

MFSC

MALTA FINANCIAL SERVICES CENTRE

Attard - Malta

***PREVENTION OF
MONEY LAUNDERING***

**Guidance Notes
for
Investment Services and
Life Assurance Business**

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EXECUTIVE SUMMARY

Objectives

The Guidance Notes outline the requirements of the Prevention of Money Laundering Regulations and provide a practical interpretation of the Regulations. The Guidance Notes give examples of good practice and assist persons licensed to carry out investment services and life assurance business to develop policies and maintain procedures appropriate to their business which deter criminals from using the investment services and life assurance sectors for money laundering.

The Guidance Notes assist persons licensed to carry on investment services and life assurance business and persons carrying out associated activities to:

- seek satisfactory evidence of identity from a prospective customer;
- create and retain records (concerning customer identification and transactions) for use as evidence in any subsequent investigation into money laundering;
- institute and maintain appropriate procedures for the recognition and prompt reporting of suspicious transactions;
- take appropriate action to make employees aware of the policies and procedures to prevent money laundering, including those for identification, record keeping and internal reporting, and of the legal requirements; and
- provide employees with training in the recognition and handling of suspicious transactions.

Accordingly, the Guidance Notes should be interpreted in the light of these objectives.

Application

These Guidance Notes are issued by the Malta Financial Services Centre and are applicable to:

- (1) persons licensed to carry out investment services activities (investment services licence category 1 to 4) and to collective investment schemes licensed in terms of the Investment Services Act, 1994; and
- (2) persons licensed to carry out life assurance business and persons licensed or authorised to carry out associated activity (salesmen, brokers and agents) in terms of the Insurance Business Act, 1998.

General Requirements

In conducting its business, a Licence Holder should not form a business relationship or carry out any transaction with or for another person unless it:

- (1) establishes and maintains:
 - (a) identification procedures in accordance with Section D;

- (b) record keeping procedures in accordance with Section E;
 - (c) internal reporting procedures in accordance with Section F; and
 - (d) internal controls and communication procedures which are appropriate to the nature and size of its business and are designed to forestall and prevent money laundering in accordance with Section H.
- (2) makes employees aware from time to time of:
 - (a) the procedures maintained under (1) above;
 - (b) the provisions of the prevention of money laundering legislation in accordance with Section G.
- (3) provides training for employees to assist them in recognising and handling transactions carried out by, or on behalf of, any person who is or appears to be engaged in money laundering in accordance with Section G.

APPENDICES

Appendix I

List Of Underlying Criminal Activities	i
--	---

Appendix II

Examples Of Possible Suspicious Transactions	ii
--	----

Appendix III

Suspicious Transaction/Activity Report	viii
--	------

Appendix IV

Customer Introduction Certificate	x
---	---

Appendix V

Group Introduction Certificate.....	xi
-------------------------------------	----

Appendix VI

Financial Action Task Force Member Countries	xii
--	-----

Appendix VII

The Forty Recommendations	xiii
---------------------------------	------

ANNEXES

Master Copies

Suspicious Transaction/Activity Report
Customer Introduction Certificate
Group Introduction Certificate

Annex 1

Prevention Of Money Laundering Act, 1994

Annex 2

Prevention Of Money Laundering Regulations, 1994

TABLE OF CONTENTS

A. Introduction	A-1
1 Overview.....	A-1
2 The Guidance Notes.....	A-1
Introduction.....	A-1
Scope.....	A-2
3 Approach and Role of the MFSC	A-2
B. The Process Of Money Laundering.....	B-3
1 Definition.....	B-3
2 Prevention of Money Laundering	B-3
3 Stages of Money Laundering	B-4
4 Abuse of The Financial Services Sector	B-5
C. The Domestic Legislative And Regulatory Structure.....	C-7
1 Introduction.....	C-7
2 The Prevention of Money Laundering Act, 1994	C-7
Scope.....	C-7
The Basic Money Laundering Offences.....	C-8
Converting or Transferring Property.....	C-8
Concealing or Disguising.....	C-8
Acquisition or Possession of Property	C-8
Attempt of an Offence	C-8
Acting as an Accomplice	C-8
Offences by a Body of Persons	C-9
Disclosure of an investigation (“Tipping Off”)	C-9
Opposing an Investigation Order	C-9
Contravening an Attachment Order (made during the investigation stage).....	C-9
Contravening a Court Order (made during the prosecution stage).....	C-9
3 The Prevention of Money Laundering Regulations, 1994	C-10
Scope.....	C-10
Relevant Financial Business	C-10
Requirements and Obligations.....	C-10
Cases	C-11
Provision of Relevant Guidance	C-11
Supervisory Authorities	C-11
4 Countries With Equivalent Legislation.....	C-12

D. Identification Procedures..... D-13

- 1 Introduction - “Know Your Customer” D-13
 - What is identity? D-14
 - When must identity be established? D-14
- 2 Identification In Certain Cases..... D-15
 - Business Relationship and One-Off Transactions D-15
 - Small Life Assurance Contracts D-15
 - Savings Vehicles and Regular Investment Contracts D-16
 - Reinvestment of Income D-16
 - Introduction of Business D-16
 - Series of Transactions D-16
 - Switch Transactions D-17
 - Redemption/Surrenders D-17
- 3 Identification Procedures – Exemptions D-17
 - Small Life Assurance Business..... D-18
- 4 Establishing Of Identity D-18
 - Establishing Satisfactory Evidence of Identity D-18
 - Retention of Records Confirming Identity D-19
 - Timing of Identification Requirements D-19
 - Freezing D-20
 - Cancellation of Investment or Life Assurance Contract..... D-20
 - Reliance On Other Regulated Businesses..... D-20
 - Group Introductions D-20
 - Applications through Intermediaries..... D-21
 - Acquisition of One Financial Sector Business by Another D-21
- 5 Procedures To Verify Identity D-21
 - Face to Face Customers D-22
 - Non-Face To Face Verification D-23
 - Internet and Cyberbanking..... D-24
- 6 Identification Procedures - Transactions..... D-24
- 7 Corporate, Unincorporate And other Legal Entities D-24
 - Locally Established Entities..... D-25
 - Non Locally Established Entities..... D-25
 - Identification of Persons Carrying on Financial Business D-25
- 8 Agents And Nominee Applicants D-26

E. Record Keeping E-27

- 1 Introduction..... E-27
- 2 Statutory Requirements..... E-27
- 3 Customer Identification Record E-27
- 4 Transaction Record E-28
 - Investment Services E-28
 - Life Assurance Transactions E-29

5 Format Of Records.....	E-29
6 Wire Transfer Transactions	E-30
<i>F. Recognition And Reporting Of Suspicious Transactions</i>	<i>F-32</i>
1 Recognition of Suspicious Transactions	F-32
2 Examples of Suspicious Transactions.....	F-32
3 Reporting of Suspicious Transactions.....	F-33
4 The Role of The Money Laundering Reporting Officer	F-33
5 Disclosure Reporting Procedures.....	F-34
6 Confidentiality of Disclosures	F-36
7 Feedback From The Enforcement Authorities.....	F-36
<i>G. Education And Training</i>	<i>G-38</i>
1 Statutory Requirements.....	G-38
2 The Need for Staff Awareness	G-38
3 Timing And Content Of Training Programmes	G-39
New Employees	G-39
Advisory Staff/New Customer Personnel	G-39
Processing Staff	G-39
Supervisors and Managers	G-40
Money Laundering Reporting Officers	G-40
Refresher Training	G-40
4 Methods Of Providing Training	G-40
<i>H. Internal Controls</i>	<i>H-41</i>

A. INTRODUCTION

1 OVERVIEW

- 1.1 In deciding to establish and promote Malta as an international financial centre, the authorities in Malta recognised the need for changes in the framework of financial legislation. Focusing on the four principles of professionalism, confidentiality, efficiency and integrity, the necessary legislation was enacted and came into force during 1994.
- 1.2 The authorities in Malta realised that Malta - like other international financial centres - is exposed to abuse by money launderers. Therefore Malta recognises the need to protect the financial and operational integrity of the Island by statutory and regulatory means.
- 1.3 The importance of robust regulation and supervision is beyond question. The importance of confidentiality is recognised also. The introduction of a general obligation of professional secrecy in the Professional Secrecy Act, 1994 has consolidated the various provisions in Maltese law on confidentiality and professional secrecy thus providing the necessary reassurance to both domestic and foreign investors without obstructing supervision and regulation.
- 1.4 The Prevention of Money Laundering Act, 1994 (“the Act”), the Prevention of Money Laundering Regulations, 1994 (“the Regulations”) and other appropriate statutory provisions allow disclosure of information in certain situations such as in suspicious transactions.

2 THE GUIDANCE NOTES

Introduction

- 2.1 The Malta Financial Services Centre (“the MFSC”) is the Competent Authority responsible for the regulation and supervision of investment services and collective investment schemes under the Investment Services Act, 1994 and is the Competent Authority under the Insurance Business Act, 1998 responsible to supervise and regulate insurance business.
- 2.2 These Guidance Notes are issued by the MFSC and apply to:
 - *persons licensed to carry out investment services activities (investment services licence categories 1 to 4) and to collective investment schemes licensed in terms of the Investment Services Act, 1994; and*
 - *persons licensed to carry out life assurance business and persons licensed or authorised to carry out associated activity (salesmen, brokers and agents) in terms of the Insurance Business Act, 1998.*

For the purpose of these Guidance Notes, the above persons shall hereinafter be referred to as “Licence Holders”.

- 2.3 **In these Guidance Notes, references to “investors” shall be construed to include life assurance policy holders as applicable; and references to “investments” shall be construed to include life assurance policies as applicable.**
- 2.4 In these Guidance Notes, “enforcement authority” means the police. The Regulations in fact require that suspicious information should be disclosed to a police officer not belong the rank of inspector.

Scope

- 2.5 These Guidance Notes give an overview of the anti-money laundering legislation in Malta. They outline and explain the requirements of the Regulations and provide a practical interpretation of the Regulations.
- 2.6 The Guidance Notes assist Licence Holders to adhere to the Regulations and to develop policies, maintain procedures and take measures as required by the Regulations, appropriate to their business. The Guidance Notes are therefore complementary to the Act and Regulations, and should not be construed as a substitute for the relative legislation.

3 APPROACH AND ROLE OF THE MFSC

- 3.1 These Guidance Notes are intended to reflect currently adopted good practice in the deterrence of money laundering and to assist Licence Holders in developing policies and procedures appropriate to their business. Where a Licence Holder’s own policy and procedures are more rigorous than is required by these Guidance Notes, it should follow those procedures. The MFSC recognises that Licence Holders may form part of Groups where policy and procedures conform to the anti-money laundering requirements of the domicile of the Head Office or parent company and wishes to minimise areas of conflict or adjustment. The MFSC will not object to cases where Group Policy and Procedures are designed to achieve the objectives of the Guidance Notes in a different but no less rigorous way. **Nevertheless, locally based firms and associates must ensure that they adhere to procedures required by the prevention of money laundering legislation in Malta.**
- 3.2 The MFSC regards the maintenance and implementation of adequate policies and procedures for the deterrence and prevention of money laundering as an important element of the continuing “fit and proper” test applicable to all Licence Holders. The MFSC will use the Guidance Notes as the yardstick for measuring the adequacy of systems implemented by Licence Holders to counter money laundering. If it considers it desirable to do so, the MFSC may, at any time, require a full inspection of the systems and procedures put in place by the Licence Holders to deter money laundering.

B. THE PROCESS OF MONEY LAUNDERING

1 DEFINITION

- 1.1 Money Laundering may be described as the process by which criminals attempt to conceal the true origin and ownership of the proceeds of criminal activities with the ultimate aim of providing a legitimate and legal cover for their assets. If undertaken successfully, money laundering allows criminals to legitimise 'dirty' money by mixing it with 'clean' money, ultimately providing a legitimate cover for the source of their income.
- 1.2 Money laundering pre-supposes underlying criminal activity which generates the money to be laundered. Some countries consider the proceeds of all criminal activities to be 'dirty money' while other countries have taken the approach that only the proceeds derived from certain serious crimes constitute 'dirty money'. Malta has opted for the latter method.

2 PREVENTION OF MONEY LAUNDERING

- 2.1 It is recognised internationally that money laundering is most effectively dealt with on a global basis. This approach attempts to collectively prevent criminals from legitimising the proceeds of their criminal activities.
- 2.2 The need to launder the proceeds of criminal activity through the financial system is vital for the criminal. Those involved need to exploit the facilities of the world's financial markets if they are to benefit from the proceeds of their activities. The unchecked use of the financial systems for this purpose has the potential to undermine individual financial institutions, and ultimately the entire financial sector.
- 2.3 The increased integration of international financial systems, coupled with the free movement of capital, have made it easier to launder money by shifting it from one jurisdiction to another – thus making tracing so much harder.
- 2.4 The long term success of the world's financial sectors depends on attracting and retaining legitimately earned funds. Criminally earned money damages reputation and deters the honest investor. Thus Malta has an important role to play in combating money laundering. Licence Holders that become involved in money laundering risk prosecution, the loss of their reputation and, more seriously, they risk damaging the reputation of Malta as a safe and reliable financial centre.
- 2.5 Money laundering is often thought to be associated solely with credit and financial institutions. Whilst the traditional banking processes of deposit taking, money transfer systems and lending do offer a vital laundering mechanism, particularly in the initial conversion from cash, it should be recognised that products and services offered by other financial and non-financial businesses are also attractive to the launderer. The sophisticated launderer often involves many other unwitting accomplices such as:

- investment services providers;
- insurance companies and insurance brokers;
- stockbrokers;
- accountants and lawyers;
- surveyors and estate agents;
- casinos;
- dealers in precious metals and bullion;
- antique dealers, car dealers and others selling high value commodities and luxury goods.

