

L.N. 26 of 2020

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

**Prevention of Money Laundering and Funding of Terrorism
(Amendment) Regulations, 2020**

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:-

1. The title of these regulations is the Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2020, 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".

Citation.

S.L. 373.01

2. Sub-regulation (1) of regulation 2 of the principal regulations shall be amended as follows:

Amends
regulation 2 of
the principal
regulations.

(a) the definition "beneficial owner" shall be amended as follows:

(i) in the second proviso to paragraph (a) thereto, for the words "actions taken to identify the beneficial owner" there shall be substituted the words "actions taken and any difficulties encountered to determine who the beneficial owner is";

(ii) in sub-paragraph (i) of paragraph (b) thereof, immediately after the words "the settlor" there shall be added the words "or settlors";

(iii) in sub-paragraph (iii) of paragraph (b) thereof, immediately after the words "the protector" there shall be added the words "or protectors";

(b) the definition "casino" shall be substituted by the

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following:

" "casino" means any premises where gaming services are made available to the public by a gaming licensee and in relation to which a concession in terms of article 11(3)(a) of the Gaming Act has been granted, and "casino licensee" in these regulations shall be construed accordingly;"

(c) the definition "electronic money" shall be substituted by the following:

" "electronic money" has the same meaning as is assigned to the term in the Financial Institutions Act, and excludes monetary value that:

(a) is stored on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services; or

(b) is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;"

(d) in the definition "gaming licensee" for the words "in terms of the Lotteries and Other Games Act* and, or the Gaming Authorisation Regulations" there shall be substituted the words "in terms of the Gaming Authorisation Regulations"; and the marginal note "Cap. 438." shall be deleted;

(e) in the definition "gaming service" the words ", and shall also include a game subject to a licensing requirement in terms of the Lotteries and Other Games Act† and the subsidiary legislation existing thereunder" and the corresponding marginal

note "Cap. 438." shall be deleted;

(f) the definition "occasional transaction" shall be amended as follows:

(i) paragraphs (e) to (h) thereof shall be renumbered as paragraphs (f) to (i);

(ii) immediately after paragraph (d) thereof, there shall be added the following new paragraph:

"(e) a transaction amounting to ten thousand euro (€10,000) or more, carried out by a natural or legal person trading in works of art or acting as intermediary in the sale of works of art, in a single operation or in several operations which appear to be linked;"

(iii) paragraph (h) thereof, as renumbered, shall be substituted by the following:

"(h) the provision of material aid, assistance or advice on tax matters;"

(iv) in paragraph (i) thereof, as renumbered, for the words "a similar structure." there shall be substituted the words "a similar structure;" and

(v) immediately after paragraph (i) thereof, as renumbered, there shall be added the following new paragraphs:

"(j) the provision, by real estate agents, of intermediation services in relation to the letting of immovable property where the monthly rent amounts to ten thousand euro (€10,000) or more; and

(k) the storage, by free ports, of works of art the value of which is equal to or exceeds ten thousand euro (€10,000).";

(g) the definition "politically exposed persons" shall be amended as follows:

(i) in the first paragraph thereof, immediately after the words "means natural persons who are or have been entrusted with prominent public functions" there shall

be added the words "in or outside Malta"; and for the words "includes the following" there shall be substituted the word "means";

(ii) in paragraph (h) thereof, for the words "or any other international body;" there shall be substituted the words "or any other international body; and" and

(iii) immediately after paragraph (h) thereof, there shall be added the following new paragraph:

"(i) Anyone entrusted with a prominent public function listed in an order issued by the Minister in terms of article 12(5) of the Act from time to time, or included in any other equivalent list issued by any other jurisdiction or international organisation.";

(h) the definition "relevant activity" shall be amended as follows:

(i) in paragraph (a) thereof, immediately after the words "acting as provided for in paragraph (c)" there shall be added the words "and any other person that undertakes to provide, directly, or through other persons to whom he is related, material aid, assistance or advice on tax matters";

(ii) in paragraph (b) thereof, immediately after the words "real estate agents" there shall be added the words ", including when acting as intermediaries in relation to the letting of immovable property where the monthly rent amounts to ten thousand euro (€10,000) or more";

