L.N. 195 of 1994

PREVENTION OF MONEY LAUNDERING ACT, 1994 (ACT No. XIX OF 1994)

Prevention of Money Laundering Regulations, 1994

IN exercise of the powers conferred by section 9 of the Prevention of Money Laundering Act, 1994, the Minister of Finance has made the following regulations:

Citation and commencement.

1. (1) These regulations may be cited as the Prevention of Money Laundering Regulations, 1994.

(2) These regulations shall come into force on the 30 day of December 1994.

Interpretation.

2. (1) In these regulations -

"applicant for business" means an individual, 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 relevant financial business;

"business relationship" means any arrangement between two or more persons, at least one of which is acting in the course of relevant financial business, 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 engaged in money laundering, or that the transaction is carried out on behalf of another person 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" (large 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, 1994;

"criminal activity" has the same meaning as is assigned to the term in the Prevention of Money Laundering Act, 1994;

"established business relationship" means a business relationship formed by a person acting in the course of relevant financial business where that person has obtained, under procedures maintained by him in accordance with the provisions of regulation 5 of these regulations, satisfactory evidence of the identity of the persons who, in relation to the formation of that business relationship, was the applicant for business;

"money laundering" means the doing of any act which constitutes an offence under the Money Laundering Act, 1994, or in the case of an act committed otherwise than in Malta, would constitute such an offence if done in Malta;

"relevant financial business" means-

(a) any business of banking 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, 1994;

(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; *Cap. 290.*

(d) investment business carried on by a person or institution licensed, or required to be licensed, under the provisions of the Investment Services Act, 1994;

(e) a collective investment scheme licensed, or required to be licensed, under the provisions of the Investment Services Act, 1994;

(f) any activity carried on by a person pursuant to a valid stockbroker's licence issued under the provisions of the Malta Stock Exchange Act ; *Cap. 345.*

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

"supervisory authority" means-

(a) the Central Bank of Malta;

(b) the Malta Financial Services Centre;

(c) the Competent Authority nominated under the Banking Act, 1994, the Financial Institutions Act, 1994 or the Investment Services Act, 1994;

(d) the Registrar of Partnerships acting under section 193 of the Commercial Partnerships Ordinance;

(e) the Competent Authority under the Insurance Business Act;

Cap. 290.

(f) an inspector appointed under section 15 of the Banking Act;

Cap. 215.

(g) a person appointed under section 20 or section 22 of the Banking Act, 1994;

(h) a person appointed under section 14 or section 15 of the Financial Institutions Act, 1994;

(i) a person appointed under section 13 or section 14 of the Investment Services Act, 1994;

(j) an auditor, within the meaning of section 141 of the Commercial Partnerships Ordinance, appointed by a company carrying on relevant financial business; and

Cap. 168.

(k) the Malta Stock Exchange in relation to a person who holds a valid stockbroker's licence under the Malta Stock Exchange Act;

Cap. 345.

"transaction" means any transaction (including the opening of an account and a safe custody facility) other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant financial business.

(2) In these regulations any reference to 'the Banking Act' shall refer to the Banking Act, 1994 and the Banking Act, Cap 215 as provided for under subsection (3) of section 37 of the Banking Act, 1994.

Systems and training to prevent money laundering.

3. (1) No person shall, in the course of relevant financial business carried on by him, form a business relationship or carry out any transaction with another unless that person:

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

(i) identification procedures in accordance with the provisions of regulations 5 and 7 of these regulations;

(ii) record-keeping procedures in accordance with the provisions of regulation 9 of these regulations; and

(iii) internal reporting procedures in accordance with the provisions of regulation 10 of these regulations.

(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) of this sub-paragraph, and any other relevant policies that are maintained by him; and

(ii) the provisions of the Prevention of Money Laundering Act, 1994, 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 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 person has complied with any of the requirements of paragraph (1) of this regulation, a court may take account of:

(a) any relevant guidance issued, approved or adopted by a supervisory authority, which applies to that person; and

(b) in a case where no guidance falling within the provisions of sub-paragraph (a) of this paragraph applies, any other relevant guidance issued by a body

which regulates, or is representative of, any trade, profession, business or employment carried on by that person.

(4) In proceedings against any 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 relevant financial business.

Offences by bodies corporate and unincorporated associations.

4. Where an offence against the provisions of regulation 3 of these regulations 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 of these regulations, identification procedures maintained by a 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 person and an applicant for business concerning any particular business relationship or 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 a Police officer not below the rank of Inspector.

However, 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 a Police officer not below the rank of Inspector in accordance with regulation 11 of these regulations.

(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 transaction, all the circumstances shall be taken into account including, in particular:

(a) the nature of the business relationship or transaction concerned;

(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 (large 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.

Identification procedures: payment by post, etc.

6. (1) Where an applicant would, apart from this sub-regulation, be required under identification procedures in accordance with the provisions of regulation 5 of these regulations, 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;

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

(2) For the purposes of sub-paragraph (b) of paragraph (1) of this regulation, it shall be immaterial whether the payment or its details are sent or given to a person who is bound by the provisions of paragraph (1) of regulation 5 of these regulations or to some other person acting on his behalf.

