

SUBSIDIARY LEGISLATION 373.01

**PREVENTION OF MONEY LAUNDERING AND
FUNDING OF TERRORISM REGULATIONS**

31st July, 2008

LEGAL NOTICE 180 of 2008.

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

(2) The objective of these regulations is to implement the provisions of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, including Directive 2006/70/EC of the European Commission of 1 August 2006 laying down implementing measures for Directive 2005/60/EC as regards the definition of politically exposed persons and as regards the technical criteria for simplified customer due diligence and for the exemption on grounds of a financial activity being conducted on an occasional or very limited basis, as may be amended from time to time, and any further implementing measures that may be issued thereunder.

2. (1) In these regulations, unless the context otherwise requires - Interpretation and application.

"the Act" means the Prevention of Money Laundering Act; Cap. 373.

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

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

- (a) in the case of a body corporate or a body of persons, the beneficial owner includes any natural person or persons who -
 - (i) ultimately own or control, whether through direct or indirect ownership or control, including, where applicable, through bearer share holdings, more than 25% of the shares or voting rights in that body corporate or body of persons other than a company that is listed on a regulated market which is subject to disclosure requirements consistent with Community legislation or equivalent international standards; or
 - (ii) otherwise exercise control over the management

- of that body corporate or body of persons; and
- (b) in the case of any other legal entity or legal arrangement which administers and distributes funds, the beneficial owner includes:
 - (i) where the beneficiaries have been determined, a natural person who is the beneficiary of at least 25% of the property of the legal entity or arrangement;
 - (ii) where the beneficiaries have not yet been determined, the class of persons in whose main interest the legal entity or arrangement is set up or operates;
 - (iii) a natural person who controls at least 25% of the property of the legal entity or arrangement; and
 - (c) in the case of long term insurance business, the beneficial owner shall be construed to be the beneficiary under the policy;

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

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

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

"Case 3" (single large transaction) means any case where, in respect of any transaction, payment is to be made by or to the applicant for business of the amount of fifteen thousand euro (€15,000) or more, and, where an occasional transaction involves a money transfer or remittance in accordance with regulation 7(11), the payment amount is one thousand euro (€1,000) or more;

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

- (a) it appears at the outset to a person dealing with any of the transactions that -
 - (i) the transactions are carried out by the same person and are of a similar character, and
 - (ii) the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is fifteen thousand euro (€15,000) or more; or
- (b) at any later stage it appears to such a person that the

provisions of paragraph (a)(i) and (ii) are satisfied;

"casino" shall have the same meaning as is assigned to it by article 2 of the Gaming Act and "casino licensee" in these regulations shall be construed accordingly; Cap. 400.

"collective investment scheme", "participants" and "units" have the same meanings as are assigned to these terms respectively in the Investment Services Act; Cap. 370.

"the Community" shall mean the European Community and, for the purposes of these regulations, shall include EEA States;

"company" has the same meaning as is assigned to it in the Companies Act; Cap. 386.

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

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2 May, 1992 as amended by the Protocol signed at Brussels on the 17 March, 1993 and as may be amended by any subsequent acts;

"established business relationship" means a business relationship formed by a person acting in the course of either relevant financial business or relevant activity where that person has carried out customer due diligence under procedures maintained by him, in accordance with the provisions of these regulations in relation to the formation of that business relationship;

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

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

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

"long term insurance business" means the business of insurance of any of the classes specified in the Second Schedule to the Insurance Business Act; Cap. 403.

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

"occasional transaction" means any transaction other than a transaction carried out in the exercise of an established business relationship formed by a person acting either in the course of relevant financial business or in the course of relevant activity;

"politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and shall

include their immediate family members or persons known to be close associates of such persons, but shall not include middle ranking or more junior officials;

"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);
- (b) real estate agents;
- (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 execution of transactions for their clients concerning the -
 - (i) buying and selling of real property or business entities;
 - (ii) managing of client money, securities or other assets, unless the activity is undertaken under a licence issued under the provisions of the Investment Services Act;
 - (iii) opening or management of bank, savings or securities accounts;
 - (iv) organisation of contributions necessary for the creation, operation or management of companies;
 - (v) creation, operation or management of trusts, companies or similar structures, or when acting as a trust or company service provider;
- (d) trust and company service providers not already covered under paragraphs (a), (c), (e) and (f);
- (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) any person providing trustee or any other fiduciary service, whether authorised or otherwise, in terms of the Trusts and Trustees Act;
- (g) casino licensee;
- (h) other natural or legal persons trading in goods whenever payment is made in cash in an amount equal to fifteen thousand euro (€15,000) or more whether the transaction is carried out in a single operation or in several operations which appear to be linked; and
- (i) any activity which is associated with an activity falling within paragraphs (a) to (h);

"relevant financial business" means -

- (a) any business of banking or any business of an electronic money institution carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Banking Act; Cap. 371.
- (b) any activity of a financial institution carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Financial Institutions Act; Cap. 376.
- (c) long term insurance business carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Insurance Business Act or enrolled or required to be enrolled under the provisions of the Insurance Intermediaries Act; Cap. 403.
Cap. 487.
- (d) investment services carried on by a person or institution licensed or required to be licensed under the provisions of the Investment Services Act; Cap. 370.
- (e) administration services to collective investment schemes carried on by a person or institution recognised or required to be recognised under the provisions of the Investment Services Act; Cap. 370.
- (f) a collective investment scheme licensed or recognised, or required to be licensed or recognised, under the provisions of the Investment Services Act; Cap. 370.
- (g) any activity other than that of a scheme or a retirement fund, carried on in relation to a scheme, by a person or institution registered or required to be registered under the provisions of the Special Funds (Regulation) Act and for the purpose of this paragraph, "scheme" and "retirement fund" shall have the same meaning as is assigned to them in the said Act; Cap. 450
- (h) 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; Cap. 345.
- (i) any activity under paragraphs (a) to (h) carried out by branches established in Malta and whose head offices are located inside or outside the Community;
- (j) any activity which is associated with a business falling within paragraphs (a) to (i);

