FINANCIAL INTELLIGENCE ANALYSIS UNIT

CONSULTATION DOCUMENT

PREVENTION OF MONEY LAUNDERING AND FUNDING OF TERRORISM REGULATIONS 2017

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Revision of the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L.373.01)

The Financial Intelligence Analysis Unit ("FIAU") is issuing for consultation a revised version of the Prevention of Money Laundering and Funding of Terrorism Regulations ("PMLFTR") which seeks to transpose into Maltese law various provisions of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("4th AMLD").

The changes introduced by the 4th AMLD take into account the new recommendations adopted by the Financial Action Task Force ("FATF") and seeks to bring European legislation in line with international standards in combatting money laundering and the funding of terrorism as well as strengthen the integrity of the financial system and the internal market as a whole. Given that the transposition would require substantial amendments to the current version of the PMLFTR, the FIAU proposes to repeal in its entirety the version of the PMLFTR currently in force and replace the same with a new set of regulations. However, in drafting the proposal being put forth for consultation, the FIAU sought to retain, as much as possible, the same structure and numbering of the current regulations.

The FIAU strongly encourages subject persons to read this proposal in its entirety and to provide their comments and feedback. The following summary lists and briefly explains the most prominent changes being proposed:

i. The activities that can result in a natural or legal person being considered a subject person have increased. The revised regulations will cover additional providers of gaming services as defined in the proposal being put forth by the FIAU. Moreover, the threshold for payments in cash which would lead a trader in goods to be deemed a subject person has been revised downwards from €15,000 to €10,000. It is also worth noting that two additional activities have been included under the definition of "relevant financial business" under paragraphs (k) and (l), while persons or entities acting as qualified persons in terms of the Trusts and Trustees Act will also be subject to AML/CFT requirements.

ii. The definition of "beneficial owner" is also being revised and extended. At present it is possible that there may be no beneficial owner where no person holds the required percentage of shares or voting rights or where no one else is deemed to be exercising control. In such circumstances, under the revised regulations, a subject person will be required to identify those individuals who occupy senior management positions within the corporate entity concerned. Moreover, in the case of trusts any beneficiary (irrespective of the beneficial interest held) will be considered a beneficial owner.

iii. A risk-based approach to customer due diligence and other AML/CFT controls will become compulsory. Subject persons will be obliged to carry out a risk assessment to identify the ML/FT risks they are exposed to and to model their AML/CFT controls on the basis of such assessments while ensuring that their application in each individual case is also risk-based.

iv. Enhanced Customer Due Diligence measures ("EDD") will be applicable to both domestic and foreign Politically Exposed Persons ("PEPs"). This means that subject persons will not only be required to identify and apply EDD on customers and, where applicable, beneficial owners who are foreign PEPs (i.e. residing in another Member State or third country) but subject persons must now also identify and apply EDD on domestic PEPs.

v. The scope of reliance has been widened. Under the revised regulations subject persons will be able to place reliance on any other subject person, and any other entity which is subject to equivalent AML/CFT legislation and subject to supervision in a manner which is consistent with the requirements of the 4th AMLD.

vi. A more rigorous sanctioning regime in case of breaches of AML/CFT obligations will be introduced. Regulation 21 is being further enhanced and will cater for serious, repeated and systematic breaches, allowing the FIAU to impose more effective penalties in such circumstances, in line with the requirements of the 4th AMLD.

The FIAU would like to emphasise that the above are only indicative of the main changes being proposed.

Subject persons are being invited to consider these proposals and to submit their comments and feedback. The FIAU invites subject persons to submit their feedback and comments to their representatives on the Joint Committee for the Prevention of Money Laundering and the Funding of Terrorism, since this would facilitate the FIAU's work in compiling and reviewing the feedback received. Where this is not possible subject persons may correspond directly with the FIAU using the email address indicated below. Feedback and comments should reach Joint Committee representatives or the FIAU by not later than the 7 August 2017.

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Chairman, Financial Intelligence Analysis Unit	Minister for Finance

L.N. xxx of 2017

PREVENTION OF MONEY LAUNDERING ACT
(CAP. 373)

Prevention of Money Laundering and Funding of Terrorism Regulations, 2017

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

Title and scope.

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

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

Interpretation and application. Cap. 373.

