

**Act No. 61/1996 Coll.,**

**on selected measures against the legalisation of the proceeds of crime and on the amendment and supplementation of related Acts**

as amended by Act No. 15/1998 Coll., Act No. 159/2000 Coll., Act No. 239/2001 Coll., Act No. 440/2003 Coll., Act No. 257/2004 Coll. and Act No. 284/2004 Coll.

**NOTE: THIS TRANSLATION IS INFORMATIVE, I.E. NOT LEGALLY BINDING!**

Parliament has adopted this Act of the Czech Republic:

**PART ONE  
MEASURES AGAINST THE LEGALISATION OF THE PROCEEDS OF CRIME**

**CHAPTER ONE  
GENERAL PROVISIONS**

Article 1

**Subject of regulation**

The purpose of this Act is, in compliance with the laws of the European Communities<sup>1)</sup>, to stipulate some measures against the legalisation of the proceeds of crime.

Article 1a

**Definitions**

(1) For the purposes of this Act, the legalisation of the proceeds of criminal activity (hereinafter „legalisation of the proceeds“) is understood to be an action intended to conceal the illicit origin of the proceeds of this activity with the aim of creating the impression that it is income acquired in accordance with the law. At the same time it is not decisive if this action, in part or whole, took place within the territory of the Czech Republic. The stated conduct consists in particular in

- a) The conversion or transfer of property, knowing that such property springs from criminal activity, 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 such an offence to evade the legal consequences of his actions;
- b) The concealment or disguise of the true nature, source, location, disposition or movement of property or change of rights with respect to property, knowing that such property originates from a crime;
- c) The acquisition, possession or use of property or treatment of it knowing that it originates from a crime;
- d) Criminal association or any other type of association for the purpose of action stated in letters a), b) or c).

(2) Proceed, pursuant to this Act, is understood to be whatsoever economic benefit from an action that shows features of a criminal offence.

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<sup>1)</sup> The Council Directive No. 91/308/EEC dated 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, as amended by the Directive of the European Parliament and Council No. 2001/97/EC dated 4 December 2001.

(3) For the purposes of this Act, identification is understood to be

- a) for a natural person; ascertaining of his/her name and surname, possibly all his/her names and surnames, birth number or date of birth, sex, permanent or other address, verifying them from an identity card, if they are stated on it and further verifying the correspondence of an image with the photograph on the identity card and verifying the number and period of validity of the identity card and the authority or country which issued it; if it concerns a natural person who is carrying out a business activity, also ascertaining his/her business name, other distinguishing information or any further marking or identification number,
- b) for a legal person; ascertaining its business name or title including any distinguishing information or any other marking, its registered office, identification number or similar number assigned to it abroad, the name, possibly all the names and surnames, birth number or date of birth and the permanent or other address of persons who are its statutory body or its member, further ascertaining the majority associate or the controlling body<sup>2)</sup> and the identification of the natural person acting on its behalf in the given transaction; if the statutory body or its member is a legal person, then ascertaining its business name or title including any distinguishing information or any other marking, its registered office and identification number or similar number assigned to it abroad, and ascertaining the identification details of individuals who are its statutory body or its members.

(4) The verification or the ascertainment of information stated in paragraph 3 may be carried out by means of electronic data transfer if the identification of such information is guaranteed pursuant to a special Act<sup>3)</sup>.

(5) For the purposes of this Act, transaction is understood to be any action that leads to the movement of money or the transfer of assets or directly triggers it, with the exception of action that consists in the observance of obligations stipulated by law, imposed by a decision of a court or a decision of any other state authority. Transaction is also understood to be the purchase, sale or exchange of an investment instrument.

(6) For the purposes of this Act, suspicious transaction is understood to be transaction carried out under circumstances that arouse a suspicion of an effort to legalise proceeds or that the funds used in a transaction are intended for the financing of terrorism, terrorist activities or terrorist organisations; suspicious transactions are particularly

- a) Deposits in cash and then their immediate withdrawals or transfers to other accounts,
- b) Establishment of several accounts by one client, if their number is obviously disproportionate to the subject of his/her business activities or his/her relative wealth, and transfers between these accounts,
- c) Movements on a client account that obviously do not agree with the character or range of his/her business activities or his/her relative wealth,
- d) Those cases when the number of transactions on the account in a single day or in consecutive days does not agree with the usual monetary operations of the client,
- e) Transactions that obviously do not have an economic reason,
- f) Those cases when a participant in the transaction is directly or indirectly legal person or natural person against whom the Czech Republic is applying international sanctions pursuant to a special Act<sup>4)</sup>,

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<sup>2)</sup> Section 66a of the Commercial Code.

<sup>3)</sup> Act No. 227/2000 Coll., on electronic signature and on the amendment of some further Acts (Act on electronic signature), as amended.

<sup>4)</sup> for example the Act No. 48/2000 Coll., on measures in relation to the Afghanistani movement the Taliban, the Act no. 98/2000 Coll., on the application of international sanctions to maintain international peace and security.

- g) Those cases where the subject of the transaction is, even if only partially, sanctioned goods or services provided to a sanctioned subject or a sanctioned individual<sup>4)</sup>,
- h) Those transactions directed to countries that inadequately or not at all apply measures against the legalisation of proceeds.