"reputable jurisdiction" means any country having appropriate legislative measures for the prevention of money laundering and the funding of terrorism, taking into account that country's membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism, and which supervises natural and legal persons subject to such legislative measures for compliance therewith;

"shell bank" means a credit institution or an institution engaged in equivalent activities, 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;
- Cap. 386. (c) the Registrar of Companies acting under articles 403 to 423 of the Companies Act;
- Cap. 386. (d) a person appointed by the Registrar of Companies under articles 403 to 423 of the Companies Act;
- Cap. 403. (e) an inspector appointed under article 30 of the Insurance Business Act, including when such inspector exercises his functions for the purposes of the Insurance Intermediaries Act by virtue of article 54 thereof;
- Cap. 487. (f) a person appointed under article 20 or article 22 of the Banking Act;
- Cap. 371. (g) a person appointed under article 14 or article 15 of the Financial Institutions Act;
- Cap. 376. (h) a person appointed under article 13 or article 14 of the Investment Services Act;
- Cap. 370. (i) the Lotteries and Gaming Authority acting under the Lotteries and Other Games Act and the Gaming Act, and any regulations issued thereunder;
- Cap. 438. (j) a person appointed under article 17 of the Lotteries and Other Games Act;
- Cap. 400. (k) the Comptroller of Customs when carrying out duties under any regulations that may be issued or are in force from time to time relating to the cross border movement of cash and other financial instruments;

Cap. 438. "terrorism" means any act of terrorism as defined in article 328A of the Criminal Code<

Cap. 9.

"trust and company service providers" means any natural or legal person who, by way of business, provides any of the following services to third parties:

- (a) forming companies or other legal persons;
- (b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- (c) providing a registered office, business address and other related services for a company, a partnership or

any other legal person or arrangement;

- (d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;
- (e) acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on an official stock exchange that is subject to disclosure requirements in conformity with the Financial Markets Act or subject to equivalent international standards.

Cap. 345.

(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 Union Commission accordingly through the established appropriate channels.

(3) 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.

(4) Where the Financial Intelligence Analysis Unit determines, or is otherwise informed, that a particular jurisdiction meets the criteria of a 'reputable jurisdiction' as defined in this regulation, it shall inform the relevant authorities of other Member States of the Community and the European Union Commission through the established appropriate channels.

3. (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, do not fall within the scope of relevant financial business as defined for the purposes of these regulations.

Relevant financial business on an occasional or very limited basis.

(2) In making a determination under subregulation (1) the Financial Intelligence Analysis Unit shall, subject to subregulation (3), apply all the following criteria:

- (a) the total 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 not directly related to the main activity;
- (e) with the exception of paragraph (i) of the definition of 'relevant activity', the main activity is not an activity falling within the definition of 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.

(3) In assessing the risk of money laundering or the funding of terrorism for the purposes of subregulation (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 subregulation (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 subregulation (1) are not abused for money laundering or the funding of terrorism.

Systems and training to prevent money laundering and the funding of terrorism.

4. (1) No subject person shall form a business relationship or carry out an occasional transaction with an applicant for business unless that subject person -

- (a) maintains the following measures and procedures established in relation to that business in accordance with the provisions of these regulations:
 - (i) customer due diligence measures;
 - (ii) record-keeping procedures; and
 - (iii) internal reporting procedures;
- (b) applies the measures and procedures established under paragraph (a) including when entering into or undertaking non face-to-face relationships or transactions;
- (c) establishes policies and procedures on internal control, risk assessment, risk management, compliance management and communications that are adequate and appropriate to prevent the carrying out of operations that may be related to money laundering or

the funding of terrorism;

- (d) takes appropriate measures from time to time for the purpose of making employees aware of -
- (i) the measures and procedures under the provisions of paragraph (a) and paragraph (c), and any other relevant policies that are maintained by him; and
 - (ii) the provisions of the Prevention of Money Laundering Act; of the Sub-Title, Of Acts of Terrorism, Funding of Terrorism and Ancillary Offences of Title IVA of Part II of Book First of the Criminal Code; and of these regulations; and
- (e) provides employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who may have been, is, or appears to be engaged in money laundering or the funding of terrorism.

Cap. 373.

Cap. 9.

(2) Subject persons shall ensure that they have in place appropriate procedures for due diligence when hiring employees.

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

(4) 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.

(5) Any subject person who contravenes the provisions of this regulation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(6) In determining whether a subject person has complied with any of the requirements of subregulation (1), a court shall consider:

- (a) any relevant guidance or procedures issued, approved or adopted by the Financial Intelligence Analysis Unit with the concurrence of the relevant supervisory authority, and which applies to that subject person; and
- (b) in a case where no guidance or procedures falling within the provisions of paragraph (a) apply, any other relevant guidance issued by a body which regulates, or is representative of, any trade, profession, business or employment carried on by that subject person.

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

Offences by bodies
corporate and
unincorporated
associations.

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

(2) Without prejudice to subregulation (1), where the offence is committed by a body or other association of persons, be it corporate or unincorporate, or by a person within and for the benefit of that body or other association of persons consequent to the lack of supervision or control that should have been exercised on him by a person referred to in subregulation (1), such body or association shall be liable to an administrative penalty of not less than one thousand two hundred euro (€1,200) and not more than five thousand euro (€5,000).

(3) Administrative penalties under subregulation (2) shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance provided that in the latter case the accumulated penalty shall not exceed fifty thousand euro (€50,000).

