L.N. 199 of 2003

PREVENTION OF MONEY LAUNDERING ACT (CAP. 373)

Prevention of Money Laundering Regulations, 2003

IN exercise of the powers conferred by article 12 of the Prevention of Money Laundering Act, the Minister of Finance and Economic Affairs has made the following regulations:-

Citation.

1. The title of these regulations is the Prevention of Money Laundering Regulations, 2003.

Interpretation.

2. In these regulations –

"applicant for business" means a legal or natural person, whether acting as principal or agent, who seeks to form a business relationship, or carry out a transaction with a person who is acting in the course of either relevant financial business or relevant activity;

"business relationship" means any arrangement between two or more persons, at least one of which is acting in the course of either relevant financial business or relevant activity, where-

(a) the purpose or effect of the arrangement is to facilitate a frequent or habitual course of dealings between the persons concerned; and

(b) the total amount of any payment or payments to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made;

"Case 1" (negotiations) means any case where negotiations take place between the parties with a view to the formation of a business relationship between them;

"Case 2" (suspicions) means any case where, in respect of any transaction, any person handling the transaction knows or suspects that the applicant for business is, or may be, engaged in

money laundering, or that the transaction is carried out on behalf of another person who is, or may be, engaged in money laundering;

"Case 3" (single large transaction) means any case where, in respect of any transaction, payment is to be made by or to the applicant for business of the amount of Lm5,000 (five thousand Maltese liri) or more;

"Case 4" (series of transactions) means any case where, in respect of two or more transactions-

(a) it appears at the outset to a person dealing with any of the transactions that –

(i) the transactions are carried out by the same person and are of a similar character, and

(ii) the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is Lm5,000 (five thousand Maltese liri) or more; or

(b) at any later stage it appears to such a person that the provisions of sub-paragraphs (a) (i) and (ii) above are satisfied;

"collective investment scheme", "participants" and "units" have the same meanings as are assigned to these terms respectively in the Investment Services Act;

"criminal activity" has the same meaning as is assigned to the term in the Prevention of Money Laundering Act;

"established business relationship" means a business relationship formed by a person acting in the course of either relevant financial business or relevant activity where that person has obtained, under procedures maintained by him in accordance with the provisions of these regulations, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business;

"Financial Intelligence Analysis Unit" has the same meaning as is assigned to the term in the Prevention of Money Laundering Act;

"group of companies" has the same meaning as is assigned to the term "group company" by the Companies Act so however that, for the purposes of these regulations, it shall include also any other body corporate registered or operating in a reputable jurisdiction and forming part of the group of companies and which is further licensed or otherwise authorised under the laws of that jurisdiction to carry out any activity equivalent either to relevant financial business or to relevant activity;

"money laundering" means the doing of any act which constitutes an offence under the Prevention of Money Laundering Act, or in the case of an act committed otherwise than in Malta, would constitute such an offence if done in Malta;

"one-off transaction" means any transaction (including the opening of an account and a safe custody facility) other than a transaction carried out in the exercise of an established business relationship formed by a person acting either in the course of relevant financial business or in the course of relevant activity;

"relevant financial business" means-

(a) any business of banking or any business of an electronic money institution, carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Banking Act;

(b) any activity carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Financial Institutions Act;

(c) life assurance business carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Insurance Business Act or the Insurance Brokers and Other Intermediaries Act;

(d) investment business carried on by a person or institution licensed, or required to be licensed, under the provisions of the Investment Services Act;

(e) a collective investment scheme licensed, or required to be licensed, under the provisions of the Investment Services Act;

(f) any activity carried on by a person pursuant to a valid stockbroker's licence issued under the provisions of the Investment Services Act;

(g) any activity carried on by a person pursuant to a valid licence of a Recognised Investment Exchange issued under the provisions of the Financial Markets Act;

(h) any activity which is associated with a business falling within paragraphs (a) to (g) above;

"relevant activity" means the activity of the following legal or natural persons when acting in the exercise of their profession:

(a) auditors, external accountants and tax advisors;

(b) real estate agents;

(c) notaries and other independent legal professionals in relation to assisting in the planning or execution of transactions for their clients concerning the:

