VERŻJONI ELETTRONIKA

L.N. 464 of 2014

PREVENTION OF MONEY LAUNDERING ACT (CAP. 373)

Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2014

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

Citation and coming into force.

1. (1) The title of these regulations is the Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2014, 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

(2) The provisions of paragraph (b) of regulation 13 shall come into force on such date as the Minister for Finance may, by notice in the Gazette, establish and different dates may be so established for different provisions of the said regulation 13(b).

Amends regulation 2 of the principal regulations.

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

(a) for the definition "Case 2" there shall be substituted the following:

" "Case 2" (suspicion) means any case where, regardless of any exemption or threshold, in respect of any transaction, any person handling the transaction knows or suspects that the applicant for business may have been, is, or may be engaged in money laundering or the funding or terrorism, that the transaction is carried out on behalf of another person who may have been, is, or may be engaged in money laundering or the funding of terrorism, or that the transaction involves property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity;";

(b) for the definition "funding of terrorism" there shall be substituted the following:

" "funding of terrorism" means the conduct described in articles 328B and 328F to 328I, both inclusive, of the Criminal Code;"; Cap. 9.

(c) for the definition "money laundering" there shall be substituted the following:

" "money laundering" shall have the same meaning assigned to it under the Act;";

(d) in paragraph (f) of the definition "relevant activity", for the words "in terms of the Trusts and Trustees Act;" there shall be substituted the words "in terms of the Trusts and Trustees Act, other than persons acting as trustees in terms of article 43A of the said Act;"; and

(e) the definition "relevant financial business" shall be amended as follows:

(i) in paragraph (a) thereof, the words "or any business of an electronic money institution" shall be deleted;

(ii) in paragraph (c) thereof, immediately after the words "or enrolled or required to be enrolled under the provisions of the Insurance Intermediaries Act" there shall be added the words "other than natural persons who are enrolled as intermediaries and act on behalf of another intermediary"; and

(iii) for paragraph (g) thereof, there shall be substituted the following:

"(g) any activity other than that of a retirement scheme or a retirement fund, carried on in relation to a retirement scheme, by a person or institution registered or required to be registered under the provisions of the Retirement Pensions Act and for the purpose of this paragraph "retirement scheme" and "retirement fund" shall have the same meaning as is assigned to them in the said Act;". Cap. 514.

Amends regulation 3 of the principal regulations.

3. In paragraph (d) of sub-regulation (2) of regulation 3 of the principal regulations, for the words "and not directly related to the main activity" there shall be substituted the words "and directly

VERŻJONI ELETTRONIKA

related to the main activity".

Amends regulation 4 of the principal regulations.

4. Regulation 4 of the principal regulations shall be amended as follows:

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

(i) for the words "No subject person shall form a business relationship or carry out an occasional transaction with an applicant for business unless that subject person" there shall be substituted the words "Every subject person shall ensure that it";

(ii) in the Maltese text of paragraph (a) thereof, for the words "ma tadottax dawn il-miżuri u proċeduri" there shall be subsituted the words "tadotta dawn il-miżuri u proċeduri";

(iii) in paragraph (a) thereof, for the words "established in relation to that business" there shall be substituted the words "when forming a business relationship or carrying out an occasional transaction";

(iv) for the Maltese text of paragraph (b) thereof, there shall be substituted the following:

"(b) tapplika l-miżuri u l-proċeduri stabbiliti taħt il-paragrafu (a) inkluż meta tidħol għal relazzjonijiet jew tagħmel operazzjonijiet li ma jsirux wiċċ imb'wiċċ;";

(v) in the Maltese text of paragraph (c) thereof, for the words "ma tistabbilix *policies* u proċduri" there shall be substituted the words "tistabbilixxi *policies* u proċeduri";

(vi) in the Maltese text of paragraph (d) thereof, for the words "ma tieħux miżuri" there shall be substituted the words "tieħu miżuri";

(vii) in the Maltese text of paragraph (e) thereof, for the words "ma tipprovdix lill-impjegati" there shall be substitued the words "tipprovdi lill-impjegati"; and

(viii) in paragraph (e) thereof, immediately after the words "the recognition and handling of transactions" there shall be added the words "which may be related to

proceeds of criminal activity and transactions";

(b) in sub-regulation (5) thereof, for the words "the provisions of this regulation" there shall be substituted the words "the provisions of sub-regulation (1)(a) to (c)"; and

(c) in sub-regulation (6) thereof, for the words "the requirements of subregulation (1)" there shall be substituted the words "the requirements of sub-regulation (1)(a) to (c)".

Amends regulation 5 of the principal regulations.

