

A.L. 199 ta' l-2003**ATT KONTRA MONEY LAUNDERING
(KAP. 373)****Regolamenti ta' l-2003 kontra Money Laundering**

BIS-SAHHA tas-setghat moghtija bl-artikolu 12 ta' l-Att kontra *Money Laundering*, il-Ministru tal-Finanzu u Affarijiet Ekonomiċi ghamel dawn ir-regolamenti li ġejjin:-

1. It-titolu ta' dawn ir-regolamenti hu Regolamenti ta' l-2003 ^{Titolu.} kontra *Money Laundering*.

2. (1) F'dawn ir-regolamenti - ^{Tifsir.}

“applikant għall-kummerċ” tfisser persuna ġuridici jew naturali, kemm jekk ikun qed jaġixxi bhala prinċipal jew aġent, li jkun qed ifittex li jiffirma relazzjoni kummerċjali, jew li jagħmel xi transazzjoni ma' persuna li tkun qed taġixxi fil-kors jew ta' kummerċ finanzjarju rilevanti jew ta' attività rilevanti;

“attività kriminali” għandha l-istess tifsir kif moghti lill-frazi fl-Att kontra *Money Laundering*;

“attività rilevanti” tfisser l-attività ta' dawn il-persuni ġuridici jew naturali li ġejjin meta jkunu qeghdin jeżerċitaw il-professjoni tagħhom;

(a) awdituri, *accountants* esterni u konsulenti dwar it-taxxa;

(b) aġenti tal-proprjetà immobbli;

(ċ) nutara u professjonisti legali indipendenti ohra għar-rigward ta' l-assistenza li jagħtu fl-ippjanar jew l-eżekuzzjoni ta' transazzjonijiet għall-klijenti tagħhom dwar:

i. ix-xiri u l-bejgħ ta' proprjetà immobbli jew entitajiet kummerċjali;

ii. l-amministrazzjoni tal-flus, titoli jew kull attiv ieħor tal-klijenti, kemm-il darba l-attività ma ssirx taħt liċenza mahruġa taħt id-disposizzjonijiet ta' l-Att dwar Servizzi ta' Investment;

iii. il-ftuh jew l-amministrazzjoni ta' kontijiet tal-bank, tiftid jew titoli;

iv. l-organizzazzjoni ta' kontribuzzjonijiet meħtieġa għall-holqien, it-thaddim jew it-tmexxija ta' kumpanniji;

v. il-holqien, it-thaddim jew it-tmexxija ta' *trusts*, kumpanniji jew strutturi bħal dawk;

jew billi jaġixxu f'isem u għall-klijent tagħhom f'xi transazzjoni finanzjarja jew li tirrigwarda proprjetà immobbli:

Iżda meta persuna naturali tkun qed twettaq xi wahda mill-attivitajiet professjonali hawn qabel imsemmija bħala impjegata ta' persuna ġuridika, l-obbligazzjonijiet taħt dawn ir-regolamenti għandhom japplikaw għal dik il-persuna ġuridika;

(d) kumpanniji *nominee* u *nominees* li jkollhom liċenza li jagħmluha ta' attivisti jew *trustees nominee*, awtorizzati taħt l-Att dwar l-Awtorità għas-Servizzi Finanzjarji ta' Malta;

(e) kummerċjanti ta' haġar jew metall prezzjuż, jew xoghlijiet ta' l-arti jew oġġetti bħal dawk u rkantaturi ġaladarba l-hlas isir bi flus kontanti f'ammont daqs Lm5,000 (hamest elef lira Maltija) jew iżjed;

(f) xi attività assoċjata ma' attività taħt il-paragrafi (a) sa (d) hawn qabel;

“awtorità ta' sorveljanza” tfisser -

(a) il-Bank Ċentrali ta' Malta;

(b) l-Awtorità għas-Servizzi Finanzjarji ta' Malta;

(ċ) l-Awtorità Kompetenti nominata taħt l-Att dwar il-Kummerċ Bankarju, l-Att dwar Istituzzjonijiet Finanzjarji, l-Att dwar Servizzi ta' Investment, l-Att dwar l-Impriza ta' l-Assigurazzjoni, jew l-Att dwar *Brokers* fl-Assigurazzjoni u Intermedjari Ohra;

(d) ir-Registratur tas-Socjetajiet li jkun qed jagixxi taht l-artikolu 193 ta' l-Ordinanza dwar Socjetajiet Kummerċjali u taht l-artikoli 403 sa 423 ta' l-Att dwar il-Kumpanniji;