3 STAGES OF MONEY LAUNDERING

- 3.1 There is no one method of laundering money. Methods can range from the purchase and resale of a luxury item (e.g. a car or jewellery) to passing money through a complex international web of legitimate businesses and ‘shell’ companies (i.e. those companies that primarily exist only as named legal entities without any trading or business activities). Initially, in many instances such as the case of drug trafficking, the proceeds usually take the form of cash which needs to enter the financial system by some means.
- 3.2 Despite the variety of methods employed, the laundering process is accomplished in three stages which may comprise numerous transactions by the launderers:
- **Placement** – the physical disposal of *the initial* proceeds derived from illegal activity;
 - **Layering** – separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity; and
 - **Integration** – the provision of an apparently legitimate explanation for the illegally derived wealth being put back into the economy. A successful layering process simplifies the integration process by which the laundered proceeds are put back into the economy in such a way that they re-enter the financial system as legitimate business funds.
- 3.3 The three basic steps may occur as separate and distinct phases. They may occur simultaneously, or more commonly, they may overlap. How the basic steps are used depends on the available laundering mechanisms and the requirements of the criminal organisations. The table overleaf provides some typical examples:

Securities and Investment business

<i>Placement</i>	<i>Layering</i>	<i>Integration</i>
Purchase investments for cash	Deal in a large number of securities transactions for no commercial purpose	Invest layered money in a company and sell shares in that company
Invest in a cash business as a cover for banking large amounts of criminal money	Invest money for short periods to create additional layers of transactions	Gain control of a private company by investing money in it, so that it uses criminal money as its capital
	Deal in a number of securities transactions across several jurisdictions	Assemble layered money in an account and use it to set up an investment portfolio, possibly managed through an offshore trust
	Raise a loan on the security of an investment bond	Hold an investment portfolio and take the income
	Hold bearer securities outside the recognised custodial system	

Taken from a paper prepared by Michael J Hyland "The Vulnerabilities of the Financial Sector" - Bank of England, Centre for Central Banking Studies.

4 ABUSE OF THE FINANCIAL SERVICES SECTOR

4.1 Certain points of vulnerability have been identified in the laundering process which the money launderer finds difficult to avoid and where his activities are therefore more susceptible to being recognised, specifically:

- entry of cash into the financial system;
- cross-border flows of funds;
- acquisition of financial assets;
- transfers within and from the financial system;
- incorporation of companies;
- establishment of financial vehicles.

4.2 It is for this reason that most countries have therefore, to a large extent, concentrated their efforts on the placement stage. Preventing the financial system from being used for money laundering activities makes money laundering more difficult. It does not, however, prevent the money launderer from looking for and using other methods to launder the money.

- 4.3 Because investment business is not generally cash based, it is probably less at risk from the initial placement of criminally derived funds than banking. Most payments are made by way of cheque from another intermediary. Nevertheless, the purchase of investments for cash is not unknown and therefore the risk of investment business being used at the placement stage cannot be ignored.
- 4.4 However, investment business is arguably more at risk at the second and third stage of money laundering, that is the layering and integration process. Unlike laundering via banking networks, investment services and life assurance business allows the launderer to change the form of funds from whatever form to an entirely different asset or range of assets and as many times as required. Trading of financial assets is an important element in both the layering and integration processes.
- 4.5 Investments that are cash equivalents, that is bearer bonds and similar investments in which ownership can be evidenced without reference to registration of identity, may be particularly attractive as a vehicle for laundering money.
- 4.6 Investment transactions incorporate an added attraction to the launderer in that the alternative asset is normally highly liquid. The ability to liquidate investment portfolios containing both lawful and illicit proceeds, whilst concealing the criminal source of the latter, combined with the huge variety of investments available, and the ease of transfer between them, offers the sophisticated criminal launderer an ideal route to effective integration into the legitimate economy. Collective Investment Schemes and other 'pooled funds' are likely to be particularly attractive vehicles, especially when they are unregulated.
- 4.7 The money launderer is also likely to be attracted to high risk/high reward funds because his cost of funds is low and the potentially high reward speeds up the integration process.
- 4.8 Premiums on insurance policies may be paid in cash with the policy subsequently being cancelled in order to get a return of premium. Lump sum investments in products such as single premium life assurance policies are clearly most vulnerable to use by money launderers, particularly where they are of a high value. Payment in cash is likely to merit further investigation particularly where it cannot be supported by evidence of a legitimate source of funds.
- 4.9 Although it may not appear obvious that insurance and investment products might be used for money laundering purposes, vigilance is necessary throughout the financial system to ensure that such products and services are not exploited.

C. THE DOMESTIC LEGISLATIVE AND REGULATORY STRUCTURE

1 INTRODUCTION

- 1.1 In Malta, the core legislation in respect of money laundering is the Prevention of Money Laundering Act, 1994 (“the Act”). The Prevention of Money Laundering Regulations, 1994 (“the Regulations”) are secondary legislation. Money laundering as a criminal offence is also provided for in the Dangerous Drugs Ordinance, 1939 as amended.
- 1.2 Both the Act and the Regulations are largely in line with the European Union Directive On The Prevention Of The Use Of The Financial System For The Purpose Of Money Laundering (91/308/EEC) and the United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances adopted in Vienna on the 19th December 1988 (“the Vienna Convention”).
- 1.3 The “Forty Recommendations” drawn up by the Financial Action Task Force (“FATF”) – an intergovernmental body consisting of 26 countries and two international organisations – represent an important initiative in combating money laundering. A list of the countries which are members of the FATF is contained in *Appendix VI*. The Recommendations, originally drawn up in 1990, have been revised to take into account the experience gained over the years and to reflect the changes which have occurred in this area. The Forty Recommendations are attached in *Appendix VII*.
- 1.4 Although Malta is not a member of the FATF, it recognises the importance of being part of this global initiative to combat money laundering. It has, in fact, accepted and incorporated the major provisions of the “Forty Recommendations” in its anti-money laundering legislation.

2 THE PREVENTION OF MONEY LAUNDERING ACT, 1994

- 2.1 The Act makes money laundering a criminal offence in Malta. A person found guilty of this offence is liable, on conviction, to a fine (*multa*) not exceeding Lm1,000,000 (one million Maltese Liri), or to imprisonment for a period not exceeding 14 years or to both such fine and imprisonment.

Scope

- 2.2 The Act defines money laundering in terms of the definitions in the Vienna Convention to which Malta is a signatory.
- 2.3 The Act defines the underlying criminal activity as any activity, whenever or wherever carried out, which, under the laws of Malta or any other law, amounts to a crime as specified in Article 3(1)(a) of the Vienna Convention reproduced in the First Schedule to the Act or any one of the crimes listed in the Second Schedule to the Act. The First and Second Schedules to the Act are reproduced in *Appendix I*.

The Basic Money Laundering Offences

- 2.4 The Act creates specific offences where **it is known** that property constitutes or is derived from the proceeds of a criminal activity. The offences are:
- converting or transferring property to conceal or disguise the origin or to assist a person involved in criminal activity;
 - concealing or disguising the nature, source, location, movement or rights in respect of property;
 - acquisition or possession of property;
 - attempting to carry out any of the above offences; and
 - acting as an accomplice in any of the above offences..

Converting or Transferring Property

- 2.5 A person is considered guilty of an offence if, knowing that the property constitutes or is derived from the proceeds of crime, he converts or transfers that property in order to conceal or disguise its origin or in order to assist a person involved in criminal activity.

Concealing or Disguising

- 2.6 A person is considered guilty of an offence if, knowing that the property constitutes or is derived from the proceeds of crime, he conceals or disguises the true nature, source, location, disposition, movement, rights in respect of or ownership of the property.

Acquisition or Possession of Property

- 2.7 A person is considered guilty of an offence if, knowing that property is directly or indirectly derived from criminal activity, he acquires or retains that property without reasonable excuse. The aim of the offence is to prevent criminal proceeds being passed on by criminals to be enjoyed by third parties and to prevent third parties from accepting such transfers.

Attempt of an Offence

- 2.8 A person is also guilty of an offence if he attempts to commit any of the offences under the Act whether that offence is completed or not.

Acting as an Accomplice

- 2.9 The Act makes it an offence for any person to act as an accomplice to a money launderer. A person found guilty of giving assistance is liable to the same maximum penalties as the money launderer himself.

Offences by a Body of Persons

- 2.10 When a money laundering offence is committed by a body of persons, whether corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or similar officer of such body or association, or was purporting to act in any such capacity is, according to Section 3(2) of the Act, guilty of the 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.

Disclosure of an investigation (“Tipping Off”)

- 2.11 Upon the request of the Attorney General, the Criminal Court may issue an investigation order served on persons likely to be in possession of material information of value to an investigation or in connection with a suspect person himself.
- 2.12 Where such an investigation order has been made or applied for, any person disclosing such information or any other disclosure likely to prejudice the said investigation is, in terms of Section 4(2) of the Act, guilty of an offence. On conviction, such person is liable to a fine (*multa*) not exceeding Lm5,000 (five thousand Maltese Liri) or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.

Opposing an Investigation Order

- 2.13 Any person named in an investigation order who, without lawful excuse, fails or refuses to comply with such an order is, in terms of Section 4(5) of the Act, guilty of an offence. Such an offence is punishable as in “Tipping Off”.

Contravening an Attachment Order (made during the investigation stage)

- 2.14 Together with or separate from an investigation order, the Attorney General may apply to the Criminal Court for an attachment order. Contravening an attachment order is punishable as in “Tipping Off”. In certain instances the fine could be double the value of the movable or immovable property attached.

Contravening a Court Order (made during the prosecution stage)

- 2.15 When a person is charged, the Court, upon the request of the prosecution, shall issue an Order freezing the property of the person accused. Contravening such a Court Order is punishable as in “Tipping Off”.

3 THE PREVENTION OF MONEY LAUNDERING REGULATIONS, 1994

Scope

3.1 The Regulations place additional administrative requirements on persons and firms carrying out “relevant financial business”. The Regulations provide rules and obligations for the persons bound by the Regulations (“subject persons”) to prevent them from being used for money laundering purposes. The know your customer rule is at the core of the Regulations.

Relevant Financial Business

3.2 The regulations define relevant financial business carried out by subject persons as:

- the business of banking;
- activities of financial institutions;
- investment services;
- collective investment schemes;
- life assurance business;
- activities of stockbrokers; and
- any activity associated with any of the above.

Requirements and Obligations

3.3 Regulation 3 requires subject persons to establish and to maintain specific systems and procedures to guard against their business and the financial system from being abused for the purposes of money laundering. In essence, these procedures are designed to achieve two objectives: first to ensure that, through appropriate identification and record keeping procedures, if a customer comes under investigation in the future, the subject person can provide its part of the audit trail; secondly to enable suspicious customers and transactions to be recognised as such and reported to the authorities. The Regulations cover:

- Identification procedures;
- Record-keeping;
- Recognition and reporting of suspicious transactions;
- Awareness measures and communication of policies; and
- Education and training of all employees.

3.4 Failure to comply with any of the requirements and obligations under Regulation 3 of the Regulations constitutes an offence punishable by a maximum fine of Lm20,000 or imprisonment for a maximum period of two years or both – irrespective of whether money laundering has taken place.

Cases

- 3.5 The regulations identify four cases where the obligations of subject persons come into force. These are negotiations with an applicant for business (prospective customer); handling of a suspicious transaction; handling of a single large transaction (minimum Lm5,000) and handling of a large series of smaller transactions.

Provision of Relevant Guidance

- 3.6 Regulation 3 also provides that in determining whether a person or institution has complied with any of the requirements of the Regulations, a Court may take account of relevant guidance issued, approved or adopted by a supervisory authority, or any other relevant guidance issued by a body which regulates, or is representative of, any trade, profession, business or employment carried on by that person. For this purpose, these Guidance Notes are therefore to be considered as relevant guidance issued to Licence Holders.

Supervisory Authorities

- 3.7 A supervisory authority is considered to be that authority responsible for regulating and supervising the business of a subject person. The MFSC is a supervisory authority in terms of the Regulations and is also the competent authority under the Investment Services Act, 1994 and the Insurance Business Act, 1998.
- 3.8 The Regulations require the supervisory authorities themselves to maintain internal reporting procedures and to disclose to the enforcement authority any information they obtain which in their opinion indicates that any person has or may have been engaged in money laundering activities. Such information is presumed to be that information obtained by a supervisory authority in its normal course of business.
- 3.9 As a supervisory authority, the MFSC is bound to ensure that its Licence Holders are fully aware of their duties under the Act and Regulations, that they fulfil such duties by having the necessary procedures in place and that they fully and scrupulously implement such procedures.
- 3.10 Failure to have adequate policies and procedures to guard against abuse may call into question the adequacy of the Licence Holder's systems and controls, and/or the integrity or fitness and properness of the management of the Licence Holder. Adherence to these Guidance Notes is an important point of reference in any assessment of the adequacy of systems and controls to guard against money laundering.

Customer Confidentiality

- 3.11 The disclosure of information relating to a customer made in accordance with Regulations 7, 10 and 11 will not be treated as a breach of the duty of professional secrecy.

