citizens were founder members of foundation F, which was linked to a terrorist organization (carrying out propagandism and proselytism activities); the main source of income of that foundation were voluntary donations made by various natural and legal persons; the funds got to the foundation through the personal accounts of activists, but also through the accounts of some foreign citizens;
- a part of the funds collected in Romania to be made available to foundation F came from SC X SRL, which did not register in accountancy an important part of its income; money not-declared to the fiscal authorities were withdrawn in cash from the company's account and then deposited:
  - either in the accounts of the administrators of SC X SRL (non-resident citizens, members of F foundation); a part of the sums thus received were made available by these natural persons to foundation F;
  - or in the accounts of SC Y SRL (administered by the same non-resident citizens); SC Y SRL was an exchange house, through it money were exchanged in another currency and handed in, cash to another non-resident citizen (also linked to F foundation) to carry them outside the country and make them available to an friend of the persons who controlled companies X SRL and Y SRL.

3.4 EXAMPLES OF INDICATORS FOR DETECTING SUSPICIOUS TRANSACTIONS IDENTIFIED BASED ON FIU's ANALYSES AND INTERNATIONAL PRACTICE

The suspicious nature of a transaction can be determined by the reporting entity only after a careful and responsible analysis of all information related to their clients, to their business and to the services and products they offer, and taking into account all the elements necessary for an overall understanding and assessment of the phenomenon.

It is important to mention also the fact that some transactions that seems neutral by themselves (they show no characteristics that might arouse suspicion, that do not differ by others of the same kind) can become signals when they are associated with persons suspected of some connections and involvement in actions of terrorism.

Therefore, considering the infinite number of situations that can be met in practice, we do not recommend the use of restrictive indicators shown (by way of example) below, those can be completed with those from other manuals or guides, being also required that the reporting entities to apply strictly and in all situations (cases) the legal disposals related to the customers knowledge and the continuous monitoring of business relationships with them, to identify any aspects that might arouse suspicion of ML/TF.

We emphasize the need for all reporting entities to use in the prevention and fighting of SB and FT, the risk-based approach (country / geographical area risks, risks related to customer, types of transactions undertaken by the client, risks related to the products and services offered).

Thus we estimate that it is necessary that all categories of reporting entities to pay attention to:

- transfers from/to high risk countries/geographic areas and customers from those areas, such as:
    - countries that have regulatory gaps in AML/CTF;
    - countries that are subject to sanctions, embargoes or similar measures imposed by various international authorities;
    - countries in which it is known that terrorist groups operate or support terrorist financing;
    - countries known for high levels of crime (such as corruption, drug trafficking, traffic of human beings, smuggling, fraud, illegal gambling, etc.);
- certain categories of clients, such as:
    - politically exposed persons;
    - clients or persons connected with PEP (attorneys, legal representatives, partners in transactions, etc.) about who there is information on suspicious connections and implications in actions aimed at terrorism and its financing;
    - clients performing operations or transactions to / from risk zones;

- non-profit organizations which are not supervised or monitored by competent authorities;
- clients who do not have direct contact with the entity's employer ("non face to face" the client)
- clients who travel inexplicable long distance to make certain transactions, apparently without any rational explanation;
- clients who make transfers that do not seem to have a legal or economical motivation;
- clients who try to structure the their transactions in order to avoid the reporting threshold;
- clients who try to bribe the staff of the reporting entities;
- clients who try to use interposed persons in order to hide the identity of the real beneficiary;
- clients who provide fake or insufficient identification data;
- clients who seem to act in someone else's name, but do not want to reveal this fact;
- clients who do not seem to know too much about the transactions which they want to perform or avoid to provide the requested information;
- clients identified or known as being in connection with other persons / entities with a bad reputation or have been in the attention of law enforcement bodies for being involved in various criminal activities
- clients who perform transactions involving higher amounts of money than they can obtain from legal sources / activities declared at the beginning of or during a business relation;
- clients who provide evidence which seem to be fake or suspected of having been prepared in order to give a transaction a legal appearance;
- clients who make unusually large or frequent transactions using cash, especially if they could have used instead other payment tools;
- clients who divide large amounts of cash by performing several operations or using several artificially interposed natural/legal persons;
- clients who put pressure (unjustified rush, irritable or persuasive behaviour) on the reporting entity representative, trying to avoid standard checking and procedures or suggesting that the standard checking and procedures should be superficially carried out;
- clients who do not seem interested of the costs/fees for services provided by the entity;
- clients who do not choose the easiest way to make a transaction;
- any type of transaction that involves an unidentifiable persons.

Based on the analyses made by the National Office for Prevention and Combating of Money Laundering and Terrorist Financing – Financial Intelligence Unit, and the international practice in this field, we present below some examples of indicators of suspicious transactions engaged in money laundering and / or terrorist financing activities:

3.4.1 INDICATORS OF MONEY LAUNDERING FOR THE FINANCIAL SECTOR

Examples of indicators for banking entities:

1. In case of transactions with cash:

- unusually large cash deposits and withdrawals, made by a the client who usually makes transactions using checks or other payment instruments, or uses a current account;
- exchanging significant number of high denomination banknotes into lower denomination banknotes or exchanging one currency to another, without any obvious economic purpose, when the client performs such operations frequently;
- remarkable increase of cash deposits belonging to natural or legal persons, without any specific reason, deposits which are to be transferred immediately to a destination, which normally has no connection with the client's activity;
- cash deposited through many remittances, the amount of each deposit is negligible, but the total amount is significant;
- deposits and withdrawals of large amounts of cash exceeding the amount of the client's turnover;
- the opening of many current accounts, frequently used for cash deposits;
- transactions made by clients who use together or simultaneously different pay desks to deposit / withdraw cash;
- cash deposits / withdraws made by a the client within the same day, in several branches of the same bank;
- making deposits in several branches of the same bank, without a specific purpose;
- cash withdrawals from an account which was inactive till that moment or from an account that has just been credited with a significant amount of money;
- a company that increases deposits in cash or in negotiable values and uses mainly the client accounts or intermediary accounts, especially if deposits are transferred quickly to other the client accounts;
- clients who constantly make deposits to cover bills of exchange, money transfers or other negotiable instruments or payment instruments, which are easily marketable;
- deposits of fake banknotes or counterfeit payment instruments;
- the client withdraws cash from an account, then he orders its closure;
- deposits of cash followed immediately by the transfer to another account opened at another national or foreign credit institution inside;
- frequent cash withdrawals without a justification consistent with the object of activity declared by the client;
- crediting the accounts of the company by associates / managers, followed by repeated cash withdrawals justified as "loan repayment";
- the use of night safe to deposit large sums of cash;
- cash frequently deposited by third parties in the account of a the client, which do not seem to have any connexion with the account holder.

2. In case of transactions made through bank accounts:

- accounts opened by a natural / legal person do not reflect a common activity but are used for receipts, followed by cash withdrawals or cash deposits, and by payments;
- the use of an account, which usually does not show an intense activity, in order to deposit funds which are subsequently transferred abroad;

- opening multiple accounts for the same the client at several branches of the same bank, followed by repeated transfers of funds between accounts;
- transfers of funds made within the same day between accounts opened by several natural or juridical persons, so that in the circuit created the initial depositor is the final beneficiary of funds;
- repeated opening and closing of accounts without any good reason;
- repeated payments from natural / legal persons who have accounts opened in off-shore area, followed by withdrawal in cash or transfers abroad, without any justification for this kind of transactions;
- supplying an account using high value checks issued by third parties and signed on behalf of the client;
- movements of funds from a bank to another in order to create a circuit through which the amounts return to the bank at which the process was initiated;
- regular transfers from personal accounts to accounts opened in off-shore areas;
- payments / receipts, which are not based on relevant supporting documents;
- High value funds transfers on behalf of a client without a plausible motivation.

3. <u>In case of wire transfers:</u>

- unusual funds transfers between related accounts or accounts, which involve the same manager or managers who are also linked together;
- frequent transfers made between accounts, opened for several companies that have the same authorized / legal representative;
- frequent transfers of corporate accounts to natural persons accounts and vice versa, without any motivation related to the nature of transfers;
- wire transfers when they are performed frequently and economically justified;
- wire transfers which do not provide sufficient information about the sender identity and which could favour anonymity;
- frequent sending or receiving of large volumes of wire transfers to and from off-shore companies;
- multiple accounts between which money transfers are made in order to finally transfer the amounts into a collecting account;
- a the client sends and receives money using wire transfers for which there is no economic motivation or which are in contradiction with the activity carried out by the client or inconsistent with his past;
- the client's activity is characterized by a sudden growth of national and international wire transfers, due to transfers of large amounts of money and such transfers are inconsistent with the client's activity;
- small receipts frequently made by wire transfer, without a plausible reason and which are inconsistent with the client activity;
- making deposits using checks or payment orders, and the balance created is wired to another city or another country when the activity is inconsistent with the activity carried out by the client or his past;

- a the client carries out a high number of wire transfers, although he usually does not carries out such activity;

4. In case of external operations:

- establishing large balances, inconsistent with the economic activity performed by the client, followed by subsequent transfers to foreign accounts;
- using credit lines or other funding methods to make external transfers, although the usual business activity does not justify the transaction;
- external currency transfers made by residents from their own funds whose usual activity does not justify the declared nature of the operation;
- frequent external transfers of large amounts made by natural persons;
- external payments made in advance for imports that where not performed, an operation that was not carried out, a service that was not performed within the deadline specified by the contract, and which were not followed by the refunding of the prepayments, respectively the justification of the prepayments;
- external payments redirected, made by other beneficiaries than those specified on Import Customs Declarations and on external invoices;
- external transfers justified by the purchase of shares in companies registered in tax heavens;

5. In case of credit operations:

- unexpected repayment of loans with funds coming from an unknown source;
- the declared purpose of the loan which is declared by the client is unjustified, and the client provides a guarantee in cash or he mentions about it when he declares the purpose of the loan;
- a the client requests a loan, but from the analysis of his economic and financial documents there is no apparent need for a loan;
- the use of a loan in a manner which is contradictory with the purpose declared by the client when the loan was granted;
- the loan is unexpectedly transferred or wired to an off-shore bank or to a third party;
- loan applications accompanied by guarantees offered by third parties or a bank, if the origin of guarantee is unknown or inconsistent with the client's statute;
- the loan application has as guarantee a certificate of deposit issued by a foreign bank;
- the client buys certificates of deposit which he places as bank guarantee for a loan;
- a loan application of an off-shore company or the application for a loan guaranteed with the obligations of off-shore banks;
- loan applications made by new clients through professional intermediaries (lawyers, financial advisors, brokerage companies);
- repayment of the loan granted to a company by another company;

- withdrawals from currency lines used through conversions into RON for a chain of current payments of equal amounts made to different trade companies, the last of these companies performing external prepayments by converting RON into another currency.

6. In case of transactions related to investments

- purchasing securities which are kept safely by banks when this is not consistent with the client's activity;
- requests from clients for investments management (in foreign currency or in securities), when the source of the funds is uncertain and is not consistent with the client's business;
- trading securities for cash or in order to purchase other securities when the transaction is not carried out through the client's current account;
- unusual sale of high value securities in exchange for cash, which is subsequently withdrawn;
- using cash instead of bank transfers to trade securities, especially when the transactions concern large amounts of money;
- the request from a the client to a bank to issue a guarantee certificate for securities whose authenticity can not be verified;
- keeping multiple accounts or investments without a business reason

7. Credit and guarantees documentation:

- the specified applicant or beneficiary are companies with unknown addresses;
- the name of the guarantee beneficiary is not mentioned;
- using letters of credit, credit documentation and guarantees for the delivery of goods to countries which do not normally have such requests or to countries which previously did not have exports of such products;
- the specification of the fact that the guarantee is divisible, often including an addendum, which is transferable and divisible without transfer fees;
- the client provides an unusual and incomplete documentation, or use similar names with those of some well-known legitimate institutions and / or uses an ambiguous language or pseudo expert terminology.

Examples of indicators for non-banking financial institutions:

- unexpected loans repayment with funds from unknown source;
- the loan purpose stated by the client is not justified;
- the client proposes as guarantee a sum of cash from unknown origin, which he mentions when he declares the purpose of the loan;
- clients who apply for loans, although economic and financial analysis does not highlight the need of the loan;
- transactions in which assets are withdrawn immediately after having been deposited, unless the client's business provides a plausible reason for their immediate withdrawal;

- loan amounts are transferred immediately or sent by mail to an off-shore bank or a third party;
- transactions in conflict with the normal activities of the client;
- using the loan in a manner which is inconsistent with the purpose specified when the loan was granted;
- the client changes the destination of the loan;
- provision of a personal guarantee or indemnity as guarantee for loans between third parties, which fail to comply with to market conditions;
- payment of checks to a large number of third parties, signed on behalf of the client;
- loan applications accompanied by guarantees issued by third parties or a bank if the origin of that guarantee is unknown or is not in accordance with the client status;
- guarantees made by third parties unknown by the bank and who do not have relations with the client when there is no plausible reason to guarantee the concerned asset;
- loan applications from off-shore companies or loans secured by obligations of off-shore banks;
- transactions involving an off-shore bank whose name could be similar to that of a major legitimate institution;
- receipts as "credit facilities" or "loan" or "prepayment", particularly when the payments come from abroad, the indicated creditor being a mail-box, a person or a company having no business relationship with the client;
- loan applications made by new clients through professional intermediaries (lawyers, financial advisors, brokerage companies).

Examples of indicators for entities which provide payment services:
- a the client who frequently changes the name and/or address;
- a the client who is the beneficiary of several amounts received from several people from different geographical areas;
- a the client who frequently makes transfers to foreign beneficiaries, but does not seem to have any connection to the destination areas of the money;
- a network of clients using the same address;
- a the client who receives an amount of money that he fully transfers to other beneficiaries immediately or the next day;
- a the client orders the transfer of an amount of money, after which he immediately or in short time he is the beneficiary of a transfer of the same amount;
- sudden and apparently unmotivated increase of frequency / value of transactions made by a the client;
- transactions inconsistent with the client profile;
- the client is a very young person or on the contrary a quite old person and receives money from several persons from different areas;
- lack of information or insufficient information about the origin of the funds involved in transactions;

- the client is accompanied by a person who seems to keep an eye on him or wait for him at the exit of the entity (especially if the same behavior is observed on several occasions - for instance the same person waits may costumers at the exit);
- the client reads the instructions regarding the transfer (he seems that he does not know them too well) or receives instructions from other persons;
- the client seems to be put in trouble if he is requested additional information about a transfer;
- several clients collaborate to artificially divide a transaction, each of them making at least one operation.

Examples of indicators for exchange offices:

- requesting to exchange small denomination banknotes for large denomination banknotes;
- clients who try to change many dirty, deteriorated, negligently wrapped banknotes or banknotes with other suspicious features;
- operations in which is observed artificial splitting of certain amounts;
- currency exchange of large amounts of money or frequent exchanges if they do not comply with the client activity;
- the client asks that following a currency exchange to be provided with a unusually large amount of with small denomination banknotes;
- the client buys currency from a location which is situated at a long distance from the area where he has the headquarters or his domicile;
- purchase of other currencies using large amounts of cash;
- unusually frequent currency exchanges made by foreign citizens;
- the amount of money exchanged by a the client is significantly higher than the funds involved in the transactions, which he usually makes;
- sudden increase of the frequency of exchanges made by a the client;
- Several currency exchanges involving amounts below the reporting threshold, within a short period of time.

Examples of indicators for insurers, reinsurers and insurance and / or reinsurance brokers:

- clients who are not interested in the investment component of a product, but show an increased interest for the cash surrender value of the policy;
- clients who seek or accept contractual conditions which are obviously non favourable;
- the client has a suspicious behaviour (not willing to consider offers, not interested in the costs of a product, chooses the most expensive option, although it is not right for him);
- the client is accompanied by persons who seem to influence or control him and/or whose behavior raises suspicions;
- clients, beneficiaries or funds coming from risk areas and off-shore areas, involved in transaction/contracts;

- the existence of any circumstance which hides or raises suspicions about the real beneficiary;
- the choice of insurance products covering risks that are not related to the client activity or profile;
- the client has no credibility, as there are information on his involvement in frauds or suspicious transactions or payment incidents;
- involvement of other persons, which has been revealed at an advanced stage of the transaction process;
- payment of sums higher than the value of insurance premiums, followed by the request that the overpaid sum to be transferred to another account or to another beneficiary;
- premiums are paid from accounts opened in bank branches located in other jurisdiction than the one on which the policy owner has his domicile or residence;
- making frequent payments outside the established premiums payment schedule related to the contract;
- paying the insurance premiums for a the client- natural person with funds belonging to a legal person without any pertinent justification (this indicator does not refer, for instance, to the situation whereby the client is the employee of a legal person which offers him an insurance product);
- changing the insurance policy owner before the occurrence of a covered damage or theft of the insured goods;
- the client withdraws his application for compensation and waives his rights when the insurance company asks for additional information or documents;
- the client requests unduly that the compensation should be paid to a third party;
- the client prefers to receive a smaller compensation when the insurance company delays the payment in order to conduct further research;
- the client asks the insurance company to pay the compensation in cash or to transfer into a foreign account in another currency than the one used to pay the insurance premiums.

At this point, we consider that the reporting entity from the category of insurers, reinsurers and insurance and/or reinsurance brokers should guide themselves by the indicators mentioned in Art.18 of the Rules on preventing and combating money laundering and terrorist financing through the insurance market[19]. Among these we mention:

- buying life insurance policies which require large premiums and which seem to be in contradiction with the economic profile of the client or his ability to obtain incomes;
- frequent payment of premiums with high amounts of cash or currency, which seem to be inconsistent with the financial capacity of the client or his activity;

[19] Order of the Insurance Supervisory Council no. 24 as from 22 December 2008

- frequent payments of insurance premiums with cash structured in different amounts, which in total would exceed the minimum values mentioned under Article 12 paragraph (1) [20];
- assignment of life insurance beneficiaries so that the amounts expected to be paid to each of them and established in the insurance contract, as fractions of the total amount, should exceed the aggregate amount of the minimum values referred to under Article 12 paragraph (A)[3], where the relationship between the insured and beneficiary does not offer any justification;
- signing insurance policies and paying the premiums with checks issued by third parties, particularly if there is no apparent connection between the third parties and the client;
- the same contractor signs several life insurance policies which have different beneficiaries;
- changing the beneficiary of the insurance policy in favour of third parties who do not belong to the family of the insurant or have no connection with him, in a justified manner;
- the client refuses or is reluctant to provide the necessary information for the signature of the insurance contract or he provides unreal information;
- the client - legal person presents financial statements which are not made by an accountant;
- the client provides ownership documents for the good to be insured, which do not comply with the reality or show signs of forgery;
- the client refuses to allow the representative of the reporting entity to convince himself about the existence of the good covered by the insurance contract;
- the client avoids direct contact with employees or collaborators of the reporting entity by frequently issuing mandates or power of attorney in a unjustified manner;
- the client repeatedly avoids direct contact with the reporting entity, the communication being made by fax or by other communication means;
- the client opens a high number of accounts in several branches of one / several credit institutions and makes repeated transfers of significant amounts of money with which the insurance premiums are to be paid;
- paying the insurance premiums using the accounts of a company which shows a reduced activity and would not justify the signature of insurance contracts for significant amounts;
- The client requests that the first operation to be performed through an account opened on behalf of the client at a credit institution which is that is not the subject to the prevention and combating money laundering and terrorist financing regulations.

Examples of indicators of anomaly for the stock market

1) Anomaly indices related to accounts:

- the client shows an unusual interest in the company compliance with the legal requirements in the field of money laundering, particularly personal data, business type and business assets, or is reluctant or refuses to provide any

[20] Art. 12 - (1) The identification data of the client are checked and updated or completed according to the case, if necessary for any transaction of an amount representing the equivalent of at least 15.000 Euro, whether this transaction implies one or more interconnected operations.

information about the commercial activities or provides unusual or suspicious business documentation or identifying documents.

- The information provided by the client on the origin of the funds is substantially false, misleading or incorrect.
- Upon request, the client refuses or is unable to identify any legal origin of the funds or his goods.
- The client (or a public person associated with the client) has a questionable past or is subject of media features, denoting possible law violations.
- The client is a person who holds or has held high political or public position. This risk extends to his family and his known associates.
- The client comes from a country or territory which does not fully comply with the 49 FATF Recommendations or has accounts opened with banks in that country or territory.
- The client comes from a country or territory that has a reputation of operating as a refuge for dirty funds or has accounts opened in banks from this country or territory;
- The client appears to act as an agent for an unidentified mother-company and the agent refuses or is reluctant to provide information about this person or mother-entity.
- The client has difficulties in describing the type of his business or does not posses overall knowledge related to his field of activity.
- The client manages multiple accounts or he manages multiple accounts on behalf of the family or on behalf of corporate entities, without apparently having a business purpose or any other purpose.
- A client who plays like an experienced player (movable goods wholesaler), but lacks professionalism or behaves naively when opening the account.
- A client who plays like an experienced player, but who seems not to have experience on the wholesale market and has no record of achievements.