(7) Obligated persons pursuant to this Act are;

- a) A bank, savings or credit co-operative, insurance company, the Czech Consolidation Agency, the holder of a postal licence and a legal entity or an individual authorised to trade in foreign currency on own account or on a client's account, to conduct or intermediate a cash or non cash transfer of financial capital, to financially lease, to provide credit or monetary loans or to the trading in them or to issuing non cash payment means,
- b) The Czech National Bank in the keeping of accounts and providing other banking services,
- c) The Securities Centre or other legal entity authorised to maintain parts of registers of the Securities Centre as well as to perform its other activities<sup>5)</sup>, the organiser of a securities market, an investment firm<sup>6)</sup> that is not a bank, investment company, investment fund, pension fund and commodity stock exchange,
- d) The holder of a (gaming) licence to operate betting games in a casino, odds-on betting or numerical lotteries,
- e) A legal person or a natural person authorised to trade in real estate or to broker a trade in it,
- f) A legal person or a natural person authorised to buy up debts and receivables and to trade in them,
- g) A legal person or a natural person authorised to broker savings, monetary credits or loans or brokering activities that lead to the signing of insurance or reinsurance contract<sup>7)</sup>,
- h) An auditor, tax advisor or accountant if he is carrying out the relevant activity as his business,
- i) A court executor when carrying out other activities of an executor pursuant to a special legal regulation<sup>8)</sup>,
- j) A lawyer, notary or other legal person or a natural person in a business capacity, if he executes or assists in the planning or execution of transactions for his client concerning
  1. Buying or selling real property or business undertaking,
  2. Administering or safekeeping of money, securities, business shares or other assets of a client, including representing the client or acting on his behalf in connection with the establishment of a bank account at a bank or other financial institution or a securities account and the administration of such an account, or
  3. Acquiring and collecting finance or other values rateable by money for the purpose of establishing, managing or controlling a company, business group or any other similar department regardless of the fact that it is a legal person or not ,or he represents or acts on behalf of his client in any financial transaction or trade in real estate,
- k) a legal person or natural person authorised to trade in second-hand goods, in cultural items or in articles of a cultural value or to the brokering of such trading or to accept such things into pawn,

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<sup>5)</sup> Article 55 to 70a of the Act No. 591/1992 Coll., on Securities, as amended.

<sup>6)</sup> Article 45 to 48i of the Act No. 591/1992 Coll., as amended.

<sup>7)</sup> Article 2 letter f) of the Act No. 363/1999 Coll., on insurance matters and on the amendment of some connected Acts (Act on insurance matters).

<sup>8)</sup> Article 74 to 86 of the Act No. 120/2001 Coll., on court executors and execution activities (executors code) and on the amendment to further Acts, as amended by Act No. 279/2003 Coll.

- l) a legal person or natural person not mentioned in letters a) to k), if he is a businessman, as long as he, in the framework of an individual business or auction, accepts a payment in cash in the amount exceeding 15,000 EUR.

(8) An obliged person is also a branch, subsidiary or business premises of a foreign legal person or natural person mentioned in paragraph 7 that functions within the territory of the Czech Republic.

(9) For the purposes of this Act, an identification card is understood to be a valid official document issued by a state authority, from which it is possible to verify the likeness of the person who is meant to be identified, his name and surname, possibly all his names and surnames, birth number or date of birth, his nationality and possibly other identification data. In case of a legal entity this official document means a valid extract from the register, in which it is obligatorily registered or another valid document that proves its existence.

(10) The value of the transaction or suspicious transaction in the Euro currency is understood to be the equivalent value of whatever currency stipulated on the basis of the exchange rate announced by the Czech National Bank for the day on which the obligation pursuant to this Act is fulfilled. Payment in cash also means payment in high-value commodities such as precious metals or precious stones.

## **CHAPTER TWO OBLIGATIONS OF NATURAL PERSONS AND LEGAL PERSONS**

### Article 2

#### **The identification obligation**

(1) If an obliged person is a participant in (party to) a transaction that has a value exceeding 15,000 EUR it always identifies the participants in the transaction, as long as this Act does not state otherwise later on. If, at the time of the finalisation of the transaction or at any other later time, the exact amount of the whole fulfilment (payment) is not known, then the mentioned obligation arises at the time when it becomes obvious that the stipulated amount will be reached. If the transaction is implemented in the form of repeated fulfilments then the sum of the fulfilments for twelve consecutive months is decisive, if it does not concern a repeated participation in a lottery or other similar game pursuant to a special legal regulation<sup>9)</sup>.

(2) The obliged person, when entering into business relations, always identifies its participants, particularly if it concerns

- a) Suspicious transaction,
- b) Conclusion of an agreement on an opening of account or deposit into a deposit book or into a deposit certificate or the arrangement of another kind of deposit,<sup>10)</sup>
- c) Conclusion of an agreement on the renting of a safety deposit box or a contract on safekeeping,
- d) Payment of the balance from cancelled deposit on bearer deposit book, if the amount exceeds 15,000 EUR,
- e) Conclusion of an agreement for life insurance, if the sum of the premium payments in a single calendar year exceeds an amount in the value of 1,000 EUR or if the amount of a single premium payment exceeds 2,500 EUR,

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<sup>9)</sup> Act No. 202/1990 Coll., on lotteries and other similar games, as amended.

<sup>10)</sup> Article 778 to 787 of the Civil Code.

- f) Reception of payments for a previously signed life insurance policy if they exceed the amounts mentioned in letter e),
- g) The purchase of second-hand goods or goods that have no documentation of origin, cultural items or articles of a cultural value, or accepting such things in pawn.

(3) If a party to the transaction is represented on the basis of a power of attorney, then that empowered individual is identified pursuant to Article 1a paragraph 3 and further by the submission of the power of attorney with an officially authenticated signature. This power of attorney is not required, if the account holder has empowered a third person at the obliged person with a right to disposal of this account, and that person was identified pursuant to Article 1a paragraph 3 letter a) and signed the right of disposal in accordance with a specimen signature before an employee of the obliged person. In the case when an individual who does not otherwise have the right of disposal to this account deposits cash into the account and at the same time sends to the obliged person the documents that have already been filled out and signed by the authorised person the power of attorney is also not required.

(4) If, making the transaction, the obliged person discovers or has a suspicion that a participant in the transaction is not acting on his own behalf or that he is concealing the fact that he is acting for a third party, it will order him to declare, in writing, on whose behalf he is acting and to present the identification details about this third party pursuant to Article 1a paragraph 3. Everyone is bound to oblige this summons unless stipulated otherwise by a special legal regulation.

(5) The obliged person will not perform the transaction in the event that an identification obligation pursuant to paragraph 1 or 2 is given and the participant refuses to undergo the identification process or if he refuses the identification of the third person pursuant to paragraph 4. At the same time the obliged person will inform the relevant department of the Ministry of Finance (hereinafter “the Ministry”) of this fact.

