

L.N. 77 of 2019

**PREVENTION OF MONEY LAUNDERING ACT
(CAP. 373)**

**Prevention of Money Laundering and Funding of Terrorism
(Amendment) Regulations, 2019**

IN EXERCISE of the powers conferred by article 12 of the Prevention of Money Laundering Act, the Minister for Finance, acting on the advice of the Financial Intelligence Analysis Unit, has made the following regulations:-

Citation.

1. The title of these regulations is the Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2019 and these regulations shall be read and construed as one with the Prevention of Money Laundering and Funding of Terrorism Regulations, hereinafter referred to as "the principal regulations".

S.L. 373.01.

Amends
regulation 6 of
the principal
regulations.

2. In sub-regulation (1) of regulation 6 of the principal regulations the words "and third countries." shall be substituted by the words "and third countries:" and immediately thereafter there shall be added the following new proviso:

"Provided that, unless otherwise instructed by the Financial Intelligence Analysis Unit and subject to the provisions of regulation 16, a subject person that is part of a group and discloses information in accordance with regulation 15(3) to the Financial Intelligence Analysis Unit, shall share that disclosed information within the group for the purposes of preventing and detecting money laundering and the funding of terrorism.".

Amends
regulation 15 of
the principal
regulations.

3. Regulation 15 of the principal regulations shall be amended as follows:

(a) sub-regulation (11) thereof, shall be deleted; and

(b) sub-regulation (12) thereof, shall be renumbered as sub-regulation (11).

Adds new
regulation 15A
to the principal
regulations.

4. Immediately after regulation 15 of the principal regulations

there shall be added the following new regulation 15A:

"Protection
when reporting
suspicions of
money
laundering and
funding of
terrorism.

15A. (1) The Financial Intelligence Analysis Unit, any investigating, prosecuting, judicial or administrative authority and subject persons shall protect and keep confidential the identity of any individual who reports, either internally within the subject person or to the Financial Intelligence Analysis Unit, knowledge or suspicions of money laundering or funding of terrorism, or who reports knowledge or suspicions that funds are the proceeds of criminal activity.

(2) No detrimental action shall be taken against any individual, including employees or officials of subject persons, who reports, either internally within the subject person or to the Financial Intelligence Analysis Unit, knowledge or suspicions of money laundering or funding of terrorism, or knowledge or suspicions that funds are the proceeds of criminal activity.

(3) Any individual, including an employee or official of a subject person, who believes that detrimental action has been taken or is to be taken against him in reprisal for making a report as envisaged under sub-regulation (2), may file an application to the First Hall, Civil Court for:

(a) an order requiring the person who has taken the detrimental action to remedy that action; or

(b) an injunction.

(4) The court, pending the final determination of an application under sub-regulation (3) may:

(a) make an interim order; or

(b) grant an interim injunction.

(5) If, in determining an application under sub-regulation (3) the court is satisfied that a person has taken or intends to take detrimental action against an individual in reprisal for making a report, as referred to in sub-regulation (2), the court may:

(a) order the person who has taken detrimental action to remedy that action and determine the amount of damages, including, but not limited to, moral damages as the court may determine, due to the individual who suffered the detrimental action; or

(b) grant an injunction in any terms it considers appropriate.

Cap. 12. (6) Notwithstanding the provisions of the Code of Organisation and Civil Procedure, an injunction granted in terms of sub-regulation (5)(b) shall be for an indefinite period until an application for its revocation is made and need not be followed by an action on the merits. The provisions of articles 873 and 875 of the Code of Organisation and Civil Procedure shall apply to warrants issued under sub-regulation (5)(b).

Cap. 12. (7) The provisions of articles 829 to 838B of the Code of Organisation and Civil Procedure shall not apply to injunctions granted in terms of sub-regulation (5)(b).