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

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

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

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

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

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

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

(b) in the case of trusts the beneficial owner includes:

(i) the settlor;

(ii) the trustee or trustees;

(iii) the protector, where applicable;

(iv) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates; and

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the beneficial owner includes the natural person or persons holding equivalent or similar positions to those referred to in point (b);

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

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

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

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

“competent authority” means:

(a) any supervisory authority;

(b) the Comptroller of Customs when carrying out duties under any regulation that may be issued or are in force from time to time relating to the cross-border movement of cash;

(c) the Commissioner for Revenue; and

(d) the Security Service.

“correspondent relationship” means:

(a) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;

(b) the relationship between and among institutions carrying out relevant financial business and activities equivalent thereto, including where similar services to those

under paragraph (a) are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers.

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

Cap. 376. “electronic money” has the same meaning as is assigned to the term in the Financial Institutions Act;

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

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

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

Cap. 438. “gaming licensee” means any person authorised, or required to be authorised, in terms of the Lotteries and Other Games Act to provide a gaming service

Cap. 438. “gaming service” means a service which involves the operation of a game, and a game shall have the same meaning as is assigned to the term in the Lotteries and other Games Act;

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

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

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

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

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

(a) a transaction amounting to fifteen thousand euro (€15,000) or more, carried out in a single operation or in several operations which appear to be linked;

(b) a transfer of funds as defined under Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015, which exceeds one thousand euro (€1,000) in a single operation or in several operations which appear to be linked;

(c) a transaction in cash amounting to ten thousand euro (€10,000) or more, carried out by a natural or legal person trading in goods in a single operation or in several operations which appear to be linked;

(d) a transaction amounting to two thousand euro (€2,000) or more, carried out by gaming or casino licensees in a single operation or in several operations which appear to be linked;

(e) the provision of tax advice; and

(f) the formation of a company, trust, foundation or a similar structure.

“politically exposed persons” means natural persons who are or have been entrusted with prominent public functions, other than middle ranking or more junior officials. For the

purposes of this definition the term “natural persons who are or have been entrusted with prominent public functions” includes the following:

(a) Heads of State, Heads of Government, Ministers and Deputy and Assistant Ministers and Parliamentary Secretaries;

(b) Members of Parliament or similar legislative bodies;

(c) Members of the governing bodies of political parties;

(d) Members of the judiciary or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;

(e) Members of courts of auditors, Audit Committees or of the boards of central banks;

(f) Ambassadors, *charges d’affaires* and other high ranking officers in the armed forces;

(g) Members of the administrative, management or boards of State-owned enterprises;

(h) Anyone exercising a function equivalent to those set out in paragraphs (a) to (f) within an institution of the European Union or any other international body;

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

(a) auditors, external accountants and tax advisors, including when acting as provided for in paragraph (c);

(b) real estate agents;

(c) notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction or by assisting in the planning or carrying out of transactions for their clients concerning the –

(i) buying and selling of real property or business entities;

(ii) managing of client money, securities or other assets, unless the activity is undertaken under a licence issued under the provisions of the Investment Services Act; Cap. 370.

(iii) opening or management of bank, savings or securities accounts;

(iv) organisation of contributions necessary for the creation, operation or management of companies;

(v) creation, operation or management of companies, trusts, foundations or similar structures, or when acting as a trust or company service provider;

(d) trust and company service providers;

(e) nominee companies holding a warrant under the Malta Financial Services Authority Act and acting in relation to dissolved companies registered under the said Act; Cap. 330.

(f) casino licensees;

(g) gaming licensees; and

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

"relevant financial business" means –

(a) any business of banking carried on by a person or institution who is for the time being licensed, or required to be licensed, under the provisions of the Banking Act; Cap. 371.

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

Cap. 376.

(c) any long term insurance business other than reinsurance business carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Insurance Business Act;

Cap. 403.

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

Cap. 487.

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

S.L. 403.11

S.L. 386. 10

S.L. 386.13

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

Cap. 370.

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

Cap. 370.

S.L. 386.15.

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

Cap. 370.

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

Cap. 514.

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

Cap. 345.