4 COUNTRIES WITH EQUIVALENT LEGISLATION

- 4.1 Because money laundering is a global phenomenon, a large number of countries have enacted legislation to guard against their economies and their financial systems being contaminated by criminal money. For example, all member countries of the European Union – a major trading partner of Malta – have adopted legislation in accordance with the European Union Money Laundering Directive. One can thus safely assume that these countries have similar legislation to Malta.
- 4.2 In addition, countries which belong to the FATF listed in *Appendix VI* have committed themselves to implementing the FATF Forty Recommendations listed in *Appendix VII* which, in several aspects, are more wide ranging in nature than the provisions of the European Union Money Laundering Directive. Therefore, unless a Licence Holder has evidence to the contrary, any financial operator based in any FATF member country can also be assumed to adhere to strict anti-money laundering legislation.
- 4.3 Although many countries have enacted, or are enacting, anti-money laundering legislation, there are some countries where the legislation is considered to be ineffective or deficient. A few countries that are considered to be particularly at risk from criminal money have no legislation in place. The MFSC recommends that due caution is exercised when business is transacted with financial services providers in these countries. In case of doubt, Licence Holders are encouraged to contact MFSC for assistance. To facilitate provision of such guidance, all Licence Holders should bring to the MFSC's attention any information they may have on countries with inadequate anti-money laundering legislation or legislation that is not properly enforced.

D. IDENTIFICATION PROCEDURES

1 INTRODUCTION - "KNOW YOUR CUSTOMER"

- 1.1 The objective of these Guidance Notes is to assist Licence Holders to establish and maintain policies, procedures and controls which deter criminals from using their facilities for money laundering.
- 1.2 In all circumstances Licence Holders need to collate basic information about their customers. However, the nature and extent of this information will vary according to the type of customer, whether the business is being introduced by another organisation carrying on relevant financial business and the type of business being undertaken.
- 1.3 The "know your customer" concept requires Licence Holders to verify information that their customers or intermediaries provide. **Evidence of identity is deemed to be satisfactory if it establishes that the prospective customer is the person who he claims to be.** In this respect evidence should provide undoubted identification.
- 1.4 Knowing your customer is vital for the prevention of money laundering. If a customer has established a business relationship under a false identity, he may be doing so for the purpose of defrauding the Licence Holder or merely to ensure that he cannot be traced or linked to the proceeds of crime. A false name, address or date of birth will usually mean that the law enforcement authorities will find it difficult to trace the customer if he is needed for an interview in connection with an investigation.
- 1.5 Licence Holders should therefore establish that they are dealing with an individual or organisation that actually exists, and identify those persons who have power to undertake investment and insurance transactions, whether on their own behalf or on behalf of others.
- 1.6 When a business relationship is being established, the nature of the business that the customer expects to conduct with the Licence Holder concerned should be ascertained to show what might be expected as normal activity. In order to be able to judge whether a transaction is or is not suspicious, Licence Holders need to have a clear understanding of the pattern of their customer's business, as this develops into an ongoing relationship. Suspicious transactions may arise at any stage, and frequently occur during an established business relationship rather than at the outset.
- 1.7 Regulation 5 requires all those carrying on 'relevant financial business' to seek satisfactory evidence of identity of those with whom they do business. Unless satisfactory evidence of identity is obtained as soon as it is reasonably practical after contact is first made, the business cannot proceed or can only proceed under the direction of the enforcement authority or on condition that it is reported in terms of the Regulations.
- 1.8 What constitutes an acceptable time span must be determined in the light of all the circumstances including the nature of the business or transaction concerned and whether it is practical to obtain the evidence before commitments are entered into or before money is exchanged. As a rule, Licence Holders are

expected to obtain the evidence of identity **prior** to entering into commitments with the prospective customer.

- 1.9 The requirement to maintain identification procedures in accordance with the Regulations is not retrospective. It applies to transactions processed and new business relationships established after the date on which the Regulations came into force (i.e. 30 December 1994).
- 1.10 The obligation to maintain procedures for obtaining evidence of identity is general, but Regulation 8 sets out exemptions. However, irrespective of these exemptions (explained below) identity must be obtained in all cases where money laundering is known or suspected and the details should be reported in terms of the Regulations.

What is identity?

- 1.11 A person's identity comprises his name and all other names used, together with the address at which the person can be located and is normally known to be ordinarily resident. Date of birth is also a useful indicator if it is available. Ideally, to identify someone face to face an official document bearing a photograph of the person should also be obtained. However, photographic evidence of identity is only of value to verify the identity of customers who are seen face to face. It is neither safe nor reasonable to obtain a copy of a passport through the post. Licence Holders may however consider accepting such a copy if it is certified by the prospective customer's bank or other reputable and appropriate source as being a true copy of the passport belonging to the prospective customer.
- 1.12 Any subsequent changes to the customer's name or address that are notified to the Licence Holder should be recorded. Generally this would be undertaken as part of good business practice.

When must identity be established?

- 1.13 Identity should be established prior to the formation of a business relationship and in the case of single large transactions or a series of transactions amounting to Lm5,000 or more. Furthermore, irrespective of the size and nature of the transaction and of any exemptions granted, identity should also be established in all circumstances when money laundering is known or suspected and the details reported to the enforcement authority in terms of the Regulations.
- 1.14 If the identity of the customer has not been satisfactorily established, the Licence Holder should **not** make payment in cash or by money transfer, for the account or to the order of the customer, until such time as the Licence Holder is entirely satisfied that the customer's identity has been correctly established.
- 1.15 The relationship between a Licence Holder and its customer is established on the basis of personal identification and implies a judgement in relation to the customer. This judgement must be supported by information as may be deemed necessary and appropriate by the Licence Holder about the customer, his activities and the purpose of the intended business relationship. It is

important for a Licence Holder to obtain such information because this process will reduce the risk of being exploited for the purposes of money laundering and, at a later stage, it should facilitate the detection of suspect transactions because they are incompatible with the information received.

- 1.16 A Licence Holder may not delegate the responsibility for establishing the identity of his customers and thereby avoiding the duty to know one's customer and the responsibility which this knowledge confers. Subject to the exemption specifically provided in Regulation 8(1)(b), a Licence Holder is not permitted to accept a certificate prepared by a third party, acting in whatsoever capacity, attesting to his knowledge of the customer and to the fact that he has verified the identity of the customer and holds the necessary documentary proof. In the cases falling within the provisions of the said exemption, a "Customer Introductory Certificate" as shown in *Appendix IV* may be used.

2 IDENTIFICATION IN CERTAIN CASES

Business Relationship and One-Off Transactions

- 2.1 After establishing who the prospective customer is, it is also important to determine whether the individual is seeking to establish a "business relationship" with the Licence Holder or is an occasional customer undertaking a "one-off transaction".
- 2.2 Licence Holders may view a particular transaction differently depending on their role and on their respective relationships with the customer. Therefore, where a transaction involves more than one Licence Holder, each must separately consider his position and ensure that his obligations regarding the establishing of identity and associated record keeping are met.
- 2.3 A "business relationship" is any arrangement between two or more persons designed to facilitate the carrying out of transactions between the persons concerned on a 'frequent or habitual' basis and where the monetary value of dealings in the course of the arrangement is not known or capable of being ascertained at the outset. Hence, before any agreement is entered into, the requirement to establish the identity of the customer at that stage is automatically triggered.
- 2.4 A "one-off transaction" means any transaction carried out other than in the course of an established business relationship between a Licence Holder and an individual. Where business is undertaken on a one-off basis identification procedures will be required on the part of the Licence Holder in the case of a transaction exceeding Lm5,000 or its equivalent in any other currency.

Small Life Assurance Contracts

- 2.5 Identification is not required in the case of low value, single or regular premium life assurance; namely where the premium is payable in one instalment not exceeding Lm1,000, or the premium is payable periodically and the total payment in respect of any one calendar year does not exceed Lm500.

Savings Vehicles and Regular Investment Contracts

- 2.6 Frequently, investors enter agreements providing for regular subscriptions or a series of payments in the future. Establishing of identity is necessary prior to entering into such an agreement but no fresh evidence of identity is required in respect of the subsequent transactions or payments in terms of the same agreements.
- 2.7 Where an investor sets up a regular savings scheme whereby money subscribed by him is used to acquire investments to be registered in the name, or held to the order, of a third party (such as a spouse or children), the investor who makes the subscription should be regarded as the prospective customer. Measures should be taken to establish the identity both of such customer and also of the beneficiary of the investment. Should it not be possible to establish the identity of the beneficiary at the time the investment is made, this should be carried out when the investment is realised before the proceeds are paid over.

Reinvestment of Income

- 2.8 A number of retail savings products allow investors to reinvest interest and/or dividends. The reinvestment of income under such facilities should not be treated as a new transaction since the investor is not entering into a transaction but is merely foregoing the right to receive income which would otherwise be distributed to him.

Introduction of Business

- 2.9 A Licence Holder may be instrumental in introducing a business relationship to another Licence Holder who is to provide an investment product. When this is done without establishing an on-going contact between the customer and the introducing Licence Holder, this may not in itself constitute a business relationship nor a transaction and the introducing Licence Holder should consider its customer identification obligations accordingly.

Series of Transactions

- 2.10 The requirement to aggregate a series of transactions is designed to identify those who might structure their dealings to avoid identification procedures. There is clearly no need to count both ends of the same transaction, e.g. a purchase and subsequent sale should be deemed to be the same transaction and not a series of transactions.
- 2.11 The Regulations do not require firms to use additional computer software specifically to identify such transactions, however appropriate this may be. However, if a Licence Holder's systems recognise that two or more transactions appear to be related and have totalled more than Lm5,000 or its equivalent in any other foreign currency, then that information must be acted upon.

Switch Transactions

- 2.12 A transaction may not require identification if it is a switch under which all of the proceeds are directly re-invested or, on subsequent resale, the proceeds can only result in a further re-investment on behalf of the same customer or in a payment being made directly to him and of which a record is kept. This applies only if identification procedures were effected when the first transaction was executed.

Redemption/Surrenders

- 2.13 When, on maturity, an investment is encashed (wholly or partly) and if the amount realised is Lm5,000 or more, the identity of the investor must be established and recorded if it has not been done previously. This requirement will not apply where the original investment was made prior to 30 December 1994. However, if the investor to whom the payment is to be made was not a registered holder on 30 December 1994, irrespective of how the transfer or change of beneficial interest arose, identification should be carried out as if a business relationship has not yet been established.
- 2.14 In the case of a redemption or surrender of an investment (wholly or partly), a Licence Holder should be convinced that reasonable measures have been taken to establish the identity of the investor when payment is effected.
- 2.15 Payment to the legal owner of the investment should be made by means of a cheque made payable to the owner or, in case of an electronic transfer, to a bank account held (solely or jointly) in the name of the owner. Payment may also be made to a person bound by the Regulations at the request of the legal owner of the investment.

3 IDENTIFICATION PROCEDURES – EXEMPTIONS

- 3.1 The obligation to maintain procedures for obtaining evidence of identity is general. However, Regulation 8 sets out a number of exemptions when some of the requirements for identification can be waived. **The exemptions do not apply when there is suspicion of money laundering.**
- 3.2 In terms of Regulation 8(1)(a), where a prospective customer is himself a person bound by the Regulations, evidence of identity is not required.
- 3.3 In terms of Regulation 8(1)(b), where a prospective customer is a person who is introduced by a person bound by the Regulations, evidence of identity is not required in respect of a transaction so long as the introducer has provided the name of the customer and given a written assurance that evidence of identity has been obtained. This assurance may be given by the introducer using the suggested form in *Appendix IV*.
- 3.4 A Licence Holder may be faced with a situation where the introducer is a foreign entity which is not bound by the Regulations. In that case, the identification procedures of the Licence Holder should require that satisfactory

evidence of identity is available and the Licence Holder is cautioned not to carry out business if it cannot ascertain that the introducer:

- is based or incorporated in a country with anti-money laundering legislation largely complying with the FATF Forty Recommendations particularly in respect of identification, record keeping and reporting; and
- operates a financial services business which is properly regulated (i.e. the level of regulation is equal to or higher than that exercised in Malta); or
- operates under a rigorous anti-money laundering group policy which is equivalent or of a higher standard than anti-money laundering measures in force in Malta.

3.5 In cases of doubt, the Licence Holder is encouraged to consult with the MFSC for guidance or contact the appropriate regulator of the foreign introducer directly. Additional comfort can be gained by obtaining from the relevant introducer evidence of its licence or authorisation to conduct financial services business.

Small Life Assurance Business

3.6 Regulation 8(1)(c) and (d) provide for an exemption from identification procedures in respect of life assurance business where:

- a premium is payable in one instalment not exceeding Lm1,000; or
- a regular premium is payable and the total payment in respect of any one calendar year does not exceed Lm500.

3.7 This exemption is designed to cover only low value, single or regular premium life assurance.

4 ESTABLISHING OF IDENTITY

Establishing Satisfactory Evidence of Identity

4.1 In circumstances other than those covered by the exemptions set out in Regulation 8, **identity must always be established as required by the Regulations**. Other than in general terms, Regulation 5 does not specify what constitutes effective and adequate evidence of identity. This section of these Guidance Notes therefore sets out what might reasonably be expected of a Licence Holder in this respect.

4.2 The best reasonable available evidence of identity should be obtained, having regard to the circumstances of each prospective customer; his country of origin; and the nature of the business to be undertaken.

4.3 Some forms of identification are more reliable than others and, in many cases, it will be prudent for the Licence Holder to carry out more than one check and request more than one document. It is recommended that each customer's file should show the steps taken to establish his identity or, if no such steps are taken, the nature of the exemption or other reason.

- 4.4 In the early stages of the business relationship, where it is standard operating procedure that face to face contact takes place, wherever possible, the prospective customer should be interviewed personally.
- 4.5 The procedures for establishing identity in accordance with best practice and which are thought to be reasonable are set out below. The suggested procedures have not been tested in a Maltese court of law. However, in adopting these procedures a Licence Holder may draw comfort from the knowledge that these are generally accepted standards which apply in other jurisdictions such as the UK. It should be borne in mind that these procedures are not exhaustive and a Licence Holder may adopt other means to adequately establish the identity of a customer. Although alternative procedures may be perfectly acceptable, it would be prudent for the Licence Holder to be confident that it could, if required, justify the reasonableness of its actions either to its regulator or in a Court of Law.

