B 1516

L.N. 199 of 2021

PREVENTION OF MONEY LAUNDERING ACT (CAP. 373)

Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2021

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

Citation.

1. The title of these regulations is the Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2021, and these regulations shall be read and construed as one with the Prevention of Money Laundering and Funding of Terrorism Regulations, hereinafter referred to as "the principal regulations".

S.L. 373. 01.

Amends regulation 2 of the principal regulations.

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

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

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

"(c) the Malta Business Registry;";

(ii) in paragraph (d) thereof, the words "acting under the Gaming Act, and any regulations issued thereunder" and the corresponding marginal note shall be deleted;

(iii) in paragraph (e) thereof, the words "acting under the Accountancy Profession Act" and the corresponding marginal note shall be deleted; and

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

"(f) the Trade Licensing Unit limitedly to its licensing function in relation to dealers in precious metals and stones; and

(g) the Licensing Board established Cap. 615. under the Real Estate Agents, Property Brokers and Property Consultants Act;"; and

(b) in paragraph (b) of the definition "trust and company service provider", for the words "whether registered or notified, or required to be registered or notified" there shall be substituted the words "whether authorised, registered or notified, or required to be authorised, registered or notified".

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

(a) in sub-regulation (1) thereof, for the words "as subject persons for the purposes of these regulations." there shall be substituted the words "as subject persons for the purposes of these regulations:";

(b) immediately after sub-regulation (1) thereof, there shall be added the following proviso:

"Provided that the Financial Intelligence Analysis Unit may not make any determination as is referred to hereabove in relation to a person who engages in the remittance and transfer of money.";

(c) in paragraph (f) of sub-regulation (2) thereof, for the words "and is not generally offered to the public:" there shall be substituted the words "and is not generally offered to the public."; and

(d) the proviso to sub-regulation (2) thereof shall be deleted.

4. Regulation 11 of the principal regulations shall be amended as follows: Amends regulation 11 of the principal regulations.

(a) sub-regulations (12) and (13) thereof shall be renumbered as sub-regulations (13) and (14) respectively;

(b) sub-regulation (11) thereof shall be substituted by the following:

"(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 systemic reporting of transactions;

(c) limit occasional transactions or business relationships involving such non-reputable jurisdictions.";

(c) immediately after sub-regulation (11) thereof, as substituted, there shall be added the following new sub-regulation:

"(12) Without prejudice to the provisions of sub-regulation (11), the Financial Intelligence Analysis Unit or the relevant supervisory authority shall, in the situations referred to in sub-regulation (11), apply 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 sub-regulation

(11)(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."; and

(d) in sub-regulation (13) thereof, as renumbered, for the words "The provisions of the proviso to sub-regulation (11)" there shall be substituted the words "The provisions of sub-regulation (12)".

Amends regulation 13 of the principal regulations.

5. Sub-regulation (2) of regulation 13 of the principal regulations shall be amended as follows:

(a) in paragraph (a) thereof, for the words "documentation, data or information described in paragraph (a)" there shall be substituted the words "documentation, data or information described in paragraph (a) thereof";

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

"(b) in relation to the supporting evidence and records described in paragraph (b) thereof, the date when the business relationship ends or when the occasional transaction is carried out, and where the formalities necessary to end a business relationship could not be observed, the date on which the last transaction in the course of that business relationship was carried out;"; and

(c) the second proviso thereto shall be substituted by the following:

"Provided further that the period of five years may be further extended, up to a maximum retention period of ten years, where, after a thorough assessment of the necessity and proportionality of such further extension, it is concluded that the extension is justified as necessary for the purposes of the prevention, detection, analysis and investigation of money laundering or funding of terrorism activities by the Financial Intelligence Analysis Unit,

relevant supervisory authorities or law enforcement agencies.".

Amends regulation 21 of the principal regulations.

6. Sub-paragraph (ii) of paragraph (b) of sub-regulation (4) of regulation 21 of the principal regulations shall be substituted by the following new sub-paragraph:

"(ii) in the case of a subject person carrying out a relevant financial business, an administrative penalty of not more than five million euro (€5,000,000) and, where the imposition of an administrative penalty of five million euro (€5,000,000) is deemed not to be effective and dissuasive in the view of the serious, systemic and repeated nature of the contraventions committed, an administrative penalty of not more than ten per centum (10%) of the total annual turnover according to the latest available approved annual financial statements:

Provided that where the subject person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated accounts, the relevant total annual turnover shall be the total annual turnover resulting from the latest available consolidated accounts approved by the ultimate parent undertaking; and".

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