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Regulations of the Banking, Finance and Insurance Commission
on preventing money-laundering and the financing of terrorism

The Banking, Finance and Insurance Commission,

Having regard to the law of 11 January 1993 on preventing the use of the financial system for the purposes of laundering money and financing terrorism, more particularly to Articles 4, § 6, 5, § 2, *6bis*, second paragraph, 10, second paragraph, and *21bis*,

Having regard to Article 20 of the law of 22 March 1993 on the status and supervision of credit institutions,

Having regard to Article 62 of the law of 6 April 1995 on the legal status and supervision of investment firms, investment intermediaries and investment advisers,

Having regard to Article *14bis* of the law of 9 July 1975 on the supervision of insurance companies,

Having regard to the law of 2 August 2002 on the supervision of the financial sector and financial services, more particularly to Articles 64 and 49, § 3,

Ordains:

Chapter 1 – Definitions

Article 1.

For the purpose of the present regulations:

- 1° ‘the Law’ shall be taken to mean the law of 11 January 1993 on preventing the use of the financial system for the purposes of laundering money and financing terrorism;
- 2° ‘company’ shall be taken to mean a company or person falling under one of the categories listed in Article 2;
- 3° ‘business relationship’ shall be taken to mean a business relationship in the sense of Article 4, § 1, first paragraph, 1° of the Law;
- 4° ‘occasional transaction’ shall be taken to mean a transaction as contemplated in Article 4, § 1, first paragraph, 2° of the Law;
- 5° ‘economic beneficial owner’ shall be taken to mean a person as contemplated in Article 5 of the Law, for whom the customer seeks to enter into a business relationship or to execute a transaction;
- 6° ‘trust’ shall be taken to mean a trust that is established according to a clearly formulated expression of the will of its settlor, generally in the form of a document (‘express trust’), with the exception of a trust established through the operation of the law, without a clear expression of the will of a settlor;
- 7° ‘atypical transaction’ shall be taken to mean a transaction that is especially susceptible to money-laundering or the financing of terrorism in the sense of Article 8, first paragraph of the Law, more particularly because of its nature, the accompanying circumstances, the capacity of the persons involved, its unusual

character – given the activity of the customer – or because it does not appear to be in line with the knowledge the company has of its customer, his professional activities and his risk profile, and, where necessary, the origin of the money;

- 8° ‘first-line monitoring’ shall be taken to mean the monitoring of business relationships or occasional transactions with customers conducted by officers directly in contact with them, with the intention of detecting atypical transactions;
- 9° ‘second-line monitoring’ shall be taken to mean the monitoring conducted through the monitoring system as contemplated in Article 37, with the intention of detecting atypical transactions.

Chapter 2 - Field of application *ratione personae*

Article 2.

The provisions of the present regulations shall apply to companies and persons listed below:

- 1° credit institutions and the branches established in Belgium of credit institutions of foreign law, as contemplated in Article 2, first paragraph, 2° of the Law;
- 2° investment firms as contemplated in Article 2, first paragraph, 3°, 6°, 8° and 19° of the Law;
- 3° branches established in Belgium of investment firms of foreign law, as contemplated in Article 2, first paragraph, 15° and 16° of the Law;
- 4° insurance undertakings as contemplated in Article 2, first paragraph, 4° of the Law;
- 5° investment advice firms as contemplated in Article 2, first paragraph, 9° of the Law;
- 6° persons as contemplated in Article 2, first paragraph, 10° of the Law who engage in manual exchange transactions and/or wire transfers;
- 7° mortgage companies as contemplated in Article 2, first paragraph, 11° of the Law;
- 8° market operators as contemplated in Article 2, first paragraph, 20° of the Law, for the cases where the exemption from the obligation to identify, as contemplated in Article 6 of the Law, does not apply;
- 9° insurance brokers as contemplated in Article 2, first paragraph, 22° of the Law;
- 10° specialists in derivatives, established in Belgium, as contemplated in Article 45*bis* of the law of 6 April 1995 on the status and supervision of investment firms, investment intermediaries and investment advisers.

Chapter 3 – Identification of customers

Article 3.

A company and a customer enter into a business relationship in the sense of Article 4, § 1, first paragraph, 1° of the Law where they conclude a contract in execution of which, during a determined or undetermined period, various consecutive transactions between them will be executed or whereby a number of continuing commitments arise.

There is likewise a question of entering into a business relationship in the sense of Article 4, § 1, first paragraph, 1° of the Law where a customer, without concluding a contract as contemplated in the first paragraph of the present Article, regularly has recourse to the same company for the execution of a number of separate and consecutive financial transactions.

Article 4.

Where a company and a customer enter into a business relationship with the sole purpose of issuing and using electronic money in the sense of Article 3, § 1, 7° of the law of 22 March 1003 on the status and supervision of credit institutions, that company shall be

exempt from the obligation to identify its customer where the capacity of the electronic carrier made available to him to make payments is limited to a maximum of 150 euros.