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

(l) the provision of advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services related to mergers and the purchase of undertakings by any person or institution not covered under paragraph (a) or (f); and

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

"non-reputable jurisdiction" means any jurisdiction having deficiencies in its national anti-money laundering and counter funding of terrorism regime or having inappropriate and ineffective measures for the prevention of money laundering and the funding of terrorism,

taking into account any accreditation, declaration, public statement or report issued by an international organisation which lays down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism or which monitors adherence thereto, or is a jurisdiction identified by the European Commission in accordance with Article 9 of Directive (EU) 2015/849;

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

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

"subject person" means any legal or natural person carrying out either relevant financial business or relevant activity;

"supervisory authority" means –

(a) the Central Bank of Malta;

(b) the Malta Financial Services Authority;

Cap. 386. (c) the Registrar of Companies acting under articles 403 to 423 of the Companies Act;

Cap. 400. Cap. 438. (d) the Malta Gaming Authority acting under the Lotteries and Other Games Act and the Gaming Act, and any regulations issued thereunder;

Cap. 281. (e) the Quality Assurance Oversight Committee appointed by the Accountancy Board under the Accountancy Profession Act;

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

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

Cap. 529. (a) acts as a company service provider, whether registered or notified, in terms of the Company Service Providers Act;

Cap. 331. (b) provides trustee or other fiduciary services, whether authorised or otherwise, or acts as a qualified person, in terms of the Trusts and Trustees Act, other than persons acting as trustees in terms of article 43A of the said Act;

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

Cap. 345 (d) arranges, by way of business, for another person to act as a nominee shareholder for another person other than a company listed on an official stock exchange that is subject to disclosure requirements in conformity with the Financial Markets Act or subject to equivalent international standards.

(2) Where these regulations are extended to professions and other categories of undertakings other than those referred to in this regulation and whose activities are particularly likely to be used for the purposes of money laundering or the funding of terrorism, these regulations shall apply in full or in part as may be established by such extension in accordance with the provisions of the Act, and the Financial Intelligence Analysis Unit shall inform the European Commission accordingly.

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

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

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

Specific gaming services

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

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

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

(4) The provisions of sub-regulation (1) shall not be applicable to casinos, whether land-based or otherwise.

Relevant financial business on an occasional or very limited basis.

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

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

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

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

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

(d) the financial activity is ancillary and directly related to the main activity;

(e) the main activity is not an activity falling within the definition of relevant financial business or relevant activity; and

(f) the financial activity is provided only to the customers of the main activity and is not generally offered to the public.

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

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

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

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

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

Risk-assessment.

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

(2) Where the Financial Intelligence Analysis Unit considers the risk of money laundering and the funding of terrorism inherent in any particular relevant activity or relevant financial business to be clear and understood, it may exempt subject persons carrying out such relevant activity or relevant financial business from the obligation to perform a risk assessment under sub-regulation (1).

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

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

(5) Every subject person shall: –

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

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

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

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

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

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

Cap. 9.

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

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

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

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

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

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

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

Group-wide policies and procedures.

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

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

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

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

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

(5) Where the Financial Intelligence Analysis Unit is in possession of information in accordance with sub-regulation (4) it shall, where applicable, inform the relevant supervisory authority, the relevant supervisory authorities of the other Member States, and the European Supervisory Authorities.

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

Customer due diligence.

7. (1) Customer due diligence measures shall comprise -

(a) the identification of the customer, and the verification of the identity of the customer on the basis of documents, data or information obtained from a reliable and independent source:

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

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

Provided that in case of trusts or similar legal arrangements where the beneficiaries are designated by particular characteristics or class, the subject person shall obtain sufficient information concerning the beneficiaries to be able to identify and verify their identity at the time of payout or at the time the beneficiaries seek to exercise their vested rights.

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

(d) conducting ongoing monitoring of the business relationship.

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

(a) the scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being undertaken are consistent with the subject person's

knowledge of the customer and of his business and risk profile, including, where necessary, the source of funds; and

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

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

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

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

(a) establishing a business relationship;

(b) carrying out an occasional transaction:

Provided that when carrying out an occasional transaction, gaming and casino licensees may opt to apply customer due diligence measures either upon the wagering of a stake or the collection of winnings; and

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

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

(7) Where, following the application of the customer due diligence measures under these regulations in relation to a business relationship, doubts have arisen about the veracity or adequacy of the previously obtained customer identification information, or when the circumstances surrounding a business relationship change then the customer due diligence measures shall be repeated in accordance with these regulations.

(8) Subject persons may determine the extent of the application of customer due diligence requirements on a risk sensitive basis.

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

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

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

(c) verify the identity of the beneficiaries at the time of payout or at the time the beneficiary intends to assign any of his rights vested under the policy.