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

(a) in sub-regulation (1) thereof, for the words "Where an offence against the provisions of regulation 4 is committed" there shall be substituted the words "Where an offence against the provisions of these regulations is committed";

(b) in sub-regulation (2) thereof, for the words "administrative penalty of not less than one thousand two hundred euro (€1,200) and not more than five thousand euro (€5,000)" there shall be substituted the words "administrative penalty of not less than one thousand euro (€1,000) and not more than forty-six thousand five hundred euro (€46,500)"; and

(c) sub-regulation (3) thereof shall be deleted.

Amends regulation 7 of the principal regulations.

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

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

(i) in paragraph (b) thereof, the words "and in accordance with subregulation (3)" shall be deleted;

(ii) in the Maltese text of paragraph (d) thereof, for the words "li jmexxu sorveljanza kontinwa tar-relazzjoni kummerċjali" there shall be substituted the words "s-sorveljanza kontinwa tar-relazzjoni kummerċjali"; and

(iii) in paragraph (d) thereof, for the words "customer due diligence shall proceed in accordance with regulation 11(6) and (7)" there shall be substituted the words "subject persons shall apply the measures applicable under regulation 11(6)";

(b) in sub-regulation (9) thereof, for the words "on a risk based approach, whether an applicant for business is a politically exposed person" there shall be substituted the words "on a risk-sensitive basis, whether an applicant for business or a beneficial owner poses a higher risk of money laundering and funding of terrorism, including whether an applicant for business or a beneficial owner is a politically exposed person"; and

(c) in sub-regulation (12) thereof, for the words "Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payee" there shall be substituted the words "Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer"; and for the words "administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500) which shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing" there shall be substituted the words "administrative penalty of not less than one thousand euro (€1,000) and not more than forty-six thousand five hundred euro (€46,500) in respect of every separate contravention".

Amends regulation 8 of the principal regulations.

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

(a) in sub-regulation (5) thereof, for the words "consider making a suspicious transaction report" there shall be substituted the words "consider disclosing that information in accordance with regulation 15(6)"; and

(b) immediately after sub-regulation (5) thereof, there shall be added the following new sub-regulation:

"(6) Without prejudice to sub-regulation (5), a subject person who is in possession of funds of a customer or a potential customer who, pursuant to sub-regulation (5) decides to terminate or not to establish a business relationship, or not to carry out an occasional transaction and to return, release or transfer those funds shall, unless an order has been made or a notice has been issued in terms of the Act or these regulations prohibiting the release of such funds, return those funds to the same source from where they originated and through the same financial channels by which the subject person came into possession of the funds.".

Amends regulation 10 of the principal regulations.

8. Regulation 10 of the principal regulations shall be amended as follows:

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

(i) for the words "Without prejudice to the provisions of subregulation (5) and subregulation (6), subject persons shall not apply customer due diligence measures" there shall be substituted the words "Without prejudice to the provisions of sub-regulation (5) and sub-regulation (6), subject persons shall not be required to apply customer due diligence measures";

(ii) in sub-paragraph (iv) of paragraph (d) thereof, for the words "the activity of the applicant;" there shall be substituted the words "the activity of the applicant."; and

(iii) paragraph (e) thereof shall be deleted;

(b) sub-regulation (2) thereof shall be deleted;

(c) sub-regulations (3) and (4) thereof shall be renumbered as sub-regulations (2) and (3) respectively;

(d) sub-regulation (2), as renumbered, shall be amended as follows:

(i) in paragraph (e) thereof, for the words "the Banking Act" there shall be substituted the words "the Financial Institutions Act" and for the words "one hundred and fifty euro (€150)" there shall be substituted the words "two hundred and fifty euro (€250)"; and

(ii) in paragraph (f) thereof, for the words "in accordance with subregulation (4)" there shall be substituted the words "in accordance with sub-regulation (3)";

(e) sub-regulation (3) thereof, as renumbered, shall be amended as follows:

(i) for the words "for the purposes of subregulation (3)(f) where" there shall be substituted the words "for the purposes of sub-regulation (2)(f) where";

(ii) in sub-paragraph (i) of paragraph (d) thereof,

VERŻJONI ELETTRONIKA

for the words "does not exceed that laid down in subregulation 3(a) and (b);" there shall be substituted the words "does not exceed that laid down in sub-regulation (2)(a) and (b);" and

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

"(4) Without prejudice to the provisions of sub-regulation (5) and sub-regulation (6), a subject person carrying on affiliated insurance business in accordance with paragraph (c) of the definition "relevant financial business", shall not be required to apply customer due diligence measures in accordance with regulation 7 and regulation 8(1) where the applicant for business satisfies all the following criteria:

(a) is a legal person representing a low risk of money laundering and funding of terrorism and where the business relationship and the insurance product provided also represent such low risk;

(b) is a shareholder of, or is a person or entity connected with the subject person as determined by the applicable Insurance Rules issued by the Malta Financial Services Authority under the Insurance Business Act; and

Cap. 403.