2) Anomaly indices for investment funds:

- The client tries frequently to deposit large currency amounts.
- The client settles cash close to the settlement deadline.
- The client insists on working only in cash equivalents or asks for exemptions from the company policy related to the deposit of cash and cash equivalents.
- The client deposits cash below the mandatory reporting threshold at various branches of financial institutions.
- The client’s account shows many currency transactions or numerous checks of cash transactions focused on significant amounts
- The client’s account suddenly shows a unexplained excessive activity of wire transfers.
- The client's account has inflows of funds or other assets exceeding his known income or resources.
- Regular transfers of securities for sale from the account of other securities company.

3) Anomaly indices for transactions:

- The client wishes to involve himself in transactions which seem meaningless from an economic point of view or from the point of view of an apparent development strategy or in transactions which are inconsistent with the business strategy declared by the client.
- The client shows no concern about risks, commissions or other costs of the transaction.
- The client tries to make frequent deposits or large deposits of currency, insists on working only with cash or asks for exemptions from the company policies related to deposits in cash or cash equivalent.
- The client involves himself in transactions with cash or cash equivalents or other monetary instruments that appears structured in order to avoid the mandatory reporting obligations, particularly if the cash or monetary instruments are in an amount just below reporting level or below the registration threshold.
- The client requests that a transaction to be operated in such a way as to avoid the normal obligations related to asking the company's documentation.
- The client's account shows a high number of operations (cash deposits / withdrawals, payments, receipts), but a low level of transactions on the capital market.
- Sales - purchases that cancel each other (through the same account or through linked accounts).

4) Anomaly indices for settlement of the transactions:

- The client holds multiple accounts under one or more names, there is a large number of transfers between these accounts and accounts held by a third party, without any apparent economic motivation.
- The client's account has an unexplained or sudden excessive wire transfer activity, especially for accounts which have previously had low activity or no activity at all.
- The client's account has a large number of transfers to third parties who are not connected to the legitimate purpose of his business.
- The client's account shows high or frequent wire transfers followed by immediate withdrawals without any connections with his business purpose.
- The client's account shows wire transfers which do not have any apparent connection with the business purposes, transfers to or from a country known as of with of money laundering/ terrorist financing or a country with banking secrecy privileges.
- The client makes a deposit followed by an immediate request that the money be transferred to or withdrawn by a third party or another company with no apparent business purpose.
- The client makes a deposit for a long-term investment, followed immediately by an application for liquidation of the position and transfer of his incomes from his country to abroad.

- The client makes transfers between unrelated independent accounts, having no apparent business.

5) Anomaly indices relate to fictitious companies:

- Lack of information related to any legitimate activity of the company as business entity (the country where it is registered).
- Difficulty in describing the physical location of the personnel and/or the directors (substitutes, representatives) or the nature of the company activity.
- Difficulty in obtaining identification data of directors and key staff members.
- Discrepancies between the turnover of the company declared in the statutory accounts and the level of the paid taxes.
- A person who holds founder, chairman, CEO and CFO positions.
- The recording several companies by the same person or at the same address.
- The recording of the company using suspicious documents that suggest forgery.
- Signing contracts which do not contain information on the classification of goods or the list of supplied services, deadlines and appropriate measures for non-execution or inappropriate execution of the contract obligations.

3.4.2 MONEY LAUNDERING INDICATORS FOR THE NON-FINANCIAL SECTOR

Examples of indicators of anomaly for casinos

- A client uses one person or several persons to buy tokens for the game.
- Two or more clients who are together share the cash, so that each of them purchases a number of chips whose value is below the one required by the reporting obligations, thus dividing the total amount between them. Subsequently the money is summed up.
- clients who exchange cash for various currencies (the client uses the casino pay desk as a masked exchange).
- clients who buy chips from other clients of the casino, thus avoiding to buy from the pay desk.
- clients who buy chips with large amounts of cash, and then they make minimum bets.
- clients who have large sums of cash, and ask private game tables, but after a short time, they illogically end the game, exchanging chips for cash, and assuming a potential loss.
- clients who exchange cash at the game table.
- A client who is not a "regular" of the casino, has large amounts of cash and plays in an aberrant way.
- clients who exchange cash in chips, relying on the same hand as compensation, the gained amount is equal to the loss amount (for instance he bets the same amount on red and black), then he exchanges the tokens for cash.
- clients providing suspicious identity documents that suggest forgery.

- clients who attempt to bribe or influence an employee of the casino, in order to avoid reporting obligations.
- clients who play at various tables, changing each time the chips for cash and the cash for chips, thus trying to make many successive transactions;
- clients who buy chips with small denomination banknotes and who ask for large denomination banknotes when they exchange the cash into chips or vice versa.
- clients claiming various superstitions, having an unreasonable or illogical game behavior or any other behavior inconsistent with the regular patterns of regular or dedicated players.
- clients who periodically leave the casino with chips;
- clients who ask other persons to exchange their chips into cash (one or several persons), thus changing the real beneficiary of the amounts of money.

Examples of abnormal indicators for auditors and accountants

- Operations planned or carried out involving differed values from those existing on the market (prices recorded on the invoices are inflated in order to justify additional financial channels for laundering dirty money).
- Contracts whose terms and conditions are different or abnormal in relation to the commercial usage (for instance: highly flexible payment terms and conditions, no penalties in case of late payment, interest-free loans given to third parties).
- Operations for which the client asks the direct involvement of the accountant in circumstances where the situation does not requires it or when the relationship between the client and the accountant does not involve the performance of such operations.
- Operations which do not appear to be consistent with the stated aims, such as payment of invoices issued by third parties who are not among the company's usual clients or who do not appear to be compatible with the activity mentioned on the invoice.
- Accounting operations aimed to hide or to mask the sources of income, for instance, by overpricing the goods.
- Frequent purchases-cessions of companies, not justified by the economical characteristics of the potential buyers or disposal of shares or payments in favour of companies made by unusual methods or by interposing of third parties
- Unjustified use of techniques to segment the payment of invoices by dividing the invoice value into smaller parts in order to avoid the reporting or not to raise suspicions (SMURFING).
- Involvement in the transaction of some persons located in areas convenient in terms of taxation or banking secrecy (tax havens), or in countries listed by FATF as being uncooperative in the field of money laundering / terrorist financing.
- Request for financial and tax advice formulated by persons who apparently want to invest large sums of money, justified by of the legal reduction of tax liabilities.
- Crediting the company account directly with cash at the pay office, under potential questionable contracts.

- Crediting of the company by persons located in off-shore jurisdictions, especially when its weight is higher than other external credits.
- Multiple records in the account 455 where the company's financial situation does not appear to need loans from external sources. If the company's creditor is located in an off-shore area, the degree of suspicion increases.
- Receipts and payments involving the same companies, both as clients and suppliers, the balance being near zero.
- Large payments made to suppliers, for which the accountant suspects that there is no merchandise related to the records.
- Foreign external transactions of similar values accounted as receipts from clients and payments to suppliers, for the supply of services, if the company does not normally supply such services or does not seem to need the services provided by the external partners. Where the foreign partner is in a tax haven, the degree of suspicion increases.
- Reluctance in providing full information on the identity of individuals and / or legal persons involved.
- Providing false information regarding the identity of individuals and / or legal persons involved.

Examples of indicators for public notaries, lawyers and other legal persons exercising independent legal professions (in the cases in which they provide assistance in performing or finalizing operations for their clients regarding the purchase or sale of immovable property, shares or elements of the financial goodwill, the management of financial instruments or other clients' assets, opening or managing bank accounts, savings or financial instruments, organizing the process of subscribing the contributions required in order to set up a business, allow and manage its functioning, the setting up, functioning or the management of companies, undertakings for collective investment in transferable securities or other similar structures or assistance in carrying out other fiduciary activities, according to the law, as well as in the case when they represent their customers in any financial type operation or an operation linked to real estate):

- clients who run their business in unusual circumstances or ask for services in such circumstances;
- the client requests services aimed at hiding the real beneficiary, so that the latest can not be identified by the competent authorities;
- clients who have committed offences generating illicit funds and ask to takeover or manage their business;
- clients who change their instructions without any reasonable explanation;
- clients who possess properties or amounts of money whose origin can not be legally justified, and want to be informed about some ways to hide the proceeds from the competent authorities;
- the client avoids, unduly, to perform or to complete operations on his behalf, and call to the of a independent legal professional;
- the client asks the self-employed legal professional to intermediate or to represent him in financial or real estate transactions which do not appear to have an economic or legal justification;

- the client asks for services which do not appear to be consistent with his profile;
- the transactions made by a client appear to have a fictive justification or one involving the undue interposition of third parties;
- the intervention of a self-employed legal professional does not seem necessary;
- successive transfer of ownership right to some unmovable goods between several persons in an unusually short period;
- fees payment is made by a third person, which does not seem to have any connection with the client.

Examples of indicators for real estate agents:

- the propriety involved in the transaction is located in a risk area;
- Real estate transaction takes place unreasonably quickly;
- the same property makes the object of a successive transaction at different prices in a short period of time;
- division of property under suspicious circumstances;
- the use of agents / intermediaries, without a plausible justification;
- overvaluation or under-evaluation of the price of a property;
- the sale of properties immediately after the declaration of insolvency;
- the client owns or purchases properties whose value exceeds obviously his financial capacity;
- the client can not justify the origin of his funds;
- payment of a property using large amounts of cash;
- transactions where the name of the real buyer / seller real is revealed in the last moment;
- the client tries to buy a property on behalf of another person, without having any connection with him;
- the client purchases a property without expressing his interest in finding additional information about it (for example regarding the status or degree of wear of a dwelling house);
- transactions in which is involved a non-profit organization, when such transactions have no connection with the purposes of that organization.

Examples of indicators for transactions or activities related to non-profit organizations:

- a person - as the authorized representative or empowered of one or more non-profit organizations – often orders transfers from their account to many beneficiaries in various countries (especially in those where it is known that are established or operate terrorist groups);
- non-profit organizations operating in various sectors and countries under different names;
- the account of non-profit organizations is frequently fed with significant amounts of cash, with vague explanations (for example, they specify that funds are "donations", without any indication of the identity of donors), and afterwards money

is transferred to the current account of the representative of the organization from where they can finally get to the people who can use them to finance terrorism;

- the use of funds by a non-profit organization, in a manner which is not compatible with the purposes for which it was set up;
- the discrepancy between the type of transactions and the amount involved on the one hand, and the type of activity carried out by the non-profit organization (for example organizing a show, but the amounts justified as being collected from receipts are much higher than those that could result from such activity);
- sudden increase of the frequency and / or of the value of the value of the receipts in the account of a non-profit organization;
- non-profit organization deposits funds in the account and keep them over a long period of time;
- the donors are not residents in the country where the non-profit organization is located;
- the non-profit organization run by non-resident natural persons, makes transfers to the country of origin of these persons;
- the same type of operations made on one's behalf by the directors of non-profit organizations, coming from high risk countries;
- several non-profit organizations transfer their money between them, have the same address and / or the same managers;
- Although through the accounts of a non-profit organization are run significant amounts, this organization has a small number of staff, does not have suitable residence etc.
- the use of fake charity organizations to shelter terrorist groups and the misleading of donors (they believe that money will be used to provide help to disadvantaged people, but money is used entirely to finance terrorism);
- a charity organization can use donors funds to carry out real humanitarian activities (which it allows it to achieve credibility and provides it the possibility to explain the use of money) and also to finance terrorist activities.

3.4.3 INDICATORS FOR DETECTING SUSPICIOUS TRANSACTIONS FOR TERRORIST FINANCING

Examples of indicators of unusual transactions:

- Diversion of funds by fraud, by directing the amounts collected for charitable purposes towards terrorist organizations.
- The use of phantom companies or organizations working for terrorist groups.
- multiple cash transactions are made by fictitious natural person into the current account of a third person, accompanied by the justification of the donations.
- payments which consist in transfers to non-profit organizations and international transfers made by natural persons, where the originator is known to have ties with members of terrorist groups.
- Opening bank accounts with false identity documents and using them for cheque withdrawals after large amounts of money were raised, in order to purchase goods. Afterwards they are returned for cash refund and directed by members of organized groups known as having ties to terrorism.

- Purchases of goods through Internet with credit cards belonging to third parties, necessary for operational activity of terrorist groups.
- Use of expatriates and Diaspora communities by terrorist groups and their supporters in order to raise funds through extortion, which they transfer to countries with increased risk of terrorism.
- Frequent transfers through swift into accounts in different countries in order to pay rents, purchase and sale cars and electronic components which are to be used by terrorist groups.
- Crediting an account with large amounts of US dollars by active companies in diamond processing industry and debiting these funds by transfers in another currency to the Middle East.
- Transfer of funds via cash couriers to terrorism risk countries.
- Crediting funds to the account of a charity company, which is justified as payment for consulting services and transferring these funds to charity organizations from terrorism risk areas.
- Crediting the funds generated in terrorism risk countries, to the account of an individual, as wage payment, followed by the use of a large amount of the funds received as guarantee for the purchase of a property.
- Frequent travels of individuals holding large amounts of bearer money, during which they cross multiple jurisdictions until they hide them at the final destination.
- Multiple international transactions within a short period of time to make it difficult to identify the source of funds.
- Periodic transfers to a specific location or a designated account without economic justification.
- Regularly purchase and transfer of components necessary for improvising explosives to terrorism risk countries, using cash couriers.
- Frequent internal and international transfers through money transfer services.
- Multiple cash deposits and withdrawals through intermediaries, into accounts held by foreign natural persons.
- Multiple cash transactions of small amounts into an account, followed by an external large transfer.
- Frequently crediting the account of a person known as not having a profession, but instead makes multiple travels.

Examples of indicators of unusual behaviour

- Transactions which are not consistent with the client profession and profile.
- The parties involved in the transaction (owner, beneficiary, etc.) have their origin in countries known as sustaining terrorist organizations and activities.
- a fictitious person or entity uses fictitious or shell companies for economic activities.
- Including a person or entity from the UN sanctions lists or EU regulations on persons / entities suspected of financing terrorism or having links with terrorist organizations.

- Inability to identify the real beneficiary of the transaction / account.
- Using administrative accounts held by family members or third parties.
- Using false identities in order to hide the link of a person with terrorist organizations.

PART IV
FUNCTIONING OF COORDINATION MECHANISMS AT NATIONAL LEVEL

4.1 NATIONAL COOPERATION MECHANISM IN THE FIELD

In accordance with art. 5 (d) and (q) of the Government Decision no. 1599/2008 for the approval of the Regulation of organization and functioning of the National Office for Preventing and Combating Money Laundering, for the achieving of its object of activity, the Office has as main tasks:

d) it cooperates with authorities and public institutions and natural or legal persons who can provide useful data;

q) it elaborates and concludes of conventions, protocols, agreements, with the domestic institutions which have responsibilities in the field.

The inter-institutional cooperation and the national coordination mechanisms were constantly in the attention of the Office Board, representing a critical factor for the success of AML / CFT activities within the system. The aim of the inter-institutional cooperation is to establish sustainable and reliable relations between the involved institutions.

In order to perform the duties conferred by law, the Office acted in order to set up, develop and strengthen national coordination mechanisms by using the following tools:

- bilateral protocols / agreements signed with institutions and entities having attribution in this field;
- a joint action plan elaborated together with law enforcement authorities;
- a joint action plan elaborated together with prudential supervision authorities, as well as with professional associations of reporting entities.

Based on the protocols concluded by the Office with the competent national authorities, public institutions and professional associations, the institution has online access to a range of relevant databases to obtain necessary information as soon as possible.

The national mechanism for the prevention and combating money laundering and terrorist financing includes:

A) National Central Financial Intelligence Unit (F.I.U.): The National Office for Prevention and Control of Money Laundering (ONPSCB) is a specialized administrative body in charge with preventing and combating money laundering and the financing of terrorism, for which purpose it receives, analyzes, and processes information, reports to and notifies about the results of its analyses the General Prosecutor's Office of the High Court of Cassation and Justice and the Romanian Intelligence Service, whenever there is solid evidence of a case of terrorist financing.

The Office, according to the special law in the AML/CFT field, receives, processes, stores and analyses data and information sent by:

a) reporting entities specified by art. 8 of Law no. 656/2002 on preventing and sanctioning money laundering and establishing some measures to prevent and combat terrorism financing, with further amendments and completions;

b) prudential supervision and monitoring authorities (the National Bank of Romania, National Securities Commission, Insurance Supervisory Commission, the Commission for the Monitoring of Private Pension System);
c) other public institutions in charge with supplying information to the Office about field-related activities: National Tax Administration Agency, Financial Guard, General Inspectorate of Romanian Police, Border Police, General Customs Directorate, management structures of legal professions;
d) national and departmental intelligence services and other structures with information attributions;
e) Financial Intelligence Units partners.

B) The National Authority for the prevention and the combating of ML/FT: Romanian Intelligence Service (S.R.I.) is a state body specialized in the field of national security information, as part of the national defence system, organized and coordinated by the National Defense Supreme Council.

As defined by Law no. 535/2004 on prevention and combating terrorism, the Romanian Intelligence Service holds the role of the technical coordinator of the National System of Terrorism Prevention and Combating (S.N.P.C.T), this attribution being performed through the Antiterrorism Task Force Operational Cooperation Centre.

The Romanian Intelligence Service receives information from the Office, as part of the S.N.P.C.T, on the suspicious situations related to terrorism financing activities, so that the Service could run specific investigations, according to its attributions.

Further to the Office's notifications, the Romanian Intelligence Service sends data and information/control results concerning relevant elements of antiterrorism and of suspicious logistic and financial support for terrorist entities.

In case of serious grounds to suspect that the reported cases are dealing with financing of terrorist acts, the Romanian Intelligence Service sends the respective data and information to the General Prosecutor's Office of to the High Court of Cassation and Justice.

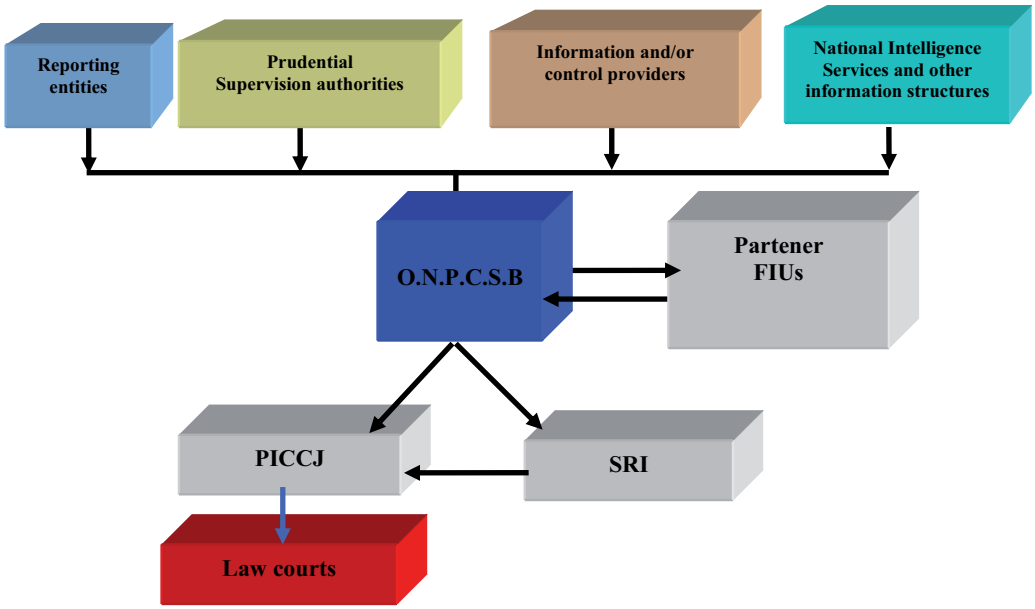
C) the General Prosecutor's Office of to the High Court of Cassation and Justice (PICCJ) - and, where appropriate, the Romanian Intelligence Service – are the exclusive beneficiaries of the notifications submitted to the Office there where the Office establishes that there is solid evidence of cases of money laundering or of financing of terrorist acts, as stipulated in art. 6 (1) of the special law.

For the purpose of additional criminal procedural documentation of the data and information sent, The General Prosecutor's may request the Office to supplement them.

D) The courts of law solve criminal cases of money laundering and/or terrorism financing.

Having regard to Law no. 656/2002, with further amendments, as well as the attributions established by normative regulations specific for each institution, authority and entity which are parts of the national mechanism of cooperation

described herein under paragraph 1.1, the following circuit of the financial information can be identified and illustrated as in the chart below.



4.2 INTER-INSTITUTIONAL COOPERATION ACTION PLAN

At the and of July 2005, the Office successfully completed the implementation of the PHARE Project RO02-IB/JH-08 – the twinning Component, financed by The European Union through PHARE program 2002, with 1 million Euro, having as project partners Ufficio Italiano dei Cambi and the Italian Ministry of Finance.

