



FINANCIAL INTELLIGENCE ANALYSIS UNIT
CONSULTATION DOCUMENT

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**PROPOSED AMENDMENTS TO ADDRESS
TECHNICAL COMPLIANCE SHORTCOMINGS IDENTIFIED
IN THE 5TH ROUND MONEYVAL EVALUATION
REPORT OF MALTA**

ISSUED ON 1 APRIL 2020

CONSULTATION CLOSING ON 17 APRIL 2020

Proposed Amendments to the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L.373.01) and the FIAU Implementing Procedures Part I

The Financial Intelligence Analysis Unit (“FIAU”) has today issued for consultation a series of amendments to the Prevention of Money Laundering and Funding of Terrorism Regulations (“PMLFTR”). These proposed amendments to the PMLFTR seek to address technical compliance shortcomings that were identified by MONEYVAL Assessors during the 5th Round Mutual Evaluation of Malta.

This exercise will ensure that provisions of the PMLFTR that were found not to be fully aligned with the FATF Recommendations are revised to ensure full adherence to these international standards.

Of particular importance are the amendments being proposed to Regulations 15(3) and (7) which will revise the time-frames for submission of suspicious transaction reports (STRs) by subject persons and supervisory authorities, as well as the amendments to Regulation 21(7) which will enable the FIAU to impose administrative sanctions on persons who have a senior managerial role within a subject person and who are found to be responsible for breaches of AML/CFT obligations. Amendments are also being proposed to Regulations 8, 11 and 12 of the PMLFTR.

This Consultation Paper also includes proposed amendments to Chapter 5 of the Implementing Procedures Part I which are ancillary to the proposed amendments to the reporting obligation envisaged under Regulation 15(3) of the PMLFTR. This approach is being taken so as to ensure that interested parties have a holistic view of the FIAU’s proposals given that both amendments are intended to come into force concurrently.

The FIAU is issuing the proposed revised versions of the PMLFTR and the mentioned Sections of the Implementing Procedures Part I with track changes, not only to make it easier for one to actually follow where and what changes are being proposed, but also to facilitate and render the consultation process more efficient.

The FIAU invites subject persons to submit their feedback and comments to their representatives on the Joint Committee for the Prevention of Money Laundering and the Funding of Terrorism, since this would facilitate the FIAU’s work in compiling and reviewing the feedback received.

Where this is not possible, subject persons may correspond directly with the FIAU using the following email address: consultation@fiumalta.org.

Feedback and comments should reach the FIAU by **not later than the 17 April 2020**.

Proposed Amendments to the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01)

SUBSIDIARY LEGISLATION 373.01

PREVENTION OF MONEY LAUNDERING AND FUNDING OF TERRORISM REGULATIONS

1st January, 2018

LEGAL NOTICE 372 of 2017, as amended by Legal Notice 430 of 2018, 77 of 2019 and 26 of 2020.

Title and scope.

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

(2) The objective of these regulations is to implement the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Interpretation and application.

Amended by:

L.N. 430 of 2018.

L.N. 26 of 2020.

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2. (1) In these regulations, unless the context otherwise requires:

"the Act" means the Prevention of Money Laundering Act;

"beneficial owner" means any natural person or persons who ultimately own or control the customer and, or the natural person or persons on whose behalf a transaction or activity is being conducted, and:

(a) in the case of a body corporate or a body of persons, the beneficial owner shall consist of any natural person or persons who ultimately own or control that body corporate or body of persons through direct or indirect ownership of twenty-five *per centum* (25%) plus one (1) or more of the shares or more than twenty-five *per centum* (25%) of the voting rights or an ownership interest of more than twenty-five *per centum* (25%) in that body corporate or body of persons, including through bearer share holdings, or through control via other means, other than a company that is listed on a regulated market which is subject to disclosure requirements consistent with European Union law or equivalent international standards which ensure adequate transparency of ownership information:

Provided that a shareholding of twenty-five *per centum* (25%) plus one (1) share or more, or the holding of an ownership interest or voting rights of more than twenty-five *per centum* (25%) in the customer shall be an indication of direct ownership when held directly by a natural person, and of indirect ownership when held by one or more bodies corporate or body of persons or through a trust or a similar legal arrangement, or a combination thereof:

Provided further that if, after having exhausted all possible means and provided there are no grounds of suspicion, no beneficial owner in terms of this paragraph has been identified, subject persons shall consider the natural person or persons who hold the position of senior managing official or officials to be the beneficial owners, and shall keep a record of the actions taken and any difficulties encountered to determine who the beneficial owner is in terms of this paragraph.

(b) in the case of trusts the beneficial owner shall consist of:

(i) the settlor or settlors;

- (ii) the trustee or trustees;
 - (iii) the protector or protectors, where applicable;
 - (iv) the beneficiaries or the class of beneficiaries as may be applicable; and
 - (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;
- (c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the beneficial owner shall consist of the natural person or persons holding equivalent or similar positions to those referred to in paragraph (b);

"business relationship" means a business, professional or commercial relationship between two or more persons, at least one of which is acting in the course of either relevant financial business or relevant activity, and which has, or is expected to have at the time when the contact is established, an element of duration;

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

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

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"company" has the same meaning as is assigned to the term in the Companies Act;

"competent authority" means:

- (a) any supervisory authority;
- (b) the Comptroller of Customs when carrying out duties under any regulation that may be issued or are in force from time to time relating to the cross-border movement of cash and other financial instruments;
- (c) the Commissioner for Revenue;
- (d) the Commissioner for Voluntary Organisations;
- (e) the Asset Recovery Bureau;
- (f) the Security Service; and
- (g) the Sanctions Monitoring Board;

"correspondent relationship" means:

- (a) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;
- (b) the relationship between and among institutions carrying out relevant financial business and activities equivalent thereto, including where similar services to those under paragraph (a) are

provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers;

"criminal activity" has the same meaning as is assigned to the term in the Act;

"customer" means a legal or natural person who seeks to form, or who has formed a business relationship, or seeks to carry out an occasional transaction with a person who is acting in the course of either relevant financial business or relevant activity;

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

- (a) is stored on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services; or
- (b) is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;

"European Supervisory Authorities" has the same meaning as is assigned to the term in the Act;

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

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

S.L. 583.05.

"gaming licensee" means any person licensed in terms of the Gaming Authorisation Regulations to provide a gaming service;

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S.L. 583.04.

"gaming service" means making a licensable game which is a game of chance as defined in the Gaming Act, available for participation by players, and, without prejudice to the preceding phrase, "licensable game" shall have the same meaning as is assigned to it in the Gaming Definitions Regulations and the subsidiary legislation existing thereunder;

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"group" has the same meaning as is assigned to the term in the Companies Act;

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"long term insurance business" means the business of insurance of any of the classes specified in the Second Schedule to the Insurance Business Act;

"management body" means the board of directors or, where there is no board of directors, the body

having equivalent powers and functions;

"Member State" has the same meaning as is assigned to the term in the Act;

"money laundering" has the same meaning as is assigned to the term in the Act;

"non-reputable jurisdiction" means any jurisdiction having deficiencies in its national anti-money laundering and counter funding of terrorism regime or having inappropriate and ineffective measures for the prevention of money laundering and the funding of terrorism, taking into account any accreditation, declaration, public statement or report issued by an international organisation which lays down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism or which monitors adherence thereto, or is a jurisdiction identified by the European Commission in accordance with Article 9 of Directive (EU) 2015/849;

"occasional transaction" means any transaction or service carried out or provided by a subject person for his customer, other than a transaction or service carried out or provided within a business relationship, and includes the following:

- (a) a transaction amounting to fifteen thousand euro (€15,000) or more, carried out in a single operation or in several operations which appear to be linked;
- (b) a transfer of funds as defined under Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015, which exceeds one thousand euro (€1,000) in a single operation or in several operations which appear to be linked;
- (c) a transaction in cash amounting to ten thousand euro (€10,000) or more, carried out by a natural or legal person trading in goods in a single operation or in several operations which appear to be linked;
- (d) a transaction amounting to two thousand euro (€2,000) or more, carried out by gaming or casino licensees in a single operation or in several operations which appear to be linked;
- (e) a transaction amounting to ten thousand euro (€10,000) or more, carried out by a natural or legal person trading in works of art or acting as intermediary in the sale of works of art, in a single operation or in several operations which appear to be linked;
- (f) a transaction, independently of the amount involved, carried out by a subject person whose activities are those referred to in paragraphs (m) and (n) of the definition "relevant financial business";

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- (g) the provision of VFA agent services to a person or institution required to be licensed to provide VFA services under the provisions of the Virtual Financial Assets Act;
- (h) the provision of material aid, assistance or advice on tax matters;
- (i) the formation of a company, trust, foundation or a similar structure;
- (j) the provision, by real estate agents, of intermediation services in relation to the letting of immovable property where the monthly rent amounts to ten thousand euro (€10,000) or more; and
- (k) the storage, by free ports, of works of art the value of which is equal to or exceeds ten thousand euro (€10,000).

"politically exposed persons" means natural persons who are or have been entrusted with prominent public functions in or outside Malta, other than middle ranking or more junior officials. For the purposes of this definition the term "natural persons who are or have been entrusted with prominent public functions" means:

- (a) Heads of State, Heads of Government, Ministers, Deputy or Assistant Ministers, and Parliamentary Secretaries;
- (b) Members of Parliament or similar legislative bodies;
- (c) Members of the governing bodies of political parties;
- (d) Members of superior, supreme, and constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
- (e) Members of courts of auditors or of the boards of central banks;
- (f) Ambassadors, *charges d'affaires* and high ranking officers in the armed forces;
- (g) Members of the administrative, management or supervisory boards of State-owned enterprises;
- (h) Anyone exercising a function equivalent to those set out in paragraphs (a) to (f) within an institution of the European Union or any other international body; and
- (i) Anyone entrusted with a prominent public function listed in an order issued by the Minister in terms of article 12(5) of the Act from time to time, or included in any other equivalent list issued by any other jurisdiction or international organisation.

