

Part III

Financial Intelligence Unit

Drafting note: Sections 31–35 are basic provisions to establish an FIU that will serve as a national centre for the receipt and analysis of suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorism financing and generated as a result of the preventive measures obligations that Part II provides for financial businesses and DNFBPs, and for disseminating the results of that analysis.

Definitions. It will be necessary to include definitions of ‘terrorist property’ (and thus also ‘terrorist act’ and ‘terrorist organisation’) as well as definitions for ‘proceeds of crime,’ ‘offence,’ ‘financial institutions,’ ‘DNFBPs’ and ‘accountable person’ in this part if it is used separately and the terms are not incorporated by reference to other provisions within domestic law. Typically, this part will be integrated in some way with preventive measures provisions since, as noted, it establishes the unit that will receive suspicious transaction reports that are required by those provisions. Definitions of the terms appear in Part II.

Section 31 Establishment and Structure

- (1) There is to be established [insert name of FIU]. [Insert name of FIU] shall be the national agency responsible for receiving, requesting and analysing reports under Section 17 and any other reports or information relating to money laundering, proceeds of crime, terrorism financing or terrorist property, as provided for by this Act, and for disseminating the results of that analysis to competent authorities either spontaneously or upon request.
- (2) The composition, organisation, operation and resources of [insert name of FIU] shall be established by [*variants: decree, regulation, other relevant legal instrument*].

Drafting note: The phrase ‘terrorist property’ should be used in this section rather than, for instance, ‘potential terrorism financing’ as terrorist property has greater breadth. It will include property already owned or possessed by a terrorist group or individual and proceeds of a terrorist act as well as property involved in financing activities.

A legal framework for an FIU can be established through statutory provisions, regulations, or, in some states, administrative provisions or a combination of these. Whatever form is used to establish the FIU, the provisions should:

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- formally establish the FIU within the state;
- define the FIU's responsibilities with precision;
- set out a structure for the organisation and its leadership; and
- provide for decision-making processes and operations that protect against undue influence or interference.

Other than the core responsibility of receiving, analysing and disseminating information on suspected money laundering, associated predicate offences and terrorism financing, the FIU's responsibilities may vary significantly from state to state, as will the powers conferred on the FIU and its organisational structure. An FIU may be located within a police service, the prosecutor's office, the central bank or a ministry of finance or justice and benefit from the infrastructure and resources of these services; or it may be established as an independent office. The model provisions in this part cover only basic core elements. These provisions should be supplemented. For instance, a state may also decide that its FIU should have responsibility to supervise the compliance of some DNFBPs or to provide specific guidance on typologies that are relevant within the jurisdiction.

In order to provide additional details on the procedural aspects of the FIU, a model decree is attached to the model provisions. States should also consider provisions in law or regulations that support operational independence and autonomy for the FIU to ensure that it is free, within the state's system, from undue influence or interference. For instance, there could be a provision that limits the review of decisions by the director of the FIU, or that the director's decision to analyse a matter or disseminate a suspicious transaction report is not subject to review. There might be a provision that sets a fixed term for the director with dismissal permissible only in the case of verifiable misconduct.

Drafters should review provisions in other jurisdictions, and may consult with authorities in various states on their experiences regarding the wide range of duties and responsibilities that have been assigned to some FIUs.

Section 32 Obligation Regarding Confidentiality and Use of Information

- (1) Every person who has duties for or within [insert name of FIU] is required to keep confidential any information obtained within the scope of his or her duties, even after the cessation of those duties, except as otherwise provided in this Act and [insert reference to State's preventive measures provisions] or as ordered by a court. Such persons may use such information only for the purposes provided for and in accordance with this Part and [insert reference to State's preventive measures provisions].

- (2) Any current or past employee of [insert name of FIU] or other person who has duties for or within [insert name of FIU] who intentionally reveals information the confidentiality of which is required to be protected by subsection (1) commits an offence that shall be punishable by imprisonment of up to [insert imprisonment range] and a fine of up to [insert monetary penalty range], or both.