(e) spettur mahtur taht l-artikolu 30 ta' l-Att dwar l-Impriza ta' l-Assigurazzjoni;

(f) persuna mahtura taht l-artikolu 20 jew l-artikolu 22 ta' l-Att dwar il-Kummerċ Bankarju;

(g) persuna mahtura taht l-artikolu 14 jew l-artikolu 15 ta' l-Att dwar Istituzzjonijiet Finanzjarji;

(h) persuna mahtura taht l-artikolu 13 jew l-artikolu 14 ta' l-Att dwar Servizzi ta' Investiment;

(i) l-Awtorità dwar il-Lotteriji u l-Loghob taht l-Att dwar Lotteriji u Loghob Iehor u l-Att dwar il-Loghob, ir-Regolamenti ta' l-1998 dwar l-Att dwar il-Loghob, u r-regolamenti kollha mahruġin taht dawk l-Atti; u

(j) spettur mahtur taht l-artikolu 17 ta' l-Att dwar Lotteriji u Loghob Iehor;

“gürisdizzjoni ta' fama” tfisser kull pajjiż li jkollu miżuri leġislattivi adatti għall-prevenzjoni ta' *money laundering*, fil-qies tas-shubija ta' dak il-pajjiż fi, jew kull dikjarazzjoni jew akkreditament minn, organizzazzjoni internazzjonali rikonoxxuta bhala li tistabbilixxi *standards* li jiġu aċċettati internazzjonalment għall-prevenzjoni ta' *money laundering*;”;

“grupp ta' kumpanniji” għandha l-istess tifsira bħalma hu mogħti lill-frazi “kumpannija minn grupp” fl-Att dwar il-Kumpanniji, b'dan li għall-ghanijiet ta' dawn ir-regolamenti, għandha tinkludi wkoll lil kull korp güridiku iehor li jkun registrat jew li jopera f'gürisdizzjoni ta' fama u li jkun jagħmel parti mill-grupp ta' kumpanniji u li jkollu iktar minn hekk il-liċenza jew ikun xort'ohra awtorizzat taht il-liġijiet ta' dik il-gürisdizzjoni li jiġġestixxi kull attività ekwivalenti jew għal kummerċ finanzjarju rilevanti jew għal attività rilevanti;

“Każ 1” (negozzjati) tfisser kull każ fejn in-negozzjati jsiru bejn il-partijiet bil-ghan li tiġi ffurmata relazzjoni kummerċjali bejnithom;

“Każ 2” (suspetti) tfisser kull każ fejn, ghar-rigward ta’ xi transazzjoni, persuna li tkun qed tittratta t-transazzjoni tkun taf jew ikullha suspett li l-applikant għall-kummerċ ikun, jew jista’ jkun, qed jagħmel *Money Laundering*, jew li t-transazzjoni tkun qegħda ssir għal xi persuna oħra li tkun, jew tista’ tkun qed tagħmel *money laundering*;

“Każ 3” (transazzjoni kbira singola) tfisser kull każ fejn, ghar-rigward ta’ xi transazzjoni, ikun irid isir hlas minn jew lill-applikant għall-kummerċ fl-ammont ta’ Lm 5,000 (hamest elef lira Maltija) jew iżjed;

“Każ 4” (serje ta’ transazzjonijiet) tfisser kull każ fejn, ghar-rigward ta’ żewġ transazzjonijiet jew aktar -

(a) ikun jidher sa mill-bidu lil persuna li tkun qed tittratta xi wahda mit-transazzjonijiet li -

(i) it-transazzjonijiet ikunu qed isiru mill-istess persuna u jkunu ta’ l-istess xorta, u

(ii) l-ammont totali, ghar-rigward tat-transazzjonijiet kollha, li jkun irid jithallas minn jew lill-applikant għall-kummerċ ikun ta’ Lm 5,000 (hamest elef lira) jew aktar; jew

(b) f’xi stadju aktar tard ikun jidher lil dik il-persuna li d-disposizzjonijiet tas-subparagrafi (a) (i) u (ii) hawn qabel ikunu twettqu;

“Korp għall-Analisi ta’ Informazzjoni Finanzjarja” għandha l-istess tifsir kif inhu mogħti lill-frazi fl-Att konra *Money Laundering*;