(c) carries out a relevant activity under paragraphs (a) to (f) of the definition "relevant activity" or an equivalent activity in another Member State of the Community or in a reputable jurisdiction:

Provided that, notwithstanding the provisions of sub-regulation (6), in making a determination as to whether an applicant for business or a business relationship or an insurance product represents a low risk of money laundering or funding of terrorism, the subject person shall consult with the Financial Intelligence Analysis Unit, which may request the opinion of the Malta Financial Services Authority, and which may determine what alternative customer due diligence measures may need to be applied.".

Amends regulation 11 of the principal regulations.

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

(a) sub-regulation (2) thereof shall be amended as follows:

(i) for the words "Subject persons shall apply one or more of the following additional measures", there shall be substituted the words "Subject persons shall apply one or more of the following measures, in addition to the requirements under regulation 7,"; and

(ii) in paragraph (c) thereof, for the words "a relevant financial activity" there shall be substituted the words "relevant financial business";

(b) in the English text of paragraph (b) of sub-regulation (4) thereof, for the word "corresponding" there shall be substituted the word "correspondent"; and

(c) in paragraph (a) of sub-regulation (6) thereof, immediately after the words "establishing such business relationships" there shall be added the words "or undertaking any occasional transaction".

Amends regulation 12 of the principal regulations.

10. In tsub-regulation (7) of regulation 12 of the principal regulations, for the words "Subject persons carrying out an activity falling with the scope of paragraph (b)" there shall be substituted the words "Subject persons carrying out an activity falling within the scope of paragraph (b)".

Amends regulation 13 of the principal regulations.

11. Regulation 13 of the principal regulations shall be amended as follows:

(a) in paragraph (c) of sub-regulation (2) thereof, for the

VERŻJONI ELETTRONIKA

words "relationships and transactions therein." there shall be substituted the words "relationships and transactions therein;" and immediately thereafter there shall be added the following new paragraphs:

"(d) a record of any disclosures made to the Financial Intelligence Analysis Unit in accordance with regulation 15(6);

(e) a record of any internal reports made in accordance with regulation 15(4)(a);

(f) a record of any written determinations made in accordance with regulation 15(8);

(g) a record of any training provided in accordance with regulation 4(1)(e); and

(h) any other document, record or information which the Financial Intelligence Analysis Unit may require to be maintained in accordance with procedures issued in terms of regulation 17.";

(b) sub-regulation (3) thereof shall be amended as follows:

(i) in the Maltese text of paragraph (a) thereof, for the words "relattivament għal dawk ir-*records*" there shall be substituted the words "fir-rigward ta' dawk ir-*records*";

(ii) in paragraph (a) thereof, for the words "relevant financial business or relevant activity was completed; and" there shall be substituted the words "relevant financial business or relevant activity was completed;";

(iii) in the Maltese text of paragraph (b) thereof, for the words "relattivament għal dawk ir-*records*" there shall be substituted the words "fir-rigward ta' dawk ir-*records*";

(iv) in paragraph (b) thereof, for the words "the transaction in question were completed:" there shall be substituted the words "the transaction in question were completed; and"; and

(vi) immediately after paragraph (b) thereof, there

shall be added the following new paragraph:

"(c) in relation to such records as are described in paragraphs (d), (e), (f) and (g), the date on which the event referred to therein took place:";

(c) in sub-regulation (6) thereof, for the words "all customer identification, due diligence records and transaction records and other relevant information" there shall be substituted the words "all records maintained in accordance with this regulation".

Amends regulation 15 of the principal regulations.

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

(a) in sub-regulation (1) thereof, for the words "and make such findings available to the Financial Intelligence Analysis Unit and to the relevant supervisory authority in accordance with applicable law" there shall be substituted the words "maintain such findings on record and ensure that, upon request, such findings are made available to the Financial Intelligence Analysis Unit, the relevant supervisory authority, other relevant competent authorities in accordance with applicable laws, and to the internal or external auditors appointed or otherwise engaged to carry out internal control functions under regulation 4(1)(c)";

(b) in the Maltese text of sub-regulation (2) thereof, for the words "għall-operazzjonijiet ma' persuni, kumpanniji u xogħlijiet" there shall be substituted the words "għall-operazzjonijiet ma' persuni, kumpanniji u impriżi";