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

- (a) auditors, external accountants and tax advisors, including when acting as provided for in paragraph (c) and any other person that undertakes to provide, directly, or through other persons to whom he is related, material aid, assistance or advice on tax matters;
- (b) real estate agents, including when acting as intermediaries in relation to the letting of immovable property where the monthly rent amounts to ten thousand euro (€10,000) or more;
- (c) notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction or by assisting in the planning or carrying out of transactions for their clients concerning the –
 - (i) buying and selling of real property or business entities;

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- (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 companies, trusts, foundations or similar structures, or when acting as a trust or company service provider;
- (d) trust and company service providers;

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- (e) nominee companies holding a warrant under the Malta Financial Services Authority Act and acting in relation to dissolved companies registered under the said Act;
- (f) casino licensees;

(g) gaming licensees;

(h) any natural or legal person trading in goods, but only where a transaction involves payment in cash in an amount equal to ten thousand euro (€10,000) or more whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(i) any natural or legal person trading in works of art or acting as intermediary in the sale of works of art, including when this is carried out by art galleries, auctioneers and freeports, where the value of the transaction or a series of linked transactions amounts to ten thousand euro (€10,000) or more; and

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

"relevant financial business" means –

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

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

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(c) any long term insurance business other than business of reinsurance 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;

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(d) any insurance intermediary activities carried out by an insurance intermediary or by a tied insurance intermediary related to long-term insurance business which person or institution is enrolled or required to be enrolled under the provisions of the Insurance Distribution Act, other than a natural person who is registered or enrolled and acts on behalf of a tied insurance intermediary or a person or institution enrolled as a tied insurance intermediary that does not collect premiums, or other amounts intended for the policyholder or the beneficiary;

S.L. 403.11

S.L. 386. 10

S.L. 386.13

(e) any long term insurance business other than business of reinsurance carried on by a person in accordance with the Insurance Business (Captive Insurance Undertakings and Captive Reinsurance Undertakings) Regulations, by a cell company in accordance with the provisions of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations or by an incorporated cell company and an incorporated cell in accordance with the provisions of the Companies Act (Incorporated Cell Companies Carrying on Business of Insurance) Regulations;

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

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(g) administration services to collective investment schemes provided by a person or institution recognised or required to be recognised under the provisions of the Investment Services Act other than administration services provided by recognised incorporated cell companies in accordance with the Companies Act (Recognised Incorporated Cell Companies) Regulations;

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(h) a collective investment scheme marketing its units or shares, licensed, recognised or notified, or required to be licensed, recognised or notified, under the provisions of the Investment Services Act;

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(i) 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 licensed or required to be licensed 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 Retirement Pension Act;

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(j) any activity of a regulated market and that of a central securities depository authorised or required to be authorised under the provisions of the Financial Markets Act;

(k) safe custody services provided by any person or institution not covered under paragraph (a) or (f);

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(l) any activity of a VFA agent carried out by a person or institution registered or required to be registered under the provisions of the Virtual Financial Assets Act;

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(m) VFA services carried out by a person or institution licensed or required to be licensed under the provisions of the Virtual Financial Assets Act;

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(n) the issue of virtual financial assets for offer to the public in or from Malta in terms of the Virtual Financial Assets Act; and

(o) any activity under paragraphs (a) to (n) carried out by branches established in Malta and whose head offices are situated outside Malta

"senior management" means an officer or employee with sufficient knowledge of the subject person's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not be a member of the management body;

"shell institution" means an institution carrying out activities equivalent to relevant financial business, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is not affiliated with a regulated financial group;

"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;

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- (c) the Registrar of Companies acting under articles 403 to 423 of the Companies Act;

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- (d) the Malta Gaming Authority acting under and the Gaming Act, and any regulations issued thereunder;

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- (e) the Accountancy Board acting under the Accountancy Profession Act;

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"terrorism" means any act of terrorism as defined in article 328A of the Criminal Code;

"trust and company service provider" means any natural or legal person who:

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- (a) provides trustee or other fiduciary services, whether authorised or required to be authorised, in terms of the Trusts and Trustees Act, other than persons acting as trustees in terms of article 43A of the said Act;

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- (b) acts as a company service provider, whether registered or notified, or required to be registered or notified in terms of the Company Service Providers Act;

- (c) arranges, by way of business, for another person to act as a trustee of an express trust or a similar legal arrangement;

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- (d) arranges, by way of business, for another person to act as a fiduciary shareholder for another person other than a company listed on regulated market that is subject to disclosure requirements in conformity with the Financial Markets Act or subject to equivalent international standards.

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"VFA" has the same meaning as is assigned to it in the Virtual Financial Assets Act;

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

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

(2) Where these regulations are extended to professions and other categories of undertakings other than those referred to in this regulation and whose activities are particularly likely to be used for the purposes

of money laundering or the funding of terrorism, these regulations shall apply in full or in part as may be established by such extension in accordance with the provisions of the Act, and the Financial Intelligence Analysis Unit shall inform the European Commission accordingly.

(3) The Financial Intelligence Analysis Unit, in conjunction with the relevant supervisory authority, may require entities issuing electronic money or providing payment services whose head office is situated in another Member State, and that are established in Malta in forms other than a branch, to appoint a central contact point in Malta to ensure on behalf of the appointing entity compliance with these regulations and to facilitate the monitoring of such compliance, including by providing the Financial Intelligence Analysis Unit and supervisory authorities with information and documents upon request.

(4) These regulations shall also apply where any 'relevant financial business' or any 'relevant activity' as defined in this regulation is undertaken or performed through the Internet or other electronic means.

(5) The Financial Intelligence Analysis Unit shall cooperate with the European Supervisory Authorities for the purposes of Directive (EU) 2015/849 and it shall provide the European Supervisory Authorities with any information which is necessary to carry out their duties under Directive (EU) 2015/849 and under Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.

Specific gaming services.

3. (1) The Financial Intelligence Analysis Unit, in conjunction with the relevant supervisory authority may, following an appropriate risk assessment, determine that these regulations are not to apply, in whole or in part, to specific gaming services on the basis of proven low risk of money laundering and funding of terrorism posed by the nature and, where appropriate, the scale of operations of such services.

(2) Any exemption in terms of sub-regulation (1) shall be revoked if the Financial Intelligence Analysis Unit, in conjunction with the relevant supervisory authority, determines that the risk of money laundering or funding of terrorism posed by such gaming services can no longer be considered as low.

(3) Any exemption or revocation in terms of this regulation shall be communicated to the European Commission.

(4) The provisions of sub-regulation (1) shall not be applicable to casinos and/or to any casino type games provided via electronic means of distance communication.

Relevant financial business on an occasional or very limited basis.

4. (1) The Financial Intelligence Analysis Unit may determine that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or the funding of terrorism occurring, are not to be considered as subject persons for the purposes of these regulations.

(2) For the purpose of reaching a determination under sub-regulation (1) the Financial Intelligence Analysis Unit shall consider a legal or natural person to be engaging in a financial activity on an occasional or very limited basis where all of the following criteria are met:

(a) the total annual turnover of the financial activity does not exceed fifteen thousand euro (€15,000), and the Financial Intelligence Analysis Unit may establish different thresholds not exceeding this amount depending on the type of financial activity;

(b) each transaction per customer does not exceed five hundred euro (€500) whether the transaction is carried out in a single operation or in several operations which appear to be linked, and the Financial Intelligence Analysis Unit may establish different thresholds not exceeding this amount depending on the type of financial activity;

(c) the financial activity is not the main activity and in absolute terms does not exceed five *per centum* (5%) of the total turnover of the legal or natural person concerned;

- (d) the financial activity is ancillary and directly related to the main activity;
- (e) the main activity is not an activity falling within the definition "relevant financial business" or "relevant activity"; and
- (f) the financial activity is provided only to the customers of the main activity and is not generally offered to the public:

Provided that in making a determination under sub-regulation (1) in relation to a person who engages in the remittance and transfer of money, the Financial Intelligence Analysis Unit shall only consider the criteria set out in paragraphs (b) to (f).

(3) In assessing the risk of money laundering or the funding of terrorism for the purposes of sub-regulation (1), the Financial Intelligence Analysis Unit shall pay particular attention to, and examine any financial activity which is particularly likely, by its very nature, to be used or abused for money laundering or the funding of terrorism and the Financial Intelligence Analysis Unit shall not consider that financial activity as representing a low risk of money laundering or funding of terrorism if the information available suggests otherwise.

(4) In making a determination under sub-regulation (1) the Financial Intelligence Analysis Unit shall further state the reasons underlying the decision and shall revoke such determination should circumstances change.

(5) The Financial Intelligence Analysis Unit shall establish risk-based monitoring mechanisms or other adequate measures as is practicable to ensure that determinations under sub-regulation (1) are not abused for money laundering or the funding of terrorism.

(6) The Financial Intelligence Analysis Unit shall inform the European Commission accordingly of any determination made under sub-regulation (1) or its subsequent revocation under sub-regulation (4).

Risk-assessment.

Amended:

L.N. 430 of 2018;

L.N. 26 of 2020.

5. (1) Every subject person shall take appropriate steps, proportionate to the nature and size of its business, to identify and assess the risks of money laundering and funding of terrorism that arise out of its activities or business, taking into account risk factors including those relating to customers, countries or geographical areas, products, services, transactions and delivery channels and shall furthermore take into consideration any national or supranational risk assessments relating to risks of money laundering and the funding of terrorism.