(6) Identification for the obliged person on its request, in which the purpose of the identification must be stated, may also be carried out by a person authorised to carry out the certification of signatures and documents pursuant to a special legal regulation<sup>11)</sup>. In such a case he/she will draw up a public document on the identification, which must contain;

- a) who carried out the identification and upon whose request,
- b) identification details mentioned in Article 1a paragraph 3,
- c) information about which type of identity card and of what supplementary documentation the identification of the individual was based upon or possibly on the basis of what type of identity card the identity of the person acting on behalf of the identified legal person or the identity of the representative of the identified person was verified,
- d) a certificate of a statement of the identified natural person or a person acting on behalf of an identified legal person or a representative of the identified person, about the purpose of performed identification and on confirmation of the accuracy of the identification, or possibly about any reservations to the identification being carried out,

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<sup>11)</sup> The Notaries’ Code.  
The Act No. 41/1993 Coll., on the certification of matching duplicates or copies with the original document and on the certification of the authenticity of signatures of District and Municipal offices and on the issue of certifications of the District and Municipal offices, as amended by the Act No. 152/1997 Coll., the Act No. 132/2000 Coll. and the Act No. 320/2002 Coll.  
Decree No. 272/2000 Coll., on the certification of the authenticity of signatures or the matching of duplicates or copies of documents with the ship’s captain.

- e) the date and place of the drawing up of the document on the identification, or possibly the date and place of the identification if they are different from the date and place of the drawing up of the document on identification,
- f) the signature of the person who carried out the identification and the imprint of his/her official stamp.

(7) The person, who carries out the identification pursuant to paragraph 6, will attach copies of the relevant documents or their parts, from which the identification was made, to the public document on identification.

(8) If the identification and other tasks have been carried out pursuant to paragraphs 6 and 7, the documents therein stated must be deposited with the obliged person. Until then the obliged person will not undertake any transaction pursuant to this Act with such an identified individual.

(9) If a lawyer, in the discharge of the duties of advocacy, accepts money or securities from his client, he shall deposit them in a separate account with an obliged person that is authorised to keep such accounts. At the same time he shall substantiate his client's identification details within the meaning of Article 1a paragraph 3 with copies of the relevant parts of the documents from which he ascertained the identification details and a written declaration of the truth of the stated information. A lawyer shall also proceed similarly when renting a safe deposit box for the safekeeping of his client's things.

(10) Identification is not necessary if the participant in the transaction is an obliged person pursuant to Article 1a paragraph 7 letter a) to c) or a credit or financial institution operating in a country that imposes an identification duty upon this institution in a comparable manner or when the identity of a participant in a transaction or the identity of a person acting in his favour is not in doubt.

### Article 3

#### **The obligation to keep the stipulated information**

(1) In the course of duration of contractual relationship or in further transactions, the obliged person controls the validity and complete character of the identification data mentioned in Article 1a paragraph 3 and keeps a note of their changes.

(2) Any identification data acquired pursuant to Article 1a paragraph 3 and Article 2, copies of documents or an extract of the relevant identification details contained in them, that are submitted for identification and in the event of representation, the original Power of Attorney, is kept by the obliged person for a period of 10 years after the relationship with the client ended. Information and documents of any transaction connected with the identification obligation is kept for a minimum of 10 years from the date of completion of the transaction. The obliged person mentioned in Article 1a paragraph 7 letter k) keeps any information and documents for a period of a minimum of 10 years, if the value of the transaction was in excess of 10,000 EUR, in other cases for 3 years after completing the transaction. This period begins to run on the first day of the calendar year following the year in which the last operation of the transaction, known to the obliged person, was carried out.

### Article 4

#### **Reporting Obligation**

(1) If the obliged person, in connection with its activities, discovers a suspicious transaction or a fact of any other kind that might indicate a suspicious transaction, it shall

immediately report it to the Ministry, stating all the discovered identification details about the participants in the transaction.

(2) It is necessary to carry out the report without undue delay, at the latest within five calendar days from discovering the transaction. If the circumstances of the case require it, particularly if there is a danger of default, the reporter is obliged to notify the Ministry instantly upon discovering the suspicious transaction.

(3) The report may be made orally onto the record or in writing in such a way that it guarantees that the information contained in it remains secret from any unauthorised person.

(4) When fulfilling a reporting obligation pursuant to paragraphs 1 to 3 it is necessary to pass on the identification details of the obliged person that is carrying out the role of the reporter, including the name and surname of the individual who is making the report, the subject and important circumstances of the transaction, as well as the identification details of the party that the report concerns and attach any further information, especially the numbers of the accounts in which the monetary funds referred to in the submitted report are accumulated.

(5) A tax administrator<sup>12)</sup>, which has accepted a payment into its account or in cash or if the tax subject requests the release of a tax refund in excess of 15,000 EUR to a foreign country, also has a reporting obligation stated in paragraph 1.

(6) The performance of reporting obligation pursuant to the previous provisions is not a breach of the legal duty of confidentiality imposed pursuant to a special Act.

(7) The provisions of paragraph 1 and Article 8 paragraph 1 do not apply to a notary, lawyer, auditor or accountant who carries out the relevant activity as a business or a tax advisor when it is information that he receives from or obtains on his client in the course of ascertaining his legal position, during his defence or representation in a judicial proceeding or in connection with such a proceeding, including advice on instituting or avoiding such proceedings without regard to whether such information is acquired before these proceedings, in the course of them or after them.

(8) The provisions of paragraph 7 are not used, if the obliged persons mentioned therein are aware that the client is requesting a legal advice for the purpose of legalisation of proceeds or for the purpose of financing terrorism, terrorist acts or terrorist organisations or if the obliged person itself partakes in such activities.

(9) A lawyer makes the report within the meaning of paragraphs 1, 3 and 4 through the appropriate professional association. The association shall ensure that the report has all the requirements within the meaning of this Act. The association can have an opinion on the content and together with this opinion, it hands the report on to the Ministry. The lawyer and appropriate professional association proceed so as to ensure that the report is delivered to the Ministry no later than by 5 calendar days from the detection of the transaction. If there is a danger of default and it is not possible to achieve the delivery of the report to the Ministry by way of the relevant professional association, the lawyer may notify the Ministry directly.