Where, however, the customer subsequently requests reimbursement of more than 10 euros of the electronic money issued, the company shall, in accordance with Article 4, § 1 of the Law, still be obliged to identify that customer.

Article 5.

With a view to complying with its obligation to identify the customer in accordance with Article 4, § 1 first paragraph, 1° of the Law, the company is required to take all appropriate measures to prevent anonymous accounts or accounts under a pseudonym or false name being opened for customers, as well as to monitor compliance with this injunction.

Customers may be given a numbered account only provided a number of specific conditions laid down by the company for opening and using such an account are complied with, and without prejudice to the application of Articles 4, 5, *6bis*, 7 and 8 of the Law.

Article 6.

Where a business relationship has already been entered into with the customer, he is not required to be identified in accordance with Article 4, § 1, first paragraph, 2° of the Law.

Article 7.

A customer is required to be identified in accordance with Article 4, § 1, first paragraph, 3° of the Law:

- 1° where, after identification in respect of the entering-into of a business relationship, suspicions arise that the identification data supplied by him are incorrect or false;
- 2° where there is doubt whether the person seeking to execute a transaction within the context of a business relationship previously entered into is actually the customer or agent identified at the time.

Article 8.

- § 1. Where the customer is a natural person, his identity is required to be verified on the basis of his identity card at the time of his face-to-face identification, in accordance with Article 4, §1 of the Law. Where the customer is a natural person with place of residence abroad, his identity may also be verified on the basis of his passport.

The identity of persons of foreign nationality established in Belgium who are not in possession of an identity card issued by the Belgian authorities because of their legal status on Belgian territory may be verified on the basis of a valid proof of registration in the Register of Aliens or, where – because of their status – they are not in possession of such a proof, on the basis of a valid document issued by the Belgian authorities that certifies the legality of their stay in Belgium.

- § 2. At the time of remote identification of a customer who is a natural person, verification of his identity in accordance with Article 4, § 1 of the Law is required to be conducted on the basis of:

- 1° the customer's electronic identity card;
- 2° a qualified certificate in the sense of the law of 9 July 2001 recording specific rules concerning the legal framework for electronic signatures and certification services, and in the sense of Directive 1999/93/EC of the European Parliament and the Council of 13 December 1999 on a common framework for electronic signatures, insofar as:
 - a. the qualified certificate is issued by:
 - a certification service established in a Member State of the European Economic Area and is accredited for the purpose in accordance with the provisions of the European Directive on electronic signatures, or

- another certification service established in a Member State of the European Economic Area and whose certificates the company concerned has already previously resolved to accept as supporting documents following prior and documented investigation into that service's reputation and certification procedures, or
 - another certification service established in a third country that complies with the conditions of Article 16, § 2 of the aforementioned law of 9 July 2001 and whose certificates the company concerned has already previously resolved to accept as supporting documents following prior and documented investigation into that service's reputation and certification procedures;
- b. the procedure for issuing the qualified certificate of identity entails face-to-face identification of the customer by the certification service itself or, in accordance with its procedures, a person it empowers for the purpose;
 - c. the qualified certificate is not issued under a pseudonym;
 - d. the company verifies forthwith, systematically and automatically whether the certificate presented has not lapsed or been revoked by the certification service that issued it.
- 3° or a copy of a supporting document that he has presented to the company, insofar as the identification occurred with a view to the entering-into of a business relationship.

Companies are required periodically, on the basis of an update of the information they retain, to review their decisions to admit certificates issued by the certification services contemplated in the first paragraph, 2°, a, second and third point.

- § 3. Where the address of the customer is not mentioned on the supporting document he presents, or where the company is not equipped with the requisite technical means to take note or make a copy of the address on the basis of the electronic identity card presented, or where it doubts the accuracy of the address given, the company is required to verify the information on the basis of another document that can serve as proof of the actual address of the customer and is required to make a copy of that document.

In respect of customers with place of residence in Belgium, companies with access to the State Register are required to conduct that verification by checking the customer's identification data against that customer's data in the Register.

Where no second document is available that can serve as proof to verify the address against, as laid down in the first paragraph, the company may conduct that verification by sending the customer a letter at the address he has given and by allowing the business relationship to commence or the intended occasional transaction to be executed only after the customer has returned a proof of receipt.

Where there is no possibility of obtaining a second document that can serve as proof to verify the address of a customer with place of residence abroad who seeks to perform one or more wire transfers, the total amount of which does not exceed 1 000 euros, verification may be conducted on the basis of a written and signed declaration from the customer, save where the company suspects that the money transfer(s) is(are) linked to money-laundering or the financing of terrorism.