(2) Where the Financial Intelligence Analysis Unit considers the risk of money laundering and the funding of terrorism inherent in any particular relevant activity or relevant financial business to be clear and understood, it may exempt subject persons carrying out such relevant activity or relevant financial business from the obligation to perform risk assessments under this regulation.

(3) The risk assessment referred to in sub-regulation (1) shall be properly documented, and shall be made available to the Financial Intelligence Analysis Unit and any other relevant supervisory authority upon demand.

(4) Subject persons shall ensure that the risk assessment carried out in terms of sub-regulation (1) is regularly reviewed and kept up-to-date.

(5) Every subject person shall: –

(a) have in place and implement the following measures, policies, controls and procedures, proportionate to the nature and size of its business, which address the risks identified as a result of the risk assessment referred to in sub-regulation (1):

(i) customer due diligence measures, record-keeping procedures and reporting

procedures;

(ii) risk management measures including customer acceptance policies, customer risk assessment procedures, internal controls, compliance management, communications, employee screening policies and procedures;

(b) take appropriate and proportionate measures from time to time for the purpose of making employees aware of –

(i) the measures, policies, controls and procedures under the provisions of paragraph (a) and any other relevant policies that are maintained by the subject person; and

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(ii) the provisions of the Prevention of Money Laundering Act and of these regulations; of the Sub-Title IV A "Of Acts of Terrorism, Funding of Terrorism and Ancillary Offences" of Title IX of Part II of Book First of the Criminal Code; and of data protection requirements;

(c) appoint, where appropriate with regard to the nature and size of the business, an officer at management level whose duties shall include the monitoring of the day-to-day implementation of the measures, policies, controls and procedures adopted under this regulation;

(d) implement, where appropriate with regard to the size and nature of the business, an independent audit function to test the internal measures, policies, controls and procedures;

(e) provide employees from time to time with training in the recognition and handling of operations and transactions which may be related to proceeds of criminal activity, money laundering or the funding of terrorism;

(f) monitor and where appropriate enhance the measures, policies, controls and procedures adopted to better achieve their intended purpose.

(6) To the extent that it may be applicable, any measures, policies, controls, procedures and changes thereto shall be adopted and implemented following senior management approval, and, where applicable, the management body of the subject person may identify one of its members who is to be responsible for the implementation of these measures, policies, controls and procedures.

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

(8) Where a natural person undertakes any of the professional activities as defined under 'relevant activity' in regulation 2 as an employee of a legal person, the obligations under this regulation shall apply to that legal person.

Group-wide policies and procedures.

Amended by:

L.N. 77 of 2019;

L.N. 26 of 2020.

6. (1) Subject persons that are part of a group shall be required to implement group-wide policies and procedures that include the measures established under regulation 5(5), as well as policies and procedures on data protection and the sharing of information within the group for the prevention of money laundering and the funding of terrorism. These policies and procedures shall be implemented effectively at the level of branches and majority-owned subsidiaries in Member States and third countries:

Provided that, unless otherwise instructed by the Financial Intelligence Analysis Unit and subject to the provisions of regulation 16, a subject person that is part of a group and discloses information in accordance with regulation 15(3) to the Financial Intelligence Analysis Unit, shall share that disclosed information within the group for the purposes of preventing and detecting money laundering and the funding

of terrorism.

(2) Subject persons having branches or majority-owned subsidiaries established in another Member State shall ensure that those branches or majority-owned subsidiaries comply with the national provisions of that Member State, transposing the provisions of Directive (EU) 2015/849.

(3) Subject persons having branches or majority-owned subsidiaries established in third countries where the anti-money laundering and counter-funding of terrorism measures are less stringent than those under these regulations shall ensure that those branches or majority-owned subsidiaries implement the provisions of these regulations in so far as that third country's legislation permits the implementation of such provisions.

(4) Where subject persons have branches or majority-owned subsidiaries established in third countries, and the legislation of such third countries does not permit the implementation of the policies and procedures under sub-regulation (1), subject persons shall ensure that those branches and majority-owned subsidiaries apply additional measures to effectively handle the risk of money laundering and funding of terrorism and shall immediately inform the Financial Intelligence Analysis Unit about these circumstances and the measures taken:

Provided that where the additional measures are not adequate, the Financial Intelligence Analysis Unit shall, in collaboration with any relevant supervisory authority, exercise additional supervisory actions, including requiring those subject persons not to establish or to terminate existent business relationships and not to undertake transactions and, where necessary require those subject persons to close down their operations in the third country.

(5) Where the Financial Intelligence Analysis Unit is in possession of information in accordance with sub-regulation (4) it shall, where applicable, inform the relevant supervisory authorities, the relevant supervisory authorities of the other Member States, and the European Supervisory Authorities, and shall seek to cooperate and coordinate its actions with such relevant supervisory authorities and the European Supervisory Authorities, as necessary.

(6) In fulfilling their obligations under sub-regulation (4), subject persons carrying out relevant financial business shall comply with any regulatory technical standards developed by the European Supervisory Authorities in accordance with Article 45(6) of Directive (EU) 2015/849 which may be adopted by the European Commission setting out the minimum action to be taken.

Customer due diligence.

*Amended by:
L.N. 26 of 2020.*

7. (1) Customer due diligence measures shall consist in:

(a) the identification of the customer, and the verification of the identity of the customer on the basis of documents, data or information obtained from a reliable and independent source, including, where available, electronic identification means issued under electronic identification schemes, or relevant trust services as set out in Regulation (EU) No 910/2014, or any other secure, remote or electronic identification process approved by the Financial Intelligence Analysis Unit under procedures issued in terms of regulation 17:

Provided that where the customer is a body corporate, a body of persons, or any other form of legal entity or arrangement, subject persons shall also verify the legal status of the customer and shall also identify all directors and, where the customer does not have directors, all such other persons vested with its administration and representation:

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

(b) the identification, where applicable, of the beneficial owners, and the taking of

reasonable measures to verify their identity so that the subject person is satisfied of knowing who the beneficial owners are, including, in the case of a body corporate, foundations, trusts and similar legal arrangements, the taking of reasonable measures to understand the ownership and control structure of the customer;

(c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship, and establishing the business and risk profile of the customer;

(d) conducting ongoing monitoring of the business relationship.

(2) The ongoing monitoring of a business relationship for the purposes of sub-regulation (1) shall consist in:

(a) the scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being undertaken are consistent with the subject person's knowledge of the customer and of his business and risk profile, including, where necessary, the source of funds; and

(b) ensuring that the documents, data or information held by the subject person are reviewed and kept up-to-date:

Provided that in the case of subject persons providing VFA agent services as defined in paragraph (l) of the definition "relevant financial business", the on-going monitoring of a business relationship shall be limited to the provisions of paragraph (b).

(3) Where a person purports to act on behalf of a customer, in addition to identifying and verifying the identity of the customer and, where applicable, the beneficial owner, subject persons shall ensure that such person is duly authorised in writing to act on behalf of the customer and shall identify and verify the identity of that person.

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

(5) Without prejudice to the provisions of regulation 8, customer due diligence measures shall be applied to all customers when:

(a) establishing a business relationship;

(b) carrying out an occasional transaction; and

(c) the subject person has knowledge or suspicion of proceeds of criminal activity, money laundering or the funding of terrorism, regardless of any derogation, exemption or threshold.

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

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

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

(7) Customer due diligence measures under these regulations shall be repeated whenever, in relation to a business relationship, doubts arise about the veracity or adequacy of the previously obtained customer identification information.

(8) The extent of the customer due diligence measures shall be commensurate to the risks of money laundering and funding of terrorism identified through the risk assessments carried out in terms of regulation

5 and may vary from case to case.

(9) Subject persons providing long-term insurance business shall, in addition to identifying and verifying the identity of the customer and, where applicable, the beneficial owner in terms of sub-regulations (1)(a) and (b), carry out the following customer due diligence measures on the beneficiaries of long-term insurance policies:

(a) where the beneficiaries are specifically named natural persons, legal entities or arrangements, subject persons shall identify such beneficiaries;

(b) where the beneficiaries are designated by characteristics, class or other means, subject persons shall obtain sufficient information concerning those beneficiaries to be able to identify them at the time of payout;

(c) where the beneficiaries assign any of their rights vested under the policy, subject persons shall, at the time of becoming aware of the assignment, identify the natural persons, legal entities or arrangements receiving for their own benefit the value of the policy assigned;

(d) verify the identity of the beneficiaries at the time of payout.

(10) A customer, or any person purporting to act on his behalf, who makes a false declaration or a false representation or who produces false documentation for the purposes of this regulation shall be guilty of an offence and shall be 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.

(11) Subject persons carrying out relevant financial business involving the transfer of funds shall comply with the provisions of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006.

Electronic money.

Added by:

L.N. 26 of 2020.

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

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

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

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

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

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

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

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

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

(4) In this regulation:

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

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

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

Verification of identification.

8. (1) Subject persons shall verify the identity of the customer and, where applicable, the identity of the beneficial owner, before the establishment of a business relationship or the carrying out of an occasional transaction.

(2) Notwithstanding the provisions of sub-regulation (1), subject persons may complete the verification after the establishment of a business relationship where this is necessary so as not to interrupt the normal conduct of business provided that the risk of money laundering or the funding of terrorism is low and, provided further, that the verification procedures be completed as soon as is reasonably practicable after the establishment of the business relationship.

(3) Notwithstanding the provisions of sub-regulations (1) and (2), subject persons carrying out relevant financial business may open an account, including accounts that permit transactions in transferable securities, as may be required by the customer provided that adequate safeguards are put in place to ensure that no transactions are carried out through the account until the verification procedures in accordance with sub-regulation (1) have been satisfactorily completed.