In the framework of this project the Inter-institutional cooperation Action Plan was elaborated, as an improving element of the efficiency of specific activities carried out on the two inter-institutional levels above mentioned: law enforcement authorities on one hand and respectively prudential supervision bodies and professional associations. The distinction resides in the role of the involved institutions. It is important to underline that there is a systemic inter-connection between the two action plans which are parts of the same system.

Short-term objectives:

a. Adopting the Action Plan, establishing a flexible organization and implementing procedures for an improved cooperation, in order to be adapted and revised whenever necessary;

b. Setting up one / several Action Groups to promptly solve the problems

c. Assessing the implementation and its results

Long-term objectives:

a. Improving the capacity of involved institutions (by attracting aid through grants and domestic activities including national inter-institutional support, e.g. training provided by institutions);

b. Coordination between the Romanian institutions in the field;
c. Monitoring the system efficiency;
d. Creating the conditions to maintain the system.

The Office continued to implement joint action plans by organizing the following activities:

a. meetings with representatives of the law enforcement authorities to analyze the problems that the institutions face regarding the application of laws in the field and to find solutions for a unitary interpretation and application of the law, and to improve the cooperation, the exchange of information and the quality of provided information.
b. meetings with representatives of law enforcement authorities in order to assess the cooperation mechanisms designed to maximize the final results by increasing the number of indictments and convictions for specific crimes;
c. participation in training seminars for staff of the reporting entities in order to get a better knowledge of the legal developments and to optimize the identification and reporting activity;
d. participation in projects carried out by law enforcement authorities (the Ministry of Justice, Prosecutors' Office of the High Court of Cassation and Justice, the National Anti-Corruption Directorate) with the aim of improving the internal procedure framework for a more efficient functioning of the anti-money laundering and terrorist financing system and for setting up the legal and institutional framework for the recovery of assets derived from crime.

4.3 THE NATIONAL STRATEGY ON PREVENTION AND COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

Romania, as a Council of Europe member state, has undergone three evaluation rounds performed by the MONEYVAL experts[21] on issues of combating money laundering and terrorist financing, the latest evaluation mission took place in 2007-2008. At the end of the on-site visit, evaluators team has presented a brief summary of the main facts-findings on the state of implementation of the international standards in the Romanian system of prevention and combating international money laundering: *one of the main facts-findings was that since the second evaluation Romania has made a major progress,* the legislation on combating money laundering and terrorist financing has been implemented broadly in line with the international requirements in the field and included in the new evaluation methodology, and Law no. 656/2002 with subsequent amendments,

[21] The MONEYVAL evaluation system is base on the model of the Financial Action Task Force (FATF), nonetheless the auto-evaluation and mutual evaluation process follows a larger set of standards in the field of combating money laundering and terrorist financing.

provides a solid basis for the regime of combating money laundering and terrorist financing in Romania.

Regarding the activity of the National Office for Prevention and Combating Money Laundering, the evaluators appreciated that the institution *„is an administrative type of FIU with a leading role in the development, coordination and the implementation of the AML/CTF system. In performing its activities as an independent administration under the Government, the FIU receives, obtains without limits, analyses and discloses information to relevant bodies. The FIU has introduced a new, advanced security system, expanding its access databases within other authorities and introduces a new IT –infrastructure and security measures in relation to protect the IT-network against unauthorized access. The Romanian FIU is now responsible also to AML/CFT supervision of financial non-banking (DNFBP) and terrorist financing. The evaluators appreciated that the FIU operates effectively with international partners and demonstrates a good co-operation in law provisions and exchange of information fields.*

Having regard to the recommendations stated by the Moneyval Report, namely **„***the mechanism for co-operation and co-ordination in place should prove to be effective in practice",* and to its own experience gained in over 10 years of functioning related to the creation and functioning of co-operation mechanism with the complex system of authorities, institutions and entities involved in activities of prevention and combating money laundering and terrorist financing, the Office took the initiative of developing a policy coordination instrument in the field of AML/CTF through the elaboration of a national strategy draft on prevention and combating money laundering and terrorist financing.

- The draft of the national strategy on prevention and combating money laundering and terrorist financing has been elaborated within the twinning project RO /2007-IB/JH/05 "Fight against money laundering and terrorist financing", financed by the European Union as a Transition Facility. For the drawing up of the document a working group of experts was set up and accompanied by the representatives of the following institutions and public authorities: the Ministry of Justice, Ministry of Public Finance (Financial Guard, National Agency for Fiscal Administration), Ministry of Administration and Interior – IGPR, The Prosecutor's Office by the High Court of Cassation and Justice, Romanian Intelligence Service, National Romanian Bank, Securities Supervision Commission, Insurance Supervision Commission, Private Pensions System Supervision Commission. The working group and the experts benefited of the assistance of 2 experts from the Polish Financial Intelligence Unit and of one expert from the Czech Financial Intelligence Unit.

The Romanian Strategy for the Prevention and Combating Money Laundering and Terrorism Financing is a policy document seeking to make the best use of the gathered experiences and to optimize the actions taken at national level in the area concerned.

To substantiate in a consistent and coherent manner the sector-based and specific actions of the public institutions and bodies, the strategy synthesizes specific objectives, clarifies definitions and correlates action lines for all the components of

the institutions involved in this mechanism, in compliance with the requirements of both the National Security Strategy and the relevant international standards in force.

The conceptual architecture of the Strategy is based on definitive elements from the social, economic realities and the relations governing their specific character, taking into account the foreseeable short and medium term internal and international developments.

The national cooperation mechanism for preventing and combating money laundering and terrorist financing comprises all means, regulations, institutions, authorities and other national components, having a role in this field.

For the implementation of the provisions of this strategy an action plan will be elaborated and approved, which will contain deadlines and concrete responsibilities for each component of the national mechanism under central national unit coordination (ONPCSB).

PART V
INTERNATIONAL ASPECTS OF COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

5.1 EUROPEAN UNION

The first measures taken against money laundering in Europe coincided with the **European Council meeting in Tampere** which took place on the 15 and 16 October 1999 on the creation of an area of freedom, security and justice in the European Union, according with Title VI - *Police and judicial cooperation in criminal matters* – of the Treaty of Amsterdam.

On this occasion, the conclusions of the Tampere stated that a special attention should be paid to the fight against money laundering, which represents *"the heart of organized crime",* especially by undertaking concrete steps for tracing, seizing and confiscating the proceeds from crimes, these actions being designed to reinforce the need for transposition of the European Council Directive no. 91/308/EC of 10 June 1991 on prevention the use of the financial system for the purpose of money laundering, subsequently amended by Directive no. 2001/97/EC of the European Parliament and of the Council of 4 December 2001, by the EU Member States into their legislation.

At the beginning of year 2006, the European Commission set up the Committee on Prevention of Money Laundering and Terrorist Financing, thus replacing the committee of contact on money laundering which had been operating since 2005. This new committee is a regulatory structure composed of representatives of EU Member States involved in the fight against money laundering and terrorist financing, the Committee being led by the European Commission, through the General Direction of Internal Market. The main role of the Committee on Prevention of Money Laundering and Terrorist Financing is to provide complete and consistent information on the implementation by the States Member of European Union of the Directive 2005/60/EC on the prevention of the use of financial system for purpose of money laundering and terrorist financing (the III Directive).

In the same year, the European Commission created a "**European Union FIUs Platform**" formed by the Heads of Financial Intelligence Units of the Member States. The Committee's main goal is to facilitate the co-operation between FIUs in the fight against money laundering and terrorist financing, to implement the Directive 2005/60/EC on the prevention of the use of the financial system for purpose of money laundering and terrorist financing and of the EU Council Framework Decision 642/2000/JHA concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information.

The list of main normative acts that form the *acquis communautaire* in the field of prevention and fighting against money laundering, includes:

1. 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 (the III Directive);

2. Commission Directive 2006/70/EC of August 1, 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of *"political exposed persons"* and the technical for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.
3. The Directive 2007/64/EC of the European Parliament and of Council of 13 November 2007 on payment services in the internal market. This normative act applies the F.A.T.F Special Recommendation VI on the alternative money transfer systems, in conjunction with the Third Directive provisions;
4. The Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, a communitarian act recently adopted by the European Parliament and European Council to eliminate obstacles to the emergence on the market of payment services providers while ensuring an equal level of prudential supervision for identical risks for all payment services providers. Moreover, according to this Directive, the electronic money institutions should be subject to effective anti-money laundering and anti-terrorist financing rules.
5. Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds. This Regulation was issued to implement the Special Recommendation VII of F.A.T.F. on SWIFT transfers.
6. 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 – issued to implement the Special Recommendation IX of F.A.T.F. regarding cash currieries.

The **Directive 2005/60/EC** of the European Parliament and Council of 26.10.2006 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing[22] entered into force on 15 December 2005. Members States had to comply with the Directive by and transpose it into national legislation by 15 December 2007. The Third Directive is the successor of the first directive[23] in the field of the fight against money laundering, as amended by the second EU Directive on in the field[24]. The Third Directive prohibits money laundering and shall apply to the financial institutions, lawyers, notaries, accountants, real estate's agents, casinos, creation, operation or management of companies providers, management of companies' funds providers, as well as to all goods providers (when they make payments in cash in an amount of Eur 15.000 or more). These entities shall:

(a) identify and to check the client and any other holder(s), beneficiary(beneficiaries) and to monitor the client's transactions using a risk-based approach;

[22] Published on the 25.11.2005 in the Oficcial Jurnal, L309, P.15
[23] Directive 91/308/EEC of the European Council of 10 June 1991 on the prevention of the use of the financial system for the puropose of money laundering, OJL 166, 28.06.1991, p.77
[24] Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending the Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, OJL 344, 28.12.2001

(b) report money laundering and terrorist financing suspicions to the Financial Intelligence Unit (FIU), and

(c) take additional measures, such as keeping the appropriate records, staff training and establishing internal procedures and rules.

Moreover having regard to the international character of the money laundering and terrorist financing phenomenon, the Directive enhances as much as possible the co-ordination and the co-operation among FIU's according to the provisions of the EU Council Framework Decision 642/2000/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information, including the setting up of an European FIU-s network.

On the issue of terrorism financing, we mention the following programmatic documents developed at European Union's level:

✓ **EU Strategy for the financing of terrorism** [25] was developed by the Council of the European Union based on the common proposals of the General Secretariat/ High Representative and of the European Commission, being adopted within the European Council of 16-17 December 2004, document which covers the three pillars of EU. Through this strategy, the European Union has the following main objectives:

- to protect the citizens of the European Union as effectively against the phenomenon of terrorism, thus providing a clear security space;
- to prevent the access of terrorists to financial resources, which is a key element of European Union's fight against terrorism;
- to establish certain priority actions that should be based on an assessment of the threat regarding terrorism financing;
- to take measures regarding transparency, to ensure that the member states have the required tools to prevent and combat financing of terrorism;
- to improve methods of freezing and seizing terrorists' assets and revenues stemming from perpetration of crimes;
- to continue constructive dialogues with key-partners, namely with GAFI, UN, United States of America and the Cooperation Council for the Arab States of the Gulf.

✓ **The Guide regarding the Common Approach in the Fight against Terrorism** developed by the COTER Working Group within the Council of the European Union is a useful tool in political dialogue and in the European Union's external relations, being a foundation for the European Union in proving its commitment to preventing and suppressing terrorism, in a visible and coherent manner. The document accompanies the EU Action Plan adopted on 21 September 2001 by the European Council and at the same time, it establishes largely the anti-terrorist approach at the Union's level.

✓ **The good practices Guide of the European Union for the effective application of restrictive measures** was developed by the group of experts on sanctions set up in 2004, through a mandate assigned by COREPER. The guide is an instrument that aims to identify key-elements as regards the enforcement of

international sanctions, including those related to terrorism and related activities of financing, in this regard taking into account the specific situation within the legal system of the European Union, the amendment of the current stage of enforcing sanctions, the importance of highlighting already existing good practices that reflect current priorities of Member States.

Also, since 11 September, a number of lists annexed to the EU Council Regulations which require blocking of all assets of natural and legal persons related to Al-Qaeda, Taliban and Osama Bin Laden have circulated in all the countries involved in the fight against this crime.

Thus, one of the permanently updated lists at European level is included in (EC) Regulation 2580/2001 regarding freezing of funds of terrorism suspects that together with (EC) Regulation 881/2002 regarding the enforcement of UN sanctions against the Al-Qaeda and Taliban network, that enforce GAFI's Special Recommendation III regarding freezing of accounts held by terrorists.

5.2 COUNCIL OF EUROPE –MONEYVAL COMMITTEE

The Council of Europe was the first international body which highlighted the importance of developing and implementing measures as regards the prevention and combating of money laundering.

Since 1977, the European Committee on Crime Problems (CDPC) decided to establish a committee of experts of the member states to examine the problems related to the illicit transfer of funds of criminal origin. Over time, the Council of Europe has issued a series of agreements and specific programs to combat and prevent money laundering, a reference being the Strasbourg Convention ratified by 48 sates, of which 47 member states and 1 non-member state (Australia).

In 1997, was set up the Committee of Experts on the Evaluation of Measures to Prevent Money Laundering and the Financing of Terrorism/Moneyval.

Moneyval is internationally recognized as a specialized regional body, classified as a FSRB (FATF-type Regional Body), being by far the most important in this category.

Also, Moneyval develops specialized studies, of typologies and delegates experts for the studies conducted by FATF.

Moneyval is entitled to assess the PML/PTF national systems of member states, assigning ratings regarding compliance with international standards in this domain.

Moneyval's assessment is extremely important in the context in which for a certain degree of non-compliance it can issue and impose measures to restrict relations (especially financial) between the institutions of members states and the institutions of the states assessed with an inappropriate compliance level (ex. Azerbaijan, for which the Council of Europe issued such measures in 2009, withdrawn only until March 2010 for a re-assessment of the PML/PTF system).

Moneyval's assessment procedure is extremely complex; it regards the compliance of the financial and non-financial sector; the compliance of the legislative and or/regulatory framework in this domain, the effectiveness of enforcement of measures by responsible authorities, effectiveness of activity of these authorities, etc.

Assessors within Moneyval, FATF, and FMI can be appointed, being nominated 4 for a report (two for the financial sector, one for the legislative one and one for the law-enforcement system). An assessment report of a member state is followed in principle by two progress reports, these documents being considered an integral part of the assessment of the compliance rating in the financial and non-financial system. Moneyval is an Associate Member and Observer within FATF and includes 28 permanent members and 2 temporary members.

The EC Council of Ministers gave the status of Active Observer to Israel, starting from 2006. USA is also an observer member of Moneyval. Also, the status of observers in Moneyval is given to other international bodies, such as IMF, World Bank, etc.

The Moneyval Member States elect for a period of two years (possibly another two) an Office made up of President, Vice-President and another three members. The Office is supported by a secretariat provided by the Council of Europe.

Moneyval's assessment reports highlight the Country Profile system, being considered crucial with regard to the identification of investment, reputational and transaction risk.

When is observed a certain level of non-compliance with reference standards in the PML/PTF field, Moneyval may request Member States to provide Compliance Reports (until it imposes restricting measures, ex. San Marino case).

All (country) assessment reports of the Moneyval Committee are made public, being transposed in the activity of bodies issuing general country ratings or of bodies of general risk assessment (ex. IMF).

The international standards followed within Moneyval's assessment reports are issued by the Council of Europe (ex. CETS Convention no. 141), by FATF (40+9 Recommendations), by the European Union (Directives 2005/60/EC, 2007/64/EC, Regulation 1781/2006, 1889/2005) and by UN (several international conventions).

On the issue of criminalization of money laundering, the Council of Europe adopted two international legal instruments [26] namely:

❖ **The European Convention [27] on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime** adopted in Strasbourg on 8 November 2990 (currently signed and ratified by 48 states), which incriminates money laundering [28], in similar terms to those included in the Palermo Convention which established the obligations of the parties to „*adopt measures they consider necessary to confer, based on internal law, the nature of crime to all or a part of the*

[26] The connection between the two legal instruments is explained in art. 49 par. 5 and 6 of the Warsaw Convention (Signing and entering into force), which stipulate that: „*Art. 49 (5) None of the parties to the 1990 Convention shall ratify, accept or approve this convention without considering itself bound by at least the corresponding provisions to those of the 1990 Convention, which it is obliged to abide by. (6) With its entry into force, the parties to this convention which are at the same time parties to the 1990 Convention a) shall apply the provisions of this convention in their mutual relations; b) shall continue to apply the provisions of the 1990 Convention in their relations with other parties to the said convention, but not to this convention".*

[27] Signed by Romania and ratified through Law no. 263/15 May 2002

[28] Art. 6 par. 1 of the Convention

deeds stipulated in par. 1 in one or all of the following cases, when the author: a) should have assumed that the good is a proceed from crime; b) acted in a lucrative purpose (for profit); c) acted in order to facilitate the continuation of a criminal activity"[29].

❖ **Council of Europe Convention** [30] **on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism**, adopted in Warsaw on 16 May 2005 (currently signed by 33 states and ratified by 16) which is the first international instrument that comprises provisions both on the prevention and fight against money laundering and on terrorism financing, thus establishing the quick access to financial information or with regards to assets possessed by criminal organizations and terrorist groups. The Convention is structured on 7 chapters and aims to take effective measures in the fight against money laundering and terrorism financing, namely of freezing, seizing and confiscating of the criminal income, to achieve international cooperation and provide technical assistance in this domain.

According to art. 9 of this last Convention, Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally, the following:

„a) the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds; and, subject to its constitutional principles and the basic concepts of its legal system:

c) acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;

d) participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article".

Also art. 10 of the Convention establishes the liability of legal persons for money laundering crimes, committed for their benefit by any natural person acting either individually or as part of an organ of the legal person, who has a leading position within the legal person based on: *„a) a power of representation of the legal person; b) an authority to take decisions on behalf of the legal person; or c) an authority to exercise control within the legal person, as well as for involvement of such a natural person as accessory or instigator".*

The Document includes in Chapter IV, named International Cooperation a mechanism designed to ensure the adequate implementation by the state-parties, while settling the general principles of cooperation, the formalities and bearing of expenses thereto.

Also, for the first time an international legal instrument establishes the obligation of the Financial Intelligence Unit (FIU) to rapidly initiate actions, on

[29] Art. 6 par. 3 of the Convention
[30] Signed by Romania and ratified through Law no. 420/22 November 2005

request by a foreign FIU to suspend or refuse to carry out a transaction for the periods and under the conditions stipulated in domestic legislation for the postponement of transactions, in order to prevent and combat money laundering and terrorism financing (art. 47 - International cooperation for postponement of suspicious transactions).

It is worth mentioning that Romania is among the first 6 states that signed and ratified this Convention, which gave it the right of membership in the Conference of parties [31], supported by the Council of Europe, which seeks to establish the procedures of implementation of this Convention at unit level by the state parties.

The Convention provides a mechanism by which the signatory states will implement the treaty's provision in national legislation. Law no. 420/2006 that ratifies the Convention appoints the National Office for Preventing and Combating Money Laundering, the Ministry of Justice, The Prosecutor's Office to the High Court of Cassation and Justice, the Ministry of Administration and Interior and Ministry of Public Finance as competent authorities to apply the provisions of the treaty.

On 10.05.2006, the Romanian Government approved the draft Law on the ratification of the Convention of the European Council on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism, adopted in Warsaw on 16 May 2005. The bill, which was adopted by the Romanian Parliament, becoming Law no. 420 of 22.11.2006 (law promulgated through decree no. 1293/2006 published in the Official Gazette no. 968/04.12.2006) appoints NOPCML as one of the main authorities of implementation of the Convention, which increased NOPCML's role of active factor within the National System of Preventing and Combating Terrorism.

The year 2009 actually meant the transposition within the national implementation mechanisms of the above-mentioned legislative framework, by developing specific norms and procedures within all components of the national mechanism in the domain of preventing and combating activities of terrorism financing and by implementing the regime of international sanctions and the Warsaw Convention.

5.3 FINANCIAL ACTION TASK FORCE

Inter-governmental body established in 1989 following the G7 Summit in Paris, in order to develop, implement and promote national and international policies to combat money laundering and terrorism financing. The Presidents of the G7 states (including heads of government) together with the President of the European Commission decided to establish this body as a response to the danger and vulnerabilities of the financial system (especially banking) to the risk of money laundering. Currently, GAFI includes 32 member states and 2 regional organizations: European Commission and Cooperation Council in the Gulf Area.

We mention that GAFI/FATF type bodies exist also at regional level for a better coordination of policies and international standards in the field of prevention

[31] Romania chaired the First Conference of Parties organized in April 2009 by the Council of Europe.

and fight against money laundering and terrorism financing (named FATF Regional Style Body – FSRB), among which: Caribbean Financial Action Task Force (CFATF), GAFISUD, Asia/Pacific Group on Money Laundering (APG), Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG).

FATF was charged with the responsibility of examining money laundering techniques and trends in the field, having also the role to develop specific measures of prevention and combating.