(iii) in paragraph (g) thereof, for the words "gaming licensees; and" there shall be substituted the words "gaming licensees;"; and

(iv) immediately after paragraph (h) thereof, there shall be added the following new paragraphs:

"(i) any natural or legal person trading in works of art or acting as intermediary in the sale of works of art, including when this is carried out by art galleries, auctioneers and freeports, where the value of the transaction or a series of linked

transactions amounts to ten thousand euro (€10,000) or more; and

(j) free ports when storing works of art the value of which amounts to ten thousand euro (€10,000) or more, or when trading in works of art or acting as intermediaries in the sale of works of art as envisaged under paragraph (i);";

(i) the definition "supervisory authority" shall be amended as follows:

(i) in paragraph (d) thereof, the words "the Lotteries and Other Games Act* and" and the corresponding marginal note "Cap. 438." shall be deleted; and

(ii) paragraph (e) thereof shall be substituted by the following:

"(e) the Accountancy Board acting under Cap. 281. the Accountancy Profession Act;";

(j) the definition "trust and company service provider" shall be amended as follows:

(i) in paragraph (a) thereof, for the words "whether authorised or otherwise" there shall be substituted the words "whether authorised or required to be authorised"; and

(ii) in paragraph (b) thereof, immediately after the words "whether registered or notified" there shall be added the words ", or required to be registered or notified";

(k) in the definition "VFA", for the words "in the Virtual Financial Assets Act." there shall be substituted the words "in the Virtual Financial Assets Act;" and

(l) immediately after the definition "VFA" there shall be added the following new definition:

" "Work of Art" means an original, unique and tangible object of any kind or material that is created or executed by hand or a limited edition reproduction thereof, and which is considered to have an imaginative, expressive and aesthetic function, value or appeal, irrespective of artistic quality, and provided that the said criteria are met

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includes the following:

- (a) paintings, drawings, etchings and decorative plaques;
- (b) engravings, lithographs or other prints;
- (c) works of sculpture or statuary;
- (d) tapestries;
- (e) photographs printed and signed by the photographer, including limited edition prints made from the exposure; and
- (f) ceramic works."

Amends
regulation 5 of
the principal
regulations.

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

(a) in sub-regulation (2) thereof, for the words "perform a risk assessment under sub-regulation (1)" there shall be substituted the words "perform risk assessments under this regulation"; and

(b) in sub-regulation (6) thereof, for the words "where applicable, the management board" there shall be substituted the words "where applicable, the management body".

Amends
regulation 6 of
the principal
regulations.

4. In sub-regulation (5) of regulation 6 of the principal regulations, for the words "inform the relevant supervisory authority" there shall be substituted the words "inform the relevant supervisory authorities"; and immediately after the words "and the European Supervisory Authorities" there shall be added the words ", and shall seek to cooperate and coordinate its actions with such relevant supervisory authorities and the European Supervisory Authorities, as necessary".

Amends
regulation 7 of
the principal
regulations.

5. Regulation 7 of the principal regulations shall be amended as follows:

(a) in paragraph (a) of sub-regulation (1) thereof, immediately after the words "obtained from a reliable and independent source" there shall be added the words ", including, where available, electronic identification means issued under electronic identification schemes, or relevant trust services as set out in Regulation (EU) No 910/2014, or any other secure,

remote or electronic identification process approved by the Financial Intelligence Analysis Unit under procedures issued in terms of regulation 17";

(b) in the proviso to paragraph (a) of sub-regulation (1) thereof, for the words "vested with its administration and representation;" there shall be substituted the words "vested with its administration and representation:", and immediately thereafter there shall be added the following new proviso:

"Provided further that where the customer is a body corporate, a body of persons or any other form of legal entity incorporated in a Member State or a trust or similar legal arrangement administered in a Member State, that is subject to the registration of beneficial owner information, subject persons shall also obtain proof that such beneficial ownership information has been duly registered with a designated beneficial ownership register.";