(4) Where the beneficiaries of a trust, legal entity or arrangement are designated by particular characteristics or class, the subject person shall identify and verify the identity of the beneficiaries at the time of payout or at the time the beneficiaries exercise their vested rights:

Provided that, before the establishment of a business relationship or the carrying out of an occasional transaction, the subject person shall obtain sufficient information concerning the beneficiaries to be able to identify and verify their identity at the time of payout or at the time the beneficiaries seek to exercise their vested rights.

(5) Where a subject person is unable to comply with regulation 7(1)(a), (b) and (c), the customer due diligence procedures shall require that subject person not to carry out any transaction through the account, not to establish the business relationship nor carry out any occasional transaction, and to terminate any business relationship and to consider disclosing that information in accordance with regulation 15(3) to the Financial Intelligence Analysis Unit:

Provided that, where to refrain in such manner ~~is impossible or is~~ would likely tip-off the customer about the submission of a disclosure in terms of regulation 15(3) or a potential to frustrate efforts of investigating a suspected money laundering or funding of terrorism analysis or investigation, operation that business shall proceed on condition that a disclosure is immediately lodged with the Financial Intelligence Analysis Unit in accordance with regulation 15(3):

Provided further that subject persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition "relevant activity" shall not be bound by the provisions of this sub-regulation if those subject persons are acting in the course of ascertaining the legal position of their client or performing

their responsibilities of defending or representing that client in, or concerning, judicial procedures, including providing advice on instituting or avoiding procedures.

(6) Without prejudice to sub-regulation (5), a subject person who is in possession of funds of a customer or a potential customer and 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 as far as reasonably possible 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, 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.

Additional provisions on customer due diligence for casino and gaming licensees.

9. (1) Notwithstanding the provisions of regulation 8(1) and without prejudice to the provisions of regulation 7(5)(c), casino and gaming licensees shall apply customer due diligence measures when carrying out transactions that amount to or exceed two thousand euro (€2,000) or more, whether carried out within the context of a business relationship or otherwise.

(2) In addition to complying with the provisions of sub-regulation (1) and regulation 8, a casino licensee shall:

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(a) not allow any person to enter the casino unless such person has been satisfactorily identified pursuant to the provisions of the Gaming Act;

(b) ensure that the particulars relating to the identity of a person exchanging chips or tokens to the value of two thousand euro (€2,000) or more is matched with, and cross referred to, the particulars relating to the identity of the person exchanging cash, cheques or bank drafts, or making a credit or debit card payment in exchange for chips or tokens, and shall further ensure that chips or tokens are derived from winnings made whilst playing a game or games at the casino; and

(c) ensure that the provisions of paragraph (b) are also applied in cases where in any one gaming session a person carries out transactions which are individually for an amount of less than two thousand euro (€2,000) but which in aggregate equal or exceed such amount.

Simplified customer due diligence.

Amended by:

L.N. 26 of 2020.

10. (1) Simplified customer due diligence may be applied:

(a) in relation to activities or services that are determined by the Financial Intelligence Analysis Unit to represent a low risk of money laundering and funding of terrorism, having taken into consideration the findings of any national risk assessment and any other relevant factors as may be deemed appropriate; or

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

(2) Simplified customer due diligence shall not constitute an exemption from all customer due diligence measures as envisaged under regulation 7(1), but subject persons may determine the applicability and extent thereof in a manner that is commensurate to the low risk identified:

Provided that subject persons shall carry out sufficient on-going monitoring in terms of regulation 7(2)(a) to be able to detect unusual and suspicious transactions.

(3) Nothing contained in this regulation shall apply where the subject person has knowledge or suspicion of proceeds of criminal activity, money laundering or the funding of terrorism.

Enhanced customer due diligence.

11. (1) In addition to the requirements under regulation 7, subject persons shall apply enhanced customer due diligence measures in the following situations:

(a) in relation to activities or services that are determined by the Financial Intelligence Analysis Unit to represent a high risk of money laundering or funding of terrorism, having taken into consideration the findings of any national risk assessment and any other relevant factors as may be deemed appropriate;

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

(c) in the cases referred to in sub-regulations (3) to (10).

(2) Subject persons shall ensure that the enhanced customer due diligence measures applied in the cases referred to in paragraphs (a) and (b) of sub-regulation (1) are appropriate to manage and mitigate the high risk of money laundering or funding of terrorism.

(3) With respect to correspondent relationships with institutions from a country other than a Member State, subject persons shall ensure that –

(a) they gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision on that institution, including whether the respondent institution has been subject to any money laundering or funding of terrorism investigation, or regulatory action;

(b) they assess the adequacy and effectiveness of the respondent institution's measures, policies, controls and procedures for the prevention of money laundering and the funding of terrorism;

(c) the prior approval of senior management for the establishment of new correspondent relationships is obtained;

(d) they clearly understand and document the respective responsibilities of each institution for the prevention of money laundering and the funding of terrorism;

(e) with respect to payable-through accounts, they are satisfied that the respondent institution has verified the identity of and performed on-going due diligence on the customers having direct access to the accounts of the respondent institution and that they are provided with relevant customer due diligence data upon request.

(4) Subject persons carrying out relevant financial business shall –

(a) not enter into, or continue, a correspondent relationship with a shell institution;

(b) take appropriate measures to ensure that they do not enter into, or continue, a correspondent relationship with a respondent institution which is known to permit its accounts to be used by a shell institution.

(5) Subject persons shall ensure that the risk management procedures maintained in accordance with regulation 5(5)(a) are conducive to determine whether a customer or a beneficial owner is a politically exposed person, and when undertaking occasional transactions for, or establishing or continuing business relationships with politically exposed persons shall:-

(a) require the approval of senior management;

(b) take adequate measures to establish the source of wealth and source of funds; and

(c) conduct enhanced ongoing monitoring of such business relationships.

(6) In addition to the requirements under sub-regulation (5), in case of long-term insurance business subject persons shall take reasonable measures to determine whether the beneficiaries of a policy and, where applicable, the beneficial owner of the beneficiary are politically exposed persons, which measures shall be taken no later than the time of payout or the time of the assignment, in whole or in part, of the policy:

Provided that where the beneficiaries of the policy or, where applicable, the beneficial owner of the beneficiary are politically exposed persons, subject persons shall inform senior management before proceeding with the payout under the policy and shall conduct enhanced scrutiny of the entire business relationship with the policy holder.

Provided further, that where the beneficiaries of a policy or, where applicable, the beneficial owners of the beneficiary are politically exposed persons and the subject person has additional indications of a higher risk of money laundering or funding of terrorism, the subject person shall consider whether it is to lodge a disclosure with the Financial Intelligence Analysis Unit in accordance with regulation 15(3).

(7) Without prejudice to the application of enhanced customer due diligence measures on a risk sensitive basis, where a politically exposed person is no longer entrusted with a prominent public function, subject persons shall be required to apply enhanced due diligence measures in accordance with sub-regulations (5) and (6) for at least twelve months after the date on which that person ceased to be entrusted with a prominent public function.

(8) Sub-regulations (5) and (6) shall also be applicable to family members or persons known to be close associates of politically exposed persons, and, for the purposes of this sub-regulation:

"family members" includes:

- (i) the spouse, or a person considered to be equivalent to a spouse;
 - (ii) the children and their spouses, or persons considered to be equivalent to a spouse;
- and
- (iii) the parents.

"persons known to be close associates" means:

- (i) a natural person known to have joint beneficial ownership of a body corporate or any other form of legal arrangement, or any other close business relations, with that politically exposed person;
- (ii) a natural person who has sole beneficial ownership of a body corporate or any other form of legal arrangement that is known to have been established for the benefit of that politically exposed person.

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

- (a) are complex;
- (b) are unusually large;
- (c) are conducted in an unusual pattern; or
- (d) have no apparent economic or lawful purpose:

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

(10) Where occasional transactions or business relationships or transactions involve non-reputable

jurisdictions, subject persons shall:

- (a) obtain additional information on the identity of the customer and, where applicable, the beneficial owners;
- (b) obtain additional information on the intended nature of business relationships;
- (c) obtain additional information on the source of wealth and source of funds of the customer, and, where applicable, the beneficial owners;
- (d) obtain information on the purpose of prospective or executed transactions;
- (e) obtain the approval of senior management when establishing business relationships, carrying out occasional transactions or continuing business relationships;
- (f) conduct enhanced monitoring of business relationships by increasing the frequency of monitoring, and identifying and, where appropriate, examining patterns of transactions that require further scrutiny; and
- (g) where applicable, require that the first payment be carried out through a bank account in the customer's name held with a bank subject to customer due diligence obligations that are consistent with those laid down under these regulations.

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

- (a) carry out additional customer due diligence measures;
- (b) introduce enhanced reporting mechanisms or systematic reporting of transactions;
- (c) limit occasional transactions or business relationships involving such non-reputable jurisdictions:

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

- (a) refuse the establishment in Malta of branches, representative offices or subsidiaries of persons or entities undertaking activities equivalent to relevant financial business or relevant activity which are situated in such non-reputable jurisdictions, or otherwise take into account the fact that that person or entity is situated in a non-reputable jurisdiction that has deficiencies in its anti-money laundering and counter funding of terrorism regime;
- (b) prohibit subject persons from establishing branches or representative offices in such a non-reputable jurisdiction or otherwise take into account the fact that the branch or representative office would be situated in a non-reputable jurisdiction that has deficiencies in its anti-money laundering and counter funding of terrorism regime;
- (c) carry out increased compliance monitoring or require increased external audit requirements on branches and subsidiaries of persons and entities referred to in paragraph (a), established in Malta;
- (d) require external audit requirements on subject persons forming part of a group in respect of their branches or subsidiaries in such non-reputable jurisdictions; and
- (e) require subject persons carrying out relevant financial business to review, amend or terminate correspondent relationships with respondent institutions established in such non-reputable jurisdiction.

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

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

Reliance on performance by other subject persons or third parties.