(10) The reporting of a suspicious transaction does not affect the duty stipulated in a special Act to report facts that indicate the committing of a crime.

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<sup>12)</sup> Article 1 para. 3 of the Act No. 337/1992 Coll., on the administration of taxes and fees, as amended.

## Article 5

### **Reporting obligation in special circumstances**

(1) A natural person entering the Czech Republic from an area outside the European Communities' customs territory<sup>13)</sup> or entering into such an area from the Czech Republic, is obliged to declare to the customs office, in writing, the import or export of any valid means of payment in Czech or foreign currency, traveller's cheques or money orders exchangeable for cash, bearer securities or securities transferable to order or any highly valuable commodities such as precious metals and precious stones, that has a sum total value in excess of 15,000 EUR.

(2) The duty mentioned in paragraph 1 must also be fulfilled by a legal person that imports or exports those items mentioned in paragraph 1 through an individual who carries these items on his/her person when crossing the border of the European Communities customs territory.

(3) A natural or legal person who sends anything from the Czech Republic to an area outside the Communities customs territory or who receives anything from that area by mail or other postal consignment that contains any items mentioned in paragraph 1 that have a sum total value of more than 15,000 EUR, is obliged to declare this consignment to the customs office and ensure that it is submitted for inspection.

(4) A natural person or legal person also has a reporting obligation pursuant to paragraphs 1 to 3 when it imports or exports into/out of the Communities customs territory or if it accepts or sends a postal consignment of items mentioned in paragraph 1 that in the course of twelve consecutive months have a sum total value that exceeds 15,000 EUR. The reporting obligation arises at the moment when the party becomes aware that the stipulated threshold will be reached.

(5) A report pursuant to paragraphs 1 and 2 is made on a form issued by the Ministry of Finance which is available at the customs office. The natural person, who is making the report, is responsible for the accuracy and completeness of the information contained thereon.

(6) A natural person or legal person discharges the reporting obligation pursuant to paragraph 3 at a customs office by the written record by the sender of the contents of the postal consignment in a customs declaration or in an international consignment note. The sender is responsible for the accuracy and completeness of the record, which must contain all the information required by the import/export declaration.

(7) Customs offices shall immediately pass on to the Ministry information about the observance of reporting obligation in travelling connections and declaration stating all the available information about the sender, recipient and the subject of reporting obligation connected with postal consignment, including those cases when this obligation was infringed.

(8) When converting money from a different currency to the Euro, the exchange rate announced for the relevant currency by the Czech National Bank and valid on the Friday of the previous calendar week, is used for a period of one calendar week. The Ministry of Finance advises the conversion rate of other currencies that are not mentioned on the exchange rate list, to the customs authorities. On the basis of a verbal request the customs office advises persons of the exchange rate and the conversion rates for the purposes of observing their reporting duty pursuant to paragraphs 1 to 4. The value of securities and

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<sup>13)</sup> Council Regulation (EEC) No. 2913/92, Article. 3 para. 1.



highly valuable commodities is understood to be their current market value or possibly the price set out in accordance with the exchange rate on official markets.

(9) Customs offices control the observance of reporting obligation pursuant to paragraphs 1 to 4.

## Article 6

### **Suspension of execution of an instruction**

(1) If there is a danger that the securing of the proceeds may be spoiled or made significantly more difficult by the immediate following of instructions, an obliged person may only carry out the client's instructions concerning a suspicious transaction at the earliest after 24 hours have elapsed from the Ministry's receipt of the report. The obliged person notifies the Ministry, in a report on a suspicious transaction, of the suspension of execution of the client's instruction.

(2) Procedure pursuant to paragraph 1 is not followed in the event that the suspension of the client's instructions is not possible, for instance in operations carried out by use of credit cards or when such a suspension pursuant to the previous notification of the Ministry or own information of the obliged person could jeopardise the investigation of a suspicious transaction. An obliged person shall inform the Ministry forthwith after carrying out such a transaction.

(3) The obliged person may also suspend execution of the client's instructions for 24 hours in the event that the Ministry requests it; the obliged person informs the Ministry of this procedure.

(4) If the scrutiny of a suspicious transaction pursuant to paragraph 1 or 3 requires a longer period of time, the Ministry may, by the due date mentioned in paragraph 1, order the obliged person to extend the time it is suspending execution of the client's instructions but no longer than 72 hours from the time of receiving the report. If the Ministry does not inform the obliged person within that time that it has lodged a complaint, the obliged person shall execute the client's instructions after the expiration of the time. If a complaint has been lodged in that time, the obliged person shall execute the client's instructions after the expiration of 3 calendar days from the day of the lodgement of the complaint if law enforcement authority acting in the criminal proceedings has not made a decision on the impounding or seizure of the subject of the suspicious transaction.

(5) The obliged person is not responsible for any damages that arise from the observance of the duties stated in paragraphs 1, 3 or 4; responsibility for such damages is carried by the state if the client's instructions were not aimed at executing a suspicious transaction. Any claim for the reimbursement of damages must be made at the Ministry of Finance.

## Article 7

### **The Obligation of Confidentiality**

(1) If this Act does not state otherwise, the reporter has an obligation of confidentiality concerning the report of a suspicious transaction or the actions taken by the Ministry pursuant to this Act, in relation to third parties, including those persons that the notified information concerns. The obligation of confidentiality applies to every employee of the reporter and also to any person active on his behalf on the basis of a contract and arises from the moment of the detection of the suspicious transaction. This obligation of confidentiality also applies to the fulfilment of further duties by the obliged person pursuant to Article 8 paragraph 1.

(2) The employees of the Ministry and authorities mentioned in Article 8 paragraph 3 are also obliged to keep confidentiality about any actions taken pursuant to this Act and about the information acquired during its carriage. The organisational branch that carries out the tasks and exercises the powers that, pursuant to this Act, appertain to it must be technically separated from other workplaces of the Ministry of Finance. Internally, it must apply the organisational, personnel and other measures so as to guarantee that the information acquired in the observance of this Act does not come into contact with any unauthorised individual. Anyone, who in conjunction with the investigation carried out by the Ministry of Finance, learns any information acquired on the basis of this Act, also has an obligation of confidentiality pursuant to this Act.