- Article 9.** § 1. Where the customer is a legal person under Belgian law, its identity is required to be verified, at the time of its identification in accordance with Article 4, §1 of the Law, on the basis of the following supporting documents:

1° the most recent version of the co-ordinated Articles of Association or the updated Articles of Association of the legal person/customer, lodged with the Registry of the Commercial Court or published in the Appendices to the Belgian Official Gazette;

- 2° the list of directors of the legal person/customer and the publication of their appointment in the Belgian Official Gazette, or any other supporting document that can serve as proof of their capacity as director, such as any publication in the Belgian Official Gazette in which the persons are mentioned or any annual accounts lodged with the National Bank of Belgium;
- 3° the most recent publication in the Belgian Official Gazette of the powers of representation of the legal person/customer.
- § 2. Where the customer is a legal person under foreign law, its identity is required to be verified, at the time of identification in accordance with Article 4, § 1 of the Law, on the basis of equivalent supporting documents, as stated in § 1 of the present Article and that, where necessary for the company, are translated into one of the national languages or English.

Article 10. Where the customer is a trust, an unincorporated association, a *fiducie* (trust-like structure) or other legal structure without legal personality, the company, for the purpose of identification, is required to take cognizance of its existence, nature, purpose and method of governance and representation, to verify that information on the basis of documents that can serve as proof and to make copies of those documents.

That identification is required to include the company taking cognizance of the list of persons authorized to exercise governance of such customers and verifying that information on the basis of a document that can serve as proof.

Article 11. Where the customer is a community of rights (parcenary), the obligations to identify and verify its identity in accordance with Article 4, § 1 of the Law shall bear on each coparcenor. Where there is a division of rights, those obligations shall bear on the usufructuaries, lessees or superficiaries.

Article 12. In order to identify the purpose and nature of the business relationship, the company is required to verify and take cognizance of the types of transaction that the customer wishes to have recourse to it for, as well as to verify and take cognizance of all relevant information that can provide an insight into the customer's purpose in entering into the business relationship.

Article 13. In respect of the identification of a customer as contemplated in Article 4, § 1, first paragraph, 1° and 2° of the Law, the company is required to gather and register all information necessary for application of the customer-acceptance policy in accordance with Chapter 6 and with a view to compliance with the obligation of due diligence vis-à-vis business relationships and occasional transactions in accordance with Chapter 8.

Article 14. Without prejudice to the identification of the customer, the persons acting in its name and on its account, no matter in what capacity, are also required to be identified in accordance with Article 4, § 1 of the Law and the provisions of the present Chapter.

Furthermore, the company is required to verify what powers of representation have been granted to the persons acting in the name of the customer and to verify that information on the basis of supporting documents. The company is required to make a copy of such documents.

The present Article contemplates particularly:

- the legal representatives of customers incapable of acting;
- persons who, by virtue of general or special authority, are authorized to act in the name of the customer;

- persons authorized to represent a customer in its relations with the company, where the customer is a legal person, an unincorporated association, a trust, a *fiducie* or any other legal structure without legal personality.

Chapter 4 – Identification of the economic beneficial owners

Article 15, § 1. Identification of the economic beneficial owners in accordance with Article 5 of the Law is required to be on the basis of the identification data laid down in Article 4, § 1, second paragraph of the Law, though with the exception of the purpose and the presumed nature of the business relationship.

§ 2. The company is required to take all reasonable measures to verify the identity of the economic beneficial owners on the basis of the documents as contemplated in Articles 8, 9 and 10.

Where the company is unable to verify the identity of the economic beneficial owners on the basis of those documents, it is required to take all reasonable measures to conduct that verification on the basis of other documents or sources of information in which reasonable credence may be placed.

Where, in reasonable terms, it is not possible to verify the identity of the persons concerned, the company is required to prepare a report on the matter and to retain that report in the identification file of the customer.

Article 16, § 1. Where the customer is a commercial enterprise or an enterprise in commercial form, ‘economic beneficial owners’ shall be taken to mean:

- the natural persons who control the company *de jure* or *de facto*, or directly or indirectly, as well as
- the persons who, without being authorized to represent the customer in its relations with the company, hold office in its governing body.

§ 2. Where the customer is a company of Belgian law, ‘natural persons who control the company *de jure* or *de facto*, or directly or indirectly’ shall be taken to mean the persons referred to in Articles 5 to 9 of the Companies Code.

The company is required to take all reasonable measures to check the list of economic beneficial owners as contemplated in the first paragraph:

- in the case of a partnership, against the register of partners, or
- in the case of a company with share capital, against the register of registered shares, or, in the case of book-entry shares, against a declaration of the account-holder or, in the case of bearer shares, against the attendance list of the last but one and the last general meeting of shareholders.

§ 3. Where the customer is a company of foreign law, the company is required to take all reasonable measures to check the list of economic beneficial owners as contemplated in § 1, first point, against any document that may serve as proof in accordance with the legislation applying to that customer/company.

Article 17. Where the customer is a legal person, but not a commercial enterprise or an enterprise in commercial form as contemplated in Article 16, ‘economic beneficial owner’ shall be taken to mean the persons who, without being authorized to represent the customer in its relations with the company, hold office in its governing body.