Branches and
majority owned
subsidiaries.

6. (1) Subject persons carrying out relevant financial business shall not establish or acquire branches or majority owned subsidiaries in a jurisdiction that does not meet the criteria for a reputable jurisdiction as defined in regulation 2.

(2) In relation to their branches and majority owned subsidiaries situated in a reputable jurisdiction, subject persons carrying out relevant financial business shall:

- (a) communicate to such branches and majority owned subsidiaries the relevant policies and procedures established in accordance with regulation 4;
- (b) apply in such branches and majority owned subsidiaries, where applicable, measures that, as a minimum, are equivalent to those under these regulations regarding customer due diligence and record keeping,

and where the legislation of that reputable jurisdiction does not permit the application of such equivalent measures, subject persons under this regulation shall immediately inform the Financial Intelligence Analysis Unit and shall further take additional measures to effectively handle the risk of money laundering or the funding of terrorism.

(3) Where the Financial Intelligence Analysis Unit is in possession of information in accordance with subregulation (2)(b) it shall immediately inform the relevant domestic supervisory authority, the relevant authorities of the other Member States of the Community, and the European Union Commission accordingly.

(4) Where a subject person under this regulation is unable to apply additional measures as required under subregulation (2) to effectively handle the risk of money laundering or the funding of terrorism, that subject person shall immediately inform the Financial Intelligence Analysis Unit who, in collaboration with the relevant supervisory authority, may require the closure of the branch or majority owned subsidiary in accordance with the applicable law.

7. (1) Customer due diligence measures in accordance with regulation 4(1)(a) shall comprise - Customer due diligence.

- (a) the identification of the applicant for business and the verification of the identity of the applicant for business on the basis of documents, data or information obtained from a reliable and independent source;
- (b) the identification, where applicable and in accordance with subregulation (3), of the beneficial owner and the taking of reasonable measures to verify the identity such that the subject person is satisfied of knowing who the beneficial owner is, including, in the case of a body corporate, trusts and similar legal arrangement, reasonable measures to understand its ownership and control structure;
- (c) obtaining information on the purpose and intended nature of the business relationship, such that a subject person is able to establish the business and risk profile of the customer;
- (d) conducting ongoing monitoring of the business relationship,

and where the applicant for business or the beneficial owner is subsequently found to be or becomes a politically exposed person as defined in regulation 2, customer due diligence shall proceed in accordance with regulation 11(6) and (7).

(2) The ongoing monitoring of a business relationship for the purposes of subregulation (1) shall include:

- (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 kept up to date.

(3) Where an applicant for business is or appears to be acting otherwise than as principal, in addition to the identification and the verification of the identity of the applicant for business:

- (a) subject persons shall ensure that the applicant for business is duly authorised in writing by the principal;
- (b) subject persons shall establish and verify the identity of the person on whose behalf the applicant for

business is acting;

- (c) where the principal is a body corporate, a body of persons, or any other form of legal entity or arrangement, subject persons shall, in addition to verifying the legal status of the principal, identify all directors and, where such principal does not have directors, all such other persons vested with its administration and representation, and establish the ownership and control structure;
- (d) in addition to the requirements under paragraph (c), where the principal is a body corporate, a body of persons, trust or any other form of legal entity or arrangement in which there is a shareholding, or any other form of ownership interest or assets held under a trustee or any other fiduciary arrangement, a subject person shall not undertake any business with or provide any service to the applicant for business unless that applicant for business discloses the identity of the beneficial owners, his principal, and the trust settlor, as the case may be, and produces the relevant authenticated identification documentation, and such disclosure procedures shall also apply where there are changes in beneficial ownership, or principal;
- (e) where the applicant for business is acting as a trustee or under any other fiduciary arrangement, a subject person shall not undertake any business with or provide any service to the applicant for business unless that applicant for business discloses the identity of the beneficial owners, his principal, and the trust settlor, as the case may be, and produces the relevant authenticated identification documentation, and such disclosure procedures shall also apply where there are changes in beneficial ownership, or principal.

(4) Subject persons shall not keep anonymous accounts or accounts in fictitious names.

(5) Without prejudice to the provisions of regulation 8, customer due diligence measures maintained by a subject person shall be deemed to be in accordance with the provisions of these regulations if, in Cases 1 to 4, that subject person requires their application to all new applicants for business when contact is first made between that subject person and the applicant for business concerning any particular business relationship or occasional transaction.

(6) Customer due diligence measures under this regulation shall be applied to all new customers and, at appropriate times, to existing customers on a risk-sensitive basis.

(7) Where, following the application of the customer due diligence measures under these regulations, in an established business relationship doubts have arisen about the veracity or adequacy of the previously obtained customer identification information, or changes have occurred in the circumstances

surrounding that established business relationship, then the customer due diligence measures shall be repeated in accordance with these regulations.

(8) Without prejudice to subregulation (1), subject persons may determine the extent of the application of customer due diligence requirements on a risk sensitive basis depending on the type of customer, business relationship, product or transaction:

Provided that subject persons are able to demonstrate to the Financial Intelligence Analysis Unit, or to any other supervisory authority acting on behalf of the Financial Intelligence Analysis Unit in ensuring compliance with these regulations, that the extent of the application on a risk-sensitive basis is appropriate in view of the risks of money laundering and the funding of terrorism.

(9) For the purposes of this regulation, subject persons shall develop and establish effective customer acceptance policies and procedures that are not restrictive in allowing the provision of financial and other services to the public in general but that are conducive to determine, on a risk based approach, whether an applicant for business is a politically exposed person and that, as a minimum, include:

- (a) a description of the type of customer that is likely to pose higher than average risk;
- (b) the identification of risk indicators such as the customer background, country of origin, business activities, products, linked accounts or activities and public or other high profile positions; and
- (c) the requirement for an enhanced customer due diligence for higher risk customers in accordance with regulation 11.