(i) buying and selling of real property or business entities;

(ii) managing of client money, securities or other assets, unless the activity is undertaken under a licence issued under the provisions of the Investment Services Act;

(iii) opening or management of bank, savings or securities accounts;

(iv) organisation of contributions necessary for the creation, operation or management of companies;

(v) creation, operation or management of trusts, companies or similar structures;

or by acting on behalf of and for their client in any financial or real estate transaction:

Provided that where a natural person undertakes any of the above professional activities as an employee of a legal person, the obligations under these regulations shall apply to that legal person;

(d) nominee companies and licensed nominees acting as nominee shareholders or trustees, authorised under the Malta Financial Services Authority Act;

(e) dealers in precious stones or metals, or works of art or similar goods and auctioneers whenever payment is made in cash in an amount equal to Lm5,000 (five thousand Maltese liri) or more;

(f) any activity which is associated with an activity falling within paragraphs (a) to (e) above;

"reputable jurisdiction" means any country having appropriate legislative measures for the prevention of money laundering, taking into account that countryís membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering;

"Subject Person" means any legal or natural person carrying out either relevant financial business or relevant activity;

"supervisory authority" means-

(a) the Central Bank of Malta;

(b) the Malta Financial Services Authority;

(c) the Competent Authority nominated under the Banking Act, the Financial Institutions Act, the Investment Services Act, the Insurance Business Act, or the Insurance Brokers and Other Intermediaries Act;

(d) the Registrar of Companies acting under article 193 of the Commercial Partnerships Ordinance and under articles 403 to 423 of the Companies Act;

(e) an inspector appointed under article 30 of the Insurance Business Act;

(f) a person appointed under article 20 or article 22 of the Banking Act;

(g) a person appointed under article 14 or article 15 of the Financial Institutions Act;

(h) a person appointed under article 13 or article 14 of the Investment Services Act;

(i) the Lotteries and Gaming Authority acting under the Lotteries and Other Games Act and the Gaming Act, the Gaming Act Regulations, 1998 and any regulations issued thereunder; and

(j) an inspector appointed under article 17 of the Lotteries and Other Games Act.

Systems and training to prevent money laundering.

3. (1) No Subject Person shall form a business relationship or carry out any one-off transaction with an applicant for business unless that Subject Person:

(a) maintains the following procedures established in relation to that business:

(i) identification procedures in accordance with the provisions of these regulations;

(ii) record-keeping procedures in accordance with the provisions of these regulations; and

(iii) internal reporting procedures in accordance with the provisions of regulation 10;

(b) takes appropriate measures from time to time for the purposes of making employees aware of:

(i) the procedures under the provision of sub-paragraph (a), and any other relevant policies that are maintained by him; and

(ii) the provisions of the Prevention of Money Laundering Act, and of these regulations; and

(c) provides employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering.

(2) Any Subject Person who contravenes the provisions of this regulation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding Lm20,000 (twenty thousand

Maltese liri) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(3) In determining whether a Subject Person has complied with any of the requirements of paragraph (1), a court shall consider:

(a) any relevant guidance or procedures issued, approved or adopted by the Financial Intelligence Analysis Unit with the concurrence of a supervisory authority, which applies to that Subject Person; and

(b) in a case where no guidance or procedures falling within the provisions of sub-paragraph (a) apply, any other relevant guidance issued by a body which regulates, or is representative of, any trade, profession, business or employment carried on by that Subject Person.

(4) In proceedings against any Subject Person for an offence against this regulation, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(5) In this regulation, the term "employees" means employees whose duties include the handling of either relevant financial business or relevant activity.

Offences by bodies corporate and unincorporated associations.

4. Where an offence against the provisions of regulation 3 is committed by a body or other association of persons, be it corporate or unincorporate, every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Identification procedures; business relationships and transactions.