12. (1) Subject persons may rely on another subject person or a third party to fulfil the customer due diligence requirements provided for under regulation 7(1)(a) to (c), with the subject person placing reliance remaining ultimately responsible for compliance with those requirements.

(2) For the purposes of this regulation "third party" shall mean any person or institution, including member organisations or representative bodies of such person or institution, situated in a Member State other than Malta or a third country that:

(a) apply customer due diligence requirements and record keeping requirements that are consistent with those laid down under these regulations; and

(b) have their compliance with anti-money laundering and counter-financing terrorism requirements monitored in a manner which is consistent with Section 2 of Chapter VI of Directive (EU) 2015/849:

Provided that subject persons may not rely on third parties from a non-reputable jurisdiction or any other jurisdiction which is considered by the subject person to present a high risk of money laundering or funding of terrorism, unless such third parties are branches or majority-owned subsidiaries of persons or institutions established in a Member State subject to national provisions implementing Directive (EU) 2015/849 and which comply fully with group-wide policies and procedures equivalent to those mentioned under regulation 6.

(3) Subject persons relying on another subject person or a third party shall obtain from that other subject person or third party the information required in accordance with the provisions under regulation 7(1)(a) to (c).

(4) Subject persons relying on another subject person or a third party shall take adequate steps to ensure that, upon request, that other subject person or third party shall immediately forward to them relevant copies of the identification and verification data relevant to the customer and the beneficial owner and other relevant documentation required in terms of regulation 7(1)(a) to (c).

(5) Subject persons that are branches or majority owned subsidiaries of persons or institutions established in a Member State or a third country other than Malta and subject persons that have branches or majority owned subsidiaries in a Member State or a third country shall be considered to comply with the provisions of sub-regulations (2) to (4) through the group's policies and procedures, where all the following conditions are met:

(a) the subject person relies on information provided by a third party that is part of the same group;

(b) that group applies customer due diligence measures, record keeping measures and anti-money laundering and counter-funding of terrorism policies and procedures equivalent to those under these regulations;

(c) the effective implementation of the measures and requirements referred to in paragraph (b) at group level is subject to supervision by a relevant authority.

(6) This regulation shall not apply to outsourcing or agency relationships where, on the basis of a contractual agreement, the outsourcing service provider or agent is to be regarded as part of the subject person.

Record keeping procedures.

Amended by:

L.N. 26 of 2020.

13. (1) Subject persons shall retain the following documents and information 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 in accordance with the provisions of applicable law:

(a) in relation to any business relationship that is formed or an occasional transaction that is carried out, the customer due diligence documentation, data and information obtained in fulfilment of the requirements under regulations 7 to 12;

(b) supporting evidence and records necessary to reconstruct all transactions carried out by that person in the course of a business relationship or any occasional transaction, which shall include original documents or other copies admissible in court proceedings;

(c) a record of any disclosures made to the Financial Intelligence Analysis Unit in accordance with regulation 15(3);

(d) a record of any internal reports made in accordance with regulation 15(1)(a);

(e) a record of any written determinations made in accordance with regulation 15(1)(b);

(f) a record of any training provided in accordance with regulation 5(5)(e); and

(g) any other document, data or information which the Financial Intelligence Analysis Unit may require to be maintained in accordance with procedures and guidance issued in terms of regulation 17.

(2) The documentation, data or information referred to in sub-regulation (1) shall be kept for a period of five years commencing on –

(a) in relation to the documentation, data or information described in paragraph (a), 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;

(b) in relation to the supporting evidence and records described in paragraph (b), the date when all dealings taking place in the course of the transaction in question were completed;

(c) in relation to the records described in paragraphs (c) to (e), the later between the following:

(i) the date when the business relationships ends or the occasional transaction is carried out; or

(ii) the date when the report or determination is submitted or drawn up, as the case may be;

(d) in relation to the records described in paragraph (f), the date when the event referred to therein took place:

Provided that, in relation to records relating to an occasional transaction consisting in several operations which appear to be linked, the aforesaid period of five years shall commence on the date on which the last operation took place:

Provided further that, the period of five years may be further extended, up to a maximum

retention period of ten years, where such extension would be considered 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.

(3) Subject persons shall ensure that, upon request, all records maintained in accordance with this regulation are made available to the Financial Intelligence Analysis Unit and, as may be allowed by law, to relevant supervisory authorities and law enforcement agencies, for the purposes of the prevention, detection, analysis and investigation of money laundering and the funding of terrorism.

(4) Subject persons shall have systems in place that enable them to respond fully and efficiently, through secure means that ensure confidentiality, to enquiries from the Financial Intelligence Analysis Unit, relevant supervisory authorities or law enforcement agencies, in accordance with applicable law, as to –

(a) whether they maintain or have maintained during the previous five years a business relationship with a specified natural or legal person; and

(b) the nature of that relationship.

(5) The retention of personal data shall no longer be deemed necessary for the purposes of these regulations beyond the period established in terms of sub-regulation (2) or any extension thereof as may become applicable in terms of the second proviso to sub-regulation (2).

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

(7) The provisions of this regulation shall be without prejudice to the right of any other authority in terms of applicable law to access the documents, data and information described in sub-regulation (1)(a) and (b).

Statistical data.
Substituted by:
L.N. 26 of 2020.

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

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

- (a) data measuring the size and importance of the different sectors which are subject to anti-money laundering and counter-funding of terrorism obligations under these regulations, including the number of entities and persons conducting a relevant activity or a relevant financial business and the economic importance of each sector;
- (b) the kind of activity conducted by the entities and persons referred to in paragraph (a);
- (c) the number of suspicious transaction reports made to the Financial Intelligence Analysis Unit, the types of underlying criminal activities, where this information is known, and the follow up given to these reports;
- (d) where available, data identifying the number and percentage of suspicious transaction reports resulting in further investigation, together with an annual report to subject persons detailing the usefulness and follow-up of the reports presented;
- (e) statistics relevant to the exchange of information between the Financial Intelligence Analysis Unit and foreign counterparts, including data regarding the number of requests for information made, received, refused and answered in full or in part, broken down per foreign counterpart;

- (f) data on human resources available to the Financial Intelligence Analysis Unit to carry out its functions under article 16(1)(a), (b) and (c) of the Act;
- (g) the number of on-site and off-site examinations carried out on subject persons with the aim of monitoring their compliance with the provisions of the Act and any regulations made thereunder, the number of compliance failures or contraventions identified following such examinations, and the number and values of administrative measures or penalties imposed.

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

Reporting procedures and obligations.

Amended by:

L.N.77 of 2019

15. (1) The reporting procedures which a subject person is required to have and implement in terms of regulation 5(5)(a)(i) shall provide for –

(a) the appointment by the subject person of one of its officers of sufficient seniority and command as the reporting officer, who may be the same officer referred to in regulation 5(5)(c), and to whom officers and employees of the subject person are to report any information or other matter which may give rise to a knowledge or suspicion that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to funding of terrorism, or that a person may have been, is or may be connected with money laundering or the funding of terrorism;

(b) the consideration of any 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 funds, regardless of the amount involved, are the proceeds of criminal activity or are related to funding of terrorism, or that a person may have been, is or may be connected with money laundering or the funding of terrorism;

(c) unrestricted access for the reporting officer or another designated employee to any relevant information held by the subject person;

(d) a procedure whereby the reporting officer or another designated employee submits a report to the Financial Intelligence Analysis Unit in accordance with sub-regulation (3) whenever he determines that there is knowledge or suspicion that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to funding of terrorism, or that a person may have been, is or may be connected with money laundering or the funding of terrorism;

(e) notifying the Financial Intelligence Analysis Unit and the relevant supervisory authority, where applicable, of the details of the appointed reporting officer and any subsequent changes thereto and the appointment of a designated employee for the purposes of paragraphs (b) to (d); and

(f) the approval by the reporting officer of any employee designated by the subject person for the purposes of paragraphs (b) to (d) who shall work under his direction.

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

(3) Where a subject person knows, suspects or has reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to funding of terrorism, or that a person may have been, is or may be connected with money laundering or the funding of terrorism, or that an attempt has been made to carry out a transaction or activity related to such proceeds or funding of terrorism, that subject person shall, ~~as soon as is reasonably practicable, but not later than five working days~~

~~from when the knowledge or suspicion first arose promptly~~ disclose that information, supported by the relevant identification and other documentation, to the Financial Intelligence Analysis Unit.

(4) Where a subject person knows or suspects that a transaction is or may be related to proceeds of criminal activity or the funding of terrorism, the subject person shall not carry out that transaction until it has informed the Financial Intelligence Analysis Unit in accordance with this regulation and, upon informing the Financial Intelligence Analysis Unit, it shall refrain from executing that transaction as provided for under article 28 of the Act.

(5) Where it is not possible for a subject person to refrain from carrying out a transaction prior to informing the Financial Intelligence Analysis Unit as provided for in sub-regulation (4) or where refraining from carrying out any such transaction is likely to frustrate efforts of investigating or pursuing the beneficiaries of the suspected money laundering or funding of terrorism operations, the subject person shall accordingly inform the Financial Intelligence Analysis Unit immediately after the transaction is effected.

(6) Where, following the consideration of an internal report in accordance with sub-regulation (1)(b), the reporting officer or other designated employee determines that no reporting to the Financial Intelligence Analysis Unit is required in terms of this regulation, the reporting officer shall record the reasons for such determination in writing and, upon request, shall make it available to the Financial Intelligence Analysis Unit or a supervisory authority acting on behalf of the Financial Intelligence Analysis Unit in monitoring compliance with these regulations.