(10) The Financial Intelligence Analysis Unit, with the concurrence of the relevant supervisory authority may, on the basis of an appropriate risk assessment which demonstrates a low risk of money laundering and funding of terrorism, exempt subject persons from the carrying out of customer due diligence measures under sub-regulations (1)(a) to (c) with respect to electronic money as defined under the Financial Institutions Act where all the

Cap.376.

following criteria are met:

(a) the electronic device is not reloadable, or has a maximum monthly payment transaction limit of two hundred fifty euro (€250) which can be used only in Malta;

(b) the maximum amount stored electronically does not exceed two hundred fifty euro (€250), or five hundred euro (€500) where the electronic device can be used only in Malta;

(c) the electronic device is used exclusively to purchase goods or services;

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

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

Provided that this exemption shall not be applied in the case of redemption in cash or cash withdrawals of the monetary value stored on the electronic device where the amount redeemed or withdraw would exceed one hundred euros (€100).

(11) A customer who makes a false declaration or a false representation or who produces false documentation for the purposes of this regulation shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

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

Verification of identification.

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

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

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

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

Provided that, where to refrain in such manner is impossible or is likely to frustrate efforts of investigating a suspected money laundering or the funding of terrorism operation that business shall proceed on condition that a disclosure is immediately lodged with the Financial Intelligence Analysis Unit in accordance with regulation 15(3):

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

(5) Without prejudice to sub-regulation (4), a subject person who is in possession of funds of a customer or a potential customer and who pursuant to sub-regulation (4) decides to terminate or not to establish a business relationship, or not to carry out an occasional transaction and to return, release or transfer those funds, shall as far as reasonably possible return those funds to the same source from where they originated and through the same financial channels by which the subject person came into possession of the funds, unless an order has been made or a notice has been issued in terms of the Act or these regulations prohibiting the release of such funds.

Additional customer due diligence requirements for casino licensees. Cap. 400.

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

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

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

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

Simplified customer due diligence.

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

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

(b) where, on the basis of the risk assessment carried out in accordance with regulation 5(1), the subject person determines that any occasional transaction or a business relationship represents a low risk of money laundering and funding of terrorism.

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

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

(3) Subject persons are required to demonstrate to the Financial Intelligence Analysis Unit, or to any other supervisory authority acting on behalf of the Financial Intelligence Analysis Unit in terms of Article 27 of the Act, that the application of the customer due diligence measures is commensurate to the risks of money laundering and funding of terrorism.

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

Enhanced customer due diligence.

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

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

(b) where, on the basis of the risk assessment carried out in accordance with regulation 5(1), the subject person determines that an occasional transaction, a business relationship or any transaction represents a higher risk of money laundering or funding of terrorism;

(c) when dealing with natural or legal persons from a non-reputable jurisdiction as defined in regulation 2, other than branches or majority-owned subsidiaries which comply with group-wide policies and procedures as required under regulation 6 in which cases enhanced due diligence measures shall be applied where there is a higher risk of money laundering or funding of terrorism; and

(d) in the cases referred to in sub-regulations (3) to (9).

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

Provided that when dealing with a natural or legal person from a jurisdiction as is referred to in sub-regulation (1)(c) in respect of which there has been an international call for counter-measures, subject persons shall report such dealings to the Financial Intelligence Analysis Unit which may, in collaboration with the relevant supervisory authority, require a business relationship not to continue or a transaction not to be undertaken or apply any other counter-measures as may be adequate under the respective circumstances.

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

(a) they gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision on that institution;

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

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

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

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

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

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

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

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

(a) require the approval of senior management;

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

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

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

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

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

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

(a) "family members" includes:

(i) the spouse, or a person considered to be equivalent to a spouse;

(ii) the children and their spouses, or persons considered to be equivalent to a spouse; and

(iii) the parents.

(b) "persons known to be close associates" means:

(i) a natural person known to have joint beneficial ownership of a body corporate or any other form of legal arrangement, or any other close business relations, with that politically exposed person;

(ii) a natural person who has sole beneficial ownership of a body corporate or any other form of legal arrangement that is known to have been established for the benefit of that politically exposed person.

(9) Subject persons shall, as far as reasonably possible, examine the purpose and background of all complex and unusually large transactions and all unusual patterns of transactions, which have no apparent economic or lawful purpose and shall in such cases increase the degree and

nature of monitoring of the business relationship, in order to determine whether those transactions or activities are suspicious in terms of regulation 15(3).

Reliance on performance by third parties.

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

(2) For the purposes of this regulation a third party shall mean a person undertaking activities equivalent to 'relevant financial business' or 'relevant activity', member organisations or representative bodies of such persons and other institutions or persons situated in a Member State or a third country other than Malta that:

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

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

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

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

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

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

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

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

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

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

Record keeping procedures.