(10) An applicant for business 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 who carry out a financial activity under 'relevant financial business' that involves the transfer of funds both domestically and cross-border shall comply with the provisions of Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfer of funds, as may be in force from time to time.

(12) A subject person who contravenes the provisions of this regulation or of Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payee accompanying transfers of funds shall be liable to an administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500) which shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing.

*PREVENTION OF MONEY LAUNDERING
AND FUNDING OF TERRORISM*

14 [S.L.373.01

Verification of
identification.

8. (1) Subject persons shall verify the identity of the applicant for business 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 subregulation (1), subject persons may complete the verification during the establishment of a business relationship where this is necessary for the continued 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 initial contact.

(3) Notwithstanding subregulations (1) and (2), in relation to life insurance, subject persons may complete the verification of the identity of the beneficiary under the policy after the business relationship has been established but prior to or at the time of payout or at or before the time the beneficiary intends to exercise any of his rights vested under the policy.

(4) Notwithstanding subregulations (1) and (2), subject persons may open a bank account as may be required by the applicant for business provided that adequate measures are put in place such that no transactions are carried out through the account until the verification procedures in accordance with subregulation (1) have been satisfactorily completed.

(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 or carry out any occasional transaction, or to terminate the business relationship and to consider making a suspicious transaction report to the Financial Intelligence Analysis Unit in accordance with these regulations:

Provided that, where to refrain in such manner is impossible or is likely to frustrate efforts of investigating a suspected money laundering or the funding of terrorism operation that business shall proceed on condition that a disclosure is immediately lodged with the Financial Intelligence Analysis Unit in accordance with regulation 15(6):

Provided further that subject persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition of "relevant activity" shall not be bound by the provisions of this subregulation if those subject persons are acting in the course of ascertaining the legal position for their client or performing their responsibilities of defending or representing that client in, or concerning, judicial procedures, including advice on instituting or avoiding procedures.

9. (1) In addition to complying with the provisions of regulation 7 and regulation 8, a casino licensee shall:

- (a) not allow any person to enter the casino unless such person has been satisfactorily identified pursuant to the provisions of article 25 of the Gaming Act;

Additional
customer due
diligence
requirements for
casino licensees.

Cap. 400.

- (b) identify, and verify by the production of an identification document, any person who, whilst in the casino exchanges cash, a cheque or bank draft, whether such is drawn on a local or a foreign credit institution, or who otherwise makes a credit or a debit card payment in exchange for chips or tokens for an amount of two thousand euro (€2,000) or more for use in the casino;
- (c) identify, and verify by the production of an identification document, any person who, whilst in the casino exchanges cash, exchanges chips or tokens after playing a game or games, for an amount of two thousand euro (€2,000) or more;
- (d) 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 those 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
- (e) ensure that the provisions of paragraphs (b) to (d) 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.

(2) Notwithstanding the provisions of subregulation (1) and without prejudice to the provisions of regulation 15(6) and (7), the casino licensee shall further record the particulars relating to the identity of a person playing a game or games in the casino where the casino licensee or any casino employee has any knowledge or suspicion that such person may have been, is, or may be, engaging in money laundering or the funding of terrorism.

10. (1) Without prejudice to the provisions of subregulation (5) and subregulation (6), subject persons shall not apply customer due diligence measures in accordance with regulation 7 and regulation 8(1), but shall gather sufficient information to establish that the applicant for business qualifies accordingly -

Simplified
Customer Due
Diligence.

- (a) where the applicant for business is a person who is authorised to undertake relevant financial business or is a person who is licensed or otherwise authorised in another Member State of the Community or under the laws of a reputable jurisdiction to carry out an activity which is equivalent to relevant financial business;
- (b) in the case of legal persons listed on a regulated market authorised in accordance with the provisions of the Financial Markets Act or on an equivalent regulated market within the Community, and legal persons otherwise listed on an equivalent regulated

Cap. 345.

- market in a reputable jurisdiction and which are subject to equivalent public disclosure requirements;
- (c) with respect to beneficial owners of pooled accounts held by persons carrying out a relevant activity under paragraph (c) of the definition of "relevant activity" domestically, from within the Community or from a reputable jurisdiction, provided that the subject person shall ensure that supporting identification documentation is available, or may be made available, on request, to the institution that is acting as the depository for the pooled accounts;
 - (d) in the case of domestic public authorities or public bodies which fulfill all the following criteria:
 - (i) the applicant for business has been entrusted with a public function pursuant to the Treaty on the European Union, the Treaties on the Communities or other Community legislation;
 - (ii) the identification of the applicant for business is publicly available, transparent and verified;
 - (iii) the applicant for business undertakes activities that are transparent, including any accounting practices; and
 - (iv) the applicant for business is either accountable to a Community institution or to a domestic relevant authority or to an authority of another member of the Community or, where appropriate and effective procedures are in place to control the activity of the applicant;
 - (e) to any other applicant for business who is a legal person and who represents a low risk of money laundering or the funding of terrorism in accordance with subregulation (2).

(2) For the purposes of subregulation (1)(e), an applicant for business who is a legal person and who does not have the status as provided for under subregulation (1)(d) shall be considered as representing a low risk of money laundering or the funding of terrorism where -

- (a) the applicant for business undertakes a financial activity outside the scope of relevant financial business as defined in these regulations, provided that the applicant for business is also subject to these regulations independently, even if the applicant for business forms part of a group of companies;
- (b) the identity of the applicant for business is publicly available, transparent and verified;
- (c) the applicant for business is subject to the full licensing requirements under domestic law for undertaking those financial activities, is supervised for those activities by a relevant competent authority, and is further subject to supervision on compliance with

these regulations in accordance with the relevant provisions of the Act; and

- (d) the applicant for business is subject to all sanctions and administrative measures provided for under these regulations for non-compliance.