“kummerċ finanzjarju rilevanti” tfisser -

(a) kull kummerċ bankarju jew kull kummerċ ta’ istituzzjoni monetarja elettronika, ġestit minn xi persuna jew istituzzjoni li f’dak iż-żmien tkun awtorizzata, jew meħtieġa li tkun awtorizzata, taħt id-disposizzjonijiet ta’ l-Att dwar il-Kummerċ Bankarju;

(b) kull attività ġestita minn persuna jew istituzzjoni li f’dak iż-żmien tkun awtorizzata, jew meħtieġa li tkun

awtorizzata, taht id-disposizzjonijiet ta' l-Att dwar l-Istituzzjonijiet Finanzjarji;

(c) impriza ta' assigurazzjoni fuq il-hajja gestita minn persuna jew istituzzjoni li f'dak iż-żmien tkun awtorizzata, jew mehtieġa li tkun awtorizzata, taht id-disposizzjonijiet ta' l-Att dwar l-Impriza ta' l-Assigurazzjoni, jew ta' l-Att dwar *Brokers* fl-Assigurazzjoni u Intermedjari Ohra;

(d) kummerċ ta' investiment gestit minn persuna jew istituzzjoni, li jkollha liċenza jew li tkun mehtieġa li jkollha liċenza, taht id-disposizzjonijiet ta' l-Att dwar *Servizzi ta' Investiment*;

(e) skema ta' investimet kollettiv li jkollha liċenza, jew li tkun mehtieġa li jkollha liċenza, taht id-disposizzjonijiet ta' l-Att dwar *Servizzi ta' Investiment*;

(f) kull attività gestita minn persuna konformement ma' liċenza ta' *stockbroker* valida mahruġa taht id-disposizzjonijiet ta' l-Att dwar *Servizzi ta' Investiment*;

(g) kull attività gestita minn persuna konformement ma' liċenza valida ta' *Borża ta' l-Investment Rikonoxxuta* taht id-disposizzjonijiet ta' l-Att dwar *is-Swieq Finanzjarji*;

(h) kull attività assoċjata ma' kummerċ li jaqa' taht il-paragrafi (a) sa (g) hawn qabel;

“*money laundering*” tfisser l-ghemil ta' xi att li jikkostitwixxi reat taht l-Att kontra *Money Laundering*, jew fil-każ ta' att magħmul xort'ohra milli f'Malta, ikun jikkostitwixxi dak ir-reat li kieku kellu jsir f'Malta;

“*Persuna Indikata*” tfisser persuna ġuridika jew naturali li tkun jew qegħda twettaq kummerċ finanzjarju rilevanti jew attività rilevanti;

“*relazzjoni kummerċjali*” tfisser kull arrangament bejn żewġ persuni jew iżjed, li għall-inqas wiehed minnhom ikun qed jaġixxi fil-kors jew ta' kummerċ finanzjarju rilevanti jew ta' attività rilevanti, meta –

(a) l-iskop jew l-effett ta' l-arrangament ikun li jiffaċilita kors ta' trattativi frekwenti jew tas-soltu bejn il-persuni involuti; u

(b) l-ammont totali ta' xi pagament jew pagamenti li jkun se jsir minn xi persuna lil xi persuna oħra fil-kors ta' dak l-arranġament ma jkunx magħruf jew ma jkunx jista' jiġi aċċertat fiż-żmien li fih isir l-arranġament;

“relazzjoni kummerċjali stabbilita” tfisser relazzjoni kummerċjali iffurmata minn persuna li tkun qed taġixxi fil-kors jew ta' kummerċ finanzjarju rilevanti jew ta' attività rilevanti meta dik il-persuna tkun akkwistat, taħt il-proċeduri minnha adottati skond id-disposizzjonijiet ta' dawn ir-regolamenti, provi sodisfaċenti ta' l-identità tal-persuna li, relattivament għall-formazzjoni ta' dik ir-relazzjoni kummerċjali, kienet l-applikant għall-kummerċ;

“skema ta' investiment kollettiv”, “partecipanti” u “units” għandhom l-istess tifsir kif mogħti lil dawn il-frażijiet rispettivament fl-Att dwar Servizzi ta' Investiment;

“transazzjoni ta' darba biss” tfisser transazzjoni (inkluż il-ftuh ta' kont u faċilità ta' kustodja sigura) li ma tkunx transazzjoni li ssir fit-tweġiq ta' xi relazzjoni kummerċjali stabbilita iffurmata minn persuna li tkun jew qegħda taġixxi filwaqt li tkun qed tagħmel xi kummerċ finanzjarju rilevanti jew filwaqt ta' xi attività rilevanti.