The first edition of the **40 Recommendations of the Group of International Financial Action** (GAFI/FATF) – an international body in the field - was issued in 1990 following the initiative to combat the misuse of the financial systems by persons who launder money stemming from drugs. Subsequently, the Recommendations were modified in 1996, being recognized by over 130 countries, the International Monetary Fund and the World Bank as international standards in the domain of combating money laundering.

The 40 Recommendations specify that each country should extend the offence of money laundering to all serious crimes, in order to include within it the most extensive range of offences premise.

Also, through this document GAFI recommends the following measures to be taken by and with regard to financial institution and non-financial professions:

- identification of customers and preservation of recordings;
- reporting of money laundering suspicious transactions;
- application of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative to natural or legal persons that do not comply with requirements regarding money laundering;
- prohibit initiation or acceptance to continue a business relation with a phantom bank;
- implementation of measures to detect and monitor physical transports of money across borders and of bearer negotiable instruments;
- reporting of all internal and external transactions above a fixed ceiling;
- paying special attention to business relation and transactions with persons, companies and financial institutions in the countries that do not apply or apply insufficiently the GAFI Recommendations;
- ensuring that financial institutions are subject to appropriate regulation, supervision, that they implement effectively the GAFI Recommendations.

At the same time, as regards competent authorities involved in preventing and combating money laundering, GAFI calls on all states to establish a Financial Intelligence Unit (FIU) to serve as a national center for receiving (and, where appropriate, requesting), analyzing and disseminating of suspicious transactions reports (STR) and other information on potential cases of money laundering or terrorism financing.

In this case, the only condition for the existence of an effective FIU regards the direct or indirect access to financial, administrative or law enforcement information that it needs to perform its tasks, including the analysis of STR.

The response of the Group of International Financial Action to the terrorist attacks in USA of 11 September 2001 was quick. Between 29-20 October 2001, GAFI gathered in Washington in an extraordinary plenary session and it decided to extend its mandate beyond the fight against money laundering (presented in the 40 Recommendations), thus including also anti-terrorism financing. Within the same meeting, GAFI adopted a new set of 8 Special Recommendations regarding terrorism financing. In this respect, GAFI required its members to take the necessary measures to implement the Special Recommendations, drawing up a Self-Assessment Questionnaire for the implementation of these recommendations. In September 2002, GAFI reported that more than 120 states responded positively to this questionnaire. These recommendations are the new international standards of fight against terrorism financing. The agreement to the Special Recommendations obliges the GAFI members to:

I. Take immediate measures to ratify and implement the UN instruments.
II. Criminalize terrorist financing, terrorist acts and organizations.
III. Freeze and seize terrorist assets.
IV. Report suspicious transactions related to terrorism.
V. Provide possible extensive assistance to law enforcement authorities and regulators in other countries, to investigate terrorism financing.
VI. Impose anti-money laundering requirements to the systems of rapid transmission of money.
VII. Strengthen measures to identify the customer in swift internal and international transfers.
VIII. Ensure that entities, especially non-profit organizations cannot be used to finance terrorism.

We mention that an additional recommendation, „Special Recommendation IX" regarding cash transfer by couriers was adopted on 22 October 2004 by this international specialized body.

In order to ensure the compliance of states in applying these recommendations, GAFI issued in 2004 an assessment methodology as a reference tool for states under this process, which was amended and supplemented recently, in 2009. The document is intended to be a guide that indicates the manner of interpreting the application of the 40+9 GAFI Special Recommendations and includes the essential criteria and additional elements necessary to establish the compliance rating.[32]

5.4 UNITED NATIONS

As an international body, the United Nations Organizations focused on developing policies and the regulatory framework for combating serious offences and on implementing the international sanctions regime.

Within the UN, functions the United Nations Office on Drugs and Crime (U.N.O.D.C.), structure that operates all over the world and is mandated to assist Member States in combating illicit drug trafficking, crime and terrorism.

[32] The Compliance Assessment Methodology to the 40 GAFI Recommendations and the 9 GAFI Special Recommendations, 2004 (updated in February 2009)

The three sectors in which U.N.O.D.C operates are:

- Projects of technical cooperation to improve the capacity of Member States to counter illicit drug trafficking, crime and terrorism;

- Research and analysis to improve knowledge and understanding of issues related to drugs and crime and to extend policies and operational decisions;

- Assisting Member States in the legislative area in order to ratify and implement relevant international treaties, improve internal legislation on combating drugs and terrorism, etc.

Among the international instruments adopted by the Member States under the auspices of the United Nations Organizations we mention:

- **The United Nations Convention**[33] **against illicit traffic in narcotic drugs and psychotropic substances**, **adopted in Vienna, on 20 December 1988**, entered into force on 11 November 1990 is the first international convention regarding money laundering, by which drug trafficking was recognized as the main crime generating dirty money. Until now, the Convention was signed by 87 states and ratified by 184.

The adoption of the Convention by the United Nations Organization reflects the constant preoccupation of this international body to find concrete means which, by harmonizing national legislations could allow the promotion by member states of a common policy in the domain of combating drug trafficking and money laundering.

- Another international legal instrument is the **United Nations Convention against organized transnational crime,** the Protocol to prevent, suppress and punish trafficking in persons, especially women and children additional to the UN Convention against organized transnational crime and the Protocol against smuggling of migrants by land, sea, air additional to the UN Convention against organized transnational crime (named the Palermo Convention). The Convention was adopted in New York, on 15 November 2009[34], being until now signed by 147 states and ratified by 153. In the terms used by the Convention, money laundering includes as premise offences all the serious offences stipulated in art. 2 lett. b) [35] of the act and offences regarding the participation to an organized criminal group, corruption and hindering the proper functioning of justice.

At the same time, the Convention establishes in art. 7 the key measures of fight against money laundering, to be taken by each state party to this international legal instrument:

❖ establishing a comprehensive internal regime regulating and controlling banks and non-banking financial institutions and other bodies which are particularly subject to the risk of money laundering, in order to prevent and discover all forms of money laundering, regime that focuses on the requirements of customer identification, of recording operations and declaring suspicious operations;

❖ ensuring that administrative, regulatory, search, suppression and fight against money laundering authorities are able to cooperate and exchange information

[33] Signed by Romania and ratified through Law no. 118/15 December 1992

[34] Signed by Romania and ratified through Law no. 565/16 October 2002

[35] Art. 2 lett. b) – *"Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;*

at national and international level, as specified in its domestic law; in this regard it envisages the creation of a Financial Intelligence Unit to fulfil the role of a national centre to collect, analyze and disseminate information regarding possible money laundering operations;

❖ implementation by the state-parties of feasible measures for discovery and supervision of cross-border movement of cash and corresponding negotiable instruments, subject to guarantees allowing the correct use of information and without preventing the movement of lawful funds;

❖ establishing the obligation for the private sector to report cross-border transfers of large amounts of currency and corresponding negotiable instruments;

❖ developing and promoting global, regional, sub-regional and bi-lateral cooperation between judicial authorities, services of search and repression and financial regulation authorities in the fight against money laundering.

- **The International Convention of the United Nations for the Suppression of the Financing of Terrorism** [36] was adopted by the UN General Assembly on 9 December 1999, in New York. The Convention was signed by 132 states and ratified until now by 171 states. The Convention comprises three main obligations for the state parties:

1) States must criminalize the offence of „financing of terrorism acts" in their national legislation;

2) States should cooperate with other state parties and provide judicial assistance in accordance with this Convention;

3) States must meet the requirements imposed regarding the role of financial institutions in detecting and reporting suspicions of financing of terrorism.

According to the provisions of the Convention „**terrorism financing**" is defined as an offence committed by a person who „*by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:*

a) an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act".

There are two aspects regarding the objective side of terrorism financing, as these are defined in the Convention. Firstly, the act must be committed intentionally and secondly the offender must have intended or knew that these funds are or will be used in such purposes. Under the latter aspect, intention and knowledge are alternative elements.

The definition of the crime of terrorism financing in the Convention contains two main material elements. The first refers to "financing" which is very largely defined through "*provision or collection of funds*". This element is established by a

[36] Signed by Romania on 26 September 2000 and ratified through Law no. 623/19.11.2002

person who „*by any means, directly or indirectly, unlawfully and willfully provides or collects funds…"*

The second material element refers to terrorist acts, which are defined by reference to two separate sources. The first source is the list of 9 international treaties that were opened for signing during 1970-1997 and that require the parties to enact various terrorism offences. The List is included in the Annex to the Convention. The Convention allows the state parties to exclude a treaty from the list only if the state is not a party to that treaty. The Annex to the Convention establishes the list of the 9 international treaties which stipulate terrorism offences, as follows:

1. Convention for the suppression of unlawful seizure of aircraft (the Hague, 16 December 1970);
2. Convention for the suppression of unlawful acts against the safety of civil aviation (Montreal, 23 September 1971);
3. Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents, adopted by the General Assembly of the United Nations on 14 December 1973;
4. International Convention against the taking of hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the physical protection of nuclear material (Vienna, 3 March 1980).
6. Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the Convention for the suppression of unlawful acts against the safety of civil aviation (Montreal, 24 February 1988);
7. Convention for the suppression of unlawful acts against the safety of maritime navigation (Rome, 10 March 1988);
8. Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf (Rome, 10 March 1988);
9. International Convention for the suppression of terrorist bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

- Resolutions of the Security Council of the United Nations Organization regarding Terrorism Financing

The Security Council characterized terrorist acts as threats to international peace and security. Resolution 1373 (2001) expresses this characterization in very broad terms, stating that the terrorist act of 11 September 2001 "*like any other international terrorist act*" constitutes a threat to international peace and security, in this regard being taken collective measures (or "sanctions") stipulated in Chapter VII of UN Charter. Secondly, the collective measures adopted by the Security Council in response to terrorism call upon states to undertake actions against natural persons, groups, organizations and their assets.

Although the Resolution 1373 (2001) was adopted in response to the terrorist attacks of 11 September 2001 in the United States of America, the measures include much broader terms and are not limited to the identification and punishment of persons suspected of committing these attacks. The Resolution calls for freezing terrorist assets, leaving unchanged the special regime established through the previous Resolutions of the Security Council.

The Resolution contains two separate requirements regarding the fight against terrorism financing:

- the first is stipulated in paragraphs 1(a) and 1(b) in which the states are required *„to prevent and suppress the financing of terrorist acts"* and to *"Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts"*.
- the second requirement is included in paragraph 1(d) of the Resolution which requires the states: „*to prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons"*. This part of the Resolution establishes an autonomous obligation, which is not contained in the Convention, since the Convention does not address issues related to financial support of terrorists of terrorist entities.

5.5 EGMONT GROUP

The Egmont Group is an international professional organization of Financial Intelligence Units, established in 1995 which ensures the framework for effective cooperation regarding change of information, training, change of experience and know-how in the domain of preventing and combating money laundering and financing of terrorism. This body aims to improve interaction between Financial Intelligence Units (FIUs) in the field of communications, information exchange and coordination of training activities. The objective of the Egmont group is to provide a forum for all FIUs all over the world, to improve national support in the fight against money laundering and terrorism financing. This support includes extending and systematizing of the change of financial information and a better communication between FIUs. The Secure Network of Egmont Group (ESW) allows its members to communicate through a secure email, by which can be required or provided financial information regarding a certain case of money laundering and/or terrorism financing as well as published useful information regarding typologies, analytical instruments and recent technical developments. Currently, the Egmont Group[37] has 116 members.

At the level of this international body were established certain admission criteria for the FIUs that want to become Egmont members, with an emphasis on the issue of combating terrorism financing and competencies a FIU must have in this field.

Thus, according to the definition of the Egmont Group, the Financial Intelligence Units are „*central agencies, responsible at national level for receiving, requesting, analyzing and transmitting to the competent authorities findings regarding financial information: regarding incomes suspect of deriving from crimes*

[37] The National Office for Prevention and Combating of Money Laundering (FIU Romania) is a member of Egmont Group since May 2000

and possible terrorism financing, or stipulated by national legislation or regulations, in view of combating money laundering and terrorism financing".

The Financial Intelligence Units (FIUs) play an increasingly important role in the fight against financing of terrorism, the primary purposes of financial investigation in the fight against terrorism being the identification, tracing and documenting of the movements of funds, identification and locating of assets subject to the measures of law enforcement and supporting criminal investigation.

Considering these purposes, the following minimum requirements were established by Egmont for compliance with the elements included in the FIU's definition as regards the terrorism financing facet: [38]

- a mandatory system of reporting suspicious transactions which are linked to terrorism financing must be established in each country.
- FIU should be the central point for receipt of such reports;
- the obligation of reporting suspicions of terrorism financing by FIU must be officially included in the law, irrespective of all *de facto* situations;
- FIU must have full authority and ability to perform information exchange regarding suspicions of terrorism financing with its partners.

5.6 FIU.NET

At European level, the body similar to Egmont Group, but established at a smaller scale and only in view of performing secure exchange of information between the FIUs of the Members States of the European Union is the **Network FIU.NET**.

FIU.NET encourages cooperation and enables FIUs to perform a rapid, secure and efficient exchange of financial information. Its main objectives are the fight against organized crime and stopping using the financial system in purposes of money laundering and terrorism financing.

5.7 INTERNATIONAL MONETARY FUND

The International Monetary Fund (IMF) contributes to international efforts of fight against money laundering, in accordance with its competence. The IMF objectives concern the exchange of information, promotion of standards and policies of preventing and combating money laundering and terrorism financing.

The three main domains in which IMF is currently involved are:

- *Assessment:* All assessments of strengths and vulnerabilities in the financial sector were performed within the Financial Sector Assessment Program (FSAP) and in the Program regarding Offshore Financial Centers, that included an evaluation of jurisdictions on the issue of combating money laundering and terrorism financing;

- *Technical Assistance:* Together with the World Bank, IMF provides technical assistance to member states in order to strengthen the legal, regulatory and financial supervision framework in the field of combating money laundering and terrorism financing and to Financial Intelligence Units;

[38] Egmont Group, Additional interpretative note regarding fight against terrorism financing, Guernsey, 2004

- *Policy development:* The IMF and World Bank personnel is actively involved in studying and analyzing international practices, in implementing regimes of combating money laundering and terrorism financing, as a basis for a future provision of technical assistance.

5.8 THE BASEL SUPERVISION COMMITTEE

The Basel Committee on Banking Supervision provides the framework of cooperation in the banking field. Its major objectives are to expand understanding of the key issues in the field of supervision and improve the quality of banking supervision in the world.

The Committee's activity is based on developing guides and standards in the field of prudential supervision. In this regard, the Committee is known for elaborating international standards on capital adequacy, central principles for an effective banking supervision and harmonization regarding cross-border banking supervision.

5.9 WOLFSBERG GROUP

The Wolfsberg Group is an association comprising 12 credit institutions (banks), having as main purpose to develop standards for the financial services, standards for knowledge of customers and policies to combat money laundering and terrorism financing.

In January 2002, the Group published the *Statement on Terrorism Financing* and in November 2002 it issued the Wolsfberg Principles for Combating Money Laundering with regards to banking correspondence.

In September 2003, the Wolsfberg Group published the *Statement on Screening in Monitoring and Search* and in 2004 it focused on developing the model regarding the standards of knowledge of customers for financial institutions.

In June 2006, the Group issued the following important documents:

- *Guide regarding the risk based approach in view of managing risks of money laundering;*
-*.The Guide to combating money laundering for mutual funds and other investment companies.*

At the beginning of 2007, the Wolsfberg Group issued the *Statement on the fight against corruption* in association with Transparency International and Basel Institute on Governance.

Also, in 2009, the Wolsfberg Group published the *Guide to Combating Money Laundering in the Activities of Issuing Credit/Charge Cards and Merchant Acquiring*.

Annex no. 1

The Parliament of Romania

Law No. 656*) of December 7th, 2002
on prevention and sanctioning money laundering, as well as for setting up some measures for prevention and combating terrorism financing

*) Note:
It contains the changes to the initial document, including the provisions:
E.G.O. no. 26/2010 published in the Official Gazette of Romania

The Parliament of Romania adopts the present law.

Chapter I
General Provisions

Art. 1 - This law establishes measures for the prevention and combating of money laundering and certain measures concerning the prevention and combating the terrorism financing.

Art. 2 - For purposes of the present law:

a) ***money laundering*** means the offence provided for in the Art. 23;

a[1]) ***terrorism financing*** means the offence referred to in the Art. 36 of the Law no. 535/2004 on the prevention and combating terrorism;

b) ***property*** means the corporal or non-corporal, movable or immovable assets, as well as the juridical acts or documents that certify a title or a right regarding them;

(c) ***suspicious transaction*** means the operation which apparently has no economical or legal purpose or the one that, by its nature and/or its unusual character in relation with the activities of the client of one of the persons referred to in Article 8, raises suspicions of money laundering or terrorist financing;

(d) ***external transfers in and from accounts*** means cross-border transfers, the way they are defined by the national regulations in the field, as well as payment and receipt operations carried out between resident and non-resident persons on the Romanian territory;

(e) ***credit institution*** means any entity that carries out one of the activities defined by article 7 para (1) point 10 of Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, approved with modifications and completions by Law no. 227/2007;

(f) ***financial institution*** means any entity, with or without legal capacity, other than credit institution, which carries out one or more of the activities referred to in Article 18, para (1), points (b)-(l), (n) and (n1) of Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, approved with modifications and completions by Law no. 227/2007, including postal offices which provide payment services and other specialized entities that provide currency exchange. Within this category there are also:[39]

1. Insurance and reinsurance companies and insurance/reinsurance brokers, authorized according with the provisions of Law no. 32/2000 on the insurance and insurance

[39] Refferences to letter (n1) included in letter f) of art. 2 will enter into force on Aprilie 30, 2011 (art. VII of G.E.O. no. 26/2010)

supervision activity, with subsequent modifications and completions, as well as the branches on the Romanian territory of the insurance and reinsurance companies and insurance and/or reinsurance intermediaries, which were authorized in other member states.

2. Financial investments service companies, investment consultancy, investment management companies, investment companies, market operators, system operators as they are defined under the provisions of Law no. 297/2004 on capital market, with subsequent modifications and completions, and of the regulations issued for its application;

(g) ***business relationship*** means the professional or commercial relationship that is connected with the professional activities of the institutions and persons covered by article 8 and which is expected, at the time when the contact is established, to have an element of duration;

(h) ***operations that seem to be linked to each other*** means the transactions afferent to a single transaction, developed from a single commercial contract or from an agreement of any nature between the same parties, whose value is fragmented in portions smaller than 15.000EURO or equivalent RON, when these operations are carried out during the same banking day for the purpose of avoiding legal requirements;

(i) ***shell bank*** means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, respectively the leadership and management activity and institution's records are not in that jurisdiction, and which is unaffiliated with a regulated financial group.

(j) ***service providers for legal persons and other entities or legal arrangements*** means any natural or legal person which by way of business, provides any of the following services for third parties:

1. Forming companies or other legal persons;

2.Acting as or arranging for another person to act as a director or manager of a company, or acting as associate in relation with a company with sleeping partners or a similar quality in relation to other legal persons;

3. Providing a registered office, administrative address or any other related services for a company, a company with sleeping partners or any other legal person or arrangement;

4. Acting as or arranging for another person to act as a trustee of an express trust activity or a similar legal operation;

5. Acting as or arranging for another person to act as a shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards;

(k) ***group*** means a group of entities, as it is defined by article 2 para (1) point 13 of Governmental Emergency Ordinance no. 98/2006 on enhanced supervision of credit institutions, insurance and/or reinsurance companies, financial investment services companies and of investment management companies all part of a financial mixture, approved with modifications and completions by Law no. 152/2007.

Art. 2[1] - (1) For the purposes of the present law, *politically exposed persons* are natural persons who are or have been entrusted with prominent public functions, immediate family members as well as persons publicly known to be close associates of natural persons that are entrusted with prominent public functions.

(2) Natural persons, which are entrusted, for the purposes of the present law, with prominent public functions are:

a) Heads of state, heads of government, members of parliament, European commissioners, members of government, presidential councilors, state councilors, state secretaries;

b) Members of constitutional courts, members of supreme courts, as well as members of the courts whose decisions are not subject to further appeal, except in exceptional circumstances;

c)Members of account courts or similar bodies, members of the boards of central banks;

d) Ambassadors, charges d'affaires and high-ranking officers in the armed forces;

e) Managers of the public institutions and authorities;

f) Members of the administrative, supervisory and management bodies of State-owned enterprises.

(3) None of the categories set out in points (a) to (f) of para (2) shall include middle ranking or more junior officials. The categories set out in points (a) to (f) of para (2) shall, where applicable, include positions at Community and international level.

(4) Immediate family members of the politically exposed persons are:

a) The spouse;

b) The children and their spouses;

c) The parents

(5) Persons publicly known to be close associates of the natural persons who are entrusted with prominent public functions, are the natural persons well known for:

a) The fact that together with one of the persons mentioned in para (2), hold or have a joint significant influence over a legal person, legal entity, or legal arrangement or are in any close business relations with these persons

b) Hold or have joint significant influence over a legal person, legal entity or legal arrangement set up for the benefit of one of the persons referred to in paragraph (2)

(6) Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph (2) for a period of at least one year, institutions and persons referred to in Article 8 shall not consider such a person as politically exposed.

