

Appendix: Explanation of the legal framework of the WWFT and BIBOB

Money Laundering and Terrorist Financing (Prevention) Act ('WWFT')

One of the purposes of the WWFT is to prevent the financial system from being used for laundering money and financing terrorism. It is important in this case to note that the WWFT provides no scope for a policy of toleration, and the policy of toleration does not extend to the WWFT. Under the WWFT, income from the sale of soft drugs is therefore considered to be income from an illegal activity.

Pursuant to the WWFT, banks carry out individual risk-based assessments of clients, which includes examining the nature and purpose of the business relationship and the origin of their capital. This means banks must assess the entire financial organisation of clients and potential clients. As a result of this assessment, risks may come to light regarding the natural or legal persons involved and/or the origin of their capital and income.

On the basis of the WWFT assessment, a bank must then establish a risk profile and determine what measures, if any, must be taken to mitigate existing risks. If a bank finds that the risks of money laundering are such that they cannot be mitigated, the bank may not enter into a business relationship with the person in question. A client may present too high a risk if it appears from sources, public or otherwise, that they have been involved in money laundering or if the company's legal structure is so complex and opaque that it cannot be determined who the company's ultimate beneficial owner (UBO) is. The principle of the risk-based assessment is that where necessary banks examine the source of the financial resources used in the business relationship or transactions, in order to ensure that it is legal. The bank keeps a record of statements given, as well as objective and independent documents regarding the source of the financial resources in the client's file. When necessary, the bank also makes further enquiries. If a bank has indications that the capital may be the result of criminal activity and if after requesting additional documentation from the client the bank still cannot rule this possibility out, the risk of money laundering is too high to enter into a business relationship.

Public Administration (Probity Screening) Act ('BIBOB')

The growers who have encountered difficulties obtaining a bank account have been screened under the BIBOB at an earlier stage. Probity screenings help protect the government's integrity because they prevent the government from facilitating criminal activity. Similar to the WWFT, the BIBOB therefore plays a gate-keeping role.

Under the BIBOB, the business owner undergoes a background check. This includes an examination of their business connections and whether any of them have been suspected of committing a criminal offence or an administrative offence punishable by fine, which would indicate the risk of misuse of the owner's designation as a grower. As part of the probity screening, the financial backers (and their backgrounds) are also investigated. In this context, the business owner may be requested to provide information regarding the capital invested in the business in order to ascertain the identity of the financial backers. The purpose of this is to investigate the parties involved and their backgrounds; it is not primarily aimed at identifying the financial flows as such. If there are indications of past or present criminal misuse by the business owner or someone – such as a financial backer – among their business connections, a further probity screening may be requested from the National Probity Screening Office. Administrative authorities and the National Probity Screening Office use information from the investigation services, inspectorates and benefits agencies to conduct probity screenings.

Where the BIBOB focuses on the persons and parties involved and their backgrounds, under the WWFT banks look at the actual source and use of financial resources and possible **risks** that stem from this. When a certain risk of money laundering exists, banks will not enter into a new relationship with a client. In contrast, a negative recommendation as the result of a probity screening is based on **concrete** judicial and other information and background records. In that context it is therefore important that, following the probity screening, a proportionality test also be carried out, on the basis of which it may be decided to deviate from a negative recommendation.