Section 33 Action Regarding Reports and Other Information Received

- (1) [Insert name of FIU] may disseminate information and the results of its analysis to relevant competent authorities when there are grounds to suspect that a transaction is related to money laundering, a predicate offence or terrorism financing.
- (2) [Insert name of FIU] may respond to requests from competent authorities for relevant information in money laundering, predicate offences or terrorism financing investigations. The decision on conducting any analysis and/or dissemination of information to the requesting authority shall remain with [insert name of FIU].
- (3) [Insert name of FIU] may withhold consent to a transaction [*Variant: depending on the option chosen under Section 17(4): order continued suspension of a transaction*] under Section 17(4) in order to analyse the transaction, confirm the suspicion and disseminate the results of the analysis to the competent authorities. [Insert name of FIU] may take such action also at the request of an FIU from another jurisdiction.

Section 34 Access to Information and Analysis Function

- (1) In relation to any information it has received in accordance with its functions, [insert name of FIU] is authorised to obtain from any accountable person any additional information that it deems necessary to properly carry out its analysis. The information requested shall be provided within the time limits and in the form specified by [insert name of FIU].
- (2) [Insert name of FIU] is authorised to access and review information that belongs to or is in the custody of an accountable person wherever [insert name of FIU] deems it appropriate to access and review such material for the fulfilment of its functions, provided that, if the premises are not the premises of [insert name of FIU], an order to access such information provided for by this Section is obtained from a [insert name of person with suitable authority to grant access].
- (3) Paragraph (1) [*option: and () [if optional subsection is used add such reference]*] of this Section shall be applied subject to the restrictions [*Variant: limitations*] in the definition of ‘DNFBPs’ in [Section 3(1)] and subject to [insert any limitation enacted in the State regarding reporting obligation for lawyers, notaries, other independent legal professionals and accountants (as Section 17(2) in the model provisions)].

- (4) [Insert name of FIU] may, in order to conduct proper analysis, obtain, where not otherwise prohibited by law, any financial, administrative or law enforcement information and any relevant information collected and/or maintained by or on behalf of other authorities and, where appropriate, commercially held data, including from:
- (a) a law enforcement authority;
 - (b) any authority responsible for the supervision of the entities and persons subject to this law;
 - (c) tax authorities;
 - (d) customs; and
 - (e) any other public agency.
- (5) [Insert name of FIU]'s analysis function shall consist of:
- (a) the operational analysis, which focuses on individual cases and specific targets, activities or transactions or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use after dissemination; and
 - (b) the strategic analysis addressing money laundering and terrorism financing trends and patterns.

Section 35 Cooperation with Foreign Counterpart Agencies

- (1) The [insert name of FIU] may, acting on its own initiative or upon request, seek from or share any information relevant to its functions with a foreign counterpart agency that performs similar functions and is subject to similar obligations of confidentiality, secrecy and disclosure with respect to the performance of its functions.
- (2) Whenever [insert name of FIU] provides information pursuant to subsection (1) to a foreign counterpart agency, it shall obtain from that agency a suitable declaration or undertaking that the information will be used only for the purpose for which it was sought, unless the foreign counterpart agency seeks and obtains the agreement of [insert name of FIU] for the information to be used for another purpose.
- (3) [Insert name of FIU] may enter into an agreement or arrangement to facilitate the exchange of information with a foreign counterpart agency that performs similar functions and is subject to similar secrecy obligations.
- (4) [Insert name of FIU] may make enquiries on behalf of a foreign counterpart agency where the enquiry may be relevant to the foreign counterpart agency's functions.
- (5) [Insert name of FIU] may:
- (a) utilise its own databases, including information related to reports of suspicious and/or cash transactions, and other databases to which [insert name of FIU]

has direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases;

- (b) obtain from an accountable person information that is relevant in connection with such request;
- (c) obtain from competent authorities information that is relevant in connection with such request to the extent [insert name of FIU] could obtain such information in a domestic matter; and
- (d) take any other action in support of the request of the foreign counterpart that is consistent with the authority of [insert name of FIU] in a domestic matter.