Art. 2^2 – (1) For the purposes of the present law, ***beneficial owner*** means any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly.

(2) The beneficial owner shall at least include:

a) in the case of corporate entities:

1. the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership over a sufficient percentage of the shares or voting rights sufficient to ensure control in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards. 2. A percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

2. the natural person(s) who otherwise exercises control over the management of a legal entity;

b) in the case of legal entities, other than those referred to in para (a), and other entities or legal arrangements, which administer and distribute funds:

1. The natural person who is the beneficiary of 25 % or more of the property of a legal person or other entities or legal arrangements, where the future beneficiaries have already been determined;

2. Where the natural persons that benefit from the legal person or entity have yet to be determined, the group of persons in whose main interest the legal person, entity or legal arrangement is set up or operates;

3.The natural person(s) who exercises control over 25 % or more of the property of a legal person, entity or legal arrangement.

Chapter II
Customers Identification Procedures and Processing Procedures of the Information Referring to Money Laundering

Art. 3 – (1) As soon as an employee of a legal or natural person of those stipulated in article 8, has suspicions that a transaction, which is on the way to be performed, has the purpose of money laundering or terrorism financing, he shall inform the person appointed according to art. 14 para (1), which shall notify immediately the National Office for Prevention and Control of Money Laundering, hereinafter referred to as ***the Office***. The appointed person shall analyze the received information and shall notify the Office about the reasonably motivated suspicions. The Office shall confirm the receipt of the notification.

(1^1) The National Bank of Romania, National Securities Commission, Insurance Supervision Commission or the Supervision Commission for the Private Pension System shall immediately inform the Office with respect to the authorization or refusal of the transactions referred to in article 28 of the Law no. 535/2004 on the prevention and combating terrorism, also notifying the reason for which such solution was given.

(2) If the Office considers as necessary, it may dispose, based on a reason, the suspension of performing the transaction, for a period of 48 hours. When the 48-hour period ends in a non-working day, the deadline extends for the first working day. The amount, in respect of which instructions of suspension were given, shall remain blocked on the account of the holder until the expiring of the period for which the suspension was ordered or, as appropriate, until the General Prosecutor's Office by the High Court of Cessation and Justice gives new instructions, accordingly with the law.

(3) If the Office that the period mentioned in para (2) is not enough, it may require to the General Prosecutor's Office by the High Court of Cassation and Justice, based on a reason, before the expiring of this period, the extension of the suspension of the operation for another period up to 72 hours. When the 72-hour period ends in a non-working day, the deadline extends for the first working day. The General Prosecutor's Office by the High Court of Cassation and Justice may authorize only once the required prolongation or, as the case may be, may order the cessation of the suspension of the operation. The decision of the General Prosecutor's Office by the High Court of Cassation and Justice is notified immediately to the Office.

(4) The Office must communicate to the persons provided under Art. 8, within 24 hours, the decision of suspending the carrying o of the operation or, as the case may be, the measure of its prolongation, ordered by the General Prosecutor's Office by the High Court of Cassation and Justice.

(5) If the Office did not make the communication within the term provided under para (4), the persons referred to in the Art. 8 shall be allowed to carry out the operation.

(6) The persons provided in the article 8 or the persons designated accordingly to the article 14 para (1) shall report to the Office, within 10 working days, the carrying out of the operations with sums in cash, in RON or foreign currency, whose minimum threshold represents the equivalent in RON of 15,000EUR, indifferent if the transaction is performed through one or more operations that seem to be linked to each other.

(7) The provisions of the para (6) shall apply also to external transfers in and from accounts for amounts of money whose minimum limit is the equivalent in RON of 15,000EUR.

(8) The persons referred to in article 8 para (1) letters e) and f) have no obligation to report to the Office the information they receive or obtain from one of their customers during

the process of determining the customer's legal status or during its defending or representation in certain legal procedures or in connection with therewith, including while providing consultancy with respect to the initiation of certain legal procedures, according to the law, regardless of whether such information has been received or obtained before, during, or after the closure of the procedures.

(9) The form and contents of the report for the operations provided for in the para (1), (6) and (7) shall be established by decision of the Office's Board, within 30 days from the date of coming into force of the present law. The reports provided for in articles (6) and (7) are forwarded to the Office once every 10 working days, based on a working methodology set up by the Office.

(10) In the case of persons referred to in article 8 para (e) and (f), the reports are forwarded to person designate by the leading structures of the independent legal profession, which have the obligation to transmit them to the Office within three days from reception, at most. The information is sent to the Office unmodified.

(11) National Customs Authority communicates to the Office, on a monthly basis, all the information it holds, according with the law, in relation with the declarations of natural persons regarding cash in foreign currency and/or national one, which is equal or above the limit set forth by the Regulation (CE) no. 1889/2005 of European Parliament and Council on the controls of cash entering or leaving the Community, held by these persons while entering or leaving the Community. National Customs Authority shall transmit to the Office immediately, but no later than 24 hours, all the information related to suspicions on money laundering or terrorism financing which is identified during its specific activity.

(12) The following operations, carried out in his own behalf, are excluded from the reporting obligations provided by para (6): between credit institution, between credit institutions and the National Bank of Romania, between credit institutions and the state treasury, between National Bank of Romania and state treasury. Other exclusions, from the reporting obligations provided by para (6), may be established for a determined period, by Governmental Decision, subsequent to the Office's Board proposal.

Art. 4 - (1) The persons provided for in the Art. 8, which know that an operation that is to be carried out has as purpose money laundering, may carry out the operation without previously announcing the Office, if the transaction must be carried out immediately or if by not performing it, the efforts to trace the beneficiaries of such money laundering suspect operation could be hampered. These persons shall compulsorily inform the Office immediately, but not later than 24 hours, about the transaction performed, also specifying the reason why they did not inform the Office, according to the Art. 3.

(2) The persons referred to in the Art. 8, which ascertain that a transaction or several transactions carried out on the account of a customer are atypical for the activity of such customer or for the type of the transaction in question, shall immediately notify the Office if there are suspicions that the deviations from normality have as purpose money laundering or terrorist financing.

Art. 5 - (1) The Office may require to the persons mentioned in the Art. 8, as well as to the competent institutions to provide the data and information necessary to fulfil the attributions provided by the law. The information connected to the notifications received under Articles 3 and 4 are processed and used within the Office under confidential regime.

(2) The persons provided for in the Art. 8 shall send to the Office the required data and information, within 30 days after the date of receiving the request.

(3) The professional and banking secrecy where the persons provided for in article 8 are kept is not opposable to the Office.

(4) The Office may exchange information, based on reciprocity, with foreign institutions having similar functions and which are equally obliged to secrecy, if such information exchange is made with the purpose of preventing and combating money laundering and terrorism financing.

Art. 6 - (1) The Office shall analyze and process the information, and if the existence of solid grounds of money laundering or financing of terrorist activities is ascertained, it shall immediately notify the General Prosecution's Office by the High Court of Cassation and Justice. In case in which it is ascertain the terrorism financing, it shall immediately notify the Romanian Intelligence Service with respect to the transactions that are suspected to be terrorism financing.

(1^1) The identity of the natural person which, in accordance with Art. 14 para (1), notified the Office may not be disclosed in the content of the notification.

(2) If following the analyzing and processing of the information received by the Office the existence of solid grounds of money laundering or terrorism financing is not ascertained, the Office shall keep records of such information.

(3) If the information referred to in the para (2) is not completed over a 10-year period, it shall be filed within the Office.

(4) Following the receipt of notifications, based on a reason, General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, may require the Office to complete such notifications.

(5) The Office is obliged to put at the disposal of the General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, at their request, the data and information obtained according to the provisions of the present law.

(6) The General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, that formulated requests in accordance with the provisions of para (4), shall notify to the Office, quarterly, the progress in the settlement of the notifications submitted, as well as the amounts on the accounts of the natural or legal persons for which blocking is ordered following the suspension carried out or the provisional measures imposed.

(7) The Office shall provide to the natural and legal persons referred to in the Art. 8, as well as, to the authorities having financial control attributions and to the prudential supervision authorities, through a procedure considered adequate, with general information concerning the suspected transactions and the typologies of money laundering and terrorism financing.

(7^1) The Office provides the persons referred to in article (8) para (a) and (b), whenever possible, under a confidentiality regime and through a secured way of communication, with information about clients, natural and/or legal persons which are exposed to risk of money laundering and terrorism financing.

(8) Following the receipt of the suspicious transactions reports, if there are found solid grounds of committing other offences than that of money laundering or terrorism financing, the Office shall immediately notify the competent body.

Art. 7 - The application in good faith, by the natural and/or legal persons, of the provisions of articles (3)-(5) may not attract their disciplinary, civil or penal responsibility.

Art. 8 – The provisions of this law shall be applied to the following natural or legal persons:

a) credit institution and branches in Romania of the foreign credit institutions;

b) financial institutions, as well as branches in Romania of the foreign financial institutions;

c) private pension funds administrators, in their own behalf and for the private pension funds they manage, marketing agents authorized for the system of private pensions;

d) casinos;

e) auditors, natural and legal persons providing tax and accounting consultancy;

f) public notaries, lawyers and other persons exercising independent legal profession, when they assist in planning or executing transactions for their customers concerning the purchase or sale of immovable assets, shares or interests or good will elements, managing of financial instruments or other assets of customers, opening or management of bank, savings, accounts or of financial instruments, organization of contributions necessary for the creation, operation, or management of a company, creation, operation, or management of companies, undertakings for collective investments in transferable securities, other trust activities or when they act on behalf of and their clients in any financial or real estate transactions;

g) persons, other than those mentioned in para (e) or (f), providing services for companies or other entities;

h) persons with attributions in the privatization process;

i) real estate agents;

j) associations and foundations;

k) other natural or legal persons that trade goods and/or services, provided that the operations are based on cash transactions, in RON or foreign currency, whose minimum value represents the equivalent in RON of 15000EUR, indifferent if the transaction is performed through one or several linked operations.

Art. 8[1] – In performing their activity, the persons referred to in article 8 are obliged to adopt adequate measures on prevention of money laundering and terrorism financing and, for this purpose, on a risk base, apply standard customer due diligence measures, simplified or enhanced, which allow them to identify, where applicable, the beneficial owner.

Art. 8[2] – Credit institutions shall not enter into or continue a correspondent banking relationship with a shell bank or with a bank that is known to permit its accounts to be used by a shell bank.

Art. 9 – (1) The persons referred to in the article 8 are obliged to apply standard customer due diligence measures in the following situations:

a) when establishing a business relationship;

b) when carrying out occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

c) when there are suspicions that the transaction is intended for money laundering or terrorist financing, regardless of the derogation on the obligation to apply standard customer due diligence measures, provided by the present law, and the amount involved in the transaction;

d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

e) when purchasing or exchanging casino chips with a minimum value, in equivalent RON, of 2000 EUR.

(2) When the sum is not known in the moment of accepting the transaction , the natural or legal person obliged to establish the identity of the customers shall proceed to their rapid identification, when it is informed about the value of the transaction and when it established that the minimum limit provided for in para (1) (b) was reached.

(3) The persons referred to in the article 8 are obliged to ensure the application of the provisions of the present law to external activities or the ones carried about by agents.

(4) Credit institutions and financial institutions must apply customer due diligence and record keeping measures to all their branches from third countries, and these must be equivalent at least with those provided for in the present law.

Art. 9^1 - The persons referred to in the article 8 shall apply standard customer due diligence measures to all new customers and also, as soon as possible, on a risk base, to the existing clients.

Art. 9^2 – (1) Credit institutions and financial institutions shall not open and operate anonymous accounts, respectively accounts for which the identity of the holder or owner is not known and documented accordingly.

(2) When applying the provisions of article 9 index 1, the persons referred to in the article 8 shall apply standard customer due diligence measures to all the owners and beneficiaries of existing anonymous accounts as soon as possible and in any event before such accounts or are used in any way.

Art. 10 - (1) The identification data of the customers shall contain:

a) in the situation of the natural persons - the data of civil status mentioned in the documents of identity provided by the law;

b) in the situation of the legal persons - the data mentioned in the documents of registration provided by the law, as well as the proof that the natural person who manages the transaction, legally represents the legal person.

(2) In the situation of the foreign legal persons, at the opening of bank accounts those documents shall be required from which to result the identity of the company, the headquarters, the type of the company, the place of registration, the power of attorney who represents the company in the transaction, as well as, a translation in Romanian language of the documents authenticated by an office of the public notary.

Art. 11 - *** *Repealed by E.O. No. 135/2005*

Art. 12 - The persons referred to in the article 8 shall apply simplified customer due diligence measures for the following situations:

a) for life insurance policies, if the insurance premium or the annual installments are lower or equal to the equivalent in RON of the sum of 1000EUR or if the single insurance premium paid is up to 2500EUR, the equivalent in RON. If the periodic premium installments or the annual sums to pay are or are to be increased in such a way as to be over the limit of the sum of 1000EUR, respectively of 2500EUR, the equivalent in RON, standard customer due diligence measures shall be applied;

b) for the situation of the subscription to pension funds;

c) for the situation of electronic currency defined accordingly with the Law, for the situations and conditions provided by the regulations on the present law;

d) when a customer is a credit or financial institution, according with article 8, from a Member State of European Union or of European Economic Area or, as appropriate, a credit or financial institution in a third country, which has similar requirements with those laid down by the present law and are supervised for their application;

e) for other situations, regarding clients, transactions or products, that pose a low risk for money laundering and terrorism financing, provided by the regulations on the application of the present law.

Art. 12[1] – (1) In addition to the standard customer due diligence measures, the persons referred to in the article 8 shall apply enhanced due diligence measures for the following situations which, by their nature, may pose a higher risk for money laundering and terrorism financing:

a) for the situation of persons that are not physically present when performing the transactions;

b) for the situation of correspondent relationships with credit institutions from states that are not European Union's Member States or do not belong to the European Economic Area;

c) for the transactions or business relationships with politically exposed persons, which are resident in another European Union Member State or European Economic Area member state, or a third country.

(2) The persons referred to in the article 8 shall apply enhanced due diligence measures for other cases than the ones provided by para (1), which, by their nature, pose a higher risk of money laundering or terrorism financing.

Art. 13 - (1) In every situation in which the identity is required according to the provisions of the present law, the legal or natural person provided for in the Art. 8, who has the obligation to identify the customer, shall keep a copy of the document, as an identity proof, or identity references, for a five-year period, starting with the date when the relationship with the client comes to an end.

(2) The persons provided for in the Art. 8 shall keep the secondary or operative records and the registrations of all financial operations that are the object of the present law, for a five-year period after performing each operation, in an adequate form, in order to be used as evidence in justice.

Art. 14 - (1) The legal persons provided for in the Art. 8 shall design one or several persons with responsibilities in applying the present law, whose names shall be communicated to the Office, together with the nature and the limits of the mentioned responsibilities.

(1^1) The persons referred to in the article 8 (a)-(d), (g)-(j), as well as the leading structures of the independent legal professions mentioned by article 8 (e) and (f) shall designate one or several persons with responsibilities in applying the present law, whose names shall be communicated to the Office, together with the nature and the limits of the mentioned responsibilities, and shall establish adequate policies and procedures on customer due diligence, reporting, secondary and operative record keeping, internal control, risk assessment and management, compliance and communication management, in order to prevent and stop money laundering and terrorism financing operations, ensuring the proper training of the employees. Credit institutions and financial institutions are obliged to designate a compliance officer, subordinated to the executive body, who coordinates the implementation of the internal policies and procedures, for the application of the present law.

(2) The persons designated according to para (1) and (1^1) shall be responsible for fulfilling the tasks established for the enforcement of this Law.

(3) The provisions of para (1), (1 index 1) and (2) are not applicable for the natural and legal persons provided by article 8 para (k).

(4) Credit and financial institutions must inform all their branches in third states about the policies and procedures established accordingly with para (1^1).

Art. 15 - The persons designated according to the Art. 14 para (1) and the persons provided for in the Art. 8 shall draw up a written report for each suspicious transaction, in the pattern established by the Office, which shall be immediately sent to it.

Art. 16 – *** *Repealed by E.O. No. 53/2008*

(1^1) The management bodies of the independent legal professions shall conclude cooperation protocols with the Office, within 60 days of the entry into force of this Law.

(2) The Office may organize training seminars in the field of money laundering and terrorism financing. The Office and the supervision authorities may take part in the special training programs of the representatives of the persons referred to in article 8.

Art. 17 – (1) The implementation modality of the provisions of the present law is verified and controlled, within the professional attributions, by the following authorities and structures:

a) The prudential supervision authorities, for the persons that are subject to this supervision;

b) Financial Guard, as well as any other authorities with tax and financial control attributions, according with the law;

c) The leading structures of the independent legal professions, for the persons referred to in article 8 (e) and (f);

d) The Office, for all the persons mentioned in article 8, except those for which the implementation modality of the provisions of the present Law is verified and controlled by the authorities and structures provided by para (a).

(2) When the data obtained indicates suspicions of money laundering, terrorism financing or other violations of the provisions of this Law, the authorities and structures provided for in para (1) (a) – (c) shall immediately inform the Office.

(3) The Office may perform joint checks and controls, together with the authorities provided for in the para (1) (b) and (c).

Art. 18 - (1) The personnel of the Office must not disseminate the information received during the activity other than under the conditions of the law. This obligation is also valid after the cessation of the function within the Office, for a five-years period.

(2) The persons referred to in the Art. 8 and their employees must not transmit, except as provided by the law, the information related to money laundering and terrorism financing and, must not warn the customers about the notification sent to the Office.

(3) Using the received information in personal interest by the employees of the Office and of the persons provided for in the Art. 8, both during the activity and after ceasing it, is forbidden.

(4) The following deeds performed while exercising job attributions shall not be deemed as breaches of the obligation provided for in para (2):

a) providing information to competent authorities referred to in article 17 and providing information in the situations deliberately provided by the law;

b) providing information between credit and financial institutions from European Union's Member States or European Economic Area or from third states, that belong to the same group and apply customer due diligence and record keeping procedures equivalent with those provided for by the present Law and are supervised for their application in a manner similar with the one regulated by the present law;

c) providing information between persons referred to in article 8 (e) and (f), from European Union's Member States or European Economic Area, or from third states which impose equivalent requirements, similar to those provided for by the present Law, persons that carry on their professional activity within the framework of the same legal entity or the same structure in which the shareholders, management or compliance control are in common.

d) providing information between the persons referred to in article 8 (a), (b), (e) and (f), situated in European Union's Member States or European Economic Area, or from third states which impose equivalent requirements, similar to those provided for by the present

Law, in the situations related to the same client and same transaction carried out through two or more of the above mentioned persons, provided that these persons are within the same professional category and are subject to equivalent requirements regarding professional secrecy and the protection of personal data;

(5) When the European Commission adopts a decision stating that a third state do not fulfill the requirements provided for by the para (4) (b) (c) and (d), the persons referred to in article 8 and their employees are obliged not to transmit to this state or to institutions or persons from this state, the information held related to money laundering and terrorism financing.

(6) It is not deemed as a breach of the obligations provided for in para 2, the deed of the persons referred to in article 8 (e) and (f) which, according with the provisions of their statute, tries to prevent a client from engaging in criminal activity.

Chapter III
The National Office for Prevention and Control of Money Laundering

Art. 19 - (1) The National Office for the Prevention and Control of Money Laundering is established as a specialised body and legal entity subordinated to the Government of Romania, having the premises in Bucharest.

(2) The activity object of the Office is the prevention and combating of money laundering and terrorism financing, for which purpose it shall receive, analyse, process information and notify, according to the provisions of the art.6 para (1), the General Prosecutor's Office by the High Court of Cassation and Justice.

(2^1) The Office carries out the analysis of suspicious transactions:

a) when notified by any of the persons referred to in article 8;

b) ex officio, when finds out, in any way, of a suspicious transaction.

(3) In order to exercise its competences, the Office shall establish its own structure at central level, whose organisation chart is approved through Government's Decision.

(4) The Office is managed by a President, appointed by the Government, from among the Members of the Board of the Office, who shall also act as credit release Authority.

(5) The Office's Board is the deliberative and decisional structure, being made of one representative of each of the following institutions: the Ministry of Public Finances, the Ministry of Justice, the Ministry of Administration and Interior, the General Prosecutor's Office by the High Court of Cassation and Justice, the National Bank of Romania, the Court of Accounts and the Romanian Banks Association, appointed for a five-year period, by Government decision.

(5^1) The deliberative and decisional activity provided for in para (5) refers to the specific cases analyzed by the Office's Board. The Office's Board decides over the economic and administrative matters, only when requested by the President.

(6) In exercising its attributions, the Office's Board adopts decisions with the vote of the majority of its members.