Article 18. Where the customer is a trust or a *fiducie*, ‘economic beneficial owner’ shall be taken to mean:

- 1° the persons who, in the deed of incorporation of the trust or *fiducie*, or in another official document, are designated by name as the persons on behalf of whom the trust or *fiducie* is being administered;
- 2° the persons on behalf of whom the trust or *fiducie* is being administered, even where they are not designated by name in the deed of incorporation of the trust or *fiducie*, or in any other official document, where, on the grounds of available information on the trust or *fiducie* concerned, or on the grounds of other relevant circumstances, the company has reason to believe that the reference *in abstracto* to the beneficiaries is particularly with a view to concealing their identity;
- 3° with the exception of the trustee as contemplated in Article 14 and of the economic beneficial owners as contemplated in 1° and 2° of the present paragraph, the persons who, without being authorized to represent the trust or *fiducie* in its relations with the company, have power to influence its administration.

The company is required to take all reasonable measures to check the list of economic beneficial owners, as contemplated in the first paragraph, against the deed of incorporation of the trust or *fiducie*, or against any other document that can serve as proof.

The company is required to take all reasonable measures to determine the list of economic beneficial owners, as contemplated in the first paragraph, 2°, on the basis of all available information to which reasonable credence may be given.

Article 19. Where the customer is an unincorporated association or any other legal structure without legal personality, ‘economic beneficial owners’ shall be taken to mean the persons who have the power to exert considerable influence on its administration, with the exception of those persons authorized to represent the association vis-à-vis the company.

Article 20. Where there is a division of rights, the obligation to identify the economic beneficial owners implies that the naked owners, the owners in respect of a lease-holding agreement and the landowner in respect of a superficies agreement are required to be identified and that their identity is required to be verified in accordance with Article 5 of the Law.

Article 21. The identification and verification of the identity of the beneficiary of a life assurance policy in accordance with Article 5 of the Law is required to occur no later than the time when the beneficiary exercises his right to payment under the policy and before that payment is made.

Article 22. § 1. Where the customer is a person as contemplated in Article *2bis*, 1° or 2°, or Article *2ter* of the Law, the company is not required to identify or verify the identity of customers of that person for whose account he is acting.

§ 2. Companies that provide services in respect of payment clearing and/or settlement of payments or financial transactions, and that institute appropriate procedures enabling them to verify whether the participants for whom they provide those services apply adequate measures for preventing money-laundering and the financing of terrorism, are not obliged, in respect of that activity, to identify or verify the identity of the customers of the participants for whom they provide those services.

Chapter 5 – Intermediation of third parties for the identification of customers and economic beneficial owners

Section 1 – Intermediation of an agent or mandatory

Article 23.

A company that has recourse to agents or mandataries in respect of the entering-into and maintaining of business relationships with customers or of the execution of occasional transactions for customers is required to provide those intermediaries in writing with the procedures that, in accordance with the Law and the present regulations, they are required to comply with regarding the identification and verification of the identity of customers. In addition, the company is required to ensure that there is appropriate monitoring of compliance with those procedures.

Where a company works with such intermediaries, it shall be without prejudice to its personal responsibility for compliance with the provisions of the Law and the present regulations.

Section 2 – Intermediation of a third-party business introducer

Article 24.

‘Third-party business introducer’ in the sense of Article 4, § 4 of the Law shall be taken to mean a credit institution or financial institution as contemplated in that Article, acting without an agent, mandatory or sub-contractor agreement with the company concerned.

Article 25.

The intermediation of a third-party business introducer as contemplated in Article 4, § 4 of the Law and Article 24 of the present regulations shall be subject to the following conditions:

- 1° the company is required to verify in advance that the third-party business introducer satisfies the conditions of Article 4, § 4 of the Law and to retain the documentation on which it based that verification;
- 2° the third-party business introducer is required to undertake in advance to provide forthwith the identification data of customers or economic beneficial owners that it proposes to introduce, as well as to provide the company, upon request, a copy of the documents on which it based verification of their identity.

Article 26. § 1.

Companies may have recourse to a third-party business introducer that satisfies the conditions of Article 25 of the present regulations, in order to comply with:

- their obligation in respect of identifying and verifying the identity of the customers introduced, as well as their obligation to identify the purpose and presumed nature of the business relationship, in accordance with Article 4, § 1 of the Law;
- their obligation in respect of identifying and verifying the economic beneficial owners, in accordance with Article 5 or the Law;
- their obligation in respect of gathering the other information as contemplated in Article 13;
- their obligation in respect of gathering the requisite information in order to comply with their obligation of constant due diligence, as set out in Article 35.

- § 2. However, recourse may be had to a third-party business introducer to comply with the obligations listed under § 1 only where that introducer has identified the customer personally fact to face and not where that introducer, in turn, has had that verification conducted by another third-party business introducer or where that introducer has identified the customer remotely.