(c) in paragraph (b) of sub-regulation (2) thereof, for the words "held by the subject person are kept up-to-date" there shall be substituted the words "held by the subject person are reviewed and kept up-to-date";

(d) sub-regulation (4) thereof shall be substituted by the following:

"(4) Subject persons shall not keep anonymous accounts or anonymous safe-deposit boxes, or accounts or safe-deposit boxes in fictitious names.";

(e) sub-regulation (6) thereof shall be substituted by the following:

"(6) Customer due diligence measures under this regulation shall also be applied, at appropriate times, to existing customers on a risk-sensitive basis and also whenever any of the following circumstances occur:

(a) when the subject person becomes aware that the relevant circumstances surrounding a business relationship have changed; or

(b) when the subject person has a legal duty to contact the customer for the purpose of reviewing and updating any information relating to the beneficial owners, including when the subject person has such a duty in terms of the Cooperation With Other Jurisdiction On Tax Matters Regulations.";

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(f) in sub-regulation (8) thereof, for the words "risk assessment" there shall be substituted the words "risk assessments"; and for the words "regulation 5(1)" there shall be substituted the words "regulation 5";

(g) sub-regulation (10) thereof shall be deleted; and

(h) sub-regulations (11) and (12) thereof shall be renumbered as sub-regulations (10) and (11) respectively.

Adds new regulation to the principal regulations.

6. Immediately after regulation 7 of the principal regulations there shall be added the following new regulation:

"Electronic money.

7A. (1) The Financial Intelligence Analysis Unit, with the concurrence of the relevant supervisory authority may, on the basis of an appropriate risk assessment which demonstrates a low risk of money laundering and funding of terrorism, exempt subject persons issuing electronic money from the carrying out of customer due diligence measures under regulation 7(1)(a) to (c) where all the following criteria are met:

(a) the payment instrument is not reloadable, or is subject to a maximum monthly payment transaction limit of one hundred fifty euro (€150) which can be used only in Malta;

(b) the maximum amount stored electronically does not exceed one hundred fifty euro (€150);

(c) the payment instrument is used exclusively to purchase goods or services;

(d) the payment instrument cannot be funded with anonymous electronic money; and

(e) the issuer carries out sufficient monitoring of the transactions and the business relationship to enable the detection of unusual or suspicious transactions:

Provided that this exemption shall not be applied in the case of redemption in cash or cash withdrawals of the monetary value stored on the payment instrument where the amount redeemed or withdrawn would exceed fifty euro (€50), or in the case of remote payment transactions where the amount paid exceeds fifty euro (€50).

(2) Subject persons issuing electronic money may still apply simplified customer due diligence measures where a low risk of money laundering and funding of terrorism is identified in accordance with regulation 10, even where the exemption envisaged under sub-regulation (1) has not been granted or has been granted subject to the criteria envisaged in the said sub-regulation (1).

(3) Subject persons acquiring payment transactions shall only accept payments carried out with anonymous prepaid instruments issued in other Member States and third countries where these are issued subject to criteria equivalent to those envisaged under sub-regulation (1).

(4) In this regulation:

"acquiring of payment transactions" means a payment service provided by a payment service provider contracting with a payee to accept and process payment transactions which results in a transfer of funds to the payee;

"payment transaction" has the same meaning as is assigned to the term under the Second Schedule to the Financial Institutions Act;

"remote payment transaction" means a payment transaction initiated via internet or through a device that can be used for distance communication."

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Amends
regulation 10 of
the principal
regulations.

7. In paragraph (b) of sub-regulation (1) of regulation 10 of the principal regulations, for the words "risk assessment" there shall be substituted the words "risk assessments"; and for the words "regulation 5(1)" there shall be substituted the words "regulation 5".

Amends
regulation 11 of
the principal
regulations.