Cap. 12. (8) Notwithstanding the provisions of Schedule A of the Code of Organisation and Civil Procedure, no registry fees shall be charged on an application filed in the First Hall of the Civil Court by any individual referred to in sub-regulation (3) but, if granted, an award on costs shall be made against the respondent.

(9) Any individual, including employees or officials of a subject person, who may have suffered detrimental action as a result of making a report as referred to in sub-regulation (2) shall, without prejudice to any other right under any other law, have a right to compensation for any damages sustained.

(10) Notwithstanding the provisions of any other law, the First Hall, Civil Court shall have exclusive jurisdiction to hear and determine an application under sub-regulation (3).

(11) All proceedings instituted under this regulation shall be held *in camera* and only the parties to the proceedings and their respective advocates shall be allowed in court during the hearings. All the judicial acts, documents and evidence shall be kept by the Registrar of the Court in a confidential manner and no access shall be given thereto except to the parties and their respective advocates.

(12) Any decree or judgement of the First Hall, Civil Court issued pursuant to this regulation shall preserve the confidentiality of the proceedings and shall only reveal such facts as may be necessary to make the same intelligible and enforceable by the parties.

(13) For the purpose of this regulation, "detrimental action" means threats, retaliatory or hostile action, including adverse or discriminatory employment actions, and without prejudice to the generality of the foregoing shall include:

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- (a) any action causing injury, loss, or damage; and, or
 - (b) victimisation, intimidation or harassment; and, or
 - (c) dismissal, suspension or demotion except where administratively or commercially justifiable for organisational reasons; and, or
 - (d) being adversely affected in respect of one's employment, profession or office, including employment opportunities and work security; and, or
 - (e) prosecution under article 101 of the Criminal Code relating to calumnious accusations; and, or
 - (f) civil or criminal proceedings or disciplinary proceedings."

5. Regulation 16 of the principal regulations shall be amended as follows:

Amends regulation 16 of the principal regulations.

(a) in the proviso of paragraph (f) of sub-regulation (2) thereof, the words "the Financial Intelligence Analysis Unit in terms of article 28 of the Act." shall be substituted by the words "the Financial Intelligence Analysis Unit in terms of article 28 of the Act;" and immediately thereafter there shall be added the following new paragraph:

"(g) any disclosures by an individual in the course of proceedings instituted under regulation 15A, including any disclosures made in any written pleadings or submissions."; and

(b) immediately after sub-regulation (3) thereof, there shall be added the following new sub-regulation:

S.L. 586.09. "(4) The rights of the data subject referred to in regulation 4 of the Restriction of the Data Protection (Obligations and Rights) Regulations, in particular the right of access, shall be restricted, partially or completely, where such a restriction is necessary and proportionate for a subject person to adhere to his obligations under sub-regulation (1).".

6. Regulation 21 of the principal regulations shall be amended as follows:

Amends regulation 21 of the principal regulations.

(a) in paragraph (a) of sub-regulation (4) thereof, the

words "an administrative penalty; and" shall be substituted by the words "an administrative penalty;"; and

(b) in the proviso to sub-paragraph (ii) of paragraph (b) of sub-regulation (4) thereof, the words "ultimate parent undertaking." shall be substituted by the words "ultimate parent undertaking; and" and immediately thereafter there shall be added the following new paragraph and proviso:

"(c) when it identifies any contravention or compliance failure as referred to in sub-regulations (1) and (2), instead of or in conjunction with the imposition of any administrative penalty as envisaged under this regulation, require a subject person to take any action or measure to remedy such contravention or ensure compliance with the provisions of the Act, these regulations or any procedures or guidance issued by the Financial Intelligence Analysis Unit in terms of regulation 17:

Provided that the provisions of this paragraph shall be without prejudice to the power of the Financial Intelligence Analysis Unit, conferred to it under article 30C of the Act, to issue directives in writing with the aim of ensuring compliance by subject persons with their obligations under the Act and regulations made thereunder, even where no contraventions or compliance failures are identified."