- § 3. Where a company has entered into a business relationship with or has executed an occasional transaction for a customer identified through the intermediation of a third-party business introducer, it is required to request that third-party business introducer to provide it with the information and, as the case may be, the documents as contemplated in Article 25, 2°, and is required to verify whether the request has been properly complied with.

Article 27. Where a third-party business introducer is a credit institution or financial institution of foreign law, the company shall be deemed to have complied with its obligation in respect of identifying and verifying the identity of introduced customers where the third-party business introducer has conducted the identification and verification of identity in accordance with the legislation that introducer is subject to. More particularly, the documents on the basis of which the third-party business provider has validly conducted verification of his own customer's identity in accordance with the legislation that introducer is subject to shall be deemed to be supporting documents in the sense of Article 4, § 1 of the Law.

Article 28. Recourse to a third-party business introducer shall be without prejudice to the responsibility of the company to verify that the third-party business introducer has conducted the identification and verification of the identity of the introduced customer or the economic beneficial owner in full and correctly, in accordance with the legislation that introducer is subject to, and, where necessary, to conduct a supplementary or even completely new identification and verification of identity; in that case, the company is required to conduct the supplementary or completely new identification and verification of identity in accordance with the provisions of the Law and the present regulations.

Section 3 – Identification of persons concluding a life assurance contract through the intermediation of an assurance broker as contemplated in Article 2, 22° of the Law

Article 29, § 1. Where a customer concludes a life assurance contract with an assurance enterprise as contemplated in Article 2, 4° of the Law through the intermediation of an assurance broker as contemplated in Article 2, 22° of the Law, the latter may conduct the identification and verification of the identity of the customer on his own behalf and on behalf of the enterprise simultaneously. This also applies for the identification and verification of the identity of the economic beneficial owner of a life assurance contract where that owner has recourse to an assurance broker, as contemplated in Article 2, 22° of the Law, for payment by an assurance enterprise, as contemplated in Article 2, 4° of the Law, of the amount referred to in a life assurance contract.

In such cases, the assurance broker is required to provide the assurance enterprise forthwith with the identification data of the customer or the economic beneficial owner, as well as with a copy of the supporting documents on the basis of which the identity of the customer or the economic beneficial owner was verified.

The intermediation of the assurance broker shall be without prejudice to the responsibility of the assurance enterprise to verify that the assurance broker has conducted the identification and verification of the identity of the customer or the economic beneficial owner in full and correctly, and, where necessary, to conduct a supplementary or even completely new identification and verification of the identity of the customer or the economic beneficial owner.

- § 2. Where the economic beneficial owner of a life assurance contract has recourse directly to the assurance company for payment of the amount referred to in the said life assurance contract, the assurance enterprise itself is required to identify and verify the identity of the economic beneficial owner.

Chapter 6 – Customer-acceptance policy

Article 30.

The company is required to develop and apply a customer-acceptance policy, appropriate to its activities, that will enable it to co-operate fully in preventing money-laundering and the financing of terrorism by taking appropriate cognizance of and instituting an investigation into the distinguishing characteristics of new customers that have recourse to it and/or of the services or transactions that customers have recourse to it for, particularly in respect of the risk of becoming involved in money-laundering or the financing of terrorism.

On the basis of the characteristics of the products and services it offers and the customers it directs itself towards, each company is required, in its customer-acceptance policy and on the basis of criteria it sets itself in order to establish an appropriate scale of risks, to establish categories linked to various levels of requirement.

Article 31.

The customer-acceptance policy is required to be so conceived that a politically exposed person seeking to enter into a business relationship with the company or to have recourse to the company for the execution of an occasional transaction can be accepted as a customer only after thorough investigation and after a decision on the matter is taken at an appropriate hierarchical level.

Before a politically exposed person can be accepted as a customer, reasonable measures are required to be taken in order to discover the origin of the monies employed or to be employed within the context of the business relationship or in the execution of the proposed occasional transaction.

To be considered as politically exposed persons are those persons who, whether in Belgium or abroad, exercise or have exercised important public functions, more particularly:

- Heads of State;
- government leaders;
- members of parliament;
- chairmen of political parties represented in a government;
- senior civil servants, senior officers of the armed forces and senior members of the judiciary;
- leaders of public corporations of national importance;
- senior political officials and senior officials of international or supranational bodies, such as the European Union, the North Atlantic Treaty Organization or the United Nations Organization.

The spouses and the direct ascendants and descendants of politically exposed persons, as well as companies or enterprises closely connected to politically exposed persons, are required to be regarded as themselves being politically exposed persons.

The customer-acceptance policy is required to specify the criteria and methods whereby it can be determined whether a customer is a politically exposed person.

Article 32.