(3) Without prejudice to the provisions of subregulation (5) and subregulation (6), subject persons shall not apply customer due diligence measures in accordance with regulation 7 and regulation 8(1) in relation to -

- (a) life insurance policies in respect of which a premium is payable in one installment of an amount not exceeding two thousand five hundred euro (€2,500);
- (b) life insurance policies in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed one thousand euro (€1,000);
- (c) insurance policies in respect of pension schemes provided that such policies contain no surrender clause and may not be used as collateral for a loan;
- (d) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are effected through deductions from wages and where the scheme regulations prohibit members from assigning their interests under the scheme;
- (e) electronic money as defined under the Banking Act where, if the electronic device cannot be recharged the maximum amount stored is one hundred and fifty euro (€150) or less, or where, if the electronic device can be recharged, a limit of two thousand five hundred euro (€2,500) is imposed on the total amount that can be transacted in a calendar year, except where an amount of one thousand euro (€1,000) or more is redeemed in that calendar year; and Cap. 371.
- (f) any other product or transaction that represents a low risk of money laundering or the funding of terrorism in accordance with subregulation (4).

(4) Subject persons shall consider products that fulfill all the following criteria, or transactions related to them, as representing a low risk of money laundering or funding of terrorism for the purposes of subregulation (3)(f) where:

- (a) the product is subject to a written contractual agreement;
- (b) the related transactions are carried out through an account in the name of the applicant for business held with a credit institution authorised under the Banking Act or so authorised in another Member State of the Community or otherwise so authorised under the laws of a reputable jurisdiction; Cap. 371.

- (c) the product or related transactions are not anonymous and they allow for the application of the customer due diligence measures in accordance with these regulations under Case 2 (suspicion) or similar regulations in another Member State of the Community or a reputable jurisdiction;
- (d) the product is subject to a predetermined maximum threshold and -
 - (i) where the product constitutes an insurance policy or savings product of a similar nature, the maximum threshold does not exceed that laid down in subregulation (3)(a) and (b);
 - (ii) in all other cases, the maximum threshold does not exceed fifteen thousand euro (€15,000), whether the transaction is carried out under Case 3 (single transaction) or Case 4 (series of transactions);
- (e) third parties cannot enjoy the benefits of the product or related transactions, except in the case of death, disablement, survival to a predetermined age, or similar events;
- (f) where the products or related transactions allow for the investment of funds in financial assets or claims, including insurance or other kind of contingent claims, provided that -
 - (i) the benefits of the product or related transactions are only realisable in the long term;
 - (ii) the product or related transactions cannot be used as collateral;
 - (iii) there are no accelerated payments, no surrender clauses are used and no early termination takes place during the contractual relationship.

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

(6) For the purposes of this regulation, in determining whether an applicant for business or a product or related transactions represent a low risk of money laundering or the funding of terrorism, subject persons shall pay special attention to the activities of that applicant for business or to any type of product or transaction that, by its nature, may be used or abused for money laundering or the funding of terrorism, and, where there is information that suggests that this risk may not be low, that applicant for business or that product and related transactions shall not be considered as representing a low risk of money laundering or the funding of terrorism.

(7) Where the Financial Intelligence Analysis Unit determines that a particular jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2, or where the Financial Intelligence Analysis Unit is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable

jurisdiction, it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from applying the provisions for simplified customer due diligence under this regulation to all business relationships and transactions from that particular jurisdiction.

11. (1) In Cases 1 to 4, in addition to the requirements under regulation 7, subject persons shall apply, on a risk-sensitive basis, enhanced customer due diligence measures in accordance with this regulation and in situations which, by their nature, can present a higher risk of money laundering or the funding of terrorism.

Enhanced
Customer Due
Diligence.

(2) Subject persons shall apply one or more of the following additional measures to compensate for the higher risk where the applicant for business has not been physically present for identification purposes:

- (a) establish the identity of the applicant for business using additional documentation and information;
- (b) verify or certify the documentation supplied using supplementary measures;
- (c) require certified confirmation of the documentation supplied by a person carrying out a relevant financial activity;
- (d) ensure that the first payment or transaction into the account is carried out through an account held by the applicant for business in his name with a credit institution authorised under the Banking Act or otherwise so authorised in another Member State of the Community or in a reputable jurisdiction.

Cap. 371.

(3) In establishing cross-border correspondent banking and other similar relationships with respondent institutions from a country other than a Member State of the Community, subject persons carrying out relevant financial business under paragraph (a) of the definition in regulation 2 shall ensure that -

- (a) they fully understand and document the nature of the business activities of their respondent institution, including, from publicly available information, the reputation of and the quality of supervision on that institution and whether that institution has been subject to a money laundering or funding of terrorism investigation or regulatory measures;
- (b) they assess the adequacy and effectiveness of their internal controls for the prevention of money laundering and the funding of terrorism;
- (c) the prior approval of senior management for the establishment of new correspondent banking relationships is obtained;
- (d) they document their respective responsibilities for the prevention of money laundering and the funding of terrorism;
- (e) with respect to payable-through accounts, they are

satisfied that the respondent credit 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 it is able to provide relevant customer due diligence data to that subject person upon request.

(4) Subject persons carrying out relevant financial business under paragraph (a) of the definition in regulation 2 shall -

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

(5) Subject persons shall pay special attention to any threat of money laundering or funding of terrorism that may arise from new or developing technologies, or from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use in money laundering or funding of terrorism.