Retention of Records Confirming Identity

- 4.6 Regulation 9 requires that records of the evidence and methods used to establish identity must be retained for at least five years after the transaction (or series of transactions) is completed, or the business relationship ended. However, the MFSC may require, at its discretion, certain Licence Holders to maintain particular records for longer than the statutory period.
- 4.7 Where a Licence Holder has introduced a customer to another and has established the identity of that customer, it is important that the introducer retains the appropriate identification records for the necessary periods in line with the requirements of the Regulations.

Timing of Identification Requirements

- 4.8 Where evidence of identity is required, Regulation 5(1) requires that it must be obtained “as soon as is reasonably practicable” after the prospective customer applies to enter into a business relationship or transaction. What constitutes an acceptable time span must be determined in the light of circumstances connected with the transaction. Regulation 5(3) states that what constitutes an acceptable time span must be determined in the light of all the circumstances including the nature of the business or transaction, perhaps the geographical location of the parties, and whether it is possible to obtain the evidence before commitments are entered into or money changes hands.
- 4.9 There may be cases where it is appropriate for the Licence Holder to start to process the business provided that it promptly takes appropriate steps to establish the customer’s identity. Ordinarily, every effort should be made to complete identification before settlement takes place or before documents of title are despatched.

Freezing

- 4.10 Where satisfactory evidence of identity has not been obtained, the business relationship or transaction in question shall not proceed any further or shall proceed only in accordance with the direction of the enforcement authorities. A Licence Holder may consider it appropriate to “freeze” the rights attaching to an investment pending receipt of the required evidence. The investor would be able to continue to deal in the investment, although in the absence of the required evidence, redemption proceeds should be retained by the Licence Holder. Documents of title should not be issued and income should not be paid out (though it may be re-invested).
- 4.11 Regulation 5 further provides that where it is not possible to stop the business, or where to do so is likely to frustrate investigations, the business may proceed subject to the enforcement authority being made aware.

Cancellation of Investment or Life Assurance Contract

- 4.12 Where a customer exercises cancellation rights over an investment or life assurance contract, the sum invested must be repaid (subject to any shortfall deduction where applicable). The repayment of money arising in these circumstances does not constitute “proceeding further with the business”. However this could be a means of laundering money, and Licence Holders should therefore be alert to any abnormal exercise of cancellation rights by any customer. In the event that abnormal exercise of these rights becomes apparent, the matter should be treated as ‘suspicious’ and reported in terms of Regulation 11 and procedures set hereunder.

Reliance On Other Regulated Businesses

- 4.13 Verifying identity is often time consuming and expensive and can cause inconvenience for prospective customers. It is therefore desirable that as far as possible, procedures are simplified and standardised and duplication of identification requirements is avoided where it is reasonable and practicable to do so.
- 4.14 The responsibility to obtain satisfactory evidence of identity cannot be avoided by a Licence Holder that is entering into a business relationship. However, there may be occasions where it is reasonable to rely on another regulated person to confirm identity.

Group Introductions

- 4.15 Where a customer is introduced by one entity to another within a local group, provided that the introducing entity is itself subject to the Regulations, and provided that the identity of the customer has been established by the introducing entity in line with the Regulations, without applying any exemptions, and provided that identification records in respect to that customer are (wherever possible) freely available on request to the other entities of the group, it may not be necessary for identification procedures or

for the records to be duplicated. An introductory certificate as per *Appendix V* may be used in these circumstances.

- 4.16 Where introductions from a foreign group entity are made, satisfactory evidence of identity should be available to the Licence Holder providing the service in Malta. It is suggested that an introduction certificate should be completed along the lines of that set out in *Appendix V*, or alternatively, a general group compliance undertaking is given. The Licence Holder entering into the business relationship should determine, as far as is practicable, that there is no professional secrecy protection that would restrict access to the records by the enforcement agencies under a court order or relevant mutual assistance procedures to the extent that they are required pursuant to an investigation. If it is found that such restrictions apply, copies of the underlying records of identity should be retained in the records of the Licence Holder providing the service in Malta.

Applications through Intermediaries

- 4.17 In the case of Licence Holders receiving applications from other Licence Holders acting as intermediaries, the intermediary should be asked to give specific confirmation that identity has been established or that the investor was an established customer whose identity has already been established. The confirmation should be kept on record and retained for the relevant period if these answers are to constitute sufficient evidence of appropriate measures having been taken to establish identity.

Acquisition of One Financial Sector Business by Another

- 4.18 Where a Licence Holder acquires the business and accounts of another Licence Holder, in whole or in part, it is not necessary for all existing customers to be re-identified, provided that all customer records are acquired with the business and that the due diligence enquiries do not give rise to doubt that the anti-money laundering procedures adopted by the previous Licence Holder may not have been satisfactory and in accordance with the Regulations.
- 4.19 In the event that the money laundering procedures previously undertaken have not been in accordance with the Regulations, or the procedures cannot be checked by the Licence Holder acquiring the business, or the customer records are not available, then identification procedures will need to be undertaken for all transferred customers as soon as is practicable.

5 PROCEDURES TO VERIFY IDENTITY

- 5.1 It is recommended that the following documents/information is obtained from any prospective customer:
- true name and/or names used;
 - correct permanent address, including postal code;
 - identity reference number; and
 - date of birth.

Face to Face Customers

- 5.2 For applications dealt with “face to face” or “over the counter”, verification of personal details should ideally be carried out through an official document which bears a photograph. Wherever possible, a valid passport or national identity card (which has not expired) should be requested and the number registered.
- 5.3 Besides verification of the name/names used and date of birth, it is important that the current permanent address is verified as this constitutes an integral part of identity. Satisfactory evidence can be obtained from any official identity document. Additionally, the following checks are possible:
- a face-to-face home visit to the prospective customer;
 - checking the Electoral Register;
 - requesting sight of a bank statement or a utilities bill (to guard against forged or counterfeit documents care should be taken to check that the documents offered are originals);
 - checking the telephone directory.
- 5.4 Where addresses cannot be verified from the identification documents produced, Licence Holders should use their best endeavours to verify the prospective customer’s permanent address with the referee/s and/or banker/s indicated by the prospective customer. Alternatively, verification of details submitted by the prospective customer may be sought from another reputable and appropriate source such as a law firm or accountancy firm of standing or a Maltese Embassy in the prospective customer’s country of residence (in the case of a non-resident) or, should this not be possible, from the customer’s employer if deemed appropriate by the Licence Holder.
- 5.5 The date of birth is also important in support of the name and is of particular value to law enforcement agencies in an investigation.
- 5.6 There is obviously a wide range of documents that prospective customers might produce as evidence of their identity. It is for each Licence Holder to decide the appropriateness of such documents that might be accepted as part of the cumulative process of identification. However, particular care should be taken in accepting documents that may be easily forged or which can be easily obtained in false identities.
- 5.7 Because documents providing photographic evidence of identity need to be compared with the customer’s appearance, and to guard against the dangers of fraud, prospective customers should not be asked to send the above identity documents by post.
- 5.8 References which the Licence Holder may deem necessary should be obtained **direct** from the referee/s indicated by the prospective customer. In exceptional circumstances, the Licence Holder may, with the exercise of due caution, accept references submitted by the prospective customer should such references be considered satisfactory.
- 5.9 A copy of the document(s) relied upon should always be taken and retained. Where this is not possible, the relevant details should be recorded on the

customer's file and the reason why a copy of the document(s) was not maintained should be recorded.

- 5.10 An introduction from a trusted employee or respected customer may assist the identification procedure, but does not replace the need for verification as described. Details of the introduction should be recorded on the customer's file.
- 5.11 Where the prospective customer is a minor, the above procedures should still be followed to the extent possible. It is advisable that identification is verified through the parents/guardians. Satisfactory identification of the parents/guardians should also be established.

Non-Face To Face Verification

- 5.12 The rapid growth in conducting financial services business by post, electronic means or telephone has added a new dimension to establishing of identity and the need to guard against criminal access to the financial system. Any mechanism which avoids face to face contact between Licence Holders and customers inevitably poses difficulties for customer identification and can provide additional opportunities for criminals. Consequently, extra vigilance should be used in these circumstances.
- 5.13 Particular care should be taken when dealing with applications to establish business received through the post to ensure that, as a minimum, the procedures mentioned above are followed in all respects.
- 5.14 Where a request to establish business is made through the post, verification of identity details submitted must be sought from a reputable credit and financial institution in the prospective customer's country of residence (in the case of non-residents) and must cover the true name or names used, the correct permanent address, identity reference number, if any, date of birth and verification of signature.
- 5.15 Where such verification is not possible, verification may alternatively be sought from another reputable or appropriate source such as a law firm or accountancy firm of standing or a Maltese Embassy from the prospective customer's country of residence (in the case of non-residents) or should this not be possible, from the customer's employer if deemed appropriate by the Licence Holder.
- 5.16 Clearly in such situations, photographic evidence is not appropriate. Licence Holders might wish to consider such evidence if authenticated by the prospective customer's bank provided that in the case of an overseas bank, it is regulated in its home country to at least the standards of regulation which apply in Malta.
- 5.17 Where such authentication is not possible, authentication may alternatively be sought from another reputable and appropriate source such as a law firm or accountancy firm of standing, or a Maltese Embassy from the prospective customer's country of residence (in the case of a non-resident) or should this not be possible, by the prospective customer's employer if deemed appropriate by the Licence Holder.

- 5.18 In the case of non-resident customers who are not seen face to face, a Licence Holder may also make use of a group presence in the form of subsidiaries, branches, head office or any correspondent relationship in the prospective customer's home country in order to verify information or authenticate documentation.
- 5.19 Particular care should be taken when dealing with countries which have a standard of legislation not at par with local standards.

Internet and Cyberbanking

- 5.20 The provision of financial services on the Internet adds yet another dimension to financial services risks, such as unlicensed deposit taking, and opens up new mechanisms for fraud and money laundering because its true use is unregulated.
- 5.21 Any Licence Holder offering any type of financial service on or from the Internet should implement procedures to identify the customer, and should ensure that there is sufficient communication to confirm the address and personal identity in accordance with the details set out above. Care should be taken to ensure that the same supporting documentation is obtained for Internet customers as for other postal/telephone customers. An initial payment drawn on a credit or financial institution which is licensed in Malta will provide additional comfort.

6 IDENTIFICATION PROCEDURES - TRANSACTIONS

- 6.1 The source or provenance of funds must be obtained where this is necessary in order that Licence Holders may better carry out their duties for the prevention of money laundering under the Act and in particular in the course of carrying out customer and transaction identification procedures under the Regulations, in line with the know your customer principle. Licence Holders shall exercise due caution and prudence depending, inter alia, on the nature of the transaction in question and on their knowledge of the customer concerned.

7 CORPORATE, UNINCORPORATE AND OTHER LEGAL ENTITIES

- 7.1 Because of potential difficulties in identifying beneficial ownership and the potential complexity of their organisation and structure, some legal entities and trusts may be convenient for money laundering, particularly when fronted by a legitimate trading activity.
- 7.2 Particular care should be taken to verify the legal existence of the entity and to ensure that any person purporting to act on its behalf is so authorised. Identification requirements should extend to the directors and other officers responsible for the administration of the entity, and as far as practicable to identifying those who have ultimate control over the entity and its assets, with particular attention on any shareholders or others who have injected a

significant proportion of the capital or financial support. Enquiries should also be made to confirm that the entity exists for a legitimate trading or other purpose.

- 7.3 Before a business relationship is established, measures should be taken by way of company search and/or other commercial enquiries to ensure that the entity has not been, or is not in the process of being, dissolved, struck off, wound up or terminated.
- 7.4 As with personal business relationships, “know your customer” is an on-going process. If a Licence Holder becomes aware of changes to the entity structure or ownership, or if suspicions are aroused by a change in the nature of the business transacted or the profile of payments through a bank account, further checks should be made to ascertain the reason for the changes.

Locally Established Entities

- 7.5 Where the prospective customer is a locally established entity, the Licence Holder should verify its legal existence and its purpose. The Licence Holder should obtain a certified copy of the constitutional documents (Memorandum and Articles) and the Certificate of Registration. Copies of the latest annual accounts and report may be requested should this be deemed necessary.
- 7.6 The Licence Holder should also verify the identity of the directors, managing partners or other officers responsible for the administration and also, to the extent possible and practicable, the identity of the shareholders, partners, or persons having ultimate ownership or controlling rights.
- 7.7 The Licence Holder should also ensure that any person purporting to act on behalf of and to represent the entity is duly authorised in writing to do so. Documentary evidence in this respect should be retained.
- 7.8 The Licence Holder may also consider taking a banker’s reference on the entity and its directors/officers.

Non Locally Established Entities

- 7.9 Where the entity is not locally registered, comparable information and documents to those for Maltese entities should be obtained (in cases of difficulty, Maltese Embassies may be able to assist with the authentication of documents).
- 7.10 Standards of control vary between different countries and attention should be paid to the place of origin of any documents on which the Licence Holder proposes to rely and the background against which they are produced.

Identification of Persons Carrying on Financial Business

- 7.11 Identification is not required for prospective customers who are persons bound by the Regulations.

- 7.12 It is recommended that the confirmation of the existence of persons carrying on relevant financial business outside Malta is checked by one or more of the following:
- checking with the home country Central Bank or financial services regulator;
 - checking with another office, subsidiary, branch or a correspondent of the Licence Holder in the same country;
 - obtaining from the relevant institution evidence of its licence or authorisation to conduct financial services business.