Sistemi u tahrig
kontra *money*
laundering.

3. (1) Ebda Persuna Indikata ma għandha tiffirma relazzjoni kummerċjali jew tagħmel xi transazzjoni ta' darba biss ma' applikant għall-kummerċ kemm-il darba dik il-Persuna Indikata:

(a) ma tadottax dawn il-proċeduri li ġejjin stabbiliti relattivament għal dak il-kummerċ:

(i) proċeduri ta' identifikazzjoni skond id-disposizzjonijiet ta' dawn ir-regolamenti;

(ii) proċeduri ta' żamma ta' *records* skond id-disposizzjonijiet ta' dawn ir-regolamenti; u

(iii) proċeduri ta' rapporti interni skond id-disposizzjonijiet tar-regolament 10;

(b) ma tiehux miżuri adatti minn żmien għal żmien bil-għan li l-impjegati jkunu konxji:

(i) mill-proċeduri taħt id-disposizzjoni tas-subparagrafu (a), u ta' kull *policy* rilevanti oħra adottata minnha; u

(ii) mid-disposizzjonijiet ta' l-Att kontra *Money Laundering* u ta' dawn ir-regolamenti; u

(c) ma tipprovdix lill-impjegati minn żmien għal żmien b'tahriġ fl-għarfien u l-immaniġġar ta' transazzjonijiet magħmula minn, jew f'isem, xi persuna li tkun, jew li tidher li tkun, qed tagħmel *money laundering*.

(2) Persuna Indikata li tikser id-disposizzjonijiet ta' dan ir-regolament tkun hatja ta' reat u tehel, meta tinsab hatja, multa ta' mhux iżjed minn Lm20,000 (għoxrin elf lira Maltija) jew priġunerija għal żmien ta' mhux iżjed minn sentejn, jew dik il-multa u priġunerija flimkien.

(3) Sabiex jiġi stabbilit jekk Persuna Indikat tkunx harset xi wahda mill-htigiet tal-paragrafu (1), il-qorti tista' tqis:

(a) kull linja direttiva jew proċedura rilevanti, mahruġa jew adottata mill-Korp għall-Analisi ta' Informazzjoni Finanzjarja bi ftehim ma' awtorità ta' sorveljanza, li tkun tapplika għal dil-Persuna Indikat; u

(b) fil-każ meta ma tkun tapplika ebda direzzjoni jew proċedura li taqa' taht id-disposizzjonijiet tas-subparagrafu (a), kull linja direttiva ohra mahruġa minn korp li jirregola, jew li jirrappreżenta, xi sengha, professjoni, kummerċ jew impieg ġestit mill-Persuna Indikata.

(4) Fi proċedimenti kontra Persuna Indikata għal reat kontra dan ir-regolament, dik il-persuna tista' tiddefendi ruhha billi turi li tkun hadet il-miżuri raġonevoli kollha u wettqet kull diligenza xierqa sabiex jiġi evitat l-għemil ta' dak ir-reat.

(5) F'dan ir-regolament, il-frazi "impjegati" tfisser impjegati li d-dmirijiet tagħhom jinkludu hidma konnessa jew ma' kummerċ finanzjarju rilevanti jew ma' attività rilevanti.

4. Meta jsir reat kontra d-disposizzjonijiet tar-regolament 3 minn korp jew għaqda ohra ta' persuni, sew jekk dak il-korp jew għaqda jkunu korporati sew jekk le, kull persuna li fiż-żmien tar-reat kienet direttur, *manager*, segretarju jew uffiċjal iehor bħal dak ta' dak il-korp jew għaqda, jew kienet tidher li qed taġixxi f'dik il-kariga, tkun hatja ta' dak ir-reat kemm-il darba ma ġgibx prova li r-reat ikun sar minghajr l-għarfien tagħha u li hija tkun eżerċitat kull diligenza xierqa biex ma thallix ir-reat isir.

Reati minn korpi korporati u għaqdiet mhux korporati.