(6) In accordance with subregulation (7) and subject to subregulation (8), subject persons undertaking transactions or establishing business relationships with politically exposed persons residing in another Member State of the Community or in any other jurisdiction shall -

- (a) require the approval of senior management for establishing such business relationships;
- (b) ensure that the internal procedures include adequate measures to establish the source of wealth and funds that are involved in these business relationships or transactions;
- (c) conduct enhanced ongoing monitoring of the business relationships.

(7) For the purposes of the definition of 'politically exposed persons' in regulation 2 -

- (a) the term 'natural persons who are or have been entrusted with prominent public functions' shall include the following:
 - (i) Heads of State, Heads of Government, Ministers and Deputy and Assistant Ministers and Parliamentary Secretaries;
 - (ii) Members of Parliament;
 - (iii) members of the Courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
 - (iv) members of courts of auditors, Audit Committees or of the boards of central banks;
 - (v) ambassadors, *charges d'affaires* and other high

- ranking officers in the armed forces;
- (vi) members of the administrative, management or boards of State-owned corporations, and where applicable, for the purposes of subparagraphs (i) to (v), shall include positions held at the Community or international level;
 - (b) the term ‘immediate family members’ shall include the following:
 - (i) the spouse, or any partner recognised by national law as equivalent to the spouse;
 - (ii) the children and their spouses or partners; and
 - (iii) the parents;
 - (c) the term ‘persons known to be close associates’ shall include the following:
 - (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.

(8) Without prejudice to the application of enhanced customer due diligence measures on a risk sensitive basis, where a person as mentioned in subregulation (6) has ceased to be entrusted with a prominent public function for a period of at least twelve months such person shall no longer be considered as a politically exposed person.

12. (1) In accordance with the provisions of this regulation, subject persons may rely on a third party or another subject person to fulfill the customer due diligence requirements provided for under regulation 7(1)(a) to (c), provided that, notwithstanding the reliance on a third party or other subject person, the relevant subject person remains responsible for compliance with the requirements under regulation 7(1)(a) to (c).

Reliance on performance by third parties.

(2) For the purposes of this regulation, and without prejudice to subregulation (11), a third party shall mean a person undertaking activities equivalent to ‘relevant financial business’ or ‘relevant activity’ who is situated in a Member State of the Community other than Malta or in a reputable jurisdiction and who is subject to authorisation or to mandatory professional registration recognised by law.

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

(4) Subject persons relying on a third party or another subject person shall further ensure that, upon request, the third party or

other subject person shall immediately forward to them relevant copies of the identification and verification data and other relevant documentation of the applicant for business or the beneficial owner as required under these regulations.

(5) For the purposes of fulfilling the requirements under regulation 7(1)(a) to (c), and in accordance with this regulation, subject persons may rely on subject persons carrying out relevant financial business as defined in these regulations.

(6) In accordance with the provisions of this regulation, subject persons may, for the purposes of the requirements under regulation 7(1)(a) to (c), recognise and accept the outcome of the customer due diligence requirements carried out in accordance with provisions equivalent to these regulations by a third party who undertakes activities equivalent to those falling within the scope of the definition of 'relevant financial business' under regulation 2(1), with the exception of those persons whose main business is currency exchange or money transmission or remittance services as defined under paragraph (b) of that definition or their equivalent, even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

(7) Subject persons carrying out an activity falling with the scope of paragraph (b) of the definition of 'relevant financial business' and whose main business is currency exchange or money transmission or remittance services may, in accordance with the provisions of this regulation and for the purposes of the requirements under regulation 7(1)(a) to (c), recognise and accept the outcome of the customer due diligence requirements carried out in accordance with provisions equivalent to these regulations by a third party who undertakes currency exchange or money transmission or remittance services, even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

(8) For the purposes of fulfilling the requirements under regulation 7(1)(a) to (c), and in accordance with this regulation, subject persons may rely on those subject persons carrying out a relevant activity under paragraphs (a), (c), or (f) of the definition of 'relevant activity' under regulation 2.

(9) Further to subregulation (8) subject persons carrying out a relevant activity under paragraphs (a), (c) or (f) of the definition of 'relevant activity' under regulation 2 may, in accordance with the provisions of this regulation and for the purposes of the requirements under regulation 7(1)(a) to (c), recognise and accept the outcome of the customer due diligence requirements carried out in accordance with provisions equivalent to these regulations by a third party who undertakes an activity equivalent to any of those in paragraph (a), (c) or (f) of the definition of 'relevant activity' under regulation 2, even if the documentation or data upon which these requirements have been based are different to those under domestic requirements.

(10) This regulation shall not apply -

- (a) 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; and
- (b) for reliance on subject persons under paragraph (i) in the definition of ‘relevant activity’ and subject persons under paragraph (j) of the definition of ‘relevant financial business’ in regulation 2(1).

(11) Where the Financial Intelligence Analysis Unit determines that a jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2 and the criteria for a third party as established under subregulation (2), or where the Financial Intelligence Analysis Unit is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable jurisdiction as defined in regulation 2 and that for a third party as established under subregulation (2), it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from relying on persons and institutions from that particular jurisdiction for the performance of customer due diligence requirements under this regulation.

13. (1) Subject persons shall retain the documents and information specified in this regulation for use in any investigation into, or an analysis of, possible money laundering or the funding of terrorism activities by the Financial Intelligence Analysis Unit or by other relevant competent authorities in accordance with the provisions of applicable law.

Record keeping procedures.