(3) The obligation of confidentiality of persons mentioned in paragraphs 1 and 2 does not expire with the termination of employment or another relationship with the obliged person or the Ministry or when the individual ceases to carry out an activity mentioned in Article 1a paragraph 7.

(4) It is not possible to invoke the obligation of confidentiality pursuant to paragraphs 1 and 2 against

- a) a law enforcement authority, if it carries out proceedings on crimes connected with the legalisation of the proceeds or if it concerns the observance of a reporting duty in connection with such a crime,
- b) a court that makes decisions in civil court litigation connected with transaction or claims arising from this Act,
- c) individuals performing controls pursuant to Article 8 paragraph 3,
- d) a body, authorised pursuant to a special regulation, to make a decision on the withdrawal of a licence to conduct a business or another independently gainful activity in the event that the Ministry submits a motion for the withdrawal of such a licence,
- e) an individual who might claim the right to compensation of damages caused by the procedure pursuant to this Act, if it concerns subsequent notification of facts that are decisive in making such a claim. In this case, the obliged person may inform the client that acts pursuant to this Act were taken only after the previous written consent of the Ministry,
- f) the relevant foreign authority in the handing over of information that serves to achieve the purpose stipulated by this Act, as long as a special legal regulation does not forbid it,
- g) an administrative authority that observes the tasks in the system of the certification of raw diamonds pursuant to a special legal regulation, when informing the matters of fact pursuant to Article 10 paragraph 3,
- h) an administrative authority authorised to impose fines pursuant to special legal regulations, which allow the Czech Republic to apply international sanctions<sup>4)</sup>, in proceedings on the violation of those legal regulations,
- i) the National Security Office, the Ministry of Defence, intelligence services or the Police of the Czech Republic, as long as, within their authority they are carrying out a security check of the proposed individual or if the National Security Office is carrying out a security check of the organisation or checking the security qualifications of individuals pursuant to a special legal regulation<sup>14)</sup>,
- j) the Security Information Services and Military Defence Intelligence,
- k) financial arbiter who makes the decisions pursuant to a special legal regulation in a litigation between a plaintiff and a transferring institution.

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<sup>14)</sup> Act No. 148/1998 Coll., on the protection of confidential facts and on the amendment of some Acts, as amended.

(5) Violating the confidentiality obligation imposed pursuant to paragraphs 1 to 3 is an offence for which it is possible in a proceeding pursuant to a special Act<sup>15)</sup> to impose a fine of up to 200,000 CZK. This does not affect the responsibility for damages that arises for the individual that the discovered information concerns, or the possible criminal liability of the person who violated the obligation of confidentiality<sup>16)</sup>.

(6) Information collected by the Ministry pursuant to this Act may only be used otherwise in proceedings before the authorities mentioned in paragraph 4.

(7) The provisions of paragraph 1 first sentence do not apply to obliged persons mentioned in Article 4 paragraph 7.

## Article 8

### Further obligations

(1) Upon request, the obliged person shall inform the Ministry, by the due date that it determines, of any information about the transactions to which the identification obligation refers or about which the Ministry is carrying out an investigation. It shall submit documentation on these transactions or will allow authorised employees of the Ministry verifying the notification or carrying out control activity access to them and it shall provide information about the individuals, who in any way whatsoever took part in such transactions.

(2) During an investigation the Ministry may request information from the whole tax proceedings from the tax administrator if the matter cannot be sufficiently clarified in any other manner.

(3) The Ministry controls whether the obliged persons comply with the obligations stipulated by this Act and whether the obliged persons do not engage in legalisation of the proceeds. When carrying out the controls the Ministry proceeds according to a special legal regulation<sup>17)</sup>. As well as the Ministry, the following authorities also carry out controls of the compliance with obligations pursuant to this Act:

- a) the Czech National Bank for banks and other obliged persons to which it grants foreign exchange licences,
- b) the Securities Commission for obliged persons mentioned in Article 1a paragraph 7 letter c),
- c) the Office for the Supervision of Co-operative Savings Unions in savings banks and credit unions,
- d) the Office of the State Supervision in Insurance and Pension Funds in insurance companies and pension funds,
- e) State Supervision over the observance of the Act on lotteries and other similar games carried out by entities under their control<sup>18)</sup>,
- f) the Czech Commercial Inspection for obliged persons mentioned in Article 1a paragraph 7 letter k).

Control also refers to obliged persons within the meaning of Article 1a paragraph 8. During the performance of a control activity, the relations between the control authorities and the controlled parties are governed by the Act on State Control. Those authorities mentioned in letters a) to e) are obliged to provide the Ministry, upon request, with an opinion within the determined time or any other requested collaboration.

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<sup>15)</sup> Czech National Council Act No. 200/1990 Coll., on infringements, as amended.

<sup>16)</sup> Article 178 of the Criminal Code.

<sup>17)</sup> the Act No. 552/1991 Coll., on State Control, as amended.

<sup>18)</sup> Article 46 paragraph 1 letters c) and d) of the Act No. 202/1990 Coll., as amended by the Act No. 149/1998 Coll.

(4) In controls carried out at the offices of lawyers or notaries, the Ministry always requests the collaboration of the relevant professional association. An employee of the Ministry only has the right to peruse written material and other documents of the lawyer or notary that are directly connected with the activities of a lawyer or notary covered by this Act. A representative of the Association shall decide what written material or document has this characteristic.

## Article 9

### **The system of internal principles and training programs**

(1) The obliged person shall introduce and apply the adequate procedures of internal control and communication for the purpose of being able to comply with the obligations stipulated by this Act. The obliged person mentioned in Article 1a paragraph 7 letters a) to g) shall draw up in writing, in the full range of the valid licences and permits for the activities that are subject to the competence of this Act, a system of internal principles, procedures and control measures for the compliance with the obligations stipulated by this Act (hereinafter “system of internal principles”). A party, which under contract carries out an activity that is subject to the authority of this Act for another obliged person, does not have to draw up its own system of internal principles, if its activity is sufficiently covered by the system of internal principles of the other obliged person and if it does not employ anyone or people are not working for it in any other way.

