



FINANCIAL INTELLIGENCE ANALYSIS UNIT

INTERPRETATIVE NOTE

ON

THE AML/CFT OBLIGATIONS OF PROFESSIONALS & PROFESSIONAL FIRMS

*AN INTERPRETATIVE NOTE ISSUED BY THE FIAU TO CLARIFY WHEN
PROFESSIONALS AND PROFESSIONAL FIRMS ARE SUBJECT TO THE
AML/CFT OBLIGATIONS UNDER THE PREVENTION OF MONEY
LAUNDERING ACT AND ANY REGULATIONS, PROCEDURES OR GUIDANCE
ISSUED THERE UNDER*

Issued: 28 January 2014

Background information

1. The Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR) defines a 'subject person' as any legal or natural person carrying out either relevant financial business or relevant activity, as delineated in Regulation 2.
2. Audit, accountancy and law firms endowed with legal personality are therefore considered as subject persons in their own right when they conduct any of the activities envisaged under paragraphs (a) or (c) of the definition of 'relevant activity' in Regulation 2 of the PMLFTR. In terms of Regulation 4(4) individual professionals who undertake such 'relevant activity' as employees of one of these firms are not themselves considered as subject persons.
3. The position of audit, accountancy and law firms that are not endowed with legal personality remained unresolved as there was no legal certainty on whether such firms could be considered as subject persons in their own right. As a consequence, the position of individual professionals who undertake any activity envisaged under paragraphs (a) or (c) of the definition of 'relevant activity' in Regulation 2 of the PMLFTR within such firms was similarly uncertain.
4. In an effort to clarify the position at law and determine whether the term 'legal persons' could be interpreted to also include audit, accountancy and law firms not endowed with legal personality, discussions have been held with the relevant stakeholders, including the Malta Institute of Accountants and the Chamber of Advocates, and guidance has been sought from the European Commission.
5. This interpretative note establishes in a definitive manner the position of professionals and professional firms who undertake any activity envisaged under paragraphs (a) or (c) of the definition of 'relevant activity' in Regulation 2 of the PMLFTR.

Definitions

6. For the purpose of this interpretative note, a 'professional' means any auditor, external accountant or advocate who holds the necessary warrant or practising certificate to exercise his/ her profession.
7. For the purpose of this interpretative note, a 'professional firm' means any civil partnership or any other form of partnership, association or similar arrangement, provided that it is constituted in writing, which is made up of two or more professionals who opt to conduct their profession jointly, even where it is not endowed with legal personality.

By way of clarification, any professionals who share an office but provide their services independently of each other are specifically excluded from the definition of a 'professional firm'.

Interpretation

8. Any professional firm shall be considered as a subject person in its own right when it conducts any of the activities envisaged under paragraphs (a) or (c) of the definition of 'relevant activity' under Regulation 2 of the PMFTR. As a subject person, such a professional firm would thus be bound by all the pertinent AML/CFT obligations.
9. Any professional who is a partner, associate or who is otherwise employed by a professional firm shall not be considered a subject person individually when that professional exercises any of the activities listed under paragraphs (a) or (c) of the definition of 'relevant activity' in Regulation 2 of the PMLFTR for and on behalf of that professional firm or as part of that firm.

In such cases, such a professional shall not be subject to the AML/CFT obligations pertaining to subject persons as the performance of such obligations shall, in line with Regulation 4(4), be the responsibility of the professional firm.

10. Professionals shall be considered as subject persons whenever they exercise any relevant activity defined under paragraphs (a) or (c) of the definition of 'relevant activity' in Regulation 2 of the PMLFTR in their personal capacity. This will apply irrespective of whether the professional is employed by or provides his professional services as part of a professional firm.

Questions or queries

11. Any questions or clarifications in relation to the contents of this Interpretative Note may be addressed to the Compliance Section of the FIAU.

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