8 AGENTS AND NOMINEE APPLICANTS

- 8.1 Regulation 7 distinguishes circumstances when persons act for known third parties and when they act without the name of that third party being disclosed.
- 8.2 In the former case, the Licence Holder should verify the identification of both the applicant and of any person on whose behalf he is acting. The applicant must be duly authorised in writing by the principal.
- 8.3 Where the identification described above is not possible, the transaction should not be carried out. If it is considered to be suspicious, it should be reported accordingly.
- 8.4 There are instances where the applicant for business is an advocate, notary, certified public accountant, certified public accountant and auditor, or an authorised nominee company established and practising in Malta who is acting on behalf of an undisclosed principal. In such cases, Licence Holders should obtain from these persons a signed declaration in accordance with Regulation 7(5) to the effect that:
- the applicant is acting in his professional capacity;
 - the applicant has maintained a professional relationship with the principal for the immediate preceding three months;
 - if such a relationship does not exist, the applicant must have obtained satisfactory references from at least two persons who have maintained such a relationship;
 - the mandate of the applicant is not for the sole purpose of dealing with the Licence Holder and he is aware of the business activities of the principal;
 - the applicant has obtained satisfactory evidence of identity of the principal and maintains a record of such identity;
 - the applicant is not aware of any fact that indicates or causes him to suspect that the assets or transaction involved are or will be derived from criminal activity; and
 - the applicant will inform the Licence Holder concerned upon revocation or termination of the applicant's mandate or if any statement in the declaration should cease to be true.

E. RECORD KEEPING

1 INTRODUCTION

1.1 Regulation 9 requires Licence Holders to retain records concerning customer identification and details of transactions for use as evidence in any possible investigation into money laundering. This is an essential constituent of the audit trail procedures that the Regulations seek to establish. Additionally, sections 4.01 to 4.27 of the Standard Licence Conditions for Licence Holders under the Investment Services Act published by the MFSC also establish procedures that Licence Holders should adopt with reference to record keeping.

2 STATUTORY REQUIREMENTS

2.1 If the enforcement authority investigating a money laundering case cannot link funds passing through the financial system with an underlying criminal offence, then the crime of money laundering cannot subsist and confiscation of criminal funds cannot be made. A Licence Holder plays a pivotal role during a money laundering investigation because he can provide relevant records about the money launderer, in particular where there is a complex web of transactions specifically created for the purpose of confusing the audit trail.

2.2 The records prepared and maintained by any Licence Holder in respect of its customer relationships and transactions should be such that:

- requirements of legislation are fully met;
- competent third parties will be able to assess the Licence Holder's observance of money laundering policies and procedures;
- any transactions effected via the Licence Holder can be reconstructed; and
- the Licence Holder can satisfy within a reasonable time any enquiries or court orders for disclosure of information.

2.3 A very important feature of the Regulations in this area is that Licence Holders are required to retain relevant records for at least five years from the date of completion of the business transaction.

3 CUSTOMER IDENTIFICATION RECORD

3.1 Regulation 9(1)(a) specifies that where evidence of a person's identity is required, the records retained by a Licence Holder must indicate the nature of the evidence obtained. Such records must comprise either a copy of the evidence or provide such evidenced information as would enable a copy of it to be obtained or be sufficient to enable details of identity to be re-obtained.

3.2 Records containing evidence of identity must be kept for a period of at least five years after the relationship with the customer has ended.

3.3 In accordance with Regulation 9(2) and (3), the date when the relationship has ended is the date of:

- the ending of the business relationship i.e. the closing of the account or accounts; or
 - the carrying out of the transaction or the last in the series of transactions; or
 - the carrying out of the suspicious transaction.
- 3.4 Where formalities to end a business relationship have not been undertaken, but the period of five years has elapsed since the date when the last transaction was carried out, then the five year retention period commences on the date of the completion of the last transaction.

4 TRANSACTION RECORD

- 4.1 In the case of transactions undertaken on behalf of customers, Regulation 9(1)(b) requires Licence Holders to keep a record containing details of all business transacted (including any business transacted in the course of a business relationship). These records will support the entries in the accounts in whatever form they exist.
- 4.2 Regulation 9(2)(b) requires that Licence Holders keep these records for a period of five years commencing on the date on which all dealings taking place in the course of the business in question were completed.
- 4.3 The Regulations do not specify what constitutes satisfactory supporting evidence. However, the ultimate objective is to ensure that, in any subsequent investigation, the Licence Holder will be able to provide the authorities with its part of the audit trail.
- 4.4 Transaction records in support of entries in the accounts, in whatever form they are used, e.g. credit/debit slips, cheques etc. need to be maintained in a form from which the enforcement authority can use to compile a satisfactory audit trail for suspected laundered money and establish a financial profile of any suspect account.
- 4.5 For example, the following information may be sought as part of an investigation into money laundering:
- 4.5.1 The identity of the beneficial owner (in the case of persons acting in their professional capacity, and the identification and documents required by Regulation 7(5));
- 4.5.2 the volume of funds flowing through the account;
- 4.5.3 for selected transactions:
- the origin of the funds (if known);
 - the form in which the funds were placed or withdrawn i.e. cash, cheques, credit or debit cards etc.;
 - the identity of the person undertaking the transaction;
 - the destination of the funds;
 - the form of instruction and authority.

Investment Services

- 4.6 For each investment transaction, the following records should be retained:
- information about the customer’s personal and financial assessment;
 - the name and address of the other party to the transaction;
 - the investment dealt in, including price and size;
 - whether the transaction was a purchase or a sale;
 - the form of instruction or authority;
 - the source from which the funds emanated (including bank accounts and, in the case of cheques, cheque number, account number and name);
 - the form and destination of payment made by the Licence Holder to the customer; and
 - whether the investments were held in safe custody by the Licence Holder or sent to the customer or to his/her order and, if so, to what name and address.

Life Assurance Transactions

- 4.7 Licence Holders should ensure that, where applicable, they have adequate procedures:
- to provide initial proposal documentation including, where these are completed, the customer’s financial assessment; the customer’s requirements; copies of regulatory documentation (e.g. details of the payment method and illustration of benefits), and a copy of the identification documentation produced;
 - to retain all post-sale records associated with the maintenance of the contract, up to and including maturity of the contract;
 - to provide details of the maturity processing and/or claim settlement including completed “discharge documentation”.
- 4.8 Full documentary evidence is usually retained, based on material completed at the initiation of the contract, together with evidence of servicing of the contract up to the point of maturity.
- 4.9 Licence Holders should follow the usual procedure and retain the records of those contracts which have been settled by maturity, claim or cancellation, for a period of five complete years after that settlement.

5 FORMAT OF RECORDS

- 5.1 It is recognised that copies of all material cannot be retained indefinitely and so prioritisation is therefore a necessity. Accordingly, Licence Holders must institute appropriate internal procedures to enable them to retrieve relative information without undue delay.
- 5.2 The retention of hardcopy evidence may create an excessive volume of records to be stored. Unless otherwise required under or by any law, retention may be in formats other than original documents such as electronic or other form. The overriding objective is for Licence Holders to be able to retrieve the relevant information without undue delay and in a cost effective manner.

- 5.3 When establishing document retention policy, Licence Holders are advised to consider the statutory requirements and the needs of the enforcement authority.
- 5.4 Section 4(4) of the Act provides that where relevant information is stored in a computer, the information to be used must be presented in a visible and legible form which can be easily retrieved and taken away.
- 5.5 Where the records relate to on-going investigations, they should be retained if necessary, beyond the period of five years, until it is confirmed by the enforcement authority that the case has been closed.
- 5.6 It is also of assistance to the enforcement authority if copies of all records relating to verification of identity are retained in Malta. This applies, in particular, to cases where a third party has been relied upon to undertake verification of identity.

Group Retention Policy

- 5.7 Where documents verifying the identity of a customer are held by one entity within a group, which entity is subject to the Regulations, the records need not be held in duplicate form by another entity within the same group with which the customer may seek to establish a business relationship or carry out a transaction. Should documents be held in another jurisdiction, they must wherever possible and subject to local legislation, be freely available on request within the group, or otherwise be available to the enforcement authority under due legal procedures and mutual assistance treaties. Access to group records must not be impeded by confidentiality or data protection restrictions.
- 5.8 Licence Holders should ensure that group records kept in other countries that are needed to comply with Maltese legislation are retained for the required period. Particular care needs to be taken to retain or hand over the appropriate records when an introducing office or subsidiary ceases to trade or have a business relationship with a customer whilst the relationship with other group members continues, or where a company holding relevant records, becomes detached from the rest of the group.

6 WIRE TRANSFER TRANSACTIONS

- 6.1 The extensive use of electronic payment and message systems by criminals to move funds rapidly in and from different jurisdictions has complicated the investigation trail. Investigations are at times even more difficult to pursue when the identity of the original ordering customer or ultimate beneficiary is not clearly shown in an electronic payment message instruction.
- 6.2 In an effort to ensure that the SWIFT system is not used by criminals as a means to break the money laundering audit trail, SWIFT has directed all users of its system to ensure that when sending SWIFT MT 100 Messages (customer transfers), the fields for the ordering and beneficiary customers must be

completed with either their respective names and addresses or their respective account number.

- 6.3 It is therefore of the utmost importance to include this information for all credit transfers made by electronic means, both domestic and international, regardless of the payment message system used. Alternatively, if for valid reasons this information is excluded, the remitting institution must be able, if requested to do so, to confirm the *bona fides* of its customer. The records of electronic payments and messages must be treated in the same way as any other records in support of entries in the account and must be kept for a minimum of five years.

F. RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS

1 RECOGNITION OF SUSPICIOUS TRANSACTIONS

- 1.1 The *know your customer* concept is fundamental in the prevention of money laundering. The first key to recognition is therefore knowing enough about the customer and his business to recognise that a transaction, or series of transactions, is unusual. A suspicious transaction will often be one which is inconsistent with that customer's known legitimate business or personal activities or with the normal business for that type of account.
- 1.2 As the types of transactions which may be used by a money launderer are almost unlimited, it is difficult to define a suspicious transaction. Suspicion is personal and subjective and falls short of proof based on firm evidence. However, it is more than the absence of certainty that someone is innocent. Nevertheless, a person would not be expected to know the exact nature of the criminal offence or that the particular funds were definitely those arising from the crime.
- 1.3 Questions that a Licence Holder might consider when determining whether an established customer's transaction might be suspicious are:
 - is the size of the transaction consistent with the normal activities of the customer?
 - is the transaction rational in the context of the customer's business or personal activities?
 - has the pattern of transactions conducted by the customer changed?
 - where the transaction is international in nature, does the customer have any obvious reason for conducting business with the other country involved?

2 EXAMPLES OF SUSPICIOUS TRANSACTIONS

- 2.1 A potential money launderer might use any financial service offered by an Licence Holder to launder money.
- 2.2 Examples of what might constitute suspicious transactions are given in *Appendix II*. These examples are not exhaustive and should only be considered as a reference and to provide examples of the most basic ways by which money could be laundered. The identification of any of the types of transactions listed in the Appendix should prompt further investigation and act as a catalyst towards making at least initial enquires about the circumstances surrounding the transaction.
- 2.3 Sufficient guidance must be given to staff to enable them to recognise suspicious transactions. The type of situations giving rise to suspicion will depend on a Licence Holder's customer base and range of services and products. Licence Holders might also consider monitoring the types of transactions and circumstances that have given rise to suspicious transaction reports by staff with a view to updating internal instructions and guidelines from time to time.

3 REPORTING OF SUSPICIOUS TRANSACTIONS

- 3.1 The regulations impose a statutory obligation on Licence Holders to report suspicions of possible money laundering activities. It is not the responsibility of Licence Holders to determine whether the suspected funds originate from any of the criminal activities listed in *Appendix I*.
- 3.2 Regulation 10 requires a subject person and a supervisory authority to maintain internal reporting procedures. This provision requires all Licence Holders and supervisory authorities to appoint a Money Laundering Reporting Officer who should be responsible for the implementation and maintenance of such reporting procedures.
- 3.3 All Licence Holders are expected to adopt a system whereby unusual or suspicious transactions are reported. Initially, suspicious transactions should be brought to the attention of a staff member's immediate superior or other senior official to ensure that there are no known facts that could provide a satisfactory explanation to the suspicion before further reporting to the Money Laundering Reporting Officer. The person who first became suspicious should nevertheless file a report with the Money Laundering Reporting Officer if he is not satisfied by any explanations given.
- 3.4 Licence Holders are obliged to ensure that each relevant employee knows to whom he should report suspicions and that there is a clear reporting chain through which those suspicions are filed with the Money Laundering Reporting Officer without undue delays.
- 3.5 Disclosure by an employee or official of a Licence Holder to a person concerned with the transaction or to a third party that a report has been filed or an investigation is being carried out (tipping off) is an offence punishable on conviction by a fine not exceeding Lm20,000 or by imprisonment for a term not exceeding two years or to both such fine and imprisonment.

4 THE ROLE OF THE MONEY LAUNDERING REPORTING OFFICER

- 4.1 Because of the high level of confidentiality expected and because of the responsibilities placed on Money Laundering Reporting Officers, Licence Holders must ensure that the appointed person is sufficiently senior to command the necessary authority.
- 4.2 Licence Holders are expected to inform the MFSC of the appointment of or any change in the appointment of their Money Laundering Reporting Officer.
- 4.3 Regulation 10 imposes a significant degree of responsibility on the Money Laundering Reporting Officer. The Officer is required to determine whether the information or other matters contained in an internal suspicious transaction report he has received, gives rise to a knowledge or suspicion that a customer is engaged in money laundering. The Officer is not expected to investigate the transaction other than internally nor to determine whether the funds are the proceeds of criminal activity.
- 4.4 In making this judgement, he must consider all other relevant information available within the institution concerning the person or business to whom the

suspicious transaction report relates. Licence Holders therefore have a responsibility to ensure that their Money Laundering Reporting Officers are granted reasonable access to any information held by them which may be of assistance to them for the purposes of considering a report.