(2) The obliged person shall designate a specific employee to fulfil the reporting obligation pursuant to Article 4 and to ensure an on-going contact with the Ministry, if the statutory body does not ensure these activities directly. The obliged person mentioned in Article 1a paragraph 7 letters a) to d) shall inform the Ministry forthwith on the designation of this person.

(3) The system of internal principles pursuant to paragraph 1 must contain

- a) the detailed demonstrative enumeration of the indications of a suspicious transaction,
- b) the manner of the identification of the client,
- c) a mechanism that allows for the information stored pursuant to Article 3 to be made available to the Ministry,
- d) the procedure of the obliged person from the detection of the suspicious transaction to the moment of delivery of the report to the Ministry so that the deadlines stipulated in Article 4 paragraph 2 are observed as well as the rules for processing the suspicious transaction and designating the people who will analyze the suspicious transaction,
- e) the measures that will prevent the threatened danger that due to the immediate execution of the client’s instructions the securing of the proceeds could be spoiled or significantly hampered,
- f) the technical and personnel measures to ensure that the Ministry is able to carry out in the obliged person the tasks pursuant to Articles 6 and 8 by the legal deadline.

(4) The obliged person shall provide the Ministry, upon request, with information and documents on the compliance with the obligations imposed pursuant to paragraphs 1 to 3.

(5) An obliged person mentioned in Article 1a paragraph 7 letters a) and b) is obliged to deliver a system of internal principles or its amendments to the Ministry within 30 days of its creation or of the effectiveness of the amendments to the system of internal principles. An obliged person mentioned in Article 1a paragraph 7 letter c) has these obligations in relation to the Securities Commission. If the submitted version is not in harmony with this Act or it does not fulfil its purpose sufficiently, the Ministry or the Securities Commission shall notify the obliged person of it in writing. In such an event the obliged person is obliged, within 30

days from the receipt of the notification, to eliminate the shortcomings and inform the Ministry or the Securities Commission in case of an obliged person mentioned in Article 1a paragraph 7 letter c). The deadline for eliminating the shortcomings and for the notification is also binding in the event that the Ministry or authority mentioned in Article 8 paragraph 3 letters a) to e) has requested the system of internal principles for control.

(6) The obliged person shall ensure the training of employees, who may come in contact with suspicious transactions during the discharge of their work duties, at least once in the course of every twelve calendar months. Training programs will be aimed at the ways of detecting suspicious transactions and at the application of procedures pursuant to this Act.

### **TITLE THREE THE POWERS OF THE MINISTRY**

#### Article 10

(1) Pursuant to this Act, the Ministry discharges the function of the collection and analysis of information. As well as authorities mentioned in Article 6 paragraphs 3 and 4, Article 8 and Article 9 paragraph 4 it may

- a) carry out its own investigation concerning transaction to which identification obligation pursuant to this Act relates,
- b) impose penalties for the non fulfilment of the duties stipulated by this Act,
- c) give the motion for the withdrawal of a licence to conduct a business or other independently gainful activities.

The Ministry also acts in the full range stipulated by this Act in proceedings on the compensation of damages.

(2) If the Ministry discovers any facts that may justify the suspicion that a crime has been committed, it shall report it pursuant to the Criminal Procedure Code. At the same time it shall provide the law enforcement authority with any information and proof of the facts that it has at its disposal, if they are connected to the report.

(3) If the Ministry discovers any facts that are significant for the performance of the tasks in the certification system of raw diamonds but there is no reason to proceed pursuant to paragraph 2, it shall inform the administrative authority that undertakes the tasks of the certification system of raw diamonds pursuant to a special legal regulation of them.

(4) If an authority mentioned in Article 8 paragraph 3 letters a) to f) discovers facts that indicate a suspicious transaction within the meaning of the Article 1a paragraph 6, it shall immediately inform the Ministry of it by means of procedure pursuant to Article 4.

(5) The Police of the Czech Republic, intelligence services, state administration authorities including those authorities carrying out state administration in a transferred competence and other state authorities are obliged to provide the Ministry with the necessary information for the enforcement of its powers pursuant to this Act, if a special Act does not forbid them to do so.

(6) The Ministry is authorised to keep the information acquired within the implementation of this Act in its information system under conditions stipulated by a special Act<sup>19)</sup>. For this purpose, it is authorised to combine information and information systems that

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<sup>19)</sup> The Act No. 101/2000 Coll., on the protection of personal information and on the amendment to some Acts, as amended.

serve various purposes. Pursuant to a special Act<sup>19)</sup> the Ministry does not provide the person concerned, upon request, with a report of the information that is kept on it in the information system maintained pursuant to this Act.

(7) Within the scope determined by an international treaty binding for the Czech Republic, or on the basis of a reciprocity, the Ministry shall cooperate with foreign authorities that have the same real competence, particularly in the handing over and receiving of information that serves to achieve the purposes stipulated by this Act. On conditions that the information will only be used to achieve the purposes of this Act and that it will enjoy protection at least in the scope stipulated by this Act, the Ministry may also cooperate with other international organisations.

## **TITLE FOUR MINISTRY PROCEEDINGS**

### Article 11

#### **General principles**

(1) If not stated otherwise, the provisions of the Czech National Council Act No. 337/1992 Coll., on the administration of taxes and fees, as amended, is used in the same way for proceedings before the Ministry pursuant to this Act, if it concerns

- a) an official language,
- b) participants of proceedings and their rights,
- c) representation,
- d) on-site investigation,
- e) delivering,
- f) exclusion,
- g) summons and order of attendance,
- h) proceedings expenses,
- i) decisions,
- j) fines and penalty tickets.

(2) Where, in the Czech National Council Act No. 337/1992 Coll., on the administration of taxes and fees, as amended, it is mentioned tax administrators, tax proceedings and tax subjects, for the purposes of this Act, it is understood to be the Ministry, Ministry proceedings carried out pursuant to this Act and the subject that has an obligation stipulated pursuant to this Act.

(3) Proceedings before the Ministry pursuant to this Act are always closed.