(7) The members of the Office's Board must fulfill, at the date of the appointment, the following conditions:

a) to have a university degree and to have at least 10 years of experience in a legal or economic position;

b) to have the domicile in Romania;

c) to have only the Romanian citizenship;

d) to have the exercise of the civil and political rights;

e) to have a high professional and an intact moral reputation.

(8) The members of the Office Plenum are forbidden to belong to political parties or to carry out public activities with political character.

(9) The function of member of the Office's Board is incompatible with any other public or private function, except for the didactic positions, in the university learning.

(10) The members of the Office's Board must communicate immediately, in writing, to the Office's president, the occurring of any incompatible situation.

(11) In the period of occupying the function, the members of the Office's Board shall be detached, respectively their work report shall be suspended. At the cessation of the mandate, they shall return to the function held previously.

(12) In case of vacancy of a position in the Office's Board, the leader of the competent authority shall propose to the Government a new person, within 30 days after the date when the position became vacant.

(13) The mandate of member of the Office's Board ceases in the following situations:

a) at the expiration of the term for which he was appointed;

b) by resignation;

c) by death;

d) by the impossibility of exercising the mandate for a period longer than six months;

e) at the appearance of an incompatibility;

f) by revocation by the authority that appointed him.

(14) The employees of the Office may not hold any position or fulfil any other function in any of the institutions provided in the article 8, while working for the Office.

(15) For the functioning of the Office, the Government shall transfer in its administration the necessary real estates – land and buildings – belonging to the public or private domain, within 60 days from the registration date of the application.

(16) The Office may participate in the activities organized by international organizations in the field and may be member of these organization.

Art. 20 - (1) The payment of the Board's members and of the Office's personnel, the functions nomenclature, the seniority and studies requirements for the appointment and promotion of the personnel are laid down in the Annex which is part of this Law.

(2) The Board's members and the personnel of the Office shall have all the rights and obligations laid down in the legal regulations mentioned in the Annex to this Law.

(3) The persons that, according to the law, handle classified information shall benefit from a 25% pay increment in respect of the management of classified data and information.

Chapter IV
Responsibilities and Sanctions

Art. 21 - The violation of the provisions of the present law brings about, as appropriate, the civil, disciplinary, contravention or penal responsibility.

Art. 22 - (1) The following deeds shall be deemed as contraventions (minor offence):

a) failure to comply with the obligations referred to in the Art. 3 para (1), (6), and (7) and Art. 4;

b) failure to comply with the obligations referred to in article 5 para (2), article 9, 9 index 1, 9 index 2, article 12 index 1 para (1), article 13-15 and article 17.

(2) The contraventions provided in para (1) a) shall be sanctioned by a fine ranging from 100,000,000 ROL to 300,000,000 ROL, and the contraventions provided in para (1) b) shall be sanctioned by a fine ranging from 150.000.000 ROL to 500.000.000 ROL.

(3) The sanctions provided under par. (2) are applied to the legal persons, too.

(3^1)Besides the sanctions provided for in the para (3) for the legal person it could be applied one or more of the following additional sanctions:

(a) confiscation of the goods designed, used or resulted from the violation;

(b) suspending the note, license or authorization to carry out an activity or, by case, suspending the economic agent's activity, for a period of one month up to 6 month;

(c) taking away the license or the authorization for some operations or for international commerce activities, for a period of one month up to 6 month or definitively;

(d) blocking the banking account for a period of 10 days up to one month;

(e) cancellation of the note, license or authorization for carrying out an activity;

(f) closing the facility.

(4) The infringements are ascertained and the sanctions, referred to in para (2), are applied by the representatives, authorized by case, by the Office or other authority competent by law to carry out the control. When the supervision authorities carry out the control, the infringements are ascertained and the sanctions are applied by the representatives, authorized and specifically designated by those authorities."

(4^1) In addition to the infringement sanctions, specific sanctioning measures may be applied by the supervision authorities, according with their competencies, for the deeds provided for by para (1).

(5) The provisions of the present law referring to contraventions are completed in accordance with the provisions of the Government Ordinance No. 2/2001 regarding the legal regime of contraventions, approved with changes and completions by the Law No. 180/2002, with the subsequent changes, except the Articles. 28 and 29.

Art. 23 - (1) The following deeds represent offence of money laundering and it is punished with prison from 3 to 12 years:

a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of property or of assisting any person who is involved in the committing of such activity to evade the prosecution, trial and punishment execution;

b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity;

c) the acquisition, possession or use of property, knowing, that such property is derived from any criminal activity;

(2) *** Repealed by L. No. 39/2003

(3) The attempt is punished.

(4) If the deed was committed by a legal person, one or more of the complementary penalties referred to in article 53 index 1, para (3) (a) –(c) of the Criminal Code is applied, by case, in addition to the fine penalty.

(5) Knowledge, intent or purpose required as an element of the activities mentioned in paragraphs (1) may be inferred from objective factual circumstances.

Art. 23^1 – The offender for the crime referred to in article 23, that during the criminal procedure denounces and facilitates the identification and prosecution of other participants in the offence, shall benefit of a half reduction of the penalty limits provided for by law.

Art. 24 - The non-observance of the obligations provided for in the Art. 18 represents offence and it is punished with prison from 2 to 7 years.

Art. 24[1] – The provisional measures shall be mandatory where a money laundering or terrorism financing offence has been committed.

Art. 25 - (1) In the case of the money laundering and terrorism financing offences, the provisions of Art. 118 of the Penal Code shall be applied with respect to the confiscation of the proceeds of crime.

(2) If the proceeds of crime, subject to confiscation, are not found, their equivalent value in money or the property acquired in exchange shall be confiscated.

(3) The income or other valuable benefits obtained from the proceeds of crime referred to in para (2) shall be confiscated.

(4) If the proceeds of crime subject to confiscation cannot be singled out from the licit property, there shall be confiscated the property up to the value of the proceeds of crime subject to confiscation.

(5) The provisions of para (4) shall be also applied to the income or other valuable benefits obtained from the proceeds of crime subject to confiscation, which cannot be singled out from the licit property.

(6) In order to guarantee the carrying out of the confiscation of the property, the provisional measures shall be mandatory as provided by the Criminal Procedure Code.

Art. 26 – In the case of the offences referred to in articles 23 and 24 and the terrorism financing offences, the banking secrecy and professional secrecy shall not be opposable to the prosecution bodies nor to the courts of law. The data and information are transmitted upon written request to the prosecutor or to the criminal investigation bodies, if their request has previously been authorized by the prosecutor, or to the courts of law.

Art. 27 - (1) Where there are solid grounds of committing an offence involving money laundering or terrorism financing, for the purposes of gathering evidence or of identifying the perpetrator, the following measures may be disposed:

a) monitoring of bank account and similar accounts;

b) monitoring, interception or recording of communications;

c) access to information systems.

d) supervised delivery of money amounts.

(2) The measure referred to in para (1) letter a) may be disposed by the prosecutor for no longer than 30 days. For well-founded reasons, such measure may be extended by the prosecutor by reasoned ordinance, provided each extension does not exceed 30 days. The maximum duration of the disposed measure is four months.

(3) The measures referred to in para (1) letters b) and c) may be ordered by the judge, according to the provisions of Articles 91^1 to 91^6 of the Criminal Procedure Code, which shall be applied accordingly.

(4) The prosecutor may dispose that texts, banking, financial, or accounting documents to be communicated to him, under the terms laid down in para (1).

(5) The measure referred to in para (1) (d) may be disposed by the prosecutor and authorized by reasoned ordinance which, in addition to the mentions referred to in article 2003 of Criminal Procedure Code, should comprise the following:

a) the solid ground that justify the measure and the motives for which the measure is necessary;

b) details regarding the money that are subject of the supervision;

c) time and place of the delivery or, upon case, the itinerary that shall be followed in order to carry out the delivery, provided these data are known;

d) the identification data of the persons authorized to supervise the delivery.

Art. 27[1] - Where there are solid and concrete indications that money laundering or terrorism financing offence has been or is to be committed and where other means could not help uncover the offence or identify the authors, undercover investigators may be employed in order to gather evidence concerning the existence of the offence and identification of authors, under the terms of the Criminal Procedure Code.

Art. 27[2] – (1) The General Prosecutor's Office by the High Court of Cassation and Justice transmits to the Office, on a quarterly bases, copies of the definitive court decisions related to the offence provided for in article 23.

(2) The Office holds the statistical account of the persons convicted for the offence provided for in article 23.

Chapter V
Final Provisions

Art. 28 - The customers' identification, according to Art. 9, shall be done after the date of coming into force of the present law.

Art. 29 - The minimum limits of the operations referred to in article 9 para (1) (b) and (e) and the maximum limits of the amounts provided for by article 12 (a) may be modified by Government Decision, subsequent to the Office's proposal.

Art. 30 - Within 30 days after the date of coming into force of the present law, the Office shall present its regulations of organization and functioning to the Government for approval.

Art. 31 - The Law No. 21/1999 for the prevention and sanctioning of money laundering, published in the Official Gazette of Romania, Part I, No. 18 of January 21st, 1999, with the subsequent changes, is abrogated.

By the present law, the provisions of articles 1 para (5), article 2 para (1), article 3 points 1,2 and 6-10, article 4, 5, 6, 7, article 8 para 2, article 9 para (1), (5) and (6), article 10 para (1), article 11 para (1)-(3) and (5), article 13, 14, 17, 20, 21, 22, 23, 25, 26, 27, article 28 para (2)-(7), article 29, article 31 para (1) and (3), article 32, article 33 para (1) and (2), article 34, article 35 para (1) and (3), article 37 para (1)-(3) and (5) as well as article 39 of the Directive 2005/60/EC of the European Parliament and of the Council, of 26th October 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, published in the Official Journal of the European Union, series L no. 309 of 25th November 2005 and article 2 of the 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 financial activity conducted on an occasional or very limited basis, published in the Official Journal of the European Union, series L no. 214 of 04th August 2006, have been transposed.

This law was adopted by the Senate in the session of November 21st, 2002, with the observance of the provisions under Art. 74 para 1 from the Constitution of Romania.

for the President of the Senate,
Doru Ioan Taracila

This law was adopted by the Chamber of Deputies in the session of November 26th, 2002, with observance of the provisions stipulated in the Art. 74 para (1) from the Constitution of Romania.

for the President of the Deputy Chamber
Viorel Hrebenciuc

Annex no. 2

GOVERNMENT OF ROMANIA
GOVERNMENT EMERGENCY ORDINANCE No.53/21st of April 2008
for the modification and completion of the Law no. 656/2002, on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating of terrorism financing

Text completed by the Governmental Emergency Ordinance no. 26/2010

Having regards to the obligations set out for Romania subsequent to the commitments taken within the Adherence to European Union Treaty and also the necessity for implementing in the internal legislation the Directive 2005/60/EC of the European Parliament and of the Council, of 26th October 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, published in the Official Journal of the European Union, series L no. 309 of 25th November 2005, and the Directive 2006/70/EC of the European Parliament and of the Council, of 1st 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 financial activity conducted on an occasional or very limited basis, published in the Official Journal of the European Union, series L no. 214 of 04th August 2006,

Whereas the deadline for the implementation by all member states was 15th of December 2007, without derogations for new member states,

Observing also the necessity for adopting new measures for the application of the Regulation (EC) no. 1781/2006 of the European Parliament and of the Council, of 15th November 2006, on information on the payer accompanying transfers of funds, published in the Official Journal of the European Union, series L no. 345 of 08th December 2006,

The urgent modification of the legal framework is necessary, as it is an extraordinary situation whose regulation cannot be postponed.

According with the provision of art. 115 para (4) of the Romania's Constitution, republished

Romanian Government adopts the following emergency ordinance:

Article I – The Law 656/2002 on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating of terrorism financing, published in the Official Gazette of Romania, Part I, no. 904, of 12 December 2002, with subsequent modifications and completions, is modified and completed as follows:

1. Paragraphs (c) and (d) of Article 2 are modified and shall comprise:

"(c) *Suspicious transaction* means the operation which apparently has no economical or legal purpose or the one that, by its nature and/or its unusual character in relation with the activities of the client of one of the persons referred to in Article 8, raises suspicions of money laundering or terrorist financing;

(d) *External transfers in and from accounts* means cross-border transfers, the way they are defined by the national regulations in the field, as well as payment and receipt operations carried out between resident and non-resident persons on the Romanian territory;"

2. Seven new paragraphs, para (e)-(k), are introduced after para (d) of Article 2, with the following content:

"(e) *Credit institution* means any entity that carries out one of the activities defined by article 7 para (1) point 10 of Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, approved with modifications and completions by Law no. 227/2007;

(f) *Financial institution* means any entity, with or without legal capacity, other than credit institution, which carries out one or more of the activities referred to in Article 18, para (1), points (b)-(l) and (n) of Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, approved with modifications and completions by Law no. 227/2007, including postal offices and other specialized entities that provide fund transfer services and those that carry out currency exchange. Within this category there are also:

1. Insurance and reinsurance companies and insurance/reinsurance brokers, authorized according with the provisions of Law no. 32/2000 on the insurance and insurance supervision activity, with subsequent modifications and completions, as well as the branches on the Romanian territory of the insurance and reinsurance companies and insurance and/or reinsurance intermediaries, which were authorized in other member states.
2. Financial investments service companies, investment consultancy, investment management companies, investment companies, market operators, system operators as they are defined under the provisions of Law no. 297/2004 on capital market, with subsequent modifications and completions, and of the regulations issued for its application;

(g) *Business relationship* means the professional or commercial relationship that is connected with the professional activities of the institutions and persons covered by article 8 and which is expected, at the time when the contact is established, to have an element of duration;

(h) *Operations that seem to be linked to each other* means the transactions afferent to a single transaction, developed from a single commercial contract or from an agreement of any nature between the same parties, whose value is fragmented in portions smaller than 15.000EURO or equivalent RON, when these operations are carried out during the same banking day for the purpose of avoiding legal requirements;

(i) '*Shell bank'* means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, respectively the leadership and management activity and institution's records are not in that jurisdiction, and which is unaffiliated with a regulated financial group.

(j) *Service providers for legal persons and other entities or legal arrangements* means any natural or legal person which by way of business, provides any of the following services for third parties:

1. Forming companies or other legal persons;
2. Acting as or arranging for another person to act as a director or manager of a company, or acting as associate in relation with a company with sleeping partners or a similar quality in relation to other legal persons;
3. Providing a registered office, administrative address or any other related services for a company, a company with sleeping partners or any other legal person or arrangement;
4. Acting as or arranging for another person to act as a trustee of an express trust activity or a similar legal operation;
5. Acting as or arranging for another person to act as a shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards;

(k) *Group* means a group of entities, as it is defined by article 2 para (1) point 13 of Governmental Emergency Ordinance no. 98/2006 on enhanced supervision of credit institutions, insurance and/or reinsurance companies, financial investment services companies and of investment management companies all part of a financial mixture, approved with modifications and completions by Law no. 152/2007."

3. Two new articles, article 2 index 1 and article 2 index 2, are introduced subsequent to article 2, with the following content:

"Article 2 index 1 - (1) For the purposes of the present law, *politically exposed persons* are natural persons who are or have been entrusted with prominent public functions, immediate family members as well as persons publicly known to be close associates of natural persons that are entrusted with prominent public functions.

(2) Natural persons, which are entrusted, for the purposes of the present law, with prominent public functions are:

a) Heads of state, heads of government, members of parliament, European commissioners, members of government, presidential councilors, state councilors, state secretaries;

b) Members of constitutional courts, members of supreme courts, as well as members of the courts whose decisions are not subject to further appeal, except in exceptional circumstances;

c) Members of account courts or similar bodies, members of the boards of central banks;

d) Ambassadors, charges d'affaires and high-ranking officers in the armed forces;

e) Managers of the public institutions and authorities;

f) Members of the administrative, supervisory and management bodies of State-owned enterprises.

(3) None of the categories set out in points (a) to (f) of para (2) shall include middle ranking or more junior officials. The categories set out in points (a) to (f) of para (2) shall, where applicable, include positions at Community and international level.

(4) Immediate family members of the politically exposed persons are:

a) The spouse;

b) The children and their spouses;

c) The parents

(5) Persons publicly known to be close associates of the natural persons who are entrusted with prominent public functions, are the natural persons well known for:

a) The fact that together with one of the persons mentioned in para (2), hold or have a joint significant influence over a legal person, legal entity, or legal arrangement or are in any close business relations with these persons

b) Hold or have joint significant influence over a legal person, legal entity or legal arrangement set up for the benefit of one of the persons referred to in paragraph (2)

(6) Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph (2) for a period of at least one year, institutions and persons referred to in Article 8 shall not consider such a person as politically exposed.

Article 2 index 2 – (1) For the purposes of the present law, *beneficial owner* means any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly.

(2) The beneficial owner shall at least include:

a) in the case of corporate entities:

1. the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership over a sufficient percentage of the shares or voting rights sufficient to ensure control in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards. A percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

2. the natural person(s) who otherwise exercises control over the management of a legal entity;

b) in the case of legal entities, other than those referred to in para (a), and other entities or legal arrangements, which administer and distribute funds:

1. The natural person who is the beneficiary of 25 % or more of the property of a legal person or other entities or legal arrangements, where the future beneficiaries have already been determined;

2. Where the natural persons that benefit from the legal person or entity have yet to be determined, the group of persons in whose main interest the legal person, entity or legal arrangement is set up or operates;

3. The natural person(s) who exercises control over 25 % or more of the property of a legal person, entity or legal arrangement."

4. Paragraphs (1), (1 index 1), (2) and (3) of Article 3 are modified and shall comprise:

"Article 3 - As soon as an employee of a legal or natural person of those stipulated in article 8, has suspicions that a transaction, which is on the way to be performed, has the purpose of money laundering or terrorism financing, he shall inform the person appointed according to art. 14 para (1), which shall notify immediately the National Office for Prevention and Control of Money Laundering, hereinafter referred to as "the Office". The appointed person shall analyze the received information and shall notify the Office about the reasonably motivated suspicions. The Office shall confirm the receipt of the notification.

(1 index 1) The National Bank of Romania, National Securities Commission, Insurance Supervision Commission or the Supervision Commission for the Private Pension System shall immediately inform the Office with respect to the authorization or refusal of the transactions referred to in article 28 of the Law no. 535/2004 on the prevention and combating terrorism, also notifying the reason for which such solution was given.

(2) If the Office considers as necessary, it may dispose, based on a reason, the suspension of performing the transaction, for a period of 48 hours. When the 48-hour period ends in a non-working day, the deadline extends for the first working day. The amount, in respect of which instructions of suspension were given, shall remain blocked on the account of the holder until the expiring of the period for which the suspension was ordered or, as appropriate, until the General Prosecutor's Office by the High Court of Cessation and Justice gives new instructions, accordingly with the law.

(3) If the Office that the period mentioned in para (2) is not enough, it may require to the General Prosecutor's Office by the High Court of Cassation and Justice, based on a reason, before the expiring of this period, the extension of the suspension of the operation for another period up to 72 hours. When the 72-hour period ends in a non-working day, the deadline extends for the first working day. The General Prosecutor's Office by the High Court of Cassation and Justice may authorize only once the required prolongation or, as the case may be, may order the cessation of the suspension of the operation. The decision of the General Prosecutor's Office by the High Court of Cassation and Justice is notified immediately to the Office."

5. Paragraphs (6)-(9) of Article 3 are modified and shall comprise:

"(6) The persons provided in the article 8 or the persons designated accordingly to the article 14 para (1) shall report to the Office, within 10 working days, the carrying out of the operations with sums in cash, in RON or foreign currency, whose minimum threshold represents the equivalent in RON of 15,000EUR, indifferent if the transaction is performed through one or more operations that seem to be linked to each other.

(7) The provisions of the para (6) shall apply also to external transfers in and from accounts for amounts of money whose minimum limit is the equivalent in RON of 15,000EUR.

(8) The persons referred to in article 8 para (1) letters e) and f) have no obligation to report to the Office the information they receive or obtain from one of their customers during the process of determining the customer's legal status or during its defending or representation in certain legal procedures or in connection with therewith, including while providing consultancy with respect to the initiation of certain legal procedures, according to the law, regardless of whether such information has been received or obtained before, during, or after the closure of the procedures.

(9) The form and contents of the report for the operations provided for in the para (1), (6) and (7) shall be established by decision of the Office's Board, within 30 days from the date of coming into force of the present law. The reports provided for in articles (6) and (7) are forwarded to the Office once every 10 working days, based on a working methodology set up by the Office.

6. Three new paragraphs, (10), (11) and (12), are introduced after the paragraph (9) of article 3, with the following content:

"(10) In the case of persons referred to in article 8 para (e) and (f), the reports are forwarded to person designate by the leading structures of the independent legal profession, which have the obligation to transmit them to the Office within three days from reception, at most. The information is sent to the Office unmodified.