- 4.5 The Regulations refer to a ‘determination’ by the Money Laundering Reporting Officer which implies a degree of formality. It does not necessarily imply that he must give his reasons for concluding that a particular suspicion may not be well founded, and therefore not reporting. It is clearly prudent, however, that for the Money Laundering Reporting Officer’s own protection, only written reports are submitted to him. Moreover, he should record his determination in writing. In any case, the Reporting Officer is duty bound to act honestly and reasonably and to make his determinations in good faith.
- 4.6 The use of a standard format in the internal reporting of suspicious transactions is important and should be followed. Licence Holders are therefore expected to establish a standard internal report format within their own established procedures. The Money Laundering Reporting Officer should ensure that such internal reporting format contains all the necessary information.
- 4.7 The receipt of an internal report is to be acknowledged in writing by the Money Laundering Reporting Officer who may also add instructions for further action. Such instructions may include a reminder of the obligation to do nothing that might prejudice investigations, i.e. “tipping off”. All internal enquiries made in relation to the report, and the reason behind whether or not to submit the report to the authorities, should be documented. This information may be required to supplement the initial report or as evidence of good practice if, at some future date, there is an investigation and the suspicions are confirmed.
- 4.8 Records of suspicions which were raised internally with the Money Laundering Reporting Officer but not disclosed to the authorities should be retained for five years from the date of the transaction. Records of suspicions which the enforcement authority has advised are of no interest should be retained for a similar period. Records of suspicions that assist with investigations should be retained over and above the five year period until the Licence Holder is informed by the enforcement authority that they are no longer needed.

5 DISCLOSURE REPORTING PROCEDURES

- 5.1 Since Regulation 10 imposes the obligation of reporting on the ‘subject person’ (the Licence Holder itself) Licence Holders are expected to ensure that the appropriate reporting procedures are instituted and complied with.
- 5.2 Regulation 11 requires Licence Holders and supervisory authorities to disclose to the enforcement authority any information which indicates that a person is or may have been engaged in money laundering.

Method of Reporting

- 5.3 The enforcement authority has established procedures to be followed by Licence Holders in filing Suspicious Transactions Reports including particular officers to be contacted. The contact persons are included in a list retained by the MFSC and issued to all Licence Holders.
- 5.4 It is recognised that reporting in a standard format to the enforcement authority would be of assistance in an investigation process. The Suspicious Transaction Report illustrated in *Appendix III* is to be used in filing any report under Regulation 11. The use of this Report does not however stop a Licence Holder from disclosing any other information or providing additional documents which, in its opinion, are of relevance to the suspected transaction.
- 5.5 The MFSC expects that, for regulatory purposes only, a copy of any Suspicious Transactions Report made by Licence Holders under Regulation 11 is to be filed with the MFSC for the attention of the relevant Regulatory Unit immediately it is made to the enforcement authority. The filing of a copy of the Report with the MFSC does not exonerate a Licence Holder from any of its obligations under the Regulations.**
- 5.6 Licence Holders having the status of an ‘offshore company’ and licensed as such in terms of the Malta Financial Services Centre Act, 1994 are required to file a Suspicious Transaction Report through the MFSC (in terms of section 4 of the MFSC Act) as “centre and channel” wherein and through which the communication of information with respect to all offshore companies shall be carried out or obtained.**
- 5.7 The enforcement authority and the MSFC will acknowledge in writing the receipt of a Suspicious Transaction Report. The enforcement authority, in acknowledging in writing the receipt of a disclosure, will give whatever appropriate written instructions are deemed necessary to the Licence Holder concerned.
- 5.8 Where a Suspicious Transaction Report is made to the enforcement authority by an intermediary after having introduced business to another Licence Holder (who is a product provider), the intermediary should inform the product provider of his suspicion and of the report made.
- 5.9 It is recognised that as a result of a disclosure to the enforcement authority or as a result of an internal report, a Licence Holder may leave itself open to certain risks. Licence Holders must decide whether or not to pay away funds that are the subject of a Suspicious Transaction Report if instructed to do so by the customer. Although in principle the withholding of funds from customers should be a measure of last resort as the risk of frustrating investigations is very high, in making such a decision, Licence Holders may wish to consider, amongst other matters, the information disclosed, the effect the decision would have on an investigation, any instructions given by the enforcement authority, normal business practice and the relative provisions of the Regulations.
- 5.10 Having made a disclosure report, a Licence Holder could subsequently terminate its relationship with the customer for commercial or risk containment reasons. In such situations however Licence Holders should exercise particular caution not to alert the customer that a disclosure report has

been made. Close liaison with the enforcement Authority in such situations is important in order not to prejudice any possible investigation.

6 CONFIDENTIALITY OF DISCLOSURES

- 6.1 The Regulations preclude the use of any information disclosed pursuant thereto for any investigations other than those in connection with money laundering activities. Therefore, access to such information should be restricted to enforcement officers concerned with investigating money laundering.
- 6.2 Regulation 13 provides that any disclosure made in terms of the Regulations and particularly any report made to the enforcement authority under Regulation 11 does not constitute a breach of the duty of professional secrecy or any other restriction upon the disclosure of information. This Regulation protects the disclosing person from any claim for breach of confidentiality which may be made by the customer.
- 6.3 During investigations by the enforcement authorities and in the event of a prosecution, the source of the information should be protected. Maintaining the integrity of the confidential relationship which has been established between Licence Holders, supervisory authorities and the enforcement authority is considered to be of paramount importance.
- 6.4 The origin of disclosures are not revealed because of the need to protect the disclosing institution and to maintain confidence in the disclosure system.

7 FEEDBACK FROM THE ENFORCEMENT AUTHORITIES

- 7.1 The provision of feedback between the persons concerned in an internal report or a disclosure report is recognised as an important element in a developed system of communication.
- 7.2 Licence Holders should ensure that:
 - Money Laundering Reporting Officers keep appropriate personnel at the offices of Licence Holders informed about developments and progress on reports filed internally through them;
 - all contact between Licence Holders and enforcement authority is reported back to the Money Laundering Reporting Officers;
 - the Licence Holder's Senior Management is continuously updated and fully aware of any situation concerning suspicious transactions;
 - the MFSC is kept fully informed of any developments on Suspicious Transaction Reports filed.
- 7.3 In addition, investigating officers of the enforcement authority should provide information on request to a disclosing Licence Holder in order to establish the current status of a specific investigation. However any information available to the investigating officers which, in their opinion, might be material to contain risks that a disclosing institution could face should be shared with that Licence Holder simultaneously.

- 7.4 Once a disclosure report has been made, any further material information available to the disclosing Licence Holder should be disclosed simultaneously to the enforcement authority.
- 7.5 Where an investigation is dropped or a business relationship is terminated, immediate written confirmation between the parties concerned is of the utmost importance.

G. EDUCATION AND TRAINING

1 STATUTORY REQUIREMENTS

- 1.1 Regulations 3(1)(b) and 3(1)(c) require Licence Holders to take appropriate measures to make their employees aware of:
- the policies and procedures put in place to prevent money laundering including those for identification, record keeping and internal reporting;
 - the legal requirements of both the Act and the Regulations;
 - their personal obligations under the legislation;
 - their personal liability for failure to report information or suspicions in accordance with internal procedures
 - and to provide relevant employees with on-going training on the recognition and handling of suspicious transactions.
- 1.2 The nature of training to be given is at the discretion and responsibility of each Licence Holder itself. Licence holders are therefore expected to establish a programme of continuous training for their staff appropriate to seniority and role such as:-
- senior management including directors;
 - managers and other senior officers;
 - front office or counter staff;
 - new employees at all levels; and
 - other staff in general.
- In this respect, Licence Holders may wish to consider some of the various training programmes available internationally.
- 1.3 Special arrangements should be made to ensure that the Money Laundering Reporting Officer is fully conversant with the prevention of money laundering legislation, the reporting and feedback arrangements with the law enforcement officers; and the typology of money laundering.

2 THE NEED FOR STAFF AWARENESS

- 2.1 The effectiveness of the procedures and recommendations contained in these Guidance Notes depends, *inter alia*, on the extent to which staff of Licence Holders appreciate the serious nature of the crime of money laundering.
- 2.2 Staff must also be aware of their own personal obligations. Staff may be personally liable for failure to report information in accordance with internal procedures. All staff must be encouraged to co-operate and to provide a prompt report on suspicious transactions.
- 2.3 It is, therefore, important that organisations conducting activities covered by the Regulations introduce comprehensive measures to ensure that staff are fully aware of their responsibilities.
- 2.4 All relevant staff should be educated in the importance of the “know your customer” requirements for money laundering prevention purposes. The

training in this respect should cover not only the need to know the true identity of the customer but also, where a business relationship is being established, the need to know enough about the type of business activities expected in relation to that customer at the outset in order to assess what might constitute suspicious activity at a future date. Staff should be alert to any change in a pattern of a customer's transactions or circumstances that might constitute criminal activity.

- 2.5 Although Directors and Senior Managers may not be involved in the day-to-day procedures, it is important that they understand the statutory duties placed on them and the Licence Holder itself. Some form of high-level training to increase general awareness is therefore suggested.

3 TIMING AND CONTENT OF TRAINING PROGRAMMES

- 3.1 Timing and content of training for various sectors of staff will need to be adapted by individual Licence Holders for their own needs. The following is recommended:

New Employees

- 3.2 A general appreciation of the background to money laundering, and the subsequent need for reporting of any suspicious transactions to the Money Laundering Reporting Officer should be provided to all new employees who will be dealing with customers or their transactions, irrespective of the level of seniority. They should be made aware of the importance placed on the reporting of suspicions by the organisation and that there is a legal requirement to report.

Advisory Staff/New Customer Personnel

- 3.3 Members of staff who are dealing directly with the public are the first point of contact with potential money launderers, and their efforts are therefore vital to the Licence Holder's reporting system for such transactions. Training should be provided on factors that may give rise to suspicions and on the procedures to be adopted when a transaction is deemed to be suspicious.
- 3.4 In addition, the need to verify the identity of the customer must be understood, and training should be given in respect to customer verification procedures. Such staff should be aware that the offer of suspicious funds or the request to undertake a suspicious transaction may need to be reported to the Money Laundering Reporting Officer, whether or not the funds are accepted or the transactions proceeded with, and must know what procedures to follow in these circumstances.
- 3.5 All front-line staff should be made aware of the Licence Holder's policy for dealing with occasional customers, particularly where large cash transactions are involved, and of the need for extra vigilance in these cases.

Processing Staff

- 3.6 Those members of staff who process settlements or carry out reconciliation should receive appropriate training in the processing and verification procedures, and in the recognition of abnormal settlement, payment or delivery instructions. The identity of the customers and cross matching the customer's name against the cheque received in settlement is, for instance, a key process. Such staff should be made aware that the offer of suspicious funds accompanying a request to undertake investment business may need to be reported to the relevant authorities, whether or not the funds are accepted or the transaction proceeded with. Staff must know the correct procedures to follow.

Supervisors and Managers

- 3.7 A higher level of instruction covering all aspects of money laundering procedures should be provided to those with the responsibility for supervising or managing staff. This will include: the offences and penalties arising from the Money Laundering Act and Regulations; procedures relating to court investigations; internal reporting procedures and the requirements for verification of identity and the retention of records.

Money Laundering Reporting Officers

- 3.8 In-depth training concerning all aspects of the primary legislation, Regulations and internal policies will be required for the Money Laundering Reporting Officer. In addition, he/she will require extensive initial and on-going instruction on the validation and reporting of suspicious transactions, on the feedback arrangements, and on new trends and patterns of criminal activity.

Refresher Training

- 3.9 It will also be necessary to make arrangements for refresher training at regular intervals to ensure that staff do not forget their responsibilities. Some may wish to provide such training on an annual basis, others may choose a shorter or longer period or wish to take a more flexible approach to reflect individual circumstances, possibly in conjunction with compliance monitoring.

4 METHODS OF PROVIDING TRAINING

- 4.1 The Regulations do not require Licence Holders to purchase specific training materials for the purpose of educating relevant staff in money laundering prevention and the recognition and reporting of suspicious transactions. However, the MFSC recognises the value of having standard procedures across the industry and of using training materials that provide consistent messages.

H. INTERNAL CONTROLS

- 1.1 Licence Holders are expected to establish clear lines of responsibility and accountability and should institute appropriate internal controls to ensure that the policies and procedures established through the Money Laundering Reporting Officers are maintained and adhered to by all concerned.
- 1.2 The Regulations impose a statutory obligation on Licence Holder to establish and maintain procedures for the purpose of preventing and recognising possible money laundering transactions in the course of their business.
- 1.3 All Licence Holders should:
 - have procedures for the prompt validation of suspicions and subsequent reporting to the enforcement authority;
 - provide the Money Laundering Reporting Officer with the necessary access to systems and records to fulfil this requirement; and
 - maintain close co-operation and liaison with the law enforcement agencies.
- 1.4 As good practice, Licence Holders are recommended to make arrangements to verify, on a regular basis, compliance with policies, procedures, and controls relating to money laundering activities, in order to satisfy that the requirement of the Regulations to maintain such procedures has been discharged.

LIST OF UNDERLYING CRIMINAL ACTIVITIES

First and Second Schedules to the Prevention of Money Laundering Act, 1994

FIRST SCHEDULE

Article 3 (1) (a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

- i. The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;
- ii. The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;
- iii. The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;
- iv. The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs, or psychotropic substances;
- v. The organisation, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above.