The customer-acceptance policy is required to be so conceived that other persons who might represent a specific risk can be accepted as customers only after thorough investigation and after a decision on the matter is taken at an appropriate hierarchical level, more particularly those:

- who ask to open a numbered account as contemplated in Article 5, second paragraph;
- who request asset management services;

- who are resident or domiciled in a country or territory deemed by the Financial Action Task Force as not co-operating in the prevention of money-laundering;
- who are natural persons identified remotely on the basis of a copy of a supporting document;
- or who, in application of the criteria contemplated in Article 30, represent a specific risk.

Article 33, § 1. Where the customer is a credit institution or financial institution of foreign law, other than the institutions contemplated in Article 6 of the Law, the customer-acceptance policy is required:

- 1° to prohibit a business relationship being entered into with or an occasional transaction being executed for such an institution;
 - a. where it has no effective establishment in the State where its registered office is situated and is not affiliated to a financial group subject to regulation satisfying the Financial Action Task Force and subject to effective monitoring at consolidated level;
 - b. or where it does not exclude the possibility of entering into a business relationship with or executing transactions for establishments or institutions contemplated in a. above;
- 2° to state that the decision to enter into a business relationship or execute a proposed transaction is required to be made on the basis of a file containing:
 - a. full identification of the credit institution or financial institution of foreign law, including a description of the nature of its activities;
 - b. the elements on the basis of which the company has verified whether the credit institution or financial institution of foreign law is not contemplated by 1° of the present paragraph;
 - c. all useful, publicly available information on the basis of which the company has based its assessment of the reputation of the credit institution or financial institution of foreign law, including information regarding any investigations or measures on the part of local authorities concerning shortcomings of the credit institution or financial institution of foreign law in respect of preventing money-laundering and the financing of terrorism;
 - d. all useful, publicly available information concerning the compliance with the forty recommendations of the Financial Action Task Force and with the legal and regulatory provisions and mechanisms in respect of the combating of money-laundering and the financing of terrorism of the State where the credit institutions or financial institution of foreign law is established;
- 3° to authorize a relationship being entered into with a correspondent bank only where:
 - a. the purpose and nature of the proposed relationship and the respective responsibilities of the company and the credit institution or the financial institution of foreign law within the context of that relationship are laid down beforehand in writing;
 - b. the decision to enter into a business relationship that, by reason of its purpose or its nature, is susceptible to specific risks in respect of money-laundering and the financing of terrorism is based on a satisfactory evaluation of the controls put in place by the credit institution or financial institution of foreign law in respect of preventing money-laundering and the financing of terrorism;
 - c. in the case of payable-through accounts being required to be opened at the credit institution or financial institutions of foreign law, that institution has

given a prior written guarantee that, on the one hand, it has verified the identity of and taken the requisite due diligence measures in respect of customers who have direct access to those accounts and, on the other, it is in a position, when requested, to provide forthwith the identification data of those customers, which it undertakes to do;

4° to lay down that the decision to enter into a business relationship or execute the proposed occasional transaction for the credit institution or financial institution of foreign law be required to be taken at an appropriate hierarchical level.

§2. Companies that have entered into a business relationship with a credit institution or financial institution of foreign law as contemplated in § 1 are required:

- periodically, in accordance with the risk, to review the information on the basis of which they decided to enter into a business relationship, and, as the case may be, to update that information;
- to re-examine the business relationship, where they have information that could undermine their confidence in the legal and regulatory provisions of the country of establishment of the financial institution/customer in respect of preventing money-laundering and the financing of terrorism, or their confidence in the efficiency of the controls put in place by that institution in respect of combating money-laundering and the financing of terrorism;
- periodically, in accordance with the risk, to carry out controls and tests in order to verify whether the financial institution/customer is still complying with the commitments it undertook, more particularly where it is required to provide forthwith the pertinent identification data of its customers who have direct access to the pay-through accounts opened for it.

Chapter 7 – Specific provisions for business relationships with and occasional transactions executed for customers identified remotely

Article 34.

Without prejudice to the provision of Article 8, § 2 concerning the remote identification of customers and the provisions of Chapter 8 concerning the obligation of due diligence vis-à-vis business relationships and occasional transactions, companies that enter into a business relationship with or execute an occasional transaction for natural persons/customers they have identified remotely are required to institute procedures that:

- prohibit a business relation being entered into with or an occasional transaction being executed for a customer identified remotely, where there are reasons to suspect that the customer is attempting to avoid face-to-face contact in order more easily to conceal his identity, or where they suspect that he intends to executed transactions in respect of money-laundering or the financing of terrorism;
- in accordance with the risk, lay down specific supplementary measures to verify the identification data obtained on the basis of the supporting document as contemplated in Article 8, § 2;
- in accordance with the risk, lay down the obligation to verify, within a reasonable period, the identity of the customer identified on the basis of a supporting document as contemplated in Article 8, § 2, 3° against another supporting document as contemplated in Article 8, § 1 or § 2, 1° or 2°;
- aim at progressively gaining a better knowledge of the customer;
- exclude transactions that work with cash, with the exception of those transactions where money is withdrawn via a cash dispenser from a current account opened in the name of a customer identified on the basis of a supporting document as contemplated in Article 8, § 2, 1° or 2°;

- exclude transactions that work with financial instruments represented by bearer securities.