(7) Where a supervisory authority discovers facts or obtains any information that is related to funds which are known or suspected to be related to proceeds of criminal activity or the funding of terrorism, or to a person who may have been, is or may be connected with money laundering or the funding of terrorism, or to an attempt to carry out a transaction or activity related to proceeds of criminal activity or funding or terrorism, that supervisory authority shall, ~~as soon as is reasonably practicable, but not later than five working days from when facts are discovered or information obtained, promptly~~ disclose those facts or that information, supported by the relevant documentation that may be available, to the Financial Intelligence Analysis Unit.

(8) Where, following a submission of a disclosure as in sub-regulation (3), or for any other reason as is allowed by law, the Financial Intelligence Analysis Unit demands information from the disclosing or any other subject person, that subject person shall comply as soon as is reasonably practicable but not later than five working days from when the demand is first made:

Provided that the Financial Intelligence Analysis Unit may, where it deems so necessary, demand that the information be submitted within a shorter period of time;

Provided further that a subject person may make representations justifying why the requested information cannot be submitted within the said time and the Financial Intelligence Analysis Unit may, at its discretion and after having considered such representations, extend such time as is reasonably necessary to obtain the information, whereupon the subject person shall submit the information requested within the time as extended.

(9) Subject persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition "relevant activity" shall not be bound by the provisions of sub-regulations (3), (4) and (8) in relation to information that is received or obtained in the course of ascertaining the legal position of 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.

(10) 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, even in circumstances where they were not precisely aware of the underlying criminal activity and regardless of whether illegal activity actually occurred.

(11) The Financial Intelligence Analysis Unit shall, wherever practicable and as may be allowed by the provisions of the Act, provide subject persons and, where applicable, supervisory authorities with timely feedback on the effectiveness of suspicious transaction reports and of any other information it receives under this regulation.

Protection when reporting suspicions of money laundering and funding of terrorism.

Added by

L.N. 77 of 2019.

15A. (1) The Financial Intelligence Analysis Unit, any investigating, prosecuting, judicial or administrative authority and subject persons shall protect and keep confidential the identity of any individual who reports, either internally within the subject person or to the Financial Intelligence Analysis Unit, knowledge or suspicions of money laundering or funding of terrorism, or who reports knowledge or suspicions that funds are the proceeds of criminal activity.

(2) No detrimental action shall be taken against any individual, including employees or officials of subject persons, who reports, either internally within the subject person or to the Financial Intelligence Analysis Unit, knowledge or suspicions of money laundering or funding of terrorism, or knowledge or suspicions that funds are the proceeds of criminal activity.

(3) Any individual, including an employee or official of a subject person, who believes that detrimental action has been taken or is to be taken against him in reprisal for making a report as envisaged under sub-regulation (2), may file an application to the First Hall, Civil Court for:

(a) an order requiring the person who has taken the detrimental action to remedy that action;
or

(b) an injunction.

(4) The court, pending the final determination of an application under sub-regulation (3) may:

(a) make an interim order; or

(b) grant an interim injunction.

(5) If, in determining an application under sub-regulation (3) the court is satisfied that a person has taken or intends to take detrimental action against an individual in reprisal for making a report, as referred to in sub-regulation (2), the court may:

(a) order the person who has taken detrimental action to remedy that action and determine the amount of damages, including, but not limited to, moral damages as the court may determine, due to the individual who suffered the detrimental action; or

(b) grant an injunction in any terms it considers appropriate.

Cap. 12.

(6) Notwithstanding the provisions of the Code of Organisation and Civil Procedure, an injunction granted in terms of sub-regulation (5)(b) shall be for an indefinite period until an application for its revocation is made and need not be followed by an action on the merits. The provisions of articles 873 and 875 of the Code of Organisation and Civil Procedure shall apply to warrants issued under sub-regulation (5)(b).

Cap. 12.

(7) The provisions of articles 829 to 838B of the Code of Organisation and Civil Procedure shall not apply to injunctions granted in terms of sub-regulation (5)(b).

Cap. 12.

(8) Notwithstanding the provisions of Schedule A of the Code of Organisation and Civil Procedure, no registry fees shall be charged on an application filed in the First Hall of the Civil Court by any individual referred to in sub-regulation (3) but, if granted, an award on costs shall be made against the respondent.

(9) Any individual, including employees or officials of a subject person, who may have suffered detrimental action as a result of making a report as referred to in sub-regulation (2) shall, without prejudice to any other right under any other law, have a right to compensation for any damages sustained.

(10) Notwithstanding the provisions of any other law, the First Hall, Civil Court shall have exclusive jurisdiction to hear and determine an application under sub-regulation (3).

(11) All proceedings instituted under this regulation shall be held *in camera* and only the parties to the proceedings and their respective advocates shall be allowed in court during the hearings. All the judicial acts, documents and evidence shall be kept by the Registrar of the Court in a confidential manner and no access shall be given thereto except to the parties and their respective advocates.

(12) Any decree or judgement of the First Hall, Civil Court issued pursuant to this regulation shall preserve the confidentiality of the proceedings and shall only reveal such facts as may be necessary to make the same intelligible and enforceable by the parties.

(13) For the purpose of this regulation, "detrimental action" means threats, retaliatory or hostile action, including adverse or discriminatory employment actions, and without prejudice to the generality of the foregoing shall include:

- (a) any action causing injury, loss, or damage; and, or
- (b) victimisation, intimidation or harassment; and, or
- (c) dismissal, suspension or demotion except where administratively or commercially justifiable for organisational reasons; and, or
- (d) being adversely affected in respect of one's employment, profession or office, including employment opportunities and work security; and, or

Cap. 9.

- (e) prosecution under article 101 of the Criminal Code relating to calumnious accusations; and, or
- (f) civil or criminal proceedings or disciplinary proceedings.

Prohibition of disclosure.

Amended by:

L.N. 430 of 2018;

L.N. 77 of 2019;

L.N. 26 of 2020.

16. (1) A subject person, a supervisory authority, any official or employee of a subject person or a supervisory authority, or any person from whom the Financial Intelligence Analysis Unit has demanded information pursuant to these regulations or article 30 of the Act, or any other person who has transmitted information to the Financial Intelligence Analysis Unit, 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, 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 one hundred and fifteen thousand euro (€115,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) Disclosures made in the following circumstances shall not constitute an offence under sub-regulation (1):

- (a) disclosures to the supervisory authority relevant to that subject person or to law enforcement agencies in accordance with applicable law;
- (b) disclosures between subject persons who undertake relevant financial business, other than a business referred to in paragraphs (l), (m) and (n) under the definition "relevant financial

business" or between those subject persons and other persons undertaking equivalent business, whether situated in a Member State or a third country, which form part of the same group and apply group-wide policies and procedures as provided for under regulation 6;

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

(d) disclosures between a subject person who undertakes relevant financial business, other than a business referred to in paragraphs (l), (m) and (n) under the definition "relevant financial business" or the activities under paragraph (a) or paragraph (c) of the definition "relevant activity" and another person from the same professional category situated in a Member State or a third country imposing requirements similar to those laid down in these regulations and in cases related to the same customer and the same transaction, provided such persons are subject to obligations as regards professional secrecy and personal data protection;

(e) disclosures by a subject person in the course of proceedings instituted against the subject person for, or as a consequence of, the failure or delay in carrying out a transaction in 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 in terms of article 28 of the Act:

Provided that disclosures under this paragraph shall not constitute an offence under sub-regulation (1) only where such disclosures are made after the lapse of the period of time referred to in the proviso to article 28(1) of the Act, and where applicable, after the lapse of any period of time during which the execution of the transaction is opposed by the Financial Intelligence Analysis Unit in terms of article 28 of the Act;

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

Provided that disclosures under this paragraph shall not constitute an offence of sub-regulation (1) only in the case where such disclosures are made after the lapse of the period of time referred to in the proviso to article 28(1) of the Act, and where applicable, after the lapse of any period of time during which the execution of the transaction is opposed by the Financial Intelligence Analysis Unit in terms of article 28 of the Act;

(g) any disclosures by an individual in the course of proceedings instituted under regulation 15A, including any disclosures made in any written pleadings or submissions.

(3) The fact that a subject person who undertakes activities under paragraph (a) or paragraph (c) of the definition "relevant activity" is seeking to dissuade a client from engaging in an illegal activity shall not constitute an offence under sub-regulation (1).

S.L. 586.09.

(4) The rights of the data subject referred to in regulation 4 of the Restriction of the Data Protection (Obligations and Rights) Regulations, in particular the right of access, shall be restricted, partially or completely, where such a restriction is necessary and proportionate for a subject person to adhere to his obligations under sub-regulation (1).

Implementing procedures.

17. The Financial Intelligence Analysis Unit, with the concurrence of the relevant supervisory

authority, may issue procedures and guidance as may be required for the carrying into effect of the provisions of these regulations, and which shall be binding on subject persons.

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 measures and procedures they maintain and apply pursuant to regulation 5 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 procedures or guidance 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.

Amended by:

L.N. 77 of 2019;

L.N. 26 of 2020.

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) A subject person who contravenes any provision of these regulations or of any procedures or guidance issued in terms of regulation 17 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 in accordance with policies and procedures established by the Board of Governors referred to in the Act, which may be imposed either as a one-time fixed penalty or as a daily cumulative penalty, or both.