5. (1) Subject to the provisions of regulations 6 and 8, identification procedures maintained by a Subject Person shall be deemed to be in accordance with the provisions of this regulation if in Cases 1 to 4 they require, as soon as it is reasonably practicable after contact is first made between that Subject Person and an applicant for business concerning any particular business relationship or one-off transaction-

(a) the production by the applicant for business of satisfactory evidence of his identity; or

(b) the taking of such measures specified in the procedures as will produce such evidence of identity and where that evidence is not obtained, the procedures shall require that the business in question shall not proceed or shall proceed only in accordance with any direction made by the Financial Intelligence Analysis Unit.

Without prejudice to the above, where to refrain in such manner is impossible or is likely to frustrate efforts of investigating a suspected money laundering operation that business shall proceed on condition that a report is immediately lodged with the Financial Intelligence Analysis Unit in accordance with regulation 11.

(2) For the purposes of these regulations, evidence of identity shall be deemed to be satisfactory if –

(a) it is reasonably capable of establishing that the applicant is the person he claims to be; and

(b) the person who obtains the evidence is satisfied, in accordance with the established internal procedures and policies of the business concerned, that it does establish that fact.

(3) In determining for the purposes of these regulations what is reasonably practicable in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including, in particular:

(a) the nature of the business relationship or transaction concerned such that a Subject Person is able to establish the business profile of the applicant for business;

(b) whether it is possible to obtain the evidence before commitments are entered into between the parties or before money is exchanged; and

(c) in relation to Case 3 (single large transaction) or Case 4 (series of transactions), the earliest stage at which there are reasonable grounds for presuming that the total amount payable by an applicant for business is Lm5,000 (five thousand Maltese liri) or more.

(4) Where, following the identification procedures under these regulations, in an established business relationship doubts have arisen or changes have occurred in the circumstances surrounding that

established business relationship, then the identification process shall be repeated in accordance with these regulations.

(5) Subject Persons shall examine with special attention any complex or large transactions and any transactions which are particularly likely, by their very nature, to be related to money laundering.

Identification procedures: payment by post, etc.

6. (1) Where an applicant for business would, apart from this sub-regulation, be required under identification procedures in accordance with the provisions of regulation 5, to produce evidence of his identity, but-

(a) the circumstances are such that a payment is to be made by the applicant for business; and

(b) it is reasonable in all the circumstances -

(i) for the payment to be sent by post or by any electronic means which is effective to transfer funds; or

(ii) for the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means;

subject to the provisions of paragraph (3), the fact that the payment is debited from an account held in the applicant's name at a credit institution within the meaning of article 2(1) of the Banking Act, shall be capable of constituting the required evidence of identity.

(2) For the purposes of paragraph 1(b), it shall be immaterial whether the payment or its details are sent or given to a Subject Person or to some other person acting on his behalf.

(3) The provisions of subregulation (1) shall not have effect to the extent that:

(a) Case 2 (suspicion) applies to the circumstances of the payment; or

(b) the payment is made by any person in the course of opening an account with a credit institution within the meaning of article 2(1) of the Banking Act.

Identification procedures: transactions on behalf of another.

7. (1) Subject to the exemptions provided in regulation 8, the provisions of this regulation apply in relation to a Subject Person where an applicant for business is or appears to be acting otherwise than as principal.

(2) In all identification procedures maintained by a Subject Person it shall be deemed to be in accordance with this regulation if, in a case to which the provisions of subregulation (1) of this regulation apply:

(a) they require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting in addition to identification of the applicant for business; and

(b) they require that, where such measures cannot be taken, the business relationship or one-off transaction shall only proceed as provided for under regulation 5(1).

(3) In determining, for the purposes of subregulation (2), what constitutes reasonable measures in any particular case, regard shall be had to best practice which, for the time being, is followed in the relevant field of business and is applicable to the circumstances of the case.

(4) For the purposes of subregulation (2), it shall be reasonable for a Subject Person to obtain from the applicant for business a written declaration, accompanied by the relevant supporting documentary evidence, in which he discloses satisfactory identification of his principal:

Provided that-

(i) where the principal is a body corporate, satisfactory identification shall also be disclosed of all directors and of all qualifying shareholders. For the purpose of this regulation a qualifying shareholding means a shareholding of 10% or more of the equity shares of the principal;

(ii) the applicant for business is duly authorised in writing by the principal.