(c) in sub-regulation (2) thereof, for the words "and, where the provisions of subregulation (1) apply to such transactions, subject persons shall proceed as provided for in subregulation (1)", there shall be substituted the words "and, where those transactions have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and the findings should be maintained and made available, upon request, to the Financial Intelligence Analysis Unit, the relevant supervisory authority, other relevant competent authorities in accordance with applicable laws, and to the internal or external auditors appointed or otherwise engaged to carry out internal control functions under regulation 4(1)(c)";

(d) sub-regulation (4) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words "that a transaction may be related to money laundering or the funding of terrorism" there shall be substituted the words "that a transaction may be related to proceeds of criminal activity, money laundering or the funding of terrorism";

(ii) in the Maltese text of paragraph (b) thereof, for the words "imdaħħla fil-*money laundering* jew fl-iffinanzjar ta' terroriżmu jew ma tkunx" there shall be substituted the words "imdaħħla fil-*money laundering* jew fl-iffinanzjar ta' terroriżmu,";

(iii) in paragraph (b) thereof, immediately after the words "is or may be engaged in money laundering or the funding of terrorism" there shall be added the words "or that a transaction may be related to proceeds of criminal activity, money laundering or the funding of terrorism"; and

(iv) in paragraph (d) thereof, immediately after the words "engaged in money laundering or the funding of terrorism" there shall be added the words "or that a transaction may be related to proceeds of criminal activity, money laundering or the funding of terrorism";

(e) in sub-regulation (6) thereof, for the words "has reasonable grounds to suspect that a transaction" there shall be substituted the words "has reasonable grounds to suspect that funds are the proceeds of criminal activity, that a transaction" and for the words "but not later than five working days from when the suspicion first arose" there shall be substituted the words "but not later than five working days from when the knowledge or suspicion first arose";

(f) in sub-regulation (7) thereof, for the words "related to money laundering or the funding of terrorism" there shall be substituted the words "related to proceeds of criminal activity, money laundering or the funding of terrorism" and for the words "shall accordingly inform the Financial Intelligence Analysis Unit immediately the transaction is effected" there shall be substituted the words "shall accordingly inform the Financial Intelligence Analysis Unit immediately after the transaction is effected";

(g) in sub-regulation (9) thereof, for the words "that could be related to money laundering or the funding of terrorism" there shall be substituted the words "that is related to funds which are known or suspected to be proceeds of criminal activity, or that could be related to money laundering or the funding of terrorism";

(h) in sub-regulation (14) thereof, for the words "who report suspicions of money laundering or the funding of terrorism" there shall be substituted the words "who report suspicions of money laundering or the funding of terrorism, or suspicions that funds are the proceeds of criminal activity";

(i) in sub-regulation (15) thereof, for the words "of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500)" there shall be substituted the words "of not less than one thousand euro (€1,000) and not more than forty-six thousand five hundred euro (€46,500) in respect of every separate contravention of any provision referred to in this sub-regulation"; and

(j) sub-regulation (16) thereof shall be deleted.

Amends regulation 16 of the principal regulations.

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

(a) for sub-regulation (1) thereof there shall be substituted the following:

"(1) A subject person, a supervisory authority, any official or employee of a subject person or a supervisory authority, or any other person from whom the Financial Intelligence Analysis Unit has demanded information, who discloses to the person concerned or to a third party, other than as provided for in this regulation, the fact that information has been demanded by the Financial Intelligence Analysis Unit or that information has been or may be transmitted to the Financial Intelligence Analysis Unit pursuant to these regulations or article 30 of the Act, or that an analysis or an investigation has been, is being, or may be carried out, shall be guilty of an offence and liable on conviction to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.";

(b) sub-regulation (2) thereof shall be amended as

follows:

(i) in paragraph (d) thereof, for the words, "the prevention of money laundering or the funding of terrorism." there shall be substituted the words "the prevention of money laundering or the funding of terrorism;"; and

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

"(e) disclosures by a subject person to a competent court, tribunal or other judicial authority in or outside Malta, including disclosures made in any written pleadings or submissions, that the subject person refrained from carrying out a transaction as required by the proviso to article 28(1) of the Act:

Provided that disclosures under this paragraph shall not constitute a breach of sub-regulation (1) only in the case where the execution of the transaction under article 28(1) of the Act has not been opposed by the Financial Intelligence Analysis Unit and the period of time referred to in the proviso to that sub-article has lapsed, and such disclosures are made in the course of proceedings instituted against the subject person for, or as a consequence of, the failure or delay in carrying out the transaction;