8. Regulation 11 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof shall be amended as follows:

(i) paragraph (b) thereof shall be substituted by the following:

"(b) where, on the basis of the risk assessments carried out in accordance with regulation 5, the subject person determines that an occasional transaction, a business relationship or any transaction represents a high risk of money laundering or funding of terrorism; and";

(ii) paragraph (c) thereof shall be deleted;

(iii) paragraph (d) thereof shall be renumbered as paragraph (c); and

(iv) in paragraph (c) thereof, as renumbered, for the words "sub-regulations (3) to (9)" there shall be substituted the words "sub-regulations (3) to (10)";

(b) in sub-regulation (2) thereof, for the words "cases referred to in paragraphs (a) to (c)" there shall be substituted the words "cases referred to in paragraphs (a) and (b)"; and the proviso thereto shall be deleted;

(c) sub-regulation (9) thereof shall be substituted by the following:

"(9) Subject persons shall, as far as reasonably possible, examine the purpose and background of all transactions that:

(a) are complex;

(b) are unusually large;

(c) are conducted in an unusual pattern; or

(d) have no apparent economic or lawful purpose:

Provided that in such cases subject persons shall increase the degree and nature of monitoring of the business relationship, to determine whether those transactions or activities are suspicious in terms of regulation 15(3)."; and

(d) immediately after sub-regulation (9) thereof, as substituted, there shall be added the following new sub-regulations:

"(10) Where occasional transactions or business relationships or transactions involve non-reputable jurisdictions, subject persons shall:

(a) obtain additional information on the identity of the customer and, where applicable, the beneficial owners;

(b) obtain additional information on the intended nature of business relationships;

(c) obtain additional information on the source of wealth and source of funds of the customer, and, where applicable, the beneficial owners;

(d) obtain information on the purpose of prospective or executed transactions;

(e) obtain the approval of senior management when establishing business relationships, carrying out occasional transactions or continuing business relationships;

(f) conduct enhanced monitoring of business relationships by increasing the frequency of monitoring, and identifying and, where appropriate, examining patterns of transactions that require further scrutiny; and

(g) where applicable, require that the first payment be carried out through a bank account in the customer's name held with a bank subject to customer due diligence obligations that are consistent with those laid down under these

regulations.

(11) Where occasional transactions or business relationships or transactions involve non-reputable jurisdictions in respect of which there is an international call for counter-measures, subject persons shall inform in writing the Financial Intelligence Analysis Unit, and shall apply one or more of the following enhanced customer due diligence measures:

(a) carry out additional customer due diligence measures;

(b) introduce enhanced reporting mechanisms or systematic reporting of transactions;

(c) limit occasional transactions or business relationships involving such non-reputable jurisdictions:

Provided that in the cases referred to in this sub-regulation the Financial Intelligence Analysis Unit or the relevant supervisory authority shall apply any one or more of the following counter-measures:

(a) refuse the establishment in Malta of branches, representative offices or subsidiaries of persons or entities undertaking activities equivalent to relevant financial business or relevant activity which are situated in such non-reputable jurisdictions, or otherwise take into account the fact that that person or entity is situated in a non-reputable jurisdiction that has deficiencies in its anti-money laundering and counter funding of terrorism regime;

(b) prohibit subject persons from establishing branches or representative offices in such a non-reputable jurisdiction or otherwise take into account the fact that the branch or representative office would be situated in a non-reputable jurisdiction that has deficiencies in its anti-money laundering and counter funding of terrorism regime;

(c) carry out increased compliance

monitoring or require increased external audit requirements on branches and subsidiaries of persons and entities referred to in paragraph (a), established in Malta;

(d) require external audit requirements on subject persons forming part of a group in respect of their branches or subsidiaries in such non-reputable jurisdictions; and

(e) require subject persons carrying out relevant financial business to review, amend or terminate correspondent relationships with respondent institutions established in such non-reputable jurisdiction.

(12) The provisions of the proviso to sub-regulation (11) shall not prejudice the ability of the Financial Intelligence Analysis Unit, or a supervisory authority, acting pursuant to its powers at law, to apply, in the case referred to in this sub-regulation, measures other than those envisaged in that proviso, or to apply measures so envisaged in other situations as deemed appropriate.

(13) When taking any measures as set out in the proviso to sub-regulation (11), the Financial Intelligence Analysis Unit and the relevant supervisory authorities shall take into account, as appropriate, relevant evaluations, assessments or reports drawn up by international organisations, which lay down or monitor adherence with international standards for the prevention of money laundering and for combating the funding of terrorism, in relation to the risks posed by individual third countries, and shall duly notify the European Commission of any measures taken."