5. (1) Bla hsara għad-disposizzjonijiet tar-regolamenti 6 u 8, il-proċeduri ta' identifikazzjoni li jsiru minn Persuna Indikata għandhom jitqiesu li jkunu skond id-disposizzjonijiet ta' dan ir-regolament jekk fil-Każijiet 1 sa 4 jkunu jehtieġu, kemm jista' jkun prattikament malajr wara li qabel ikun sar kuntatt bejn dik il-Persuna Indikata u applikant għall-kummerċ dwar xi relazzjoni kummerċjali partikolari jew transazzjoni ta' darba biss –

(a) il-produzzjoni mill-applikant għall-kummerċ ta' prova sodisfaċenti ta' l-identità tiegħu; jew

(b) it-tehid ta' dawk il-miżuri speċifikati fil-proċeduri li jipproduċu dawk il-provi ta' identità u meta dawk il-provi ma jinkisbux, il-proċeduri għandhom jehtieġu li l-kummerċ in kwistjoni ma għandux jimxi 'il quddiem jew għandu jimxi 'il quddiem biss skond kull ordni li tista' tinghata mill-Korp għall-Analisi ta' Informazzjoni Finanzjarja.

Mingħajr ebda preġudizzju għal dak hawn qabel imsemmi, meta li tiddeżisti f'dik il-manjiera jkun impossibbli jew jista' jfixxkel sforzi ta' investigazzjoni ta' suspett ta' xi operazzjoni ta' *money laundering*, dak il-kummerċ għandu jimxi 'il quddiem bil-kondizzjoni li minnufih isir rapport lill-Korp għall-Analisi ta' Informazzjoni Finanzjarja skond ir-regolament 11.

(2) Għall-finijiet ta' dawn ir-regolamenti il-provi ta' identità għandhom jitqiesu li jkunu sodisfaċenti jekk -

(a) il-provi jkunu jistgħu raġonevolment jistabbilixxu li l-applikant ikun il-persuna li huwa jgħid li hu; u

(b) il-persuna li tikseb il-provi tkun sodisfatta, skond il-proċeduri u l-*policies* interni stabbiliti tal-kummerċ in kwistjoni, illi hija tistabbilixxi dak il-fatt.

(3) Sabiex jiġi stabbilit għall-finijiet a' dawn ir-regolamenti x'ikun raġonevolment prattikabbli relattivament għal xi relazzjoni kummerċjali jew transazzjoni ta' darba biss, għandhom jitqiesu ċ-ċirkostanzi kollha inklużi, b'mod partikolari:

(a) ix-xorta tar-relazzjoni kummerċjali jew tat-transazzjoni in kwistjoni hekk li Persuna Indikat tkun tista' tistabbilixxi l-profil kummerċjali ta' l-applikant għall-kummerċ;

(b) jekk ikunx possibbli li jinkisbu provi qabel ma jsiru xi impenji bejn iż-żewġ partijiet jew qabel il-bdil ta' flus; u

(ċ) relattivament għall-Każ 3 (transazzjoni kbira singola) jew għall-Każ 4 (serje ta' transazzjonijiet kbar), l-istadju l-aktar bikri li fih ikun hemm tassew għaliex persuna tissoponi li l-ammont totali li jithallas minn applikant għall-kummerċ ikun ta' Lm 5,000 (hamest elef lira Maltija) jew iżjed.

(4) Meta, wara l-proċeduri ta' identifikazzjoni taht dawn ir-regolamenti, f'relazżjoni kummerċjali stabbilita, ikun hemm dubji jew isiru bidliet fiċ-ċirkostanzi li jkunu jipprevalu f'dik ir-relazzjoni kummerċjali stabbilita, għaldaqstant il-proċess ta' identifikazzjoni għandu jiġi ripetut skond dawn ir-regolamenti.

(5) Persuni Indikati għandhom jeżaminaw b'attenzjoni speċjali kull transazzjoni komplessa jew kbira u kull transazzjoni li x'aktarx ikollhom x'jaqsmu, mix-xorta tagħhom stess, mal-*money laundering*.

6. (1) Meta applikant għall-kummerċ ikun mehtieġ, minbarra dan is-subregolament, taht il-proċeduri ta' identifikazzjoni skond id-disposizzjonijiet tar-regolament 5, iġib provi dwar l-identità tiegħu, imma -

Proceduri ta' identifikazzjoni, hlas, eċċ.