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

- (a) in relation to any business relationship that is formed or an occasional transaction that is carried out, a record indicating the nature of the evidence of the customer due diligence documents required and obtained under procedures maintained in accordance with these regulations, comprising a copy of or the reference to the evidence required for the identity and providing sufficient information to enable the details as to a person’s identity contained in the relevant evidence to be re-obtained;
 - (b) a record containing details relating to the business relationship and to all transactions carried out by that person in the course of an established business relationship or occasional transaction which shall include the original documents or other copies which are admissible in court proceedings;
 - (c) in relation to regulations 15(1) and 15(2) a record of the findings of the examination of the background and purpose of the relationships and transactions therein.
- (3) For the purposes of subregulation (2), the prescribed period

shall be the period of at least five years commencing with -

- (a) in relation to such records as are described in paragraph (a), the date on which the relevant financial business or relevant activity was completed; and
- (b) in relation to such records as are described in paragraphs (b) and (c), the date on which all dealings taking place in the course of the transaction in question were completed:

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

(4) For the purposes of subregulation (3)(a) the date on which relevant financial business or relevant activity is completed shall, as the case may be, be deemed to be the date of -

- (a) in circumstances falling within Case 1 (negotiations), the ending of the business relationship in respect of whose formation the record under this regulation was compiled;
- (b) in circumstances falling within Case 2 (suspicion), the reporting of the suspicious transaction in accordance with regulation 15, provided that the period of five years may be extended as may be required by the Financial Intelligence Analysis Unit;
- (c) in the circumstances falling within Case 3 (single large transaction), the carrying out of the transaction or the last of a series of single large transactions in respect of which the record under this regulation was compiled; and
- (d) in circumstances falling within Case 4 (series of transactions), the carrying out of the last transaction in a series of transactions in respect of which the record under this regulation was compiled,

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

(5) Without prejudice to subregulations (2) to (4), a casino licensee shall also maintain records in relation to all identification processes under regulation 9 in accordance with the relevant provisions of the Gaming Act.

Cap. 400.

(6) Subject persons shall ensure that, upon request, all customer identification, due diligence records and transaction records and other relevant information are made available on a timely basis to the Financial Intelligence Analysis Unit and, as may

be allowed by law, to other relevant competent authorities, for the purposes of the prevention of money laundering and the funding of terrorism.

(7) Subject persons carrying out relevant financial business shall establish systems that enable them to respond efficiently to enquiries from the Financial Intelligence Analysis Unit or from supervisory or other relevant competent authorities, 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 or persons; and
- (b) the nature of that relationship.

14. (1) The Financial Intelligence Analysis Unit, subject persons and supervisory and other competent authorities responsible for combating money laundering or the funding of terrorism, shall maintain comprehensive statistical data, as applicable, in accordance with subregulation (2) and, upon request, such subject persons and supervisory and other competent authorities, shall make this statistical data available to the Financial Intelligence Analysis Unit to enable it to review the effectiveness of the national systems.

Statistical data.

(2) Comprehensive statistical data on matters relevant to the effectiveness of national systems to combat money laundering and the funding of terrorism maintained under subregulation (1) shall, as a minimum, include:

- (a) the number of suspicious transaction reports made to the Financial Intelligence Analysis Unit;
- (b) the number of suspicious transaction reports forwarded by the Financial Intelligence Analysis Unit for further investigation by the law enforcement agencies;
- (c) the follow up given to these reports;
- (d) the number of cases investigated;
- (e) the number of persons prosecuted;
- (f) the number of persons convicted for the offence of money laundering or the funding of terrorism;
- (g) details and value of property that has been frozen, seized or confiscated;
- (h) any other relevant statistical data as may justifiably be required by the Financial Intelligence Analysis Unit in order for it to fulfill its obligations under this regulation and the Prevention of Money Laundering Act.

Cap. 373.

(3) The Financial Intelligence Analysis Unit shall publish consolidated reviews of the statistical data gathered in accordance with this regulation.

(4) The Financial Intelligence Analysis Unit shall, wherever practicable and as may be allowed by the provisions of the Act within the provisions of law, provide subject persons and, where

applicable, supervisory authorities with timely feedback on the effectiveness of the suspicious transaction reports, other information it receives under regulation 15, and the effectiveness of the statistical data gathered under this regulation.

Reporting
procedures and
obligations.

15. (1) Subject persons shall examine with special attention, and to the extent possible, the background and purpose of any complex or large transactions, including unusual patterns of transactions, which have no apparent economic or visible lawful purpose, and any other transactions which are particularly likely, by their nature, to be related to money laundering or the funding of terrorism, establish their findings in writing, and make such findings available to the Financial Intelligence Analysis Unit and to the relevant supervisory authority in accordance with applicable law.

(2) Subject persons shall pay special attention to business relationships and transactions with persons, companies and undertakings, including those carrying out relevant financial business or a relevant activity, from a jurisdiction that does not meet the criteria of a reputable jurisdiction as defined in regulation 2, and, where the provisions of subregulation (1) apply to such transactions, subject persons shall proceed as provided for in subregulation (1).

(3) Where a jurisdiction, as is mentioned in subregulation (2), continues not to apply measures equivalent to those laid down by these regulations, subject persons shall inform the Financial Intelligence Analysis Unit which, in collaboration with the relevant supervisory authority, may require such business relationship not to continue or a transaction not to be undertaken or apply any other counter-measures as may be adequate under the respective circumstances.

(4) Internal reporting procedures maintained by a subject person, shall be deemed to be in accordance with the provisions of these regulations if they provide for -

- (a) the appointment by the subject person of one of its officers of sufficient seniority and command as the reporting officer, to whom a report is to be made of any information or other matter which gives rise to a knowledge or suspicion that a person may have been, is or may be engaged in money laundering or the funding of terrorism or that a transaction may be related to money laundering or the funding of terrorism;
- (b) consideration of such report by the reporting officer or by another designated employee of the subject person, in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the report does give rise to a knowledge or suspicion that a person may have been, is or may be engaged in money laundering or the funding of terrorism;

- (c) reasonable access for the reporting officer or other designated employee to any information held by the subject person which may be of assistance for the purposes of considering the report;
- (d) a procedure whereby any knowledge or suspicion that a person may have been, is or may be engaged in money laundering or the funding of terrorism determined by the reporting officer or other designated employee is reported in accordance with subregulation (6);
- (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) any employee designated by the subject person for the purposes of paragraphs (b) to (d) shall be approved by the reporting officer and shall work under his direction.