13. (1) Subject persons shall retain the following documents and information for the purposes

of the prevention, detection, analysis and investigation of money laundering or funding of terrorism activities by the Financial Intelligence Analysis Unit, other relevant competent authorities, or law enforcement agencies in accordance with the provisions of applicable law:

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

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

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

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

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

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

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

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

(a) in relation to the documentation, data or information described in paragraphs (a) and (b), the date when the business relationship ends or when the occasional transaction is carried out, and where the formalities necessary to end a business relationship could not be observed, the date on which the last transaction in the course of that business relationship was carried out;

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

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

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

(c) in relation to the records described in paragraph (f), the date on which the event referred to therein took place:

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

Provided further that, the period of five years may be further extended, up to a maximum retention period of ten years, where such extension would be considered necessary for the purposes of the prevention, detection, analysis and investigation of money laundering or funding of terrorism activities by the Financial Intelligence Analysis Unit, other relevant competent authorities or law enforcement agencies.

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

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

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

(b) the nature of that relationship.

Statistical data.

14. (1) The Financial Intelligence Analysis Unit, competent authorities, law enforcement agencies and any other relevant department, agency, authority or body, shall maintain comprehensive statistical data on the national system to combat money laundering or the funding of terrorism to assist in the review of such system and the carrying out of national risk assessments.

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

(a) the number of entities and persons conducting a relevant activity or a relevant financial business;

(b) the kind of activity conducted by the entities and persons referred to in (a) above

(c) economic indicators for each relevant activity and relevant financial business;

(d) the number of suspicious transaction reports made to the Financial Intelligence Analysis Unit and the follow up given to these reports including, where available, data identifying the number and percentage of reports resulting in further investigation;

(e) the number of persons and cases investigated;

(f) the number of persons and cases prosecuted;

(g) the number of persons convicted for the offence of money laundering or the funding of terrorism;

(h) the types of predicate offences, where such information is known;

(i) details and value of property that has been attached, frozen, seized or confiscated;

(j) statistics relevant to the exchange of information between the Financial Intelligence Analysis Unit and foreign counterparts, including data on requests for information made, received, refused and answered, whether fully or partially.

(3) The Financial Intelligence Analysis Unit shall publish consolidated reviews of the statistical data gathered in accordance with this regulation and shall ensure that such statistical data is also made available to the European Commission.

(4) The departments, agencies, authorities and bodies referred to in sub-regulation (1) shall make available, upon request, the relevant statistical data to the Financial Intelligence Analysis Unit to enable it to fulfil its function under sub-regulation (3).

Reporting procedures and obligations.

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

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

may be connected with money laundering or the funding of terrorism

(b) the consideration of any such report by the reporting officer or by another designated employee of the subject person, in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the report does give rise to a knowledge or suspicion that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to funding of terrorism, or that a person may have been, is or may be connected with money laundering or the funding of terrorism;

(c) reasonable access for the reporting officer or another designated employee to any information held by the subject person which may be of assistance for the purposes of considering the report;

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

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

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

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

(3) Where a subject person knows, suspects or has reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to funding of terrorism, or that a person may have been, is or may be connected with money laundering or the funding of terrorism, that subject person shall, as soon as is reasonably practicable, but not later than five working days from when the knowledge or suspicion first arose, disclose that information, supported by the relevant identification and other documentation, to the Financial Intelligence Analysis Unit through the reporting officer.

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

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

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

regulations.

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

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

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

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

(9) Subject persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition of "relevant activity" shall not be bound by the provisions of sub-regulations (3), (4) and (8) in relation to information that is received or obtained in the course of ascertaining the legal position of their client or performing their responsibility of defending or representing that client in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

(10) Any *bona fide* communication or disclosure made by a supervisory authority or by a subject person or by an employee or director of such a supervisory authority or subject person in accordance with these regulations shall not be treated as a breach of the duty of professional secrecy or any other restriction (whether imposed by statute or otherwise) upon the disclosure of information and shall not involve that supervisory authority or subject person or the directors or employees of such supervisory authority or subject person in any liability of any kind, even in circumstances where they were not precisely aware of the underlying criminal activity and regardless of whether illegal activity actually occurred.

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

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

Prohibition of disclosure.