(a) iċ-ċirkostanzi jkunu tali li jkun irid isir hlas mill-applikant għall-kummerċ; u

(b) ikun fiċ-ċirkostanzi kollha raġonevoli -

(i) li l-hlas jintbaghat bil-posta jew b'mezzi elettronici li jkunu effettivi għat-trasferiment ta' fondi; jew

(ii) li d-dettalji tal-hlas jintbagħtu bil-posta, jingħataw bit-telefon jew jingħataw b'xi mezz elettroniku iehor,

bla hsara għad-disposizzjonijiet tas-subregolament (3), il-fatt li l-hlas ikun addebitat minn kont miżmum f'isem l-applikant f'istituzzjoni ta' kreditu fil-kuntest ta' l-artikolu 2(1) ta' l-Att dwar il-Kummerċ Bankarju, ikun biżżejjed biex dan jikkostitwixxi l-prova mehtieġa dwar l-identità.

(2) Għall-finijiet ta' paragrafu 1(b), ikun immaterjali jekk il-hlas jew id-dettalji tiegħu jintbagħtux jew jiġux mogħtija lil Persuna Indikata jew lil xi persuna oħra li taġixxi f'ismu.

(3) Id-disposizzjonijiet tal-paragrafu (1) ma jkollhomx effett sal-limitu li:

(a) Każ 2 (suspett) ikun japplika għaċ-ċirkostanzi tal-hlas; jew

(b) il-hlas isir minn persuna fil-kors ta' ftuh ta' kont ma' istituzzjoni ta' kreditu fil-kuntest ta' l-artikolu 2(1) ta' l-Att dwar il-Kummerċ Bankarju.

Proċeduri ta' identifikazzjoni f'isem haddiehor.

7. (1) Bla hsara għall-eżenzjonijiet li hemm provdut dwarhom fir-regolament 8, id-disposizzjonijiet ta' dan ir-regolament japplikaw għar-rigward ta' Persuna Indikata meta applikant għall kummerċ ikun jew jidher li jkun qed jaġixxi xort'ohra milli bhala prinċipal.

(2) Fil-proċeduri kollha ta' identifikazzjoni adottati minn Persuna Indikata, jitqies li jkun skond dan ir-regolament jekk, f'każ li għalih japplikaw id-disposizzjonijiet tas-subregolament (1) ta' dan ir-regolament:

(a) dawn ikunu jehtieġu miżuri raġonevoli biex tiġi stabbilita l-identità ta' xi persuna li l-applikant għall-kummerċ ikun qed jaġixxi f'isimha b'żieda ma' l-identifikazzjoni ta' l-applikant għall-kummerċ; u

(b) dawn ikunu jehtieġu li, fejn daww il-miżuri ma jkunux jistgħu jittiehdu, ir-relazzjoni kummerċjali jew transazzjoni timxi biss 'il quddiem bil-mod provdut taht ir-regolament 5(1).

(3) Sabiex jiġi stabbilit, għall-finijiet tas-subregolament (2), x'jikkostitwixxi miżuri raġonevoli f'xi każ partikolari, għandha titqies xi tkun l-ahjar Prattika li, f'dak iż-żmien, għandha tkun segwita fil-kamp tal-kummerċ rilevanti u li tkun applikabbli għaċ-ċirkostanzi tal-każ.

(4) Għall-finijiet tas-subregolament (2), ikun raġonevoli għal Persuna Indikata li tikseb minghand l-applikant għall-kummerċ dikjarazzjoni bil-miktub, li magħha jkun hemm prova dokumentarja li ssostni dak li jkun qed jingħad, li fiha huwa jiżvela identifikazzjoni sodisfaċenti tal-prinċipal tiegħu:

Iżda -

(i) meta l-prinċipal ikun korp magħqud, għandha wkoll tiġi żvelata identifikazzjoni tad-diretturi kollha u ta' l-azzjonisti kwalifikanti. Għall-fini ta' dan ir-regolament *shareholding* kwalifikanti tfisser *shareholding* b'10% jew iżjed mill-ishma ta' ekwità tal-prinċipal;

(ii) l-applikant għall-kummerċ ikun awtorizzat kif imiss bil-miktub mill-prinċipal.