### Article 12

#### **Fines**

(1) The Ministry or an authority mentioned in Article 8 paragraph 3 may impose a fine of an amount of up to 2,000,000 CZK on an individual that violates or fails to comply with an obligation stipulated by this Act, if it does not concern a breach of the obligation of confidentiality or if such conduct is not an act more seriously punishable. In case of a repeated violation or a failure to comply with obligations in a consecutive 12-month period it may be up to 10,000,000 CZK if it concerns an individual. In case of a legal person the imposed fine may be up to 10,000,000 CZK and in case of a repeated violation or a failure to comply with an obligation in a consecutive 12-month period it may be up to 50,000,000 CZK. The authority that first discovers the violation shall levy the fine.

(2) When determining the amount of the fine, it is necessary to take into consideration the personal and property conditions of the individual upon whom the fine is being imposed and also the character and seriousness of the obligation that was violated or not complied with, its duration and the consequences of the illegal conduct.

(3) It is not possible to impose a fine if two years from the end of the year in which the conduct that gave rise to the right of imposing a fine have elapsed. The right to enforce the levied fine lapses after five years from the making of the decision. The yield from the fines is the revenue of the State Budget of the Czech Republic.

(4) The individual, upon whom the fine has been imposed, may make an appeal against the decision of the Ministry that must contain grounds of imposing a fine. The appeal must reach the Ministry within 30 days of the delivery of the decision of the fine. An appeal that is lodged in time has a delaying effect. The Minister of Finance decides on the appeal.

(5) If it is a lawyer or notary who violates or fails to comply with the obligations stipulated by this Act and if such conduct is not an act that is more seriously punishable, then it is considered to be a disciplinary offence within the meaning of a special legal regulation<sup>20)</sup> and shall be discussed by the relevant professional association pursuant to this special legal regulation. A hearing of a disciplinary offence proceeds pursuant to a special legal regulation<sup>20)</sup> and the provisions of paragraphs 1 to 4 and Article 11 are not applied to such a hearing. If a professional association or its employee violates an obligation stipulated by this Act, the Ministry shall warn of it.

#### Article 12a

(1) If the customs office discovers that a natural or a legal person failed to comply with a reporting obligation pursuant to Article 5 paragraphs 1 to 4, it shall impose a fine of up to the value of the undeclared goods on it. The customs office shall proceed in the same way in case of incorrect or incomplete information in report pursuant to Article 5 paragraph 5 or in a record pursuant to Article 5 paragraph 6.

(2) The customs office in whose territorial district this obligation was violated shall conduct the hearing of the violation of an obligation pursuant to Article 5 paragraphs 1 to 4.

(3) The customs office to which the hearing of the violation of the obligation pursuant to paragraph 2 appertains, may hand over the matter to a customs office in whose territorial district lies

- a) The registered office of the legal person that failed to comply with an obligation mentioned in Article 5 paragraphs 2 to 4,
- b) The permanent residential address of the individual that failed to comply with an obligation mentioned in Article 5 paragraphs 1, 3 and 4.

(4) When determining the amount of the fine, the customs office particularly takes into account the seriousness, manner, duration and consequences of the violation of the obligation.

(5) A fine levied pursuant to paragraph 1 is due and payable within 30 days from the day when the decision on its imposition comes into force. The fine is the revenue of the State Budget of the Czech Republic.

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<sup>20)</sup> The Act No. 85/1996 Coll., on advocacy, as amended.  
Act No. 358/1992 Coll., on notaries and their activities (Notaries Code), as amended.

(6) A fine may be imposed up to 2 years from the day when the violation of the obligation pursuant to Article 5 paragraphs 1 to 4 was discovered, at the latest, however, up to 5 years from the day the violation took place.

(7) The customs office when discovering a violation of an obligation pursuant to Article 5 paragraphs 1 to 4 may seize goods, which relate to the violation of duty. An appeal against this decision does not have a delaying effect.

(8) An individual, to whom a decision on the securing of goods was delivered or announced, is obliged to surrender them to the customs office. If the secured goods are not surrendered at the summons of the customs office they may deprive the person who has them in his possession of those goods. The customs office shall issue a receipt for the giving up or deprivation of goods to an individual who gave up the goods or who was deprived of the goods.

(9) If the imposed fine is not paid voluntarily by the due date for payment, the customs office may use the seized items in lieu.

(10) If the seized items are no longer necessary for further proceedings and if their use in payment of the fine cannot be considered, the customs office shall return them to the person, who delivered them or from whom they were taken.

(11) The customs office may also impose a fine, which does not exceed the amount of 5,000 CZK, by means of a penalty ticket procedure. If the violation of the duty has been reliably proved, the individual who violated the duty pursuant to Article 5 paragraphs 1 to 4 shall pay the fine on the spot. It is not possible to appeal against the imposition of a fine in a penalty ticket procedure.

(12) The penalty ticket by which the imposition of a fine is decided has on itself written who, when and for the violation of what legal obligation the fine was imposed. The penalty ticket also serves as a receipt for the payment of an on the spot fine in cash.

(13) If this Act does not state otherwise, proceedings regarding the imposition of fines for the violation of obligations pursuant to Article 5 paragraph 1 to 4 are governed by the Administrative Procedure Code. When collecting and recovering fines, the customs office shall proceed according to a special legal regulation<sup>21)</sup>.

### Article 13

#### **Motion for the withdrawal of a licence to conduct a business or some other independently gainful activity**

(1) If the Ministry discovers that a legal person or a natural person who has earned incomes from a business or some other independently gainful activity has in the long term and repeatedly violated some of the duties stipulated by this Act or imposed by a decision issued pursuant to this Act, it shall submit the motion for the withdrawal of a licence to conduct a business or some other independently gainful activity to the authority which is authorised to make a decision on its withdrawal pursuant to a special regulation. This authority is obliged to notify the Ministry of the measures it has taken and of the manner in which it has dealt with the motion within 30 days of the motive being delivered.

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<sup>21)</sup> The Act No. 337/1992 Coll., as amended.



(2) Long-term or repeated violations of the obligations stipulated by this Act or imposed by a decision issued on its basis, are a reason for the withdrawal of a licence to conduct a business or other independently gainful activity pursuant to a special regulation.