(5) (a) Where the applicant for business is acting on behalf of a body corporate, the shareholding of which includes a qualifying shareholding as defined in subregulation (4) held under a nominee, trustee or other fiduciary arrangement, a Subject Person shall not

undertake any business with or provide any service to such applicant for business unless that applicant for business discloses the identity of the beneficial owners or beneficiaries of the qualifying shareholding and produces the relevant authenticated identification documentation. Such disclosure procedures shall also apply where there are changes in beneficial ownership or beneficiaries.

(b) Where the applicant for business is acting as a nominee shareholder, trustee or under any other fiduciary arrangement, a Subject Person shall not undertake any business with or provide any service to such applicant for business unless that applicant for business discloses the identity of the beneficial owners of the shares held by him or of the trust beneficiaries or of his principal, as the case may be, and produces the relevant authenticated identification documentation. Such disclosure procedures shall also apply where there are changes in beneficial ownership, beneficiaries or principal.

(6) An applicant for business who makes a false declaration for the purposes of this regulation shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding Lm20,000 (twenty thousand Maltese liri) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Identification procedures, exemptions.

8. (1) Subject to the provisions of subregulation (2), identification procedures under the provisions of these regulations shall not require any steps to be taken to obtain evidence of any person's identity-

(a) where there are reasonable grounds for believing that the applicant for business is a person who is authorised to undertake relevant financial business or is a person who is licensed or otherwise authorised under the laws of a reputable jurisdiction to carry out any activity which is equivalent to relevant financial business;

(b) where any transaction is carried out with a third party pursuant to an introduction effected by a person in respect of whom there are reasonable grounds for believing that that person is authorised to undertake relevant financial business or is a person who is licensed or otherwise authorised under the laws of a reputable jurisdiction to carry out any activity which is equivalent to relevant financial business, and who provides the name of the third party and gives an assurance that he has obtained evidence as to the identity of the third party:

Provided that the Subject Person shall ensure that supporting identification documentation is available or may be made available if required by the relevant authorities.

(c) in relation to life insurance business in respect of which a premium is payable in one instalment of an amount not exceeding Lm1,000 (one thousand Maltese liri);

(d) in relation to life insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed Lm500 (five hundred Maltese liri); and

(e) in relation to insurance policies in respect of pension schemes taken out by virtue of a contract of employment or the insuredís occupation:

Provided that such policies contain no surrender clause and may not be used as collateral for a loan.

(2) Nothing in this regulation contained shall apply in circumstances falling within Case 2 (suspicion).

Record-keeping procedures.

9. (1) Record-keeping procedures maintained by a Subject Person shall be deemed to be in accordance with the provisions of this regulation if they make provision for the keeping, for the prescribed period, of the following records:-

(a) in relation to any business relationship that is formed or a one-off transaction that is carried out, a record indicating the nature of the evidence of a person's identity obtained under procedures maintained in accordance with these regulations, comprising a copy of the evidence of identity and providing sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained.

(b) a record containing details relating to all transactions carried out by that person in the course of an established business relationship.

(2) For the purposes of subregulation (1), the prescribed period shall be the period of at least five years commencing with-

(a) in relation to such records as are described in paragraph (a), the date on which the relevant financial business was completed; and

(b) in relation to such records as are described in paragraph (b), the date on which all dealings taking place in the course of the transaction in question were completed:

Provided that, in relation to records relating to a one-off transaction or a series of one-off transactions, the aforesaid period of at least five years shall commence with the date on which the one-off transaction or the last of a series of one-off transactions took place.

(3) For the purposes of paragraph 2(a) the date on which relevant business is completed shall, as the case may be, be deemed to be the date of-

(a) in circumstances falling within Case 1 (negotiations), the ending of the business relationship in respect of whose formation the record under this regulation was compiled,

(b) in circumstances falling within Case 2 (suspicion) or Case 3 (single large transaction), the carrying out of the one-off transaction or the last of a series of one-off transactions in respect of which the record under this regulation was compiled, and

(c) in circumstances falling within Case 4 (series of transactions), the carrying out of the last one-off transaction in a series of one-off transactions in respect of which the record under this regulation was compiled,

and where the formalities necessary to end a business relationship have not been observed, but a period of five years has elapsed since the date on which the last transaction was carried out in the course of that relationship, then the date of that transaction shall be treated as the date on which the relevant business was completed.