(4) Notwithstanding the provisions of sub-regulations (1) and (2), the Financial Intelligence Analysis Unit may:

(a) with respect to minor contraventions and where the circumstances so warrant, impose an administrative penalty below the minimum established by these regulations but not less than two hundred and fifty euro (€250) or issue a reprimand in writing instead of an administrative penalty;

(b) with respect to serious, repeated or systematic contraventions of these regulations or of any procedures or guidance issued in terms of regulation 17, impose administrative sanctions as follows:

(i) in the case of a subject person carrying out a relevant activity, an administrative penalty of not more than one million euro (€1,000,000) or, where the benefit derived from that contravention can be quantified, not more than twice the amount of the benefit so derived; or

(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) or 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

- (c) when it identifies any contravention or compliance failure as referred to in sub-regulations (1) and (2), instead of or in conjunction with the imposition of any administrative penalty as envisaged under this regulation, require a subject person to take any action or measure to remedy such contravention or ensure compliance with the provisions of the Act, these regulations or any procedures or guidance issued by the Financial Intelligence Analysis Unit in terms of regulation 17:

Provided that the provisions of this paragraph shall be without prejudice to the power of the Financial Intelligence Analysis Unit, conferred to it under article 30D of the Act, to issue directives in writing with the aim of ensuring compliance by subject persons with their obligations under the Act and regulations made thereunder, even where no contraventions or compliance failures are identified.

(5) 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 the maximum set out under sub-regulations (1), (2) and (4)(b) as may be applicable.

(6) Where the Financial Intelligence Analysis Unit imposes an administrative penalty on a subject person, it shall inform in a timely manner the relevant supervisory authority or any other authority, body or committee responsible for the authorisation, licensing, registration or regulation of, or the granting of a warrant to, the subject person concerned, and shall provide all relevant information on the contravention which it retains necessary.

(7) Where a contravention in terms of sub-regulations (1), (2) and (4) is committed by a subject person who is a body or other association of persons, be it corporate or unincorporate, the Financial Intelligence Analysis Unit may, in addition to any administrative penalty imposed on the subject person, impose an applicable administrative penalty, as envisaged under sub-regulation (1), (2) or (4), on any person or persons who at the time of the contravention was:

(i) a director or other similar officer responsible for the management administration of such body or association of persons, or was purporting to act in any such capacity; and/or, unless that person proves that the contravention was committed without his knowledge and that he exercised all due diligence to prevent the commission of the contravention.

(ii) an officer of such body or association of persons holding an executive management function, including the person appointed as reporting officer in terms of regulation 15(1)(a) and the person appointed in terms of regulation 5(5)(c);

and who through an act or omission, whether intentional or due to negligence, including through the lack of proper oversight of subordinates, caused or contributed to the commission of any such contravention;

Provided that the Financial Intelligence Analysis Unit may also, in addition to the said administrative penalty, recommend to any relevant supervisory authority or any other authority or body responsible for the authorisation, licensing, registration or regulation of the subject person concerned, that the person or persons aforesaid be suspended or precluded from exercising managerial functions within that or any other subject person, as may be deemed appropriate.

(8) The provisions of this regulation shall be without prejudice to the powers of a supervisory authority or any other authority, body or committee responsible for the authorisation, licensing, registration,

regulation, or the granting of a warrant to a subject person, to take any action or regulatory measure available to it under applicable law as it may deem appropriate in the circumstances of the case.

Proposed Amendments to Chapter 5 of the FIAU Implementing Procedures Part I

CHAPTER 5 – REPORTING PROCEDURES AND OBLIGATIONS

Subject persons are required to have internal and external reporting procedures in place to report any knowledge or suspicion of ML/FT to the FIAU, and any knowledge or suspicion that funds or property are the proceeds of criminal activity.

Throughout this chapter, whenever reference is made to knowledge, suspicion or reasonable grounds to suspect ML/FT, this will also be deemed to include knowledge, suspicion and reasonable grounds to suspect that funds or property are the proceeds of criminal activity. References to knowledge or suspicion of ML/FT are to be deemed as also including references to reasonable grounds for suspicion, or to an attempt to carry out a transaction or activity related to proceeds of criminal activity or funding of terrorism.

5.1 THE MONEY LAUNDERING REPORTING OFFICER

5.1.1 The Role of the MLRO

Regulation 15 of the PMLFTR¹ requires a subject person to appoint one of its officers as the MLRO, whose core functions are to:

- (a) receive internal reports (from the subject person's employees or through software solutions used to analyse transactions) of-on information or matters that may give rise to knowledge or suspicion of ML/FT, or that a person may have been, is or may be connected with ML/FT;
- (b) consider these reports to determine whether knowledge or suspicion of ML/FT subsists, or whether a person may have been, is or may be connected with ML/FT;
- (c) report knowledge or suspicion of ML/FT or of a person's connection with ML/FT to the FIAU; and
- (d) respond promptly to any request for information made by the FIAU.

5.4 Internal Reporting Procedures

The internal reporting procedures of a subject person have to clearly set out the steps to be followed when an employee of the subject person becomes aware of any information or matter that could give rise to knows knowledge or suspects suspicion, or there are grounds to suspect, that a person or a transaction is connected to ML/FT.² Reference to the requirements to submit internal reports-reporting obligations-of-anby employees is also understood to be

¹ Regulation 15(1)(a) of the PMLFTR

² Refer to Section 5.5 for an explanation of these concepts.

applicable to those officers of a subject person who may not have an employment relationship with the subject person (such as temporary, ~~or contract~~ed or outsourced staff).

The internal reporting procedures should clearly state that, when an employee ~~has becomes~~ aware of any such information or matter, he/she shall treat the case with the utmost urgency and shall-is to report the matter to the MLRO without delay. The FIAU expects such a report to be made within the same day. the employee or officer becomes aware of any information or matter that could give rise to knowledge or suspicion that a person or a transaction is connected to ML/FT. Therefore, it is crucial that all employees are informed of the identity of the appointed MLRO (and of the designated employee, where applicable) to whom the report has to be made, and of the procedure to follow and the information that has to be made available with the report. The internal reporting procedures should also include information on the procedures employees of the subject person are to follow when the MLRO is absent from duties.

Internal reports are to be submitted in writing (manually or in electronic format), preferably using a standard template, together with all relevant information and documentation available to the employee to assist the MLRO in making a determination as to how best to proceed. The report should include details on the customer and/or the transaction/activity that who-is the subject of concern and as full a statement as possible of the information or matter that gave rise to the employee's concern. giving rise to the knowledge or suspicion.

Reporting lines should be kept as short as possible, ideally allowing an employee to report directly to the MLRO to ensure speed, confidentiality and quick access to the MLRO. However, it is acknowledged that in larger organisations this may not always be possible and may even prove to be counter-productive. In these cases, it is acceptable for the internal reporting procedures to provide for intermediate reportingfiltering stages.

Thus, it is possible that a subject person's internal reporting procedures provide for an employee to discuss the circumstances surrounding a particular customer or transaction with his/her immediate superior prior to determine whether to submit an internal report. It is also possible for~~Another option would be to have~~ a specialised team ~~who is~~-to consider reports made by employees and forward to the MLRO only those that ~~do~~-contain the basis of knowledge or suspicion of ML/FT. In those cases where internal reports are not raised directly with the MLRO, any discussions with immediate superiors or considerations by specialised teams are to be given immediate priority so as to enable any eventual internal report to be raised with the MLRO within the next working day.

~~The same applies with regard to the~~Subject persons could also use ~~of~~-software solutions to identify transactions or patterns of transactions that are unusual or exceed a given threshold as part of a subject person's ongoing monitoring systems. The reports generated by any such software solutions s need not be transmitted automatically to the MLRO ~~for his/her consideration but~~and may be further considered filtered and analysed by specialised teams. and only tThose transactions found to have an indication of knowledge or suspicion of ML/FT shall then be forwarded to the MLRO without delay for his/her consideration. (i.e. by not later than the next working day from when they are identified by the software solution).

However, when extending reporting lines in this manner, including situations where the subject person has outsourced ongoing monitoring to a third party, it is important that:

- (a) the MLRO understands and is in agreement with the ~~filtering~~ criteria used and analytical methodology applied to identify those reports that he/she is to receive. When reviews are carried out on the effectiveness of the procedures adopted by the subject person, these are to be made available to the MLRO with sufficient information to allow him/her to raise any concerns he/she may have in relation to these procedures and ensure these are considered and, if necessary, properly addressed.
- (b) when a decision is taken not to proceed with submitting an internal report to the MLRO, a written record has to be kept of the circumstances of the case and of the reasons why it was decided not to file an internal report. These records are to be made available to the MLRO and, if applicable, to the officer entrusted with the monitoring function and to the subject person's internal audit function. An internal audit function may be carried out by an employee or officer of the subject person but may also involve an audit or review carried out by an external consultant. These records may provide important information on the effectiveness of a subject person's internal procedures and their review can lead to the eventual improvement of one's internal reporting procedures.
- (c) when a decision is taken not to forward a report to the MLRO, the employee who made the report has to be informed of the decision. If the employee still considers that the report should be escalated to the MLRO, the internal procedures should be such as to still enable the employee to submit the report directly to the MLRO.

It is possible that additional internal reports may have to be made following the submission of an initial report since the employee may notice further related transactions or activities that give rise to knowledge or suspicion of ML/FT. These too need to be reported to the MLRO.

The MLRO must consider, with ~~out the utmost urgency and without any~~ delay, every internal report he/she receives to ~~decidedetermine~~ whether: ~~or not the information contained in the report:~~

- (a) the information contained in the report does give rise to a knowledge or suspicion of ML/FT; or
- (b) whether additional information is necessary to reach this determination.

The MLRO shall make this decision by not later than the next working day.

~~In the latter circumstances~~ Where additional information is deemed necessary, the MLRO must collect and consider ~~without delay~~ any additional information and/or documentation he/she deems relevant to make this determination, which may include:

- (a) previous transactions, transaction patterns and volumes, previous patterns of instructions, the duration of the business relationship and CDD information;
- (b) where applicable, other connected accounts and the existence of other relationships, including where the person suspected of ML/FT:
 - (i) is a settlor, donor, contributor, protector, trustee or beneficiary of a trust, foundation, trust account or other trust or fiduciary relationship with the subject person; or
 - (ii) is a beneficial owner, director, shareholder or legal representative of a legal entity or other legal arrangement having a business relationship with the subject person; or
 - (iii) holds a power of attorney or has any fiduciary arrangements related to a business relationship with the subject person; and
- (c) other information or documents that are reasonably accessible through public sources, or that may be obtained from the customer or person subject of that internal report.