16. (1) A subject person, a supervisory authority, any official or employee of a subject person or a supervisory authority, or any person from whom the Financial Intelligence Analysis Unit has demanded information pursuant to these regulations or article 30 of the Act, or any other person who has transmitted information to the Financial Intelligence Analysis Unit, who

discloses to the person concerned or to a third party, other than as provided for in this regulation, the fact that information has been demanded by the Financial Intelligence Analysis Unit or that information has been or may be transmitted to the Financial Intelligence Analysis Unit, or that an analysis or an investigation has been, is being, or may be carried out, shall be guilty of an offence and liable on conviction to a fine (*multa*) not exceeding one hundred and fifteen thousand euro (€115,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

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

(a) disclosures to the supervisory authority relevant to that subject person or to law enforcement agencies in accordance with applicable law;

(b) disclosures between a subject person who undertakes relevant financial business and another person undertaking activities equivalent to relevant financial business, whether situated in a Member State or a third country, which form part of the same group and apply group-wide policies and procedures as provided for under regulation 6;

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

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

(e) disclosures by a subject person in the course of proceedings instituted against the subject person for, or as a consequence of, the failure or delay in carrying out the transaction in a competent court, tribunal or other judicial authority in or outside Malta, including disclosures made in any written pleadings or submissions, that the subject person refrained from carrying out a transaction as required in terms of article 28 of the Act:

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

(f) disclosures by a subject person to a supervisory authority or professional body exercising supervision or regulatory oversight over that subject person, made in response to an enquiry or action by that supervisory authority or professional body with respect to the subject person's failure or delay in carrying out the transaction, that the subject person refrained from carrying out a transaction as required in terms of article 28 of the Act:

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

transaction is opposed by the Financial Intelligence Analysis Unit in terms of article 28 of the Act.

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

Implementing procedures.

17. The Financial Intelligence Analysis Unit, with the concurrence of the relevant supervisory authority, may issue procedures and guidance as may be required for the carrying into effect of the provisions of these regulations, and which shall be binding on subject persons.

Power to terminate a business relationship.

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

Periodical reporting.

19. In fulfilment of its supervisory functions under the Act, the Financial Intelligence Analysis Unit may require subject persons to submit periodical reports on the measures and procedures they maintain and apply pursuant to regulation 5 and any other information or documents as the Financial Intelligence Analysis Unit may consider necessary.

Format of information.

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

Penalties.

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

(2) A subject person who contravenes any provision of these regulations or of any procedures or guidance issued in terms of regulation 17 shall be liable to an administrative penalty of not less than one thousand euro (€1,000) and not more than forty-six thousand five hundred euro (€46,500) in respect of every separate contravention.

(3) Administrative penalties under these regulations shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing and in accordance with policies and procedures established by the Board of Governors referred to in the Act, which may be imposed either as a one-time fixed penalty or as a daily cumulative penalty, or both.

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

(a) With respect to minor contraventions of these regulations or of any procedures or guidance issued in terms of regulation 17, impose an administrative penalty below the minimum established by these regulations but not less than two hundred and fifty euro (€250) or issue a reprimand in writing instead of an administrative penalty; and

(b) With respect to serious, repeated or systematic contraventions of these regulations or of any procedures or guidance issued in terms of regulation 17, impose

administrative sanctions as follows:

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

(ii) In the case of a subject person carrying out a relevant financial business, an administrative penalty of not more than five million Euro (€5,000,000) or not more than ten per centum (10%) of the total annual turnover according to the latest available approved annual financial statements.

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

(5) Administrative penalties imposed on a daily cumulative basis shall not be less than two hundred and fifty euro (€250) and the accumulated penalty shall not exceed the maximum set out under sub-regulations (1), (2) and (4)(b) as may be applicable.

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

(7) Where a contravention in terms of sub-regulations (1), (2) and (4) is committed by a subject person who is a body or other association of persons, be it corporate or unincorporate, the Financial Intelligence Analysis Unit may impose the applicable administrative penalty on any person who at the time of the contravention was a director or other similar officer responsible for the management of such body or association of persons, or was purporting to act in any such capacity, unless that person proves that the contravention was committed without his knowledge and that he exercised all due diligence to prevent the commission of the contravention.

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

Revocation.

22. The revocation of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008 shall not –

(a) affect the previous operation of the regulations so revoked[1] or anything done or suffered under those regulations;

(b) affect the institution, continuation or enforcement of any inquiry, investigation or legal proceedings under the regulations so revoked or the imposition of any penalty or punishment under the provisions of those regulations.

[1] Revoked by these regulations.

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