SECOND SCHEDULE

- An offence against the law relating to dangerous drugs and narcotics;
- Illegal dealing in arms and armaments;
- Procuring, or trafficking in men, women or young persons for immoral purposes;
- Dealing in slaves;
- Piracy;
- Illegal arrest, detention or confinement of a person;
- Wilful homicide;
- Wilful grievous bodily harm;
- Blackmail;
- Any crime affecting public trust;
- Any of the crimes under sections 197, 204, 205, 208 and 210 of the Criminal Code, Cap. 9;
- Theft;
- Any crime of fraud under the Criminal Code, Cap. 9;
- Any crime against the Customs Ordinance, Cap. 37;
- Any crime against the Official Secrets Ordinance, Cap. 50;
- Any crime against the Arms Ordinance, Cap. 66;
- Any crime against the Central Bank of Malta Act, Cap. 204;
- Any crime against the Exchange Control Act, Cap. 233;
- Any crime which constitutes a “corrupt practice” as defined in the Permanent Commission Against Corruption Act, Cap. 326.

EXAMPLES OF POSSIBLE SUSPICIOUS TRANSACTIONS**MONEY LAUNDERING USING CASH TRANSACTIONS**

1. Unusually large cash deposits made by an individual or company whose activities would normally generate cheques and other instruments.
2. Substantial increases in cash deposits of any individual or business without apparent cause, especially if such deposits are subsequently transferred within a short period out of the account and/or to a destination not normally associated with the customer.
3. Customers who deposit cash by means of numerous credit slips so that the total of each deposit is unremarkable, but the total of all the credits is significant.
4. Company accounts whose transactions, both deposits and withdrawals, are denominated in cash rather than the forms of debit and credit normally associated with commercial operations (e.g. Cheques, Letter of Credit, Bills of Exchange etc.)
5. Customers who constantly pay-in or deposit cash to cover requests for bankers drafts, money transfers or other negotiable and readily marketable money instruments.
6. Customers who seek to exchange large quantities of low denominated notes for those of higher denominated.
7. Frequent exchange of cash into other currencies.
8. Branches that have a great deal more cash transactions than usual.
9. Customers whose deposits contain counterfeit notes or forged instruments.
10. Customers transferring large sums of money to or from overseas locations with instructions for payment in cash.
11. Large cash deposits using night safe facilities, thereby avoiding direct contact with staff.

MONEY LAUNDERING USING BANK ACCOUNTS

1. Customers who wish to maintain a number of trustee or clients' accounts which do not appear consistent with the type of business, including transactions which involve nominee names.
2. Customers who have numerous accounts and pay in amounts of cash to each of them in circumstances in which the total of credits would be a large amount.
3. Any individual or company whose account shows virtually no normal personal banking or business related activities, but is used to receive or disburse large sums which have no

obvious purpose or relationship to the account holder and/or his business (e.g. a substantial increase in turnover on an account).

4. Reluctance to provide normal information when opening an account, providing minimal or fictitious information or, when applying to open an account, providing information that is difficult or expensive for the Bank to verify.
5. Customers who appear to have accounts with several financial institutions within the same locality, especially when the Bank is aware of a regular consolidation process from such accounts prior to a request for onward transmission of the funds.
6. Matching of payments out with credits paid in by cash on the same or previous day.
7. Paying in large third party cheques endorsed in favour of the customer.
8. Large cash withdrawals from a previously dormant/inactive account, or from an account which has just received an unexpected large credit from abroad.
9. Customers who together, and simultaneously, use separate tellers to conduct large cash transactions or foreign exchange transactions.
10. Greater use of safe deposit facilities. Increased activity by individuals. The use of sealed packets deposited and withdrawn.
11. Companies' representatives avoiding contact with the branch.
12. Substantial increases in deposits of cash or negotiable instruments by a professional firm or company, using client accounts or in-house company or trust accounts, especially if the deposits are promptly transferred between other client company and trust accounts.
13. Customers who decline to provide information that in normal circumstances would make the customer eligible for credit or for other banking services that would be regarded as valuable.
14. Insufficient use of normal banking facilities e.g. avoidance of high interest rate facilities for large balances.
15. Large number of individuals making payments into the same account without an adequate explanation.

MONEY LAUNDERING USING SECURITIES & INVESTMENTS RELATED TRANSACTIONS

New Business

1. A personal client for whom verification of identity proves unusually difficult and who is reluctant to provide details.

2. A corporate/trust client where there are difficulties and delays in obtaining copies of the accounts or other documents of incorporation.
3. A client with no discernible reason for using the firm's service, e.g. clients with distant addresses who could find the same service nearer their home base, or clients whose requirements are not in the normal pattern of the firm's business and could not be more easily serviced elsewhere.
4. An investor introduced by an overseas bank, affiliate or other investor, when both investor and introducer are based in countries where production of drugs or drug trafficking may be prevalent.
5. Any transaction in which the counterparty to the transaction is unknown.

Dealing patterns and abnormal transactions

Dealing patterns

1. A large number of security transactions across a number of jurisdictions.
2. Transactions not in keeping with the investor's normal activity, the financial markets in which the investor is active and the business which the investor operates.
3. Buying and selling of a security with no discernible purpose or in circumstances which appear unusual, e.g. churning at the client's request.
4. Low grade securities purchased in an overseas jurisdiction, sold locally, with the proceeds used to purchase high grade securities.
5. Bearer securities held outside a recognised custodial system.
6. Back to back deposit/loan transactions with subsidiaries of, or affiliates of, overseas financial institutions in known drug trafficking areas.
7. Request by customers for investment management services (securities) where the source of the funds is unclear or not consistent with the customer's apparent standing.

Abnormal transactions

1. A number of transactions by the same counterparty in small amounts of the same security, each purchased for cash and then sold in one transaction, the proceeds being credited to an account different from the original account.
2. Any transaction in which the nature, size or frequency appears unusual, e.g. early termination of packaged products at a loss due to front end loading, or early cancellation, especially where cash had been tendered and/or the refund cheque is to a third party.
3. Transactions not in keeping with normal practice in the market to which they relate, e.g. with reference to market size and frequency, or at off-market prices.

4. Other transactions linked to the transaction in question which could be designed to disguise money and divert it into other forms or to other destinations or beneficiaries.
5. Purchasing of securities to be held by the financial institution in safe custody, where this does not appear appropriate given the customer's apparent standing.

Settlements

Payment

1. A number of transactions by the same counterparty in small amounts of the same security, each purchased for cash and then sold in one transaction.
2. Large or unusual transaction settlements of securities in cash form.
3. Payment by way of third party cheque or money transfer where there is a variation between the account holder, the signatory and the prospective investor, must give rise to additional enquiries.

Delivery

1. Settlement to be made by way of bearer securities from outside a recognised clearing system.
2. Allotment letters for new issues in the name of persons other than the client.

Disposition

1. Payment to a third party without any apparent connection with the investor.
2. Settlement either by registration or delivery of securities to be made to an unverified third party.
3. Abnormal settlement instructions including payment to apparently unconnected parties.

MONEY LAUNDERING INVOLVING EMPLOYEES AND AGENTS

1. Changes in employee characteristics, e.g. lavish life styles or avoiding taking vacation leave.
2. Changes in employee or agent performance, e.g. the salesman selling products for cash has remarkable or unexpected increase in performance.
3. Any dealing with an agent where the identity of the ultimate beneficiary/counterparty is undisclosed, contrary to normal procedure for the type of business concerned.

MONEY LAUNDERING BY SECURED AND UNSECURED LENDING

1. Customers who repay problem loans unexpectedly.
2. Request to borrow against assets held by a credit/financial institution or a third party, where the origin of the assets is not known or the assets are inconsistent with the customer's standing.
3. Request by a customer for a financial institution to provide or arrange finance where the source of the customer's financial contribution to a deal is unclear, particularly where property is involved.

MONEY LAUNDERING THROUGH INSURANCE BUSINESS

Brokerage and Sales

New Business

1. A customer for whom verification of identity proves unusually difficult, who is evasive or reluctant to provide full details.
2. A corporate/trust client where there are difficulties and delays in obtaining copies of the accounts or other documents of incorporation.
3. A client with no discernible reason for using the firm's service, e.g. clients with distant addresses who could find the same service nearer their home base, or clients whose requirements are not in the normal pattern of or inconsistent with the firm's business and could be more easily serviced elsewhere.
4. A customer introduced by an overseas broker, affiliate or other intermediary, when both the customer and introducer are based in countries where production of drugs or drug trafficking may be prevalent.
5. Any transaction in which the insured is unknown.
6. Any **apparent unnecessary** use of an intermediary in the transaction should give rise to further enquiry.

Abnormal Transactions

1. Proposals from an intermediary not in keeping with the normal business introduced.
2. Proposals not in keeping with an insured's normal requirements.
3. Early cancellation of policies, particularly large single premium policies, with return of premium, with no discernible purpose or in circumstances which appear unusual.

4. A number of policies entered into by the same insurer/intermediary for small amounts and then cancelled at the same time, especially where cash has been tendered and/or the refund cheque is to a third party.
5. Assignment of policies to apparently unrelated third parties.
6. Transactions not in keeping with normal practice in the market to which they relate.
7. Other transactions linked to the transaction in question which could be designed to disguise money and divert it into other forms or other destinations or beneficiaries.
8. Willingness to pay premiums on high risks which have a likelihood of regular claims being made.
9. Claims paid to persons other than the insured.
10. Claims which, while apparently legitimate, occur with abnormal regularity.

Settlements

Payment

1. A number of policies taken out by the same insured for low premiums, each purchased for cash and then cancelled with return of premium to the third party.
2. Large or unusual payment of premiums or transaction settlement by cash.
3. Claims paid to persons other than the insured.
4. Overpayment of premium with a request to refund the excess to a third party or different country.
5. Payment by way of third party cheque or money transfer where there is a variation between the account holder, the signatory and the prospective insured.

Disposition

1. Payment of claims to a third party without any apparent connection with the investor.
2. Abnormal settlement instructions, including payment to apparently unconnected parties or to countries in which the insured is not known to operate.

Part 3: Suspicious Transaction/Activity Information

Date of suspicious Transaction/Activity

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Amount involved in suspicious transaction/activity

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Explanation/description of suspicious transaction/activity. (This section of the report is *very important*. The suspicious transaction/activity should be described in a complete and clear manner. All facts should be given in a chronological order. The explanation/ description should outline what is unusual, irregular or suspicious about the transaction/activity. All relevant information which would assist the enforcement authorities in their investigations should be given.

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Continue on a separate page if necessary.

Additional documents attached

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Has the Regulatory Authority (the MFSC) and/or the law enforcement authorities (police) already been advised by telephone, written communication or otherwise?

If so, indicate the organisation and person contacted _____

Name of Reporting Officer

--

Signature of Reporting Officer

--

Official Rubber Stamp of the Licence Holder

--

CUSTOMER INTRODUCTION CERTIFICATE

(To be completed by a person carrying out relevant financial business and subject to the
Prevention of Money Laundering Regulations, 1994)

NAME OF CUSTOMER:

ADDRESS OF CUSTOMER:

.....

IDENTITY/REFERENCE NUMBER

DATE OF BIRTH **NATIONALITY**

I/WE CERTIFY THAT in accordance with the provisions of the Prevention of Money Laundering Regulations, 1994 and Guidance Notes issued by the Malta Financial Services Centre/Central Bank of Malta (*Please delete as applicable*)

A1 we have established the identity of the customer (copies of relevant documents proving verification are attached) **or**

A1 the customer was an existing customer of ours as at 30 December 1994.

AND (Please delete as applicable):

B1 *the customer is acting on his own behalf; OR*

B2 *the customer is acting on behalf of a principal (details of the principal are attached); OR*

B3 *the customer is acting as advocate, notary, certified public accountant and auditor or nominee company on behalf of an undisclosed principal and has produced the declaration required in terms of Regulation 7(5) of the Prevention of Money Laundering Regulations, 1994 (Copy of declaration attached).*

ALTERNATIVELY

C I/WE CERTIFY THAT we have not established the identity of the customer.

Explanation:

.....

Full Name of Issuer of Certificate:

Details of Licence:

Signed: **Full Name:**

Date: **Job Title:**

GROUP INTRODUCTION CERTIFICATE

NAME OF CUSTOMER:

ADDRESS OF CUSTOMER:

.....

IDENTITY/REFERENCE NUMBER:

DATE OF BIRTH **NATIONALITY**

The above named is a customer of,
a member of the group of companies.

The customer wishes to do business with

We hereby certify the following in respect of this customer:

1. The customer has been known to us for years, and all necessary due diligence as required by local law in the area of establishment of identity for the purpose of combating money laundering has been satisfactorily taken.
2. There is sufficient information on file at the above group company to establish the ownership of the customer, if a corporate entity, or the customer's true name and address if a natural person.
3. Where the introducing entity is outside Malta, in the event of any enquiry from the relevant authorities in Malta, copies of the relevant customer records referred to in (2) above: [Delete as applicable]
 - (a) shall be made available to the member of the group in Malta to satisfy the requests of the Maltese Authorities; **or**
 - (b) will need to be obtained direct from this office under a Court Order or relevant mutual assistance procedure.
4. We are unaware of any activities in which the above customer indulges which lead us to suspect that the customer is involved in Money Laundering. Should we subsequently become so suspicious, we shall inform the member of the group to whom the customer is being introduced immediately.