The collection and consideration of any additional information and/or documentation by the MLRO to make this determination has to take place without unreasonable delay. While it is not possible to give a clear definition of what constitutes an unreasonable delay, as this may vary from one case to another, subject persons should be guided by the following expectations:

- (a) MLROs are not expected to carry out investigative or analytical work. Their role is that of determining whether there is knowledge or suspicion of ML/FT which ought to be flagged to the FIAU for analysis;
- (b) The highest priority should be given to those cases which might be related to FT;
- (c) Priority should also be given to cases of ML involving substantial amount of funds (especially if the funds in question are still within the control of the subject person), pending transactions, or cases involving PEPs;
- (d) MLROs should be supported by adequate human and technical resources to be able to make such assessments as expeditiously as possible;
- (e) Where the MLRO identifies the need to obtain information from the customer or any person or other external sources, the request should be made immediately and followed up regularly. The lack of cooperation, including non-response, by a customer could be seen as a further indicator of suspicion;
- (f) Information that is already held by the subject person (e.g. previous transactional history or information on connected accounts) should be obtained without delay; and
- (g) There shouldn't be any unnecessary delays in making the necessary considerations and determinations.

Failure by the MLRO to diligently consider all relevant material available to the subject person may lead to vital information being overlooked and the knowledge or suspicion not being

identified and subsequently disclosed to the FIAU. In view of this requirement, the MLRO should be granted unrestricted access to all relevant documentation and information.

The decision to file or not to file an STR must always be the MLRO's/designated employee's own, and should not be subject to the direction or approval of other parties within the subject person. This is not to say that in reaching a determination on whether an internal report gives rise to knowledge or suspicion of ML/FT, the MLRO cannot seek assistance, including from internal staff of the subject person or external advisors. However, this has to be done discreetly and on a need to know basis, and when it involves external advisors be done in a manner that does not disclose any information that may lead to the identification of the subject of the STR and any surrounding legal or natural persons, and restricted specifically to the matter requiring input from advisors, taking into consideration the non-disclosure obligations that subject persons have to adhere to.

If the MLRO, after having obtained and considered the additional information necessary to reach his/her determination, concludes, for justifiable reasons, that an internal report does not give rise to knowledge or suspicion of ML/FT, the MLRO need not file a report with or otherwise inform the FIAU.³ In this case, the MLRO must keep a written record (manually or in electronic format) of the internal report received, the assessment carried out, the outcome and the reasons why the report was not submitted to the FIAU. On request by the FIAU or the relevant supervisory authority acting on behalf of the FIAU, the MLRO must make this information available.

5.5 External Reporting Procedures

After considering the internal report and all the necessary documentation, when the MLRO or the designated employee determines that the subject person:

- (a) knows;
- (b) suspects; or
- (c) has reasonable grounds to suspect that:
 - a transaction, including attempted transactions, may be related to ML/FT; or
 - a person may have been, is or may be connected with ML/FT; or
 - ML/FT has been, is being or may be committed or attempted,

the MLRO must file an STR with the FIAU as set out hereunder.⁴ In so doing, the MLRO is not to disclose the name of the employee who made the internal report to the FIAU.

The PMLFTR require the MLRO to report to the FIAU when he has **knowledge, suspicion or reasonable grounds** to suspect ML/FT or that funds (regardless of the amount involved) are the proceeds of criminal activity. Subject persons are required to report also attempted transactions that are deemed suspicious but which never materialise, as by way of example the subject person would have desisted from servicing or on-boarding the customer in question. The same obligation to file an STR applies to a sole trader or sole practitioner with

³. Regulation 15 (6) of the PMLFTR.

⁴. Regulation 15(3) of the PMLFTR.

no employees or no persons working within his practice, who has a similar knowledge, suspicion or reasonable grounds of suspicion.

A brief explanation of these three concepts is provided below:

(i) Knowledge

Being an objective criterion, the existence of knowledge of ML/FT is not difficult to ascertain since a person either knows something or does not. If for any reason the MLRO, or any other employee of the subject person, is aware or is in possession of information that indicates that any of the above activities may have taken place, are taking place or will be taking place, the MLRO should immediately proceed with filing an STR with the FIAU.

(ii) Suspicion

Suspicion of ML/FT is more subjective than knowledge and, in order to determine its existence, the MLRO must rely on objective criteria, which differ depending on the circumstances.

For instance, an unemployed customer of a bank depositing considerable amounts of money into his bank account should raise the bank's suspicion. In this case the objective element is the fact that the person is unemployed and, although the bank does not have any concrete evidence that the money derives from an illegal activity, there are objective indications pointing to such a possibility.

Another objective element on which suspicion may be based, which is specifically referred to in the PMLFTR,⁵ is the situation when the subject person is unable to complete CDD due, for instance, to the unwillingness of the applicant for business to provide the required documentation or information. In this case, the PMLFTR require the subject person to consider filing a report with the FIAU.

Certain pronouncements by the courts in the United Kingdom may be of assistance in determining what constitutes 'suspicion' for the purposes of the PMLFTR and the degree of suspicion that is required for an STR to be filed:

"A degree of satisfaction and not necessarily amounting to belief but at least extending beyond speculation as to whether an event has occurred or not".

"Although the creation of suspicion requires a lesser factual basis than the creation of a belief, it must nonetheless be built upon some foundation."

In ***R v Da Silva*** [2006] 4 All ER 900, the UK Court of Appeal stated:

⁵. Regulation 8(5) of the PMLFTR.

“It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice. But the statute does not require the suspicion to be 'clear' or 'firmly grounded and targeted on specific facts'.”

Furthermore, in *Shah & Another v HSBC Private Bank (UK) Limited* [2012] EWHC 1283 (QB), the UK High Court held that “[t]o be a suspicion rather than a mere feeling of unease it must be thought to be based on possible facts, but the sufficiency of those possible facts as a grounding for the suspicion is irrelevant...”

The Court in this case further stated that:

“Parliament intended suspicion as a subjective fact to be sufficient (1) to expose a person to criminal liability for money laundering and (2) to trigger disclosures to the authorities. Parliament did not require, in addition, that the suspicion be based upon ‘reasonable’ or ‘rational’ grounds. There are good practical reasons for this. Unlike law enforcement agencies, banks have neither the responsibility nor the expertise to investigate criminal activity to satisfy themselves that the grounds for their suspicion are well founded, reasonable or ‘rational’.”

A transaction that appears *unusual* is not necessarily *suspicious*. Even customers with a stable and predictable transactions profile will have periodic transactions that are unusual for them. Many customers will, for perfectly good reasons, have an erratic pattern of transactions or account activity. So, the unusual is, in the first instance, only a basis for further enquiry that may in turn require judgment as to whether it is suspicious.

(iii) Reasonable Grounds to Suspect

The requirement to file an STR goes beyond “suspicion” and also includes the obligation to report when “reasonable grounds to suspect” exist. This implies that a further obligation to report arises where, on the basis of objective facts or circumstances, a reasonable person would have inferred knowledge or formed the suspicion that ML/FT existed or that funds were the proceeds of criminal activity.

It should also be kept in mind that a transaction may not be suspicious at the time, but suspicions may arise later, in which case the obligation to file an STR still arises.

Any disclosures should be made to the FIAU ~~as soon as is reasonably practicable, but not later than five (5) working days from when the knowledge or suspicion of ML/FT first arises or from the existence of reasonable grounds to suspect ML/FT~~ promptly, meaning that a suspicious transaction report should be submitted on the same day when knowledge or suspicion of ML/FT is considered to subsist by the MLRO.

~~The five (5) working days, which are referred to in Regulation 15(3) of the PMLFTR, shall be deemed to start to run in accordance with the provisions of the following paragraphs:~~

- ~~(a) in cases where, subsequent to the receipt of an internal report, the MLRO determines, on the basis of additional information and/or documentation other than what is contained in the internal report received by the MLRO, that there is knowledge or suspicion of ML/FT, the five (5) working day period shall start to run from when such a determination is made by the MLRO;~~

~~The subject person and MLRO are not only expected to ensure that their ongoing monitoring and internal reporting processes are conducted in an expeditious and effective manner as required under Section 5.4, but that the analysis of internal reports is carried out with the necessary due diligence, keeping in mind that subject persons would be in breach of their reporting obligations where they (b) notwithstanding the provisions of paragraph (a), when the subject person is are in possession of information that constitutes even a reasonable ground to suspect ML/FT, and which is not brought to the attention of the FIAU. the five (5) working days shall start to run from when the subject person came into possession of or became aware of that information, independently of when that information was brought to the attention of the MLRO.~~

Timing is an aspect that should be clearly considered by subject persons when drawing up their internal reporting procedures, especially if they include intermediate filtering levels.

STRs are to be submitted to the FIAU through the FIAU website using the template provided. Guidance on STR reporting is also provided on the FIAU's website. In exceptional cases, when subject persons do not have access to IT systems to submit STRs online, manual submissions are also accepted. In completing this report MLROs should seek to provide as much detail as possible together with the relevant identification and other supporting documentation.

For the avoidance of any doubt, in those circumstances when the STR is not filed electronically but submitted to the FIAU in paper format, the physical act of submitting an STR need not be undertaken by the MLRO himself/herself; his/her responsibility is that of making a reasoned determination as to whether an STR must be submitted or otherwise. Therefore, the submission itself may be done by any employee of the subject person who is acting under the responsibility of, or answers to, the MLRO as long as this is delivered to the FIAU sealed in an envelope and marked as "SECRET".

It is important to keep in mind that subject persons must file STRs only with the FIAU and with no other supervisory authority.