Internal reporting procedures.

10. (1) Internal reporting procedures maintained by a Subject Person, shall be deemed to be in accordance with the provisions of this regulation if they provide for-

(a) a reporting officer employed by the Subject Person to whom a report is to be made of any information or other matter which gives rise to a knowledge or suspicion that another person is engaged in money laundering;

(b) consideration of such report by the reporting officer or by another designated employee of the Subject Person, in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the

report does give rise to a knowledge or suspicion that another person is engaged in money laundering;

(c) reasonable access for the reporting officer or other designated employee to any information held by the Subject Person which may be of assistance for the purposes of considering the report; and

(d) a procedure whereby any knowledge or suspicion that another person is engaged in money laundering determined by the reporting officer or other designated employee is reported in accordance with regulation 11.

(2) It shall be lawful for the reporting officer or other designated employee of the Subject Person to disclose information obtained in the course of internal reporting procedures under these regulations to the reporting officer or other designated employee of another Subject Person or Persons forming part of the same group of companies of the former Subject Person.

(3) A supervisory authority shall maintain internal reporting procedures in accordance with the provisions of paragraph (1). The failure of a supervisory authority to maintain such procedures in accordance with the provisions of this regulation shall not constitute an offence but may be the subject of disciplinary proceedings against the officials or employees concerned.

(4) Any official or employee of a Subject Person or a supervisory authority who discloses to the person concerned or to a third party not being the reporting officer or other designated employee as referred to in subregulation (2) that an investigation is being carried out pursuant to the provisions of this regulation, or that information has been transmitted to the Financial Intelligence Analysis Unit pursuant to this regulation or regulation 11, shall be guilty of an offence and liable on conviction to a fine (*multa*) not exceeding Lm20,000 (twenty thousand Maltese liri) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Reporting of evidence of money laundering.

11. (1) Where a supervisory authority, either in the course of its supervisory work or in any other way, or a Subject Person -

(a) obtains any information, and

(b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering that supervisory authority or Subject Person shall, as soon as is

reasonably practicable, disclose that information, supported by the relevant identification documentation, to the Financial Intelligence Analysis Unit.

(2) Subject Persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition of "relevant activity" shall not be bound by the provisions of subregulation (1) if such information is received or obtained in the course of ascertaining the legal position for their client or performing their responsibility of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

Use of disclosed information.

12. Any information disclosed under these regulations shall be used only in connection with investigations of money laundering activities.

Exoneration from the duty of professional secrecy.

13. Any bona fide communication or disclosure made by a supervisory authority or by a Subject Person or by an employee or director of such a supervisory authority or Subject Person in accordance with these regulations shall not be treated as a breach of the duty of professional secrecy or any other restriction (whether imposed by statute or otherwise) upon the disclosure of information and shall not involve that supervisory authority or Subject Person or the directors or employees of such supervisory authority or Subject Person in any liability of any kind.

Power to issue Procedures.

14. The Financial Intelligence Analysis Unit, with the concurrence of the relevant supervisory authority, may issue procedures as may be required for the carrying into effect of the provisions of these regulations. Such procedures shall be binding on persons carrying out relevant financial business or relevant activity.

Transitory provisions.

15. Nothing in these regulations contained shall require a person who is carrying out a relevant activity to maintain procedures in accordance with these regulations which require evidence to be obtained, in respect of any business relationship formed by him before the date on which these regulations come into force, as to the identity of the person with whom that relationship has been formed, and any such relationship shall be treated as if it were an established business relationship:

Provided that where a doubt has arisen or changes have occurred in the circumstances surrounding the established business relationship

the identification process shall be carried out in accordance with these regulations.

Repeal of L.N. 195 of 1994.

16. The Prevention of Money Laundering Regulations, 1994 are hereby repealed.

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