Full Name of Issuer of Cert.:

Details of Licence:

Signed: **Full Name:**

Date: **Job Title:**

FINANCIAL ACTION TASK FORCE MEMBER COUNTRIES

- Australia
- Austria
- Belgium
- Canada
- Denmark
- Finland
- France
- Germany
- Greece
- Hong Kong
- Iceland
- Ireland
- Italy
- Japan
- Luxembourg
- Netherlands
- New Zealand
- Norway
- Portugal
- Singapore
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom
- United States

The FATF works closely with a range of other international organisations, bodies and groups which are involved in combating money laundering. These are:

- Asia/Pacific Money Laundering Group
- Caribbean Financial Action Task Force on Money Laundering
- The Commonwealth Secretariat
- The Council of Europe
- Interpol
- IMF - the International Monetary Fund
- IOSCO - the International Organisation of Securities Commissions
- OAS/CICAD - Organisation of American States/Inter-American Drug Abuse Control Commission
- OGBS - the Offshore Group of Banking Supervisors
- UNDCP - the United Nations International Drug Control Programme
- UNCPCJD - the United Nations Crime Prevention and Criminal Justice Division
- The World Bank
- WCO - the World Customs Organisation

THE FORTY RECOMMENDATIONS OF THE FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING

Introduction

- a) The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering -- the processing of criminal proceeds in order to disguise their illegal origin. These policies aim to prevent such proceeds from being utilised in future criminal activities and from affecting legitimate economic activities.
- b) The FATF currently consists of 26 countries and two international organisations. Its membership includes the major financial centre countries of Europe, North America and Asia. It is a multi-disciplinary body – as is essential in dealing with money laundering - bringing together the policy-making power of legal, financial and law enforcement experts.
- c) This need to cover all relevant aspects of the fight against money laundering is reflected in the scope of the forty FATF Recommendations – the measures which the Task Force have agreed to implement and which all countries are encouraged to adopt. The Recommendations were originally drawn up in 1990. In 1996 the forty Recommendations were revised to take into account the experience gained over the last six years and to reflect the changes which have occurred in the money laundering problem¹.
- d) These forty Recommendations set out the basic framework for anti-money laundering efforts and they are designed to be of universal application. They cover the criminal justice system and law enforcement; the financial system and its regulation, and international co-operation.
- e) It was recognised from the outset of the FATF that countries have diverse legal and financial systems and so all cannot take identical measures. The Recommendations are therefore the principles for action in this field, for countries to implement according to their particular circumstances and constitutional frameworks allowing countries a measure of flexibility rather than prescribing every detail. The measures are not particularly complex or difficult, provided there is the political will to act. Nor do they compromise the freedom to engage in legitimate transactions or threaten economic development.
- f) FATF countries are clearly committed to accept the discipline of being subjected to multilateral surveillance and peer review. All member countries have their implementation of the forty Recommendations monitored through a two-pronged approach: an annual self-assessment exercise and the more detailed mutual evaluation process under which each

¹ During the period 1990 to 1995, the FATF also elaborated various Interpretative Notes which are designed to clarify the application of specific Recommendations. Some of these Interpretative Notes have been updated in the Stocktaking Review to reflect changes in the Recommendations.

member country is subject to an on-site examination. In addition, the FATF carries out cross-country reviews of measures taken to implement particular Recommendations.

- g) These measures are essential for the creation of an effective anti-money laundering framework.

GENERAL FRAMEWORK OF THE RECOMMENDATIONS

1. Each country should take immediate steps to ratify and to implement fully, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention).
2. Financial institution secrecy laws should be conceived so as not to inhibit implementation of these recommendations.
3. An effective money laundering enforcement program should include increased multilateral co-operation and mutual legal assistance in money laundering investigations and prosecutions and extradition in money laundering cases, where possible.

ROLE OF NATIONAL LEGAL SYSTEMS IN COMBATING MONEY LAUNDERING

Scope of the Criminal Offence of Money Laundering

4. Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalise money laundering as set forth in the Vienna Convention. Each country should extend the offence of drug money laundering to one based on serious offences. Each country would determine which serious crimes would be designated as money laundering predicate offences.
5. As provided in the Vienna Convention, the offence of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances.
6. Where possible, corporations themselves - not only their employees - should be subject to criminal liability.

Provisional Measures and Confiscation

7. Countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offence, or property of corresponding value, without prejudicing the rights of bona fide third parties.

Such measures should include the authority to : 1) identify, trace and evaluate property which is subject to confiscation; 2) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; and 3) take any appropriate investigative measures.

In addition to confiscation and criminal sanctions, countries also should consider monetary and civil penalties, and/or proceedings including civil proceedings, to void contracts entered into by parties, where parties knew or should have known that as a result of the contract, the State would be prejudiced in its ability to recover financial claims, e.g. through confiscation or collection of fines and penalties.

ROLE OF THE FINANCIAL SYSTEM IN COMBATING MONEY LAUNDERING

8. Recommendations 10 to 29 should apply not only to banks, but also to non-bank financial institutions. Even for those non-bank financial institutions which are not subject to a formal prudential supervisory regime in all countries, for example bureaux de change, governments should ensure that these institutions are subject to the same anti-money laundering laws or regulations as all other financial institutions and that these laws or regulations are implemented effectively.
9. The appropriate national authorities should consider applying Recommendations 10 to 21 and 23 to the conduct of financial activities as a commercial undertaking by businesses or professions which are not financial institutions, where such conduct is allowed or not prohibited. Financial activities include, but are not limited to, those listed in the attached annex. It is left to each country to decide whether special situations should be defined where the application of anti-money laundering measures is not necessary, for example, when a financial activity is carried out on an occasional or limited basis.

Customer Identification and Record-keeping Rules

10. Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names: they should be required (by law, by regulations, by agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash transactions).

In order to fulfil identification requirements concerning legal entities, financial institutions should, when necessary, take measures:

- to verify the legal existence and structure of the customer by obtaining either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity.
 - to verify that any person purporting to act on behalf of the customer is so authorised and identify that person.
11. Financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether these clients or customers are acting on their own behalf, for example, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc. that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).
 12. Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.

Financial institutions should keep records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the account is closed.

These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.

13. Countries should pay special attention to money laundering threats inherent in new or developing technologies that might favour anonymity, and take measures, if needed, to prevent their use in money laundering schemes.

Increased Diligence of Financial Institutions

14. Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.
15. If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.
16. Financial institutions, their directors, officers and employees should be protected by legal provisions from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the competent authorities, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.
17. Financial institutions, their directors, officers and employees, should not, or, where appropriate, should not be allowed to, warn their customers when information relating to them is being reported to the competent authorities.
18. Financial institutions reporting their suspicions should comply with instructions from the competent authorities.
19. Financial institutions should develop programs against money laundering. These programs should include, as a minimum :
 - the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees;
 - an ongoing employee training programme;
 - an audit function to test the system.

Measures to Cope with the Problem of Countries with No or Insufficient Anti-Money Laundering Measures

20. Financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply these Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the mother institution should be informed by the financial institutions that they cannot apply these Recommendations.
21. Financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

Other Measures to Avoid Money Laundering

22. Countries should consider implementing feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

23. Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.
24. Countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers.
25. Countries should take notice of the potential for abuse of shell corporations by money launderers and should consider whether additional measures are required to prevent unlawful use of such entities.

Implementation, and Role of Regulatory and other Administrative Authorities

26. The competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should co-operate and lend expertise spontaneously or on request with other domestic judicial or law enforcement authorities in money laundering investigations and prosecutions.
27. Competent authorities should be designated to ensure an effective implementation of all these Recommendations, through administrative supervision and regulation, in other professions dealing with cash as defined by each country.
28. The competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behaviour by their customers. It is understood that such guidelines must develop over time, and will never be exhaustive. It is further understood that such guidelines will primarily serve as an educational tool for financial institutions' personnel.
29. The competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control or acquisition of a significant participation in financial institutions by criminals or their confederates.

STRENGTHENING OF INTERNATIONAL CO-OPERATION

Administrative Co-operation

Exchange of general information

30. National administrations should consider recording, at least in the aggregate, international flows of cash in whatever currency, so that estimates can be made of cash flows and reflows from various sources abroad, when this is combined with central bank information. Such information should be made available to the International Monetary Fund and the Bank for International Settlements to facilitate international studies.
31. International competent authorities, perhaps Interpol and the World Customs Organisation, should be given responsibility for gathering and disseminating information to competent authorities about the latest developments in money laundering and money laundering techniques. Central banks and bank regulators could do the same on their network. National authorities in various spheres, in consultation with trade associations, could then disseminate this to financial institutions in individual countries.

Exchange of information relating to suspicious transactions

32. Each country should make efforts to improve a spontaneous or "upon request" international information exchange relating to suspicious transactions, persons and corporations involved in those transactions

between competent authorities. Strict safeguards should be established to ensure that this exchange of information is consistent with national and international provisions on privacy and data protection.

Other forms of Co-operation

Basis and means for co-operation in confiscation, mutual assistance and extradition

33. Countries should try to ensure, on a bilateral or multilateral basis, that different knowledge standards in national definitions - i.e. different standards concerning the intentional element of the infraction - do not affect the ability or willingness of countries to provide each other with mutual legal assistance.
34. International co-operation should be supported by a network of bilateral and multilateral agreements and arrangements based on generally shared legal concepts with the aim of providing practical measures to affect the widest possible range of mutual assistance.
35. Countries should be encouraged to ratify and implement relevant international conventions on money laundering such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Focus of improved mutual assistance on money laundering issues

36. Co-operative investigations among countries' appropriate competent authorities should be encouraged. One valid and effective investigative technique in this respect is controlled delivery related to assets known or suspected to be the proceeds of crime. Countries are encouraged to support this technique, where possible.
37. There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in money laundering investigations and prosecutions and in related actions in foreign jurisdictions.
38. There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate proceeds or other property of corresponding value to such proceeds, based on money laundering or the crimes underlying the laundering activity. There should also be arrangements for co-ordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.
39. To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. Similarly, there should be arrangements for co-ordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.
40. Countries should have procedures in place to extradite, where possible, individuals charged with a money laundering offence or related offences. With respect to its national legal system, each country should recognise money laundering as an extraditable offence. Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgements, extraditing their nationals, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.

Annex to Recommendation 9: List of Financial Activities undertaken by business or professions which are not financial institutions

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.²
3. Financial leasing.
4. Money transmission services.
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques and bankers' drafts...).
6. Financial guarantees and commitments.
7. Trading for account of customers (spot, forward, swaps, futures, options...) in:
 - (a) money market instruments (cheques, bills, CDs, etc.);
 - (b) foreign exchange;
 - (c) exchange, interest rate and index instruments;
 - (d) transferable securities;
 - (e) commodity futures trading.
8. Participation in securities issues and the provision of financial services related to such issues.
9. Individual and collective portfolio management.
10. Safekeeping and administration of cash or liquid securities on behalf of clients.
11. Life insurance and other investment related insurance.
12. Money changing.

² Including inter alia

- consumer credit
- mortgage credit
- factoring, with or without recourse
- finance of commercial transactions (including forfaiting)

Part 3: Suspicious Transaction/Activity Information

Date of suspicious Transaction/Activity

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Amount involved in suspicious transaction/activity

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Explanation/description of suspicious transaction/activity. (This section of the report is *very important*. The suspicious transaction/activity should be described in a complete and clear manner. All facts should be given in a chronological order. The explanation/ description should outline what is unusual, irregular or suspicious about the transaction/activity. All relevant information which would assist the enforcement authorities in their investigations should be given.

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Continue on a separate page if necessary.

Additional documents attached

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Has the Regulatory Authority (the MFSC) and/or the law enforcement authorities (police) already been advised by telephone, written communication or otherwise?

If so, indicate the organisation and person contacted _____

Name of Reporting Officer

--

Signature of Reporting Officer

--

Official Rubber Stamp of the Licence Holder

--

CUSTOMER INTRODUCTION CERTIFICATE

(To be completed by a person carrying out relevant financial business and subject to the
Prevention of Money Laundering Regulations, 1994)

NAME OF CUSTOMER:

ADDRESS OF CUSTOMER:
.....

IDENTITY/REFERENCE NUMBER

DATE OF BIRTH **NATIONALITY**

I/WE CERTIFY THAT in accordance with the provisions of the Prevention of Money Laundering Regulations, 1994 and Guidance Notes issued by the Malta Financial Services Centre/Central Bank of Malta (*Please delete as applicable*)

A1 we have established the identity of the customer (copies of relevant documents proving verification are attached) **or**

A1 the customer was an existing customer of ours as at 30 December 1994.

AND (Please delete as applicable):

B1 the customer is acting on his own behalf; *OR*

B2 the customer is acting on behalf of a principal (details of the principal are attached); *OR*

B3 the customer is acting as advocate, notary, certified public accountant and auditor or nominee company on behalf of an undisclosed principal and has produced the declaration required in terms of Regulation 7(5) of the Prevention of Money Laundering Regulations, 1994 (Copy of declaration attached).

ALTERNATIVELY

C I/WE CERTIFY THAT we have not established the identity of the customer.

Explanation:
.....

Full Name of Issuer of Certificate:

Details of Licence:

Signed: **Full Name:**

Date: **Job Title:**

GROUP INTRODUCTION CERTIFICATE

NAME OF CUSTOMER:

ADDRESS OF CUSTOMER:
.....

IDENTITY/REFERENCE NUMBER:

DATE OF BIRTH **NATIONALITY**

The above named is a customer of,
a member of the group of companies.

The customer wishes to do business with

We hereby certify the following in respect of this customer:

1. The customer has been known to us for years, and all necessary due diligence as required by local law in the area of establishment of identity for the purpose of combating money laundering has been satisfactorily taken.
2. There is sufficient information on file at the above group company to establish the ownership of the customer, if a corporate entity, or the customer's true name and address if a natural person.
3. Where the introducing entity is outside Malta, in the event of any enquiry from the relevant authorities in Malta, copies of the relevant customer records referred to in (2) above: [Delete as applicable]
 - (a) shall be made available to the member of the group in Malta to satisfy the requests of the Maltese Authorities; **or**
 - (b) will need to be obtained direct from this office under a Court Order or relevant mutual assistance procedure.
4. We are unaware of any activities in which the above customer indulges which lead us to suspect that the customer is involved in Money Laundering. Should we subsequently become so suspicious, we shall inform the member of the group to whom the customer is being introduced immediately.

Full Name of Issuer of
Certificate:

Details of Licence:

Signed: **Full Name:**

Date: **Job Title:**