(11) National Customs Authority communicates to the Office, on a monthly basis, all the information it holds, according with the law, in relation with the declarations of natural persons regarding cash in foreign currency and/or national one, which is equal or above the limit set forth by the Regulation (CE) no. 1889/2005 of European Parliament and Council on the controls of cash entering or leaving the Community, held by these persons while entering or leaving the Community. National Customs Authority shall transmit to the Office immediately, but no later than 24 hours, all the information related to suspicions on money laundering or terrorism financing which is identified during its specific activity.

(12) The following operations, carried out in his own behalf, are excluded from the reporting obligations provided by para (6): between credit institution, between credit institutions and the National Bank of Romania, between credit institutions and the state treasury, between National Bank of Romania and state treasury. Other exclusions, from the reporting obligations provided by para (6), may be established for a determined period, by Governmental Decision, subsequent to the Office's Board proposal."

7. Paragraph (3) of article 5 is modified and shall have the following content:

"(3) The professional and banking secrecy where the persons provided for in article 8 are kept is not opposable to the Office"

8. Paragraphs (4)-(6) of article 6 are modified and shall have the following content:

"(4) Following the receipt of notifications, based on a reason, General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, may require the Office to complete such notifications.

(5) The Office is obliged to put at the disposal of the General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, at their request, the data and information obtained according to the provisions of the present law.

(6) The General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, that formulated requests in accordance with the provisions of para (4), shall notify to the Office, quarterly, the progress in the settlement of the notifications submitted, as well as the amounts on the accounts of the natural or legal persons for which blocking is ordered following the suspension carried out or the provisional measures imposed.

9. In article (6), a new para (7 index 1) is introduced following to para (7), and shall have the following content:

"(7 index 1) The Office provides the persons referred to in article (8) para (a) and (b), whenever possible, under a confidentiality regime and through a secured way of communication, with information about clients, natural and/or legal persons which are exposed to risk of money laundering and terrorism financing."

10. Article 7 is modified and shall have the following content:

"(7) Article 7 – The application in good faith, by the natural and/or legal persons, of the provisions of articles (3)-(5) may not attract their disciplinary, civil or penal responsibility."

11. Article 8 is modified and shall have the following content:

"Article 8 – The provisions of this law shall be applied to the following natural or legal persons:

a) credit institution and branches in Romania of the foreign credit institutions;
b) financial institutions, as well as branches in Romania of the foreign financial institutions;
c) private pension funds administrators, in their own behalf and for the private pension funds they manage, marketing agents authorized for the system of private pensions;
d) casinos;
e) auditors, natural and legal persons providing tax and accounting consultancy;
f) public notaries, lawyers and other persons exercising independent legal profession, when they assist in planning or executing transactions for their customers concerning the purchase or sale of immovable assets, shares or interests or good will elements, managing of financial instruments or other assets of customers, opening or management of bank, savings, accounts or of financial instruments, organization of contributions necessary for the creation, operation, or management of a company, creation, operation, or management of companies, undertakings for collective investments in transferable securities, other trust activities or when they act on behalf of and their clients in any financial or real estate transactions;
g) persons, other than those mentioned in para (e) or (f), providing services for companies or other entities;
h) persons with attributions in the privatization process;
i) real estate agents;
j) associations and foundations;
k) other natural or legal persons that trade goods and/or services, provided that the operations are based on cash transactions, in RON or foreign currency,

whose minimum value represents the equivalent in RON of 15000EUR, indifferent if the transaction is performed through one or several linked operations."

12. Two new articles (8 index 1) and (8 index 2) are introduced after the article 8 and shall have the following content:

"Article 8 index 1 – In performing their activity, the persons referred to in article 8 are obliged to adopt adequate measures on prevention of money laundering and terrorism financing and, for this purpose, on a risk base, apply standard customer due diligence measures, simplified or enhanced, which allow them to identify, where applicable, the beneficial owner.

Article 8 index 2 – Credit institutions shall not enter into or continue a correspondent banking relationship with a shell bank or with a bank that is known to permit its accounts to be used by a shell bank"

13. Article 9 is modified and shall have the following content:

"Article 9 – (1) The persons referred to in the article 8 are obliged to apply standard customer due diligence measures in the following situations:

a) when establishing a business relationship;
b) when carrying out occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
c) when there are suspicions that the transaction is intended for money laundering or terrorist financing, regardless of the derogation on the obligation to apply standard customer due diligence measures, provided by the present law, and the amount involved in the transaction;
d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.
e) when purchasing or exchanging casino chips with a minimum value, in equivalent RON, of 2000 EUR.

(2) When the sum is not known in the moment of accepting the transaction , the natural or legal person obliged to establish the identity of the customers shall proceed to their rapid identification, when it is informed about the value of the transaction and when it established that the minimum limit provided for in para (1) (b) was reached.

(3) The persons referred to in the article 8 are obliged to ensure the application of the provisions of the present law to external activities or the ones carried about by agents.

(4) Credit institutions and financial institutions must apply customer due diligence and record keeping measures to all their branches from third countries, and these must be equivalent at least with those provided for in the present law."

14. Two new articles (9 index 1) and (9 index 2) are introduced following the article 9, with the following content:

"Article 9 index 1 - The persons referred to in the article 8 shall apply standard customer due diligence measures to all new customers and also, as soon as possible, on a risk base, to the existing clients.

Article 9 index 2 – (1) Credit institutions and financial institutions shall not open and operate anonymous accounts, respectively accounts for which the identity of the holder or owner is not known and documented accordingly.

(2) When applying the provisions of article 9 index 1, the persons referred to in the article 8 shall apply standard customer due diligence measures to all the owners and

beneficiaries of existing anonymous accounts as soon as possible and in any event before such accounts or are used in any way."

15. Article 12 is modified and shall have the following content:

"Article 12. - The persons referred to in the article 8 shall apply simplified customer due diligence measures for the following situations:

a) for life insurance policies, if the insurance premium or the annual installments are lower or equal to the equivalent in RON of the sum of 1000EUR or if the single insurance premium paid is up to 2500EUR, the equivalent in RON. If the periodic premium installments or the annual sums to pay are or are to be increased in such a way as to be over the limit of the sum of 1000EUR, respectively of 2500EUR, the equivalent in RON, standard customer due diligence measures shall be applied;

b) for the situation of the subscription to pension funds;

c) for the situation of electronic currency defined accordingly with the Law, for the situations and conditions provided by the regulations on the present law;

d) when a customer is a credit or financial institution, according with article 8, from a Member State of European Union or of European Economic Area or, as appropriate, a credit or financial institution in a third country, which has similar requirements with those laid down by the present law and are supervised for their application;

e) for other situations, regarding clients, transactions or products, that pose a low risk for money laundering and terrorism financing, provided by the regulations on the application of the present law.

16. A new article, Article 12 index 1, is being introduced following article 12, with the following content:

"Article 12 index 1 – (1) In addition to the standard customer due diligence measures, the persons referred to in the article 8 shall apply enhanced due diligence measures for the following situations which, by their nature, may pose a higher risk for money laundering and terrorism financing:

a) for the situation of persons that are not physically present when performing the transactions;

b) for the situation of correspondent relationships with credit institutions from states that are not European Union's Member States or do not belong to the European Economic Area;

c) for the transactions or business relationships with politically exposed persons, which are resident in another European Union Member State or European Economic Area member state, or a third country.

(2) The persons referred to in the article 8 shall apply enhanced due diligence measures for other cases than the ones provided by para (1), which, by their nature, pose a higher risk of money laundering or terrorism financing."

17. Paragraph (1) of the article 14 is modified and shall have the following content:

"(1 index 1) The persons referred to in the article 8 (a)-(d), (g)-(j), as well as the leading structures of the independent legal professions mentioned by article 8 (e) and (f) shall designate one or several persons with responsibilities in applying the present law, whose names shall be communicated to the Office, together with the nature and the limits of the mentioned responsibilities, and shall establish adequate policies and procedures on customer due diligence, reporting, secondary and operative record keeping, internal control, risk assessment and management, compliance and communication management, in order to prevent and stop money laundering and terrorism financing operations, ensuring the proper training of the employees. Credit institutions and financial institutions are obliged to

designate a compliance officer, subordinated to the executive body, who coordinates the implementation of the internal policies and procedures, for the application of the present law.

18. Two new paragraphs, (3) and (4), are introduced following the paragraph (2) of article 14, which shall have the following content:

"(3) The provisions of para (1), (1 index 1) and (2) are not applicable for the natural and legal persons provided by article 8 para (k).

(4) Credit and financial institutions must inform all their branches in third states about the policies and procedures established accordingly with para (1 index1)."

19. The paragraph (1) of article 16 is abrogated:

20. The paragraph (2) of article 16 is modified and shall have the following content:

"(2) The Office may organize training seminars in the field of money laundering and terrorism financing. The Office and the supervision authorities may take part in the special training programs of the representatives of the persons referred to in article 8"

21. Article 17 is modified and shall have the following content:

"Article 17 – (1) The implementation modality of the provisions of the present law is verified and controlled, within the professional attributions, by the following authorities and structures:

a) The prudential supervision authorities, for the persons that are subject to this supervision;

b) Financial Guard, as well as any other authorities with tax and financial control attributions, according with the law;

c) The leading structures of the independent legal professions, for the persons referred to in article 8 (e) and (f);

d) The Office, for all the persons mentioned in article 8, except those for which the implementation modality of the provisions of the present Law is verified and controlled by the authorities and structures provided by para (a).

(2) When the data obtained indicates suspicions of money laundering, terrorism financing or other violations of the provisions of this Law, the authorities and structures provided for in para (1) (a) – (c) shall immediately inform the Office.

(3) The Office may perform joint checks and controls, together with the authorities provided for in the para (1) (b) and (c)."

22. Three new paragraphs, (4), (5) and (6) are introduced after paragraph (3) of article 18, with the following content:

"(4) The following deeds performed while exercising job attributions shall not be deemed as breaches of the obligation provided for in para (2):

a) providing information to competent authorities referred to in article 17 and providing information in the situations deliberately provided by the law;

b) providing information between credit and financial institutions from European Union's Member States or European Economic Area or from third states, that belong to the same group and apply customer due diligence and record keeping procedures equivalent with those provided for by the present Law and are supervised for their application in a manner similar with the one regulated by the present law;

c) providing information between persons referred to in article 8 (e) and (f), from European Union's Member States or European Economic Area, or from third states which impose equivalent requirements, similar to those provided for by the present Law, persons

that carry on their professional activity within the framework of the same legal entity or the same structure in which the shareholders, management or compliance control are in common.

d) providing information between the persons referred to in article 8 (a), (b), (e) and (f), situated in European Union's Member States or European Economic Area, or from third states which impose equivalent requirements, similar to those provided for by the present Law, in the situations related to the same client and same transaction carried out through two or more of the above mentioned persons, provided that these persons are within the same professional category and are subject to equivalent requirements regarding professional secrecy and the protection of personal data;

(5) When the European Commission adopts a decision stating that a third state do not fulfill the requirements provided for by the para (4) (b) (c) and (d), the persons referred to in article 8 and their employees are obliged not to transmit to this state or to institutions or persons from this state, the information held related to money laundering and terrorism financing.

(6) It is not deemed as a breach of the obligations provided for in para 2, the deed of the persons referred to in article 8 (e) and (f) which, according with the provisions of their statute, tries to prevent a client from engaging in criminal activity."

23. A new para, para (2 index 1) is introduced following para (2) of article 19, which shall have the following content:

"(2 index 1) The Office carries out the analysis of suspicious transactions:

a) when notified by any of the persons referred to in article 8;

b) ex officio, when finds out, in any way, of a suspicious transaction."

24. A new para, para (5 index 1) is introduced following para (5) of article 19, which shall have the following content:

"(5 index 1) The deliberative and decisional activity provided for in para (5) refers to the specific cases analyzed by the Office's Board. The Office's Board decides over the economic and administrative matters, only when requested by the President.

25. Paragraph (16) of article 19 is modified and shall have the following content:

"(16) The Office may participate in the activities organized by international organizations in the field and may be member of these organization."

26. Paragraph (1) (b) of article 19 is modified and shall have the following content:

"b) failure to comply with the obligations referred to in article 5 para (2), article 9, 9 index 1, 9 index 2, article 12 index 1 para (1), article 13-15 and article 17."

27. Paragraph (4) of article 22 is modified and shall have the following content:

"(4) The infringements are ascertained and the sanctions, referred to in para (2), are applied by the representatives, authorized by case, by the Office or other authority competent by law to carry out the control. When the supervision authorities carry out the control, the infringements are ascertained and the sanctions are applied by the representatives, authorized and specifically designated by those authorities."

28. A new para, para (4 index 1) is introduced following para (4) of article 22, which shall have the following content:

"(4 index 1) In addition to the infringement sanctions, specific sanctioning measures may be applied by the supervision authorities, according with their competencies, for the deeds provided for by para (1)"

29. Two new paragraphs, (4), (5) are introduced after paragraph (3) of article 23, with the following content:

"(4) If the deed was committed by a legal person, one or more of the complementary penalties referred to in article 53 index 1, para (3) (a) –(c) of the Criminal Code is applied, by case, in addition to the fine penalty.

(5) Knowledge, intent or purpose required as an element of the activities mentioned in paragraphs (1) may be inferred from objective factual circumstances."

30. A new article, (23 index 1), is introduced following article 23, which shall have the following content:

"Article 23 index 1 – The offender for the crime referred to in article 23, that during the criminal procedure denounces and facilitates the identification and prosecution of other participants in the offence, shall benefit of a half reduction of the penalty limits provided for by law."

31. Article 26 is modified and shall have the following content:

"Article 26 – In the case of the offences referred to in articles 23 and 24 and the terrorism financing offences, the banking secrecy and professional secrecy shall not be opposable to the prosecution bodies nor to the courts of law. The data and information are transmitted upon written request to the prosecutor or to the criminal investigation bodies, if their request has previously been authorized by the prosecutor, or to the courts of law."

32. A new point (d) is introduced after the point © para (1) of article 27, which shall have the following content:

"d) Supervised delivery of money amounts"

33. A new para, para (5) is introduced following para (4) of article 27, which shall have the following content:

"(5) The measure referred to in para (1) (d) may be disposed by the prosecutor and authorized by reasoned ordinance which, in addition to the mentions referred to in article 2003 of Criminal Procedure Code, should comprise the following:

a) the solid ground that justify the measure and the motives for which the measure is necessary;

b) details regarding the money that are subject of the supervision;

c) time and place of the delivery or, upon case, the itinerary that shall be followed in order to carry out the delivery, provided these data are known;

d) the identification data of the persons authorized to supervise the delivery."

34. A new article, (27 index 2), is introduced following article 27 index 1, which shall have the following content:

"Article 27 index 2 – (1) The General Prosecutor's Office by the High Court of Cassation and Justice transmits to the Office, on a quarterly bases, copies of the definitive court decisions related to the offence provided for in article 23."

The Office holds the statistical account of the persons convicted for the offence provided for in article 23."

35. Article 29 is modified and shall have the following content:

"The minimum limits of the operations referred to in article 9 para (1) (b) and (e) and the maximum limits of the amounts provided for by article 12 (a) may be modified by Government Decision, subsequent to the Office's proposal."

36. Following the article 31 the next mention is introduced:

"By the present law, the provisions of articles 1 para (5), article 2 para (1), article 3 points 1,2 and 6-10, article 4, 5, 6, 7, article 8 para 2, article 9 para (1), (5) and (6), article 10 para (1), article 11 para (1)-(3) and (5), article 13, 14, 17, 20, 21, 22, 23, 25, 26, 27, article 28 para (2)-(7), article 29, article 31 para (1) and (3), article 32, article 33 para (1) and (2), article 34, article 35 para (1) and (3), article 37 para (1)-(3) and (5) as well as article 39 of the Directive 2005/60/EC of the European Parliament and of the Council, of 26th October 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, published in the Official Journal of the European Union, series L no. 309 of 25th November 2005 and article 2 of the 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 financial activity conducted on an occasional or very limited basis, published in the Official Journal of the European Union, series L no. 214 of 04th August 2006, have been transposed."

Article II – (1) The provisions of points 13-17 of article I enter into force in 45 days from the date of present ordinance's publication in the Official Gazette of Romania, Part I. The legal provisions, in force before this date, shall be applicable until the new ones enter into force.

The Government adopts, by decision, within 15 days from the entering into force of the present ordinance, subsequent to the consultation of prudential supervision authorities, the tax-financial control authorities, the leading structures of independent legal professions and the National Office for Prevention and Control of Money Laundering, a regulation on the application of Law no.656/2002 on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating of terrorism financing, with subsequent modifications and completions, which will detail the standard, simplified or enhanced customer due diligence measures, as well as the content and conditions for applying law no. 656/2002, with subsequent modifications and completions.

(3)The National Office for Prevention and Control of Money Laundering adopts the working methodology provided for by the article 3 para (9) of Law no. 656/2002, with subsequent modifications and completions, within 30 days from the moment of present ordinance's entering into force.

(4) Within 45 days from the moment of present ordinance's entering into force, prudential supervision authorities, the tax-financial control authorities of the persons referred to in article 8 of Law no. 656/2002, with subsequent modifications and completions, as well as the leading structures of independent legal professions issue, according with their competency, standards on customer due diligence.

(5) Within 30 days from the moment of present ordinance's entering into force, the leading structures of independent legal professions shall conclude cooperation protocols with the National Office for Prevention and Control of Money Laundering and the existing protocols shall be updated based on the provisions of the present emergency ordinance.

Article III – (1) For the application of the Regulation (EC) no. 1781/2006 of the European Parliament and of the Council, of 15th November 2006, on information on the payer accompanying transfers of funds, published in the Official Journal of the European Union, series L no. 345 of 08th December 2006, the following authorities are designated, as responsible authorities, for the supervision of compliance with the obligations regarding the information on the payer accompanying transfers of funds:

a) National Bank of Romania, for credit institutions and payment institutions;
b) National Office for Prevention and Control of Money Laundering, for postal offices providing payment services within the current national legislation.

(2) The fund transfers referred to in article 3 para 6 of the regulations are excluded from the application of the Regulation (EC) no. 1781/2006 of the European Parliament and of the Council, of 15th November 2006

(3) The following deeds shall be deemed as infringements:

a) breaching the obligations referred to by article 9 para (2) final thesis of the Regulation (EC) no. 1781/2006 of the European Parliament and of the Council, of 15th November 2006

b) breaching the obligations referred to by article 4, article 5 para (1), (2), (4) and (5), article (6) para (2), article (7) para (2), article 8, article 9 para (1) and article (2) first thesis, article 11, article 12, article 13 para (3), (4) and (5) and article 14 first thesis of Regulation (EC) no. 1781/2006 of the European Parliament and of the Council, of 15th November 2006.

(4)The infringements referred to in para (3) (a) are sanctioned by fine raging from 10000RON to 30000RON and the infringements referred to in para (3) (b), by fine raging from 15000RON to 50000RON.

(5)The infringements are ascertained and the sanctions are applied by authorized representatives specifically designated by National Bank of Romania and National Office for Prevention and Control of Money Laundering, according with their competencies.

(6)The requirements provided by article 22 of Law no. 656/2002, with subsequent modifications and completions, apply accordingly.

Article IV - The Law no. 656/2002, on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating of terrorism financing, published in the Official Gazette of Romania, Part I, no. 904 from 12 of December 2002, with subsequent modifications and completions, as well as with the modifications and completions set up by the present emergency ordinance, shall be republished, in the Official Gazette of Romania, Part I, after its approval by law, and the texts will receive a new numbering.

PRIME MINISTER
CALIN POPESCU TARICEANU

COUNTERSIGNS
Ministry of Justice
Catalin Marian Predoiu

Ministry of Interior and Administrative Reform
Liviu Radu

Department for European Affaires
Adrian Ciocanea

Ministry of Economy and Finance
Catalin Doica

Annex no. 3

Governmental Decision no. 594/04.06.2008 on the approval of the Regulation for application of the provisions of the Law no. 656/2002 for the prevention and sanctioning money laundering as well as for instituting some measures for prevention and combating terrorism financing acts

Published in the Official Gazette no. 444 from June 13, 2008

This Decision enters into force at the date provided by Art. II para. 1 of the Governmental Emergency Ordinance no. 53/2008.
Text completed by the Governmental Emergency Ordinance no. 26/2010

In accordance with Article 108 from the Romanian Constitution, republished, and Article II para 2 from the Governmental Emergency Ordinance no. 53/2008 on modification and completion of the Law no. 656/2002 for the prevention and sanctioning money laundering as well as for instituting some measures for prevention and combating terrorism financing acts, with subsequent modifications and completions,

The Romanian Government adopts this decision.

ART. 1

It is approved the Regulation for application of the provisions of the Law no. 656/2002 for the prevention and sanctioning money laundering as well as for instituting some measures for prevention and combating terrorism financing acts**,** published in the Official Gazette of Romania, Part I, no. 904 from December 12, 2002, with subsequent modifications and completions, provided for in the annex which is integrant part of this decision.