(3) The provisions of paragraph (1) of this regulation 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 bank within the meaning of subsection (1) of section (2) of the Banking Act.

Identification procedures: transactions on behalf of another.

7. (1) Subject to the exemptions provided in regulation 8 of these regulations, the provisions of this regulation apply in relation to a person who is bound by the provisions of paragraph (1) of regulation 3 of these regulations where an applicant for business is or appears to be acting otherwise than as principal.

(2) In all identification procedures maintained by a person it shall be deemed to be in accordance with this regulation if, in a case to which the provisions of paragraph (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 transaction shall only proceed as provided for under paragraph (1) of regulation 5 of these regulations.

(3) In determining, for the purposes of paragraph (2) of this regulation, what constitutes 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 paragraph (2) of this regulation, it shall be reasonable for a person bound by the provisions of paragraph (1) of regulation 3 of these regulations to obtain from the applicant for business a written declaration 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 of the principal;

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

(iii) this paragraph shall not apply where the applicant for business is a person acting within the terms of paragraph (5) of this regulation.

(5) Where the applicant for business is an advocate, notary, certified public accountant, certified public accountant and auditor or nominee company established and practising in Malta, who is not acting on his own behalf, it shall be reasonable for a person bound by the provisions of paragraph (1) of regulation 3 of these regulations to obtain a declaration in writing from the applicant for business to the effect that:

(a) the applicant for business is acting in the professional capacity of advocate, notary, certified public accountant, certified public accountant and auditor or nominee company on behalf of an undisclosed principal and has maintained a professional relationship with the principal for the three months immediately preceding the application for business or

has obtained satisfactory references from at least two persons who have maintained a professional relationship with the principal for the said three months;

(b) the powers of the applicant for business have not been conferred principally for the sole purpose of dealing with persons bound by the provisions of sub-paragraph (1) of regulation 3 of these regulations and that the applicant knows or will know the nature of the underlying transactions for the purpose of which he will be dealing with persons bound by the said provisions of paragraph (1) of regulation 3;

(c) the applicant for business has obtained satisfactory evidence of the identity of the principal within the meaning of paragraph (2) of regulation 5 of these regulations and maintains a record of such identity or identities in accordance with regulation 9 of these regulations;

(d) the applicant for business is not aware of any fact that indicates that, or causes him to suspect that, the assets or transactions involved are or will be derived from criminal activity;

(e) the applicant for business will inform the person bound by the provisions of paragraph (1) of regulation 3 of these provisions if the powers of the applicant for business are revoked or otherwise terminated, or if any statement in the written declaration should cease to be true.

(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 paragraph (2) of this regulation, identification procedures under the provisions of regulations 5 and 7 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 bound by the provisions of paragraph (1) of regulation 3 of these regulations;

(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 he is bound by the provisions of paragraph (1) of regulation 3 of these regulations, 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;

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

(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).

(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 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 any case where evidence of a person's identity is obtained under procedures maintained in accordance with the provisions of regulations 5 or 7 of these regulations, a record that indicates the nature of the evidence and:-

(i) comprises a copy of the evidence of identity; or

(ii) provides such information authenticated by the applicant for business as would enable a copy of the evidence of identity to be obtained; or

(iii) in a case where it is not reasonably practicable to comply with items (i) or (ii) of this sub-paragraph, provides sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained; and

(b) a record containing details relating to all business transacted (including any business transacted in the course of a business relationship).

(2) For the purposes of paragraph (1) of this regulation, 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 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 business in question were completed.

(3) For the purposes of sub-paragraph (a) of paragraph (2) of this regulation 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 transaction in respect of which the record under this regulation was compiled; and

(c) in circumstances falling within Case 4 (large series of transactions), the carrying out of the last transaction 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 person, hereinafter referred to as the "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 of these regulations.

(2) A supervisory authority shall maintain internal reporting procedures in accordance with the provisions of paragraph (1) of this regulation. 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.

(3) Any official or employee of a Subject Person or a supervisory authority who discloses to the person concerned or to a third party that an investigation is being carried out pursuant to the

provisions of this regulation, or that information has been transmitted to a Police officer 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. Where a supervisory authority or any person bound by that provisions of paragraph (1) of regulation 3 of these regulations referred to as the "Subject Person" under regulation 10 of these regulations-

(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 person shall, as soon as is reasonably practicable, disclose that information to a Police officer not below the rank of Inspector.

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 in accordance with paragraph (5) of regulation 7, regulation 10 or regulation 11 of 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.

Transitory provisions.

14. Nothing in these regulations contained shall require a person who is bound by the provisions of paragraph (1) of regulation 3 of these regulations to maintain procedures in accordance with regulations 5 and 7 of 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.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni – Kastilja — *Published by the Department of Information – Kastilja*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Prezz 14c — *Price 14c*