Chapter 8 – Obligation of due diligence vis-à-vis business relationships and occasional transactions

Article 35.

For the companies concerned, the obligation of constant due diligence as contemplated in Article 4, § 2 of the Law includes the obligation to verify and, as the case may be, update, within a period determined in accordance with the risk, the identification data and the other data contemplated in Article 13 that they maintain on customers with which they have entered into a business relationship, where they have indications that the data is no longer up to date.

In respect of the updating of the identification data as contemplated in Article 4, § 1, second paragraph of the Law, the new data are required to be verified on the basis of a supporting document in the sense of Article 4, § 1 of the Law, of which a copy is required to be made on paper or electronic carrier.

Article 36.

Officers charged with first-line monitoring are required to be notified in writing by their companies of appropriate criteria that ought to enable them to detect atypical transactions to which those officers are required to pay particular attention and about which they are required to prepare a written report as contemplated in Article 8, second paragraph of the Law.

In respect of the investigation contemplated in Article 8, first paragraph of the Law, particular attention is required to be given to the apparent economic justification and the legitimacy of the transactions.

Officers charged with first-line monitoring are also required to be notified in writing by their companies of the procedure to be followed regarding submission of written reports to the officer for preventing money-laundering and the financing of terrorism, as contemplated in Article 19 of the Law, including the term within which submission is required to be made.

Article 37.

Companies are required to supplement first-line monitoring with second-line monitoring through a monitoring system enabling atypical transactions to be detected.

The monitoring system is required:

- to embrace all the customers' accounts and transactions;
- to be based on precise and pertinent criteria laid down by each company separately on the basis of particularly the typical features of the products and services the company offers, as well the typical features of the customers it directs itself towards, and which criteria are so refined as to be able effectively to detect atypical transactions;
- to permit rapid detection of such transactions;
- to produce written reports containing a description of the atypical transactions detected and indicating which of the criteria contemplated in the second point of the present paragraph serves or serve as a basis for the transactions to be deemed atypical; the reports are required to be submitted to the officer for preventing money-laundering and the financing of terrorism, as contemplated in Article 10 of the law;
- to be automated, save where the company can demonstrate that the nature and volume of the transactions are such as not to require automation of the monitoring system;

- to be subject to an initial validation procedure and thereafter to be regularly reviewed for its pertinence with a view to adapting it, if necessary, to the development of activities, customers or the contextual circumstances.

More particularly, the criteria contemplated in the second point of the preceding paragraph are required to take account of the specific risk regarding money-laundering and the financing of terrorism that attaches to transactions that:

- are executed by natural persons/customers remotely;
- are executed by customers whose acceptance is subject to stricter rules, pursuant to the customer-acceptance policy contemplated in Chapter 6;
- concern amounts that are unusual in absolute terms or given the customary practice of the customer concerned, considered within the context of his relationship with the company.

Constituting an atypical transaction in the sense of the present article is a wire transfer or funds transfer received for the customer, for which the correct and practical information regarding the originator is lacking.

Article 38.

Companies are required to apply the necessary resources and develop appropriate procedures with a view, under the responsibility of the officer for preventing money-laundering and the financing of terrorism, to proceeding as rapidly as possible to the analysis of the written reports contemplated in Article 8, second paragraph of the Law, submitted to him in accordance with Articles 36 and 37, in order to determine whether the transactions or facts reported are required to be notified to the Financial Intelligence Processing Unit, in accordance with Articles 12 to 14 of the Law.

The written report, its analysis and the decision arising from the analysis in application of Articles 12 to 14 of the Law are required to be kept on record in the manner contemplated in Article 7, first paragraph of the Law.

Chapter 9 – Appointment and role of the officer for preventing money-laundering and the financing of terrorism

- Article 39,** § 1. At each company, the officer(officers) for preventing money-laundering and the financing of terrorism, as contemplated in Article 10 of the Law, is(are) required to be appointed by the body charged with the effective management of the company, after it has verified whether the person(persons) appointed possesses(possess) the requisite professional trustworthiness to be able to carry out the function with integrity.
- § 2. The officers appointed in accordance with § 1 are also required to have, within the company, the professional experience, hierarchical level and competences necessary to be able to function effectively and independently.
- § 3. The officers for preventing money-laundering and the financing of terrorism are required to ensure in general that the company complies with all its obligations regarding the prevention of money-laundering and the financing of terrorism, and in particular that it provides an appropriate administrative organization and internal control regarding the matter. They shall be authorized, on their own initiative, to propose all necessary or useful measures to the body charged with the effective management of the company, including the release of the necessary resources.

More particularly, they are required, on their own initiative, to develop and implement procedures regarding the analysis of the written reports drawn up in accordance with Article 8, second paragraph of the Law and regarding notification of information to the Financial Intelligence Processing Unit in accordance with Articles 12 to 14 of the Law.