## **TITLE FIVE**

*Cancelled*

Article 14

*Cancelled*

## **PART TWO**

### **AMENDMENT TO RELATED LEGISLATION**

Article 15

Act No. 21/1992 on banks, as amended by Act No. 264/1992 Coll., Act No. 292/1993 Coll., Act No. 156/1994 Coll., Act No. 83/1995 Coll. and Act No. 84/1995 Coll., shall be amended as follows:

1. Section 38, Paragraph 2, shall have a sentence added at the end. The full wording of the sentence, including footnote No. 10, shall read as follows: “Disclosure of client data and information on the client’s transaction upon filing of the criminal complaint or upon compliance with the reporting requirement under a special Act shall not constitute a breach of bank secrecy requirement.<sup>10)</sup>”

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10) Act No. 61/1996 Coll., on Selected Measures against the Legalization of the Proceeds of Crime and on the Amendment to Related Acts”.

2. In Section 38, Paragraph 3, a comma shall replace the full stop at the end, and a Paragraph (e) shall be added, reading:

“(e) the Ministry of Finance under conditions stipulated by a special Act<sup>10)</sup>.”

3. Section 44a shall read as follows:

“Section 44a

The obligations of the Consolidation Bank Prague, a public financial institution, shall be guaranteed by the Government.”

## Article 16

The Act of the Czech National Council No. 591/1992 Coll., on Securities, as amended by Act No. 89/1993 Coll., Act No. 331/1993 Coll. and Act No. 259/1994 Coll., shall be amended as follows:

In Section 79, last sentence of paragraph 4, the words “or when complying with an obligation to the competent division of the Ministry pursuant to a special Act<sup>36a</sup>” shall be inserted after the words “criminal proceedings”.

Footnote No.36a shall read as follows:

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“36a) Act No. 61/1996 Coll., on Selected Measures against the Legalization of the Proceeds of Crime and on the Amendment to Related Acts.”

## Article 17

*Cancelled*

## Article 18

Act No. 42/1994 Coll., on State-Contributory Supplementary Pension Insurance and on the amendment to selected Acts relating to its introduction, shall be amended as follows:

In Section 7, last sentence of Paragraph 7, the conjunction “and” shall be replaced by a comma, and after the word “taxes” the following words shall be added: “and when complying with an obligation to the competent division of the Ministry pursuant to a special Act<sup>6a</sup>.”

Footnote No. 6a shall read as follows:

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“6a) Act No. 61/1996 Coll., on Selected Measures against the Legalization of the Proceeds of Crime and on the Amendment to Related Acts.”

## Article 19

*Cancelled*

**PART THREE**  
**FINAL PROVISIONS**

Article 20

**Provisions on Authorization**

(1) The Ministry of Finance shall, by means of a decree, stipulate details of fulfilment of the reporting obligation by the obliged persons, determine the name of the unit that acts on behalf of the Ministry of Finance pursuant to this Act, and determine the identification card for the staff of such a unit.

(2) The Ministry of Finance shall, by means of a decree, stipulate the reporting form pursuant to Article 5 paragraph 5 of this Act.

Article 21

**Effectiveness of the Act**

This Act comes into effect on the 1<sup>st</sup> July 1996.

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Act No. 15/1998 Coll., on the Securities Commission and on the amendment and supplementation of some other Acts came into effect on the 1<sup>st</sup> April 1998, with the exception of Articles 2, 21 to 28 and Article 30 points 1 and 2, which came into effect on the 6<sup>th</sup> February 1998.

Act No. 159/2000 Coll., which amends Act No. 61/1996 Coll., on selected measures against the legalisation of the proceeds of crime and on the amendment and supplementation of related Acts, as amended by Act No. 15/1998 Coll., and some other Acts, came into effect on the 1<sup>st</sup> August 2000.

Act No. 239/2001 Coll., on the Czech Consolidation Agency and on the amendment to some Acts (Act on the Czech Consolidation Agency) came into effect on the 1st September 2001 and ceases to be effective on the 31<sup>st</sup> December 2011.

Act No. 440/2003 Coll., on the treatment of raw diamonds, on the conditions for their import, export and transit and on the amendment to some Acts, came into effect on the 3rd January 2004.

Act No. 257/2004 Coll., which amends some Acts in conjunction with the adoption of the Act on Undertaking on the Capital Market, the Act on Collective Investment and the Act on Bonds, came into effect on the 1st May 2004.

Act No. 284/2004, that amends Act No. 61/1996 Coll., on selected measures against the legalisation of the proceeds of crime and on the amendment and supplementation of related Acts as amended and some other Acts will come into effect on the 1st September 2004 with the exception of the provisions of Article VIII points 3, 5 and 8, which will come into effect on the 1st January 2005.

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**TEMPORARY AND FINAL PROVISIONS  
of the Act No. 284/2004 Coll. dated 8 April 2004**

1. The obliged person shall supplement the system of internal principles pursuant to Article 9 of the Act No. 61/1996 Coll., as amended by this Act, at the latest by 60 days from the date of this Act's coming into effect. The obliged person mentioned in Article 1a paragraph 7 letter a) shall send the supplemented system of internal principles to the Ministry by the due date and an obliged person mentioned in Article 1a paragraph 7 letter c) shall send it to the Securities Commission by the due date.
2. A legal person or an individual, who has been newly categorised as an obliged person by this Act, is obliged to draw up and apply a system of internal principles and enjoin its employees to observe the reporting duty pursuant to Article 9 paragraph 1 of the Act No. 61/1996 Coll., as amended by this Act, at the latest, by 60 days from the day of this Act's coming into effect. If this newly categorised obliged person is mentioned in Article 1a paragraph 7 letters a) and b) of the Act No. 61/1996 Coll., as amended by this Act, it shall send the system of internal principles to the Ministry by the due date. If it is mentioned in Article 1a paragraph 7 letter c) of the Act No. 61/1996 Coll., as amended by this Act, it shall send it to the Securities Commission by the due date.
3. Where this Act refers to a lawyer it is also understood to be a European lawyer.<sup>22)</sup>

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<sup>22)</sup> Act No. 85/1996 Coll., as amended.