(5) A supervisory authority shall maintain internal reporting procedures in accordance with the provisions of subregulation (4), although the failure of a supervisory authority to maintain such procedures in accordance with the provisions of this regulation shall not constitute an offence but may be the subject of internal disciplinary proceedings against the officials or employees concerned.

(6) Where a subject person knows, suspects or has reasonable grounds to suspect that a transaction may be related to money laundering or the 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 money laundering or the funding of terrorism has been, is being or may be committed or attempted, that subject person shall, as soon as is reasonably practicable, but not later than five working days from when the suspicion first arose, disclose that information, supported by the relevant identification and other documentation, to the Financial Intelligence Analysis Unit.

(7) Subject persons shall refrain from carrying out a transaction that is suspected or known to be related to money laundering or the funding of terrorism until they have informed the Financial Intelligence Analysis Unit in accordance with this regulation and, where to refrain in such a manner is not possible or is likely to frustrate efforts of investigating or pursuing the beneficiaries of the suspected money laundering or funding of terrorism operations, subject persons shall accordingly inform the Financial Intelligence Analysis Unit immediately the transaction is effected.

(8) Where, following the consideration of an internal report, the reporting officer or other designated employee determines not to report in accordance with this subregulation for justifiable reasons in accordance with subregulation (4)(b), 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.

(9) Where a supervisory authority, either in the course of its supervisory work or in any other way, discovers facts or obtains any information that could be related to money laundering or the funding of 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, disclose those facts or that information, supported by the relevant documentation that may be available, to the Financial Intelligence Analysis Unit.

(10) Subject persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition of "relevant activity" shall not be bound by the provisions of subregulation (6) or subregulation (7) if such information is received or obtained in the course of ascertaining the legal position for their client or performing their responsibility of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

(11) Where, following a submission of a disclosure as in subregulation (6) or subregulation (7), 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 unless that subject person makes representations justifying why the requested information cannot be submitted within the said time and the Financial Intelligence Analysis Unit, at its discretion and after having considered such representations, extends such time as is reasonably necessary to obtain the information, whereupon the subject person shall submit the information requested within the time as extended.

(12) 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.

(13) Any information disclosed under these regulations shall be used only in connection with investigations of money laundering and, or funding of terrorism activities.

(14) Any investigating, prosecuting, judicial or administrative authority and subject persons shall protect and keep confidential the identity of persons and employees who report suspicions of money laundering or the funding of terrorism either internally or to the Financial Intelligence Analysis Unit.

(15) A subject person who contravenes the provisions of this regulation, or who fails to disclose information as is required by subregulation (6) or subregulation (7) or who fails to submit information demanded under subregulation (11), shall be liable to an administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500).

(16) Administrative penalties under subregulation (15) shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance, provided that in the latter case the accumulated penalty shall not exceed twelve thousand five hundred euro (€12,500).

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

Prohibition of disclosure.

(2) Without prejudice to subregulation (1), disclosures made under the following circumstances shall not constitute a breach of that subregulation:

- (a) disclosures to the supervisory authority relevant to that subject person or to law enforcement agencies in accordance with applicable law;
- (b) disclosures by the reporting officer of a subject person who undertakes relevant financial business to the reporting officer of another person or persons undertaking equivalent activities and who form part of the same group of companies of the former subject person, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction;
- (c) disclosures by the reporting officer of a subject person who undertakes activities under paragraph (a) or paragraph (c) of the definition of 'relevant activity' to the reporting officer of another person or persons undertaking equivalent activities, who perform their professional activities whether as employees or not, but within the same legal person or within a larger structure to which the subject person belongs and which shares common ownership, management or compliance control, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction;
- (d) disclosures between the same professional category of subject persons referred to in paragraph (b) and

paragraph (c) in cases related to the same customer and the same transaction that involves two or more institutions or persons, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction, provided that such subject persons are subject to equivalent obligations as regards professional secrecy and personal data protection and, provided further that the information exchanged shall only be used for the purposes of the prevention of money laundering or the funding of terrorism.

(3) The fact that a subject person as referred to in subregulation (2)(c) is seeking to dissuade a client from engaging in an illegal activity shall not constitute a disclosure in breach of subregulation (1).

(4) Where the Financial Intelligence Analysis Unit determines that a jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2, or where the Financial Intelligence Analysis Unit is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable jurisdiction, it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from applying the provisions of subregulation (2) with persons and institutions from that jurisdiction.

Implementing
procedures.

17. (1) 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 persons carrying out relevant financial business or relevant activity.

(2) A subject person who fails to comply with the provisions of any procedures and guidance established in accordance with subregulation (1) shall be liable to the administrative penalties as provided for under regulation 15(15) and (16).

Cap. 373.

(3) In fulfilling its compliance supervisory responsibilities under the Prevention of Money Laundering Act, the Financial Intelligence Analysis Unit may monitor persons carrying out a 'relevant activity', with the exception of those under paragraph (g) and paragraph (h), on a risk-sensitive basis.

Revocation of
Legal Notice 199
of 2003.

18. The revocation of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2003* shall not -

- (a) affect the previous operation of the regulations so revoked or anything done or suffered under those regulations;
- (b) affect the institution, continuation or enforcement of any inquiry, investigation or legal proceeding under the regulations so revoked or the imposition of any penalty or punishment under the provisions of those

*Revoked by these regulations.

regulations.