Art. 2

By this Regulation, provided for in the Article 1, there are transposed the art. 6, art.7, art.8 para (1) and (2), art.9 para (1), para.(5) the second thesis, and para.(6), art.10 para (1), art.11 para (2), (3), (4) and (5), art.12, art.13 para (2), (3) and (4), art.15 para (2) and (3), art. 16 para.(1), art.18, art.19, art.30 letter a) and b), art.31 para (1) and (2) and art.32 from the Directive no. 2005/60/EC of the European Parliament and Council on the prevention of the use of the financial system in the purpose of money laundering and terrorism financing, published in the Official Journal of the European Union, series L, no. 309 from November 25, 2005 and article 3 para (3) of the Directive 2006/70/EC of the European Commission of August 1, 2006 laying down implementing measures for Directive of the European Parliament and of the Council as regards the definition of „politically exposed persons" 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, published in the Official Journal of the European Union, series L no. 214 from August 4, 2006.

Annex

Regulation for application of the provisions of the Law no. 656/2002 for the prevention and sanctioning money laundering as well as for instituting some measures for prevention and combating terrorism financing acts

Chapter I
General Provisions

Art. 1

In application of the provisions of the Law no. 656/2002 for the prevention and sanctioning money laundering as well as for instituting of some measures for prevention and combating terrorism financing acts, with subsequent modifications and completions, further called the Law no. 656/2002, this Regulation settles the measures of prevention and combating money laundering and terrorism financing acts.

Art. 2

(1) In the spirit of this Regulation, the terms and expressions below have the following significations:

a) Suspicious Transaction Report – document whose form and content is established by decision of the National Office for Prevention and Control of Money Laundering' Board, further called the Office, through which the persons provided for in the article 8 of the Law no. 656/2002 submit to the Office the information regarding the operations suspected of money laundering and terrorism financing;

b) Cash Transaction Report – document whose form and content is established by decision of the National Office for Prevention and Control of Money Laundering' Board, further called the Office, through which the persons provided for in the article 8 of the Law no. 656/2002 submit to the Office the information regarding the transactions in cash whose minimum limit represents the equivalent in lei of 15.000 de euro;

c) External Transfers Report – document whose form and content is established by decision of the National Office for Prevention and Control of Money Laundering' Board, further called the Office, through which the persons provided for in the article 8 of the Law no. 656/2002 submit to the Office the information regarding the external transfers in or out of the accounts, whose minimum limit represents the equivalent in lei of 15.000 de euro;.

d) Third parties – credit and financial institutions, situated in Member States and the similar ones, situated in third country, who meet the following requirements:

1. they are subject to mandatory professional registration for the performing of the activity, recognized by law;
2. they apply customer due diligence requirements and record keeping requirements as laid down in the Law no. 656/2002 and this Regulation and their compliance with the requirements of these acts is supervised in accordance with the Law no.656/2002.

(2) The following are not considered third parties in the meaning of para. 1 let. d): specialized entities which perform services of foreign currency exchange, payment institutions which provide services in accordance with art. 8 letter f), listed as payment institutions in the Governmental Emergency Ordinance no. 113/2009 on payment services, and postal offices which provide payment services.

Chapter II
Customer Due Diligence and standards for processing of the information on money laundering and terrorism financing

Art.3

The persons provided for in article 8 of the Law no. 656/2002 shall adopt, during the performance of their activity, adequate measures for prevention money laundering and terrorism financing acts, and, in this purpose, based on risk, shall apply standard, simplified or enhanced customer due diligence which shall allow also the identification, by case, of the beneficial owner.

Section 1
Standard customer due diligence

Art. 4

(1) The persons provided for in article 8 of the Law no. 656/2002 shall apply the standard customer due diligence in the following situations:

a) when establishing a business relationship;

b) when carrying out occasional transactions amounting at least EUR 15 000 or its equivalent, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

c) when there are suspicions of money laundering or terrorist financing, regardless the value of transaction or any derogation from the obligation to apply standard customer due diligence provided for in the Law no. 656/2002 and this Regulation;

d) when there are doubts about the veracity or adequacy of previously obtained customer identification data;

e) when purchasing or exchange in casinos gambling chips with a minimum value of the equivalent of EUR 2 000.

(2) When the amount is not known when the transaction is accepted, the natural or legal person obliged to establish the customers identity shall proceed to their identification as soon as possible, when she/he is informed about the value transaction and when it was ascertained that the minimum limit provided for in para (1) letter b) has been reached.

(3) The persons provided for in the art. 8 of the law no. 656/2002 shall apply the standard customer due diligence to all new customers as well as, as soon as possible, based on the risk, to all existent customers.

(4) The credit institutions and financial institutions shall not open and perform anonymous accounts, respectively accounts for which the identity of the holder or of the beneficial owner is not known and highlighted properly.

(5) In the spirit of para 3, the persons provided for in the article 8 of the Law no. 656/2002 shall apply standard customer due diligence to all anonymous account or savings checks holders or beneficial owners, as soon as possible.

(6) The use of any type of existing anonymous accounts and savings checks shall not be allowed unless after the application of standard customer due diligence provided in the para (5).

Art. 5

(1) Standard customer due diligence measures are:

a) identifying the customer and verifying the customer's identity on the basis of documents, and, by case, of information obtained from reliable independent sources;

b) identifying, where applicable, the beneficial owner and taking risk-based checks on customer’s identity so that the information obtained by the person covered by the

article 8 of the Law no. 656/2002 are satisfactory and it allows to understand the ownership and control structure of the customer – legal person;

c) obtaining information on the purpose and intended nature of the business relationship;

d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that these transactions are consistent with the information about the customer, his business and risk profile, including, by case, the source of funds and ensuring that the documents, data or information held are kept up-to-date.

(2) The identification data of the customers shall include at least:

a) as regards natural persons - the data of civil status mentioned in the documents of identity provided by the law;

b) as regards legal persons - the data mentioned in the documents of registration provided by the law, as well as the proof that the natural person who manages the transaction, legally represents the legal person.

(3) The persons provided for in the article 8 of the Law no. 656/2002 shall apply all the measures provided for in para (1) letter a) – d), having the possibility to take into the account the circumstances based on the risk, depending on the type of the customer, business relationship, product or transaction, case in which he has to demonstrate to the authorities or to the structures provided for in the article 17 of the Law no. 656/2002 that the customer due diligence measures are adequate in view of the risks of money laundering and terrorism financing.

(4) When the persons provided for in the article 8 of the Law no. 656/2002 are unable to comply with para 1 letter a)-c), it may not carry out the transaction, start the business relationship, or shall terminate the business relationship, and shall report this issue as soon as possible to the Office.

(5) The provisions of para 4 shall not be applied to the persons provided for în the article 8 letters e and f of the Law no. 656/2002 as regards the information obtained from or regarding the customers when it is ascertaining the legal position for that customer or performing task of defending or representing that customer in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, even this information has been obtained previously, during or after this procedure.

(6) The persons provided for in the article 8 of the Law no. 656/2002 have the obligation to verify the identity of the customer and of the beneficial owner before establishing business relationship or carrying out the occasional transaction.

Art. 6

(1) The persons provided for in the article 8 of the Law no. 656/2002 may use in the purpose of applying standard customer due diligence measures provided for in the art. 5 para (1) letter a) - c) of this Regulation, the information regarding the customer obtained from third parties, even the respective information is obtaining based on documents whose form is different to that used at internal level**.**

(2) In the situation provided for in the para 1 the liability for the compliance with all standard customers due diligence measures is on to the persons who use the information obtained from the third party.

(3) The third party from Romania which intermediates the contact with the customer shall submit to the person who applies standard due diligence measures all the information obtained within own identification procedures, so the requirements provided for in art. 5 para (1) letter a)- c) of this Regulation to be respected.

(4) Copies of the documents based on which the identification and the verification of the customer’s identity or, by case, beneficial owner’s identity was accomplished, shall

immediately be sent by the third party from Romania, by request of the person to whom the customer has been recommended.

(5) The persons provided for in the article 8 of the Law no. 656/2002 have the obligation to ensure the application of the provisions of the Law no. 656/2002 and of this Regulation also in the case of the externalized activities or those performed by agents. The agents and the entities through which the externalized activities are performed by the previously mentioned persons, shall not be considered third parties, in the spirit of article 2 para (1) letter d) of this Regulation

(6) The persons provided for in the article 8 of the Law no. 656/2002 shall not use for accomplishing the customer due diligence requirements provided for in the art. 5 para (1) letter a) – c) of this Regulation the customer due diligence measures applied by a third party from a third country, on which the European Commission adopted a decision in this purpose.

Section 2
Simplified customer due diligence measures
Art. 7

(1) By way of derogation from article 4 para (1) letter a), b) and d), the persons provided for in the article 8 of the Law no. 656/2002 shall apply simplified customer due diligence measures where the customer is a credit or financial institution from a member state or, by case, a credit or financial institution situated in a third country which imposes requirements equivalent to those laid down in the Law no. 656/2002 and supervised for compliance with those requirements.

(2) By way of derogation from article 4 para (1) letter a), b) and d), the persons provided for in the article 8 of the Law no. 656/2002 may apply simplified customer due diligence measures in the following situations:

a) life insurance policies where the insurance premium or the annual installments are lower or equal to the equivalent in lei of the sum of 1,000 EUR or if the single insurance premium paid is up to the equivalent in lei of 2,500 EUR. If the periodic premium installments or the annual sums to pay are or are to be increased in such a way as to be over the limit of the sum of 1,000 EUR, respectively of 2,500 EUR, the equivalent in lei, the standard customer due diligence measures customers' identification shall be required;

(b) in acts for accessing the pension funds;

(c) in electronic money, as defined in Governmental Emergency Ordinance no. 99/2006 on credit institution and capital adequacy, approved with modifications and completions by the Law no. 227/2007 related to the products and transactions which have the following features:

1. the device cannot be recharged, the maximum amount stored in the device is no more than EUR 150 or

2. the electronic device can be recharged, a limit of the equivalent in lei of EUR 2 500 is imposed on the total amount transacted in a calendar year, except when an amount of the equivalent in lei of EUR 1 000 or more is redeemed in that same calendar year by the bearer.

Art.8

By way of derogation from article 4 para (1) letter a), b) and d), the persons provided for in the article 8 of the Law no. 656/2002 may apply simplified customer due diligence measures for the following customers:

a) companies whose securities are admitted to trading on a regulated market within the meaning of Law no. 297/2004 on capital market, with subsequent modifications and completions, in one or more Member States and listed companies from third countries

which are subject to disclosure and transparency requirements consistent with Community legislation;

b) beneficial owner of the transactions performed through collective accounts administrated by notaries and other independent legal professions from the member states or from third countries subject to requirements to combat money laundering or terrorist financing consistent with the standards provided in the Law 656/2002 and this Regulation and they supervise them for compliance with those requirements, provided that, by request, the administrators of these collective accounts to disseminate the information on the identity of the beneficial owner to the accounts depository institutions;

c) domestic public authorities;

d) the customers who have a low risk on money laundering or terrorism financing and who fulfill the following criteria:

1. they are public authorities or bodies charged with the relevant competencies based on the communitarian legislation;

2. their identity is publicly available, transparent and certain;

3. their activities and accountable evidences are transparent;

4. the customer is responsible in front of a communitarian institution or an authority within a member state or the customer's activity is under control by specific checking procedures;

Art.9

(1) By way of derogation from the provisions of the art. 4 para. 1 letter a), b) and d), the persons provided for in the art. 8 of the Law no. 656/2002 may apply simplified due diligence measures in case of products and operations connected with these that fulfill the following criteria:

a) the product is offered based on a written contract;

b) the operations related to the product is performed through an account of the customer opened with a credit institutions from member states or third countries which impose similar obligations as the ones provided by the Law no. 656/2002 and this Regulation;

c) the product or the operations connected to the product are nominatives and according to their nature allow a proper application of the provisions of the art. 4 para. 1 letter c) from this Regulation;

d) the value of the product is not over the limit provided at the art. 12 para. 1 letter a) of the Law no. 656/2002 in case of insurance policies and of the similar saving products or over the threshold of 15.000 euro or its equivalent in case of other products;

e) the beneficiary of products or connected operations cannot be a third person, excepting death, invalidity, predetermined ages or other similar situations;

f) in case that the products or connected operations allow investments in financial assets or debts, including any type of insurances or any contingent debts, if the following cumulative criteria are fulfilled:

1. the benefits of the products or of the connected operations are materialized just on a long term;

2. the product or the connected operations cannot be used as guaranty (assurance);

3. during the contractual relation, anticipated payments cannot be made, there are not provided clauses of anticipated cancellation and the contractual obligations cannot be priory cancelled.

Art.10

(1) In the situations provided for in the art. 7 and 8, the persons provided for in the art. 8 from the Law 656/2002 shall obtain adequate information about their customers and shall permanently monitor their activity in order to establish if they are framed within the category for which is provided the respective derogation.

(2) The Office shall inform the authorities with similar attribution from other member states and the European Commission about the cases in which it is considered that a third country fulfills the obligation provided for in the articles 7 and 8 or in the situation provided for in the art. 9.

Art. 11

The persons provided for in the art. 8 of the Law 656/2002 cannot apply the provisions of art. 7 – 9 in case of customers as credit institutions, financial institutions or companies of whose securities are traded on a regulated market from third countries, regarding of which the European Commission adopted a decision on this regard.

Section 3

Enhanced due diligence measures

Art. 12

(1) The persons provided for in the art. 8 from the Law no. 656/2002 shall apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the standard customer due diligence, in all situations which by their nature can present a higher risk of money laundering or terrorist financing. The applying of the enhanced due diligence measures is mandatory at least in the following situations:

a) in case of persons who are not physically present the performance of the operations;

b) in case of correspondent relations with credit institutions within third country;

c) regarding the occasional transactions or business relations with the politically exposed persons who are resident within another member state of European Union or of the European Economic Space or within a foreign state;

(2) In case provided at the para. 1 letter a) the persons provided for in the art. 8 of the Law no. 656/2002 shall apply one or more of the following measures, without that enumeration being limitative one:

a) requesting documents and additional information in order to establish the identity of the customer;

b) taking additional measures for checking and verification of supplied documents or requesting a certification from a credit or financial institution under the obligation of preventing and combating money laundering and terrorism financing equivalent with the standards provided for in the Law 656/2002 and this Regulation;

c) requesting that the first operation to be performed through an account opened on the name of the customer with a credit institution which is subject to the obligations on prevention and combating money laundering and terrorism financing equivalent with the standards provided for in the Law no. 656/2002 and this Regulation.

(3) In case provided in the para. 1 letter b), credit institutions shall apply the following measures:

a) gather sufficient information about the credit institution from a third country for fully understanding the nature of its activity and for establishing, based on the publicly available information, its reputation and the quality of supervision;

b) asses the control mechanisms implemented by the credit institution from a third country in order to prevent and combat money laundering and terrorism financing;

c) obtain the approval from executive management before establishing a new correspondent relation;

d) establish based on documents the liability of each of the two credit institutions;

e) in case of correspondent account directly accessible for the customers of credit institution from third country, it shall ensure that this institution has applied standard customer due diligence measures for all the customer who has access to these accounts and

that it is able to provide, upon request, information on the customers, data obtained following the enforcement of the respective measures.

(4) In respect of occasional transactions or business relations with politically exposed persons, the persons provided for in the art. 8 of the Law no. 656/2002 shall apply the following measures:

a) to have in place risk based procedures which allow the identification of the customers within this category;

b) to obtain executive management's approval before starting a business relationship with a customer within this category;

c) to set up adequate measures in order to establish the source of income and the source of funds involved in the business relationship or in the occasional transaction;

d) to carry out an enhanced and permanent supervision of the business relationship.

(5) The persons referred to in article 8 of Law no. 656/2002 shall pay a enhanced attention to the transactions and procedures which, by their nature, may favor anonymity or which may be linked with money laundering or terrorism financing.

Chapter III
Other procedural dispositions and sanctions

Art. 13

(1) Financial and credit institutions shall apply, according to the situation, in their branches and majority subsidiaries from other third country, customer due diligence and record keeping measures, equivalent at least with those provided for by the Law no. 656/2002 and the present Regulation..

(2) When the legislation of the third country does not allow for such equivalent measures to be applied, the credit and financial institutions shall inform the competent Romanian authorities, in accordance with the provisions of article 17 of Law no. 656/2002.

(3) When the legislation of the third country does not allow the application of the customer due diligence mandatory measures, the credit and financial institutions shall apply the necessary customer due diligence measures, in order to efficiently cope with the money laundering or terrorism financing risk.

Art. 14

(1) When the application of the customer due diligence measures is mandatory, the persons provided for in article. 8 of Law 656/2002 shall keep a copy of the document used, as proof of identity or identity reference, for a period of at least 5 years, starting with the termination date of the relationship with the customer.

(2) The persons provided for in article. 8 of Law 656/2002 shall keep, in an adequate format so it can be used as evidence in court, secondary or operative evidence and recordings of all financial transactions within the business relationship or occasional transaction, for a period of at least 5 years starting from the termination of the business relationship, respectively of performing the occasional transaction.

Art. 15

(1) The persons referred to in article 8 para (a)-(d), (g)-(j), as well as the leading structures of the liberal legal professions provided for in article 8 para (e) and (f) of Law no. 656/2002 shall designate, by internal decision act draw up in accordance with the Annex part in the present Regulation, one or more persons with responsibilities in the enforcement of Law no. 656/2002 and the present Regulation, whose name shall be transmitted to the Office,

together with the nature and extent of the mentioned responsibilities. The internal decision act shall be transmitted to the Office either directly or by post with receipt confirmation.

(2) The persons provided for in para (1) shall establish adequate politics and procedures on customer due diligence, reporting and record keeping of secondary and operative evidence, internal control, assessing and managing the risks, conformity management and communication in order to prevent and hamper the money laundering and terrorism financing suspicious transactions, ensuring the proper training of the employees. Credit and financial institutions are obliged to designate a conformity officer, subordinated to the executive management, which coordinates the implementation of the internal politics and procedures for the application of the Law no. 656/2002 and the present Regulation.

(3) The persons designated in accordance with para (1) and (2) are responsible for the carrying out of the responsibilities established for the application of Law no. 656/2002.

(4) The provisions of para (1) -(3) are not applicable to natural and legal persons provided for in article 8 (k) of Law no. 656/2002.

(5) The financial and credit institutions must inform all their branches and subsidiaries from the third countries about the politics and procedures set up in accordance with para (2)..

Art. 16

Credit and financial institutions are obliged to keep in place internal procedures and to have systems which allow the promptly transmission, by Office's or prosecution bodies request, of the information regarding the identity and the nature of the relationship for the customers specified in the request, with which a business relationship is or has been in progress in the last 5 years.

Art.17

(1) The reports provided for in article 3 para (1) of Law no. 656/2002 shall be forwarded to the Office immediately, and those provided for in article 3 para (6) and (7) of Law no. 656/2002, in 10 working days at most, based on a working methodology specially set up for this purpose by the Office.

(2) The Office establishes, by an internal working procedure, a system for carrying out the financial analyses, which shall be periodically adapted, based on the identified risk indicators.

Art. 18

(1) The Office shall inform the authorities with similar attribution from other member states and the European Commission about the cases of third countries which are thought not to fulfill the requirements provided for in article 18 para (4) (b)-(d) of Law no. 656/2002.

(2) The Office shall inform the European Commission about the cases when a third country is in the situation described in article. 13 para (3).

(3) The Office shall inform the authorities with similar attribution from other member states and the European Commission about the case of a third country which is thought to impose the enforcement of customer due diligence and record keeping procedures equivalent with those provided for in article 656/2002 and the present Regulation, and the enforcement of these is supervised in a manner equivalent with that regulated by the Law no. 656/2002 and the present Regulation.

Art. 19

(1) The breaching of the dispositions of article 6 para (3) and (4), article (10) para. 1, article 13 para (2) and (3) and article 16, by the persons referred to in article 8 of Law no. 656/2002, constitutes infringement and is sanctioned by fine between 10,000 lei and 30,000 lei.

(2) The dispositions of art.22 para (3)-(5) of Law nr.656/2002 are applicable in accordance.

Regulation' Annex

The name of the legal person:.……
Unique Identification Code…….
Registration number with the NRT
Main premises…..……
Telephone/fax…..…….

To:

National Office for Prevention and Control of Money Laundering

The legal person…….……. represented by (manager / director / president - name surname, PIN) ……..……., with the main activity object of (name and CAEN)……., in accordance with the provisions of art. 14 of Law nr. 656/2002 for the prevention and sanctioning of money laundering, and for setting up certain measures for the prevention and combat of terrorism financing, with subsequent modifications and completions, empowers (name and surname of one or more persons, holder/holders of ID……, series……., no.…… PIN……in the relationship with National Office for Prevention and Control of Money Laundering, with responsibilities in the application of the Law mentioned above. In order to fulfill the provisions of Law no. 656/2002, with subsequent modifications and completions, the designated person/persons shall have the following responsibilities:

……..
……..

STAMP
SIGNATURE

*Note:
- one sample shall be sent to the Office
- one sample shall be kept at the issuer's premises