They are required to monitor the training and sensitization of staff, in accordance with Article 9 of the Law and Article 40 of the present regulations.

They are the privileged contact persons – together with, as the case may be, the compliance officer – for the Banking, Finance and Insurance Commission and for the Financial Intelligence Processing Unit in respect of all questions concerning the prevention of money-laundering and the financing of terrorism.

§ 4. The officers for preventing money-laundering and the financing of terrorism are required to draw up an activity report at least once a year and submit it to the body charged with the effective management of their company. That report is required to enable that body correctly to assess the extent of the detected attempts to launder money or finance terrorism, to assess the adequacy of the administrative organization and internal controls put in place and to assess the co-operation of the services of the company in prevention.

A copy of the annual activity report is required to be systematically submitted to the Banking, Finance and Insurance Commission and, as the case may be, to the company's accredited auditor. Although the companies contemplated in Article 2, 9° are exempt from this obligation to submit their annual activity reports, they are nevertheless required to make their five latest annual reports available to the Banking, Finance and Insurance Commission and to submit them forthwith upon request.

Chapter 10 – Training and sensitization of staff

Article 40, § 1. The obligatory training and sensitization of staff in respect of preventing money-laundering and the financing of terrorism, as contemplated in Article 9 of the Law, bears on the staff of the company and on all persons representing the company on self-employed basis:

- who, by virtue of the tasks they carry out for customers or of the transactions they execute, run the risk of being confronted with attempts to launder money or finance terrorism, or
- whose tasks consist of developing procedures or computer or other applications employed in activities that may be deemed sensitive vis-à-vis the aforementioned risk.

§ 2. The training and sensitization of and regular provision of information to staff is aimed particularly at:

- helping staff to acquire the know-how and develop the critical faculty necessary to be able to detect atypical transactions;
- helping staff to develop the necessary familiarity with the procedures, in order to be able to react appropriately where they are confronted with such transactions;
- integrating in an appropriate manner the question of preventing money-laundering and the financing of terrorism into the procedures and applications developed to be employed in activities that may be deemed sensitive vis-à-vis the aforementioned risk.

Chapter 11 – Entry into force and transitional provisions

Article 41. The present regulations shall enter into force on the date the Royal Decree approving them comes into force.

Article 42, § 1. The companies contemplated in Article 2, 1° to 7° are required to draw up before 2 February 2005 the necessary procedures to ensure that, within a reasonable time and given the risk of money-laundering and the financing of terrorism, as well as the particular features of the activities they pursue:

- 1° they are in possession of a copy of the supporting documents, as contemplated in Articles 8 to 10, for all customers with whom they entered into a business relationship prior to 25 October 1988;
- 2° the purpose and nature of the business relationships that they entered into with their customers prior to 2 February 2004 have been identified in accordance with Article 4, § 1, second paragraph of the Law;
- 3° the identification of those of their customers that are legal persons, trusts, *fiducies*, unincorporated associations or any other legal structure without legal personality and with which they entered into a business relationship prior to 2 February 2004 bears equally on the administrators of those legal persons, trusts, *fiducies*, unincorporated associations or any other legal structure without legal personality and on the knowledge of the provisions regarding the competence to assume obligations on their part.

Article 4, § 3 of the Law applies to business relationships with customers as contemplated in the first paragraph, where companies have not been able to obtain the documents they need from them to comply with the obligations set out in that first paragraph.

§ 2. The companies as contemplated in Article 2, 8° and 9° are required to draw up before 2 February 2005 the necessary procedures to ensure that, within a reasonable time and given the risk of money-laundering and the financing of terrorism, as well as the particular features of the activities they pursue, they have identified their customers with whom they entered into a business relationship prior to 2 February 2004 and have verified their identities in accordance with Article 4, § 1 of the Law and Chapter 3 of the present regulations.

Article 43. Companies are required to take the necessary measures to ensure that the customer-acceptance policy as contemplated in Chapter 6 and the obligation of due diligence as contemplated in Chapter 8 come into force within one year after the present regulations come into force.

In derogation from the preceding paragraph, companies are required to take the necessary measures to implement, within two years after the present regulations come into force, the monitoring system as contemplated in Article 37.

Article 44. Article 8, § 3, third paragraph shall come into force on the day when companies obtain access to the State Register, in order to verify the name, first name and address of their customers with place of residence in Belgium.

Until 31 December 2004 or until the date as contemplated in the preceding paragraph, the address of customers with place of residence in Belgium who present an electronic identity card for identification purposes is required, in derogation from Article 8, 3, second paragraph, to be verified on the basis of the supplementary document delivered to the customer as proof thereof by the local authority of his place of residence.

Article 45.

The companies contemplated in Article 2, 10° shall be subject to the present regulations with effect from the date that the Royal Decree including those companies in the list of persons and companies listed in Article 2 of the Law comes into force.

Brussels, 27 July 2004.

The Chairman