(f) disclosures by a subject person to a supervisory authority or professional body exercising supervision or regulatory oversight over that subject person that the subject person refrained from carrying out a transaction as required by the proviso to article 28(1) of the Act:

Provided that disclosures under this paragraph shall not constitute a breach of sub-regulation (1) only in the case where the execution of the transaction under article 28(1) of the Act has not been opposed by the Financial Intelligence Analysis Unit and the period of time referred to in the proviso to that sub-article has lapsed, and such disclosures are made in response to an enquiry or action by that supervisory authority or professional

body with respect to the subject person's failure or delay in carrying out the transaction;

(g) disclosures by a subject person to a competent court, tribunal or other judicial authority in or outside Malta, including disclosures made in any written pleadings or submissions, that the execution of a transaction had been suspended by the Financial Intelligence Analysis Unit in accordance with article 28 of the Act:

Provided that disclosures under this paragraph shall not constitute a breach of sub-regulation (1) only in the case where such disclosures are made upon the lapse of the period of time referred to in sub-article (2) or the extended period referred to in sub-article (3) of article 28 of the Act and such disclosures are made in the course of proceedings instituted against the subject person for, or as a consequence of, the failure or delay in carrying out the transaction;

(h) disclosures by a subject person to a supervisory authority or professional body exercising supervision or regulatory oversight over that subject person that the execution of a transaction had been suspended by the Financial Intelligence Analysis Unit in accordance with article 28 of the Act:

Provided that disclosures under this paragraph shall not constitute a breach of sub-regulation (1) only in the case where such disclosures are made upon the lapse of the period of time referred to in sub-article (2) or the extended period referred to in sub-article (3) of article 28 of the Act and such disclosures are made in response to an enquiry or action by that supervisory authority or professional body with respect to the subject person's failure or delay in carrying out the transaction.".

Amends regulation 17 of the principal regulations.

14. In sub-regulation (2) of regulation 17 of the principal regulations, for the words "shall be liable to the administrative penalties as provided for under regulation 15(15) and (16)" there shall be substituted the words "shall be liable to an administrative penalty of not less than one thousand euro (€1,000) and not more than forty-

six thousand five hundred euro (€46,500) in respect of every separate failure to comply with such provisions".

Adds new regulations to the principal regulations.

15. Regulation 18 of the principal regulations shall be re-numbered as regulation 22 thereof, and immediately after regulation 17 there shall be added the following new regulations:

"Power to terminate a business relationship.

18. Where the Financial Intelligence Analysis Unit knows or has reasonable grounds to suspect that, in connection with a business relationship established by a subject person, money laundering or funding of terrorism is taking place, has taken place or has been attempted, or that such business relationship could increase the risk of money laundering or funding of terrorism, the Financial Intelligence Analysis Unit may, where the circumstances so warrant, require such subject person to terminate that business relationship within a stipulated period of time.

Periodical reporting.

19. In fulfilment of its supervisory functions under the Act, the Financial Intelligence Analysis Unit may require subject persons to submit periodical reports on the internal policies and procedures they maintain and apply pursuant to regulation 4 and any other information or documents as the Financial Intelligence Analysis Unit may consider necessary.

Format of information.

20. Where a subject person is required to provide information to the Financial Intelligence Analysis Unit under the Act, these regulations and any implementing procedures issued thereunder, the Financial Intelligence Analysis Unit may demand that the information is produced electronically and may establish the format within which the information is to be provided.

Penalties.

21. (1) Any subject person who fails to comply with any lawful requirement, order or directive issued by the Financial Intelligence Analysis Unit under these regulations or the Act shall be liable to an administrative penalty of not less than one thousand euro (€1,000) and not more than forty-six thousand five hundred euro (€46,500) in respect of every separate failure to comply with such lawful requirement, order or directive.

(2) Unless otherwise specifically provided for under any other regulation, a subject person who contravenes any provision of these regulations shall be liable to an administrative penalty of not less than one thousand euro (€1,000) and not more than forty-six thousand five hundred euro (€46,500) in respect of every separate contravention.

(3) Administrative penalties under these regulations shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing and may be imposed either as a one time fixed penalty or as a daily cumulative penalty, or both:

Provided that administrative penalties imposed on a daily cumulative basis shall not be less than two hundred and fifty euro (€250) and the accumulated penalty shall not exceed forty-six thousand five hundred euro (€46,500).

(4) Notwithstanding any provision imposing an administrative penalty under these regulations, the Financial Intelligence Analysis Unit may, where the circumstances so warrant, issue a reprimand in writing instead of an administrative penalty.".

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — ***Printed at the Government Printing Press on recycled paper***

Prezz/*Price*
€1.44