9. Sub-regulation (6) of regulation 13 of the principal regulations shall be substituted by the following:

Amends regulation 13 of the principal regulations.

"(6) The processing of personal data for the purposes of the Act and these regulations shall be deemed to be a matter of public interest under Regulation (EU) 2016/679, and the term "personal data" shall have the same meaning as is assigned to it under Regulation (EU) 2016/679."

10. Regulation 14 of the principal regulations shall be substituted by the following:

Substitutes regulation 14 of the principal regulations.

"14. (1) The Financial Intelligence Analysis Unit shall maintain comprehensive statistical data relative to its functions under the Act, to assist in the review of the effectiveness of the national system to combat money laundering or the funding of terrorism and the carrying out of national risk assessments.

(2) Comprehensive statistical data maintained under sub-regulation (1) shall include:

(a) data measuring the size and importance of the different sectors which are subject to anti-money laundering and counter-funding of terrorism obligations under these regulations, including the number of entities and persons conducting a relevant activity or a relevant financial business and the economic importance of each sector;

(b) the kind of activity conducted by the entities and persons referred to in paragraph (a);

(c) the number of suspicious transaction reports made to the Financial Intelligence Analysis Unit, the types of underlying criminal activities, where this information is known, and the follow up given to these reports;

(d) where available, data identifying the number and percentage of suspicious transaction reports resulting in further investigation, together with an annual report to subject persons detailing the usefulness and follow-up of the reports presented;

(e) statistics relevant to the exchange of information between the Financial Intelligence Analysis Unit and foreign counterparts, including data regarding the number of requests for information made, received, refused and answered in full or in part, broken down per foreign counterpart;

(f) data on human resources available to the Financial Intelligence Analysis Unit to carry out its functions under article 16(1)(a), (b) and (c) of the Act;

(g) the number of on-site and off-site examinations carried out on subject persons with the aim of monitoring their compliance with the provisions of the Act and any regulations made thereunder, the number of compliance failures or contraventions identified following

such examinations, and the number and values of administrative measures or penalties imposed.

(3) The Financial Intelligence Analysis Unit shall publish consolidated reviews of the statistical data gathered in accordance with this regulation on an annual basis and shall ensure that such statistical data is also made available to the National Co-ordinating Committee on Combating Money Laundering and Funding of Terrorism established by the National Co-ordinating Committee on Combating Money Laundering and Funding of Terrorism Regulations in terms of article 12A of the Act and the European Commission on an annual basis and upon request."

11. Sub-regulation (2) of regulation 16 of the principal regulations shall be amended as follows:

Amends
regulation 16 of
the principal
regulations.

(a) paragraph (b) thereof shall be substituted by the following:

"(b) disclosures between subject persons who undertake relevant financial business, other than a business referred to in paragraphs (l), (m) and (n) under the definition "relevant financial business" or between those subject persons and other persons undertaking equivalent business, whether situated in a Member State or a third country, which form part of the same group and apply group-wide policies and procedures as provided for under regulation 6;"

(b) paragraph (c) thereof shall be substituted by the following:

"(c) disclosures between subject persons who undertake activities under paragraph (a) or paragraph (c) of the definition "relevant activity" or between those subject persons and other persons undertaking activities equivalent to those under the said paragraphs in a Member State or a third country imposing requirements similar to those laid down in these regulations, who perform their professional activities, whether as employees or not, within the same legal person or within a larger structure to which they belong and which share common ownership, management or compliance control;" and

(c) in paragraph (d) thereof, immediately after the words "who undertakes relevant financial business" there shall

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be added the words ", other than a business referred to in paragraphs (l), (m) and (n) under the definition "relevant financial business" ".

Amends
regulation 21 of
the principal
regulations.

12. In the proviso to paragraph (c) of sub-regulation (4) of regulation 21 of the principal regulations, for the words "conferred to it under article 30C" there shall be substituted the words "conferred to it under article 30D".