(5) (a) Meta l-applikant għall-kummerċ ikun qed jaġixxi f'isem korp magħqud, li jkollu *shareholding* li jinkludi *shareholding* kwalifikanti kif imfisser fis-sub-regolament (4) li jkun miżmum taht arrangament ta' *nominee*, *trustee* jew xi arrangament fiduċjarju iehor, Persuna Indikata ma għandhiex tidhol għal xi kummerċ ma', jew tipprovd i xi servizz lil, dak l-applikant għall-kummerċ kemm-il darba dak l-applikant għall-kummerċ ma jiżvelax l-identità tas-sidien benefiċi i jew tal-benefiċjarji tax-*shareholding* kwalifikanti u jgħib id-dokumentazzjoni ta' identifikazzjoni awtentikat rilevanti. Dawk il-proċeduri ta' żvelar għandhom ikunu wkoll japplikaw fejn ikun hemm tibdiliet fis-sidien benefiċi jew fil-benefiċjarji.

(b) Meta l-applikant għall-kummerċ ikun qieghed jaġixxi bhala azzjonist jew *trustee nominee*, jew taht xi arrangament fiduċjarju iehor, Persuna Indikata ma għandhiex tidhol għal xi kummerċ ma' jew tipprovd i xi servizz lil dak l-applikant għall-kummerċ kemm-il darba dak l-applikant għall-kummerċ ma jiżvelax l-identità tas-sidien benefiċi ta' l-ishma li huwa jkollu jew tal-benefiċjarji tat-*trust* jew tal-prinċipal tiegħu, skond il-każ, u jipproduċi d-dokumentazzjoni ta' identifikazzjoni awtentikata rilevanti. Dawk il-proċeduri ta' żvelar għandhom ukoll japplikaw fejn ikun hemm bidliet fis-sidien benefiċi, fil-benefiċjarji jew tal-prinċipal.

(6) Applikant għall-kummerċ li jagħmel dikjarazzjoni falza għall-finijiet ta' dan ir-regolament ikun hati ta' reat u jehel, meta jinsab hati, multa ta' mhux iżjed minn Lm 20,000 (ghoxrin elf lira Maltija) jew priġunerija għal żmien mhux iżjed minn sentejn jew dik il-multa u priġunerija flimkien.

8. (1) Bla hsara għad-disposizzjonijiet tas-subregolament (2), il-proċeduri ta' identifikazzjoni taht id-disposizzjonijiet ta' dawn ir-regolamenti ma għandhomx jehtiegu li jittiehdu xi miżuri biex jinkisbu provi ta' l-identità ta' xi persuna -

Proċeduri ta' identifikazzjoni, eżenzjonijiet.

(a) meta jkun hemm raġunijiet biżżejjed li juru li l-applikant għall-kummerċ ikun persuna li tkun awtorizzata tiġġestixxi kummerċ finanzjarju rilevanti jew tkun persuna li jkollha liċenza jew tkun xort'ohra awtorizzata taht il-liġijiet ta' ġurisdizzjoni ta' fama li tiġġestixxi kull attività li tkun ekwivalenti għal kummerċ finanzjarju rilevanti;

(b) meta xi transazzjoni tiġi ġestita flimkien ma' terza parti konformement ma' introduzzjoni li ssir minn persuna li għar-rigward tagħha jkun hemm raġunijiet biżżejjed li juru li dik il-persuna tkun awtorizzata tiġġestixxi kummerċ finanzjarju rilevanti jew tkun persuna li jkollha liċenza jew tkun xort'ohra awtorizzata

taht il-ligijiet ta' ġurisdizzjoni ta' fama li tiġġestixxi xi attività li tkun ekwivalenti għal kummerċ finanzjarju rilevanti, u li tipprovdi l-isem tat-terza persuna u tagħti assigurazzjoni li tkun kisbet provi dwar l-identità tat-terza persuna:

Iżda l-Persuna Indikata għandha tiżgura li kull dokumentazzjoni ta' identifikazzjoni ta' sostenn tkun disponibbli jew tista' ssir disponibbli jekk l-awtoritajiet rilevanti hekk jehtieġu;

(ċ) għar-rigward ta' kummerċ ta' assigurazzjoni fuq il-hajja li dwaru jithallas *premium* f'daqqa ta' ammont ta' mhux iżjed minn Lm1,000 (elf lira Maltija);

(d) għar-rigward ta' kummerċ ta' assigurazzjoni fuq il-hajja li dwaru jithallas *premium* preiodiku u meta t-total li jithallas dwar xi sena kalendarja ma jkunx iżjed minn Lm500 (hames mitt lira Maltija); u

(e) għar-rigward ta' poloz ta' assigurazzjoni dwar skemi tal-pensjoni li jsiru bis-saħha ta' kuntratt ta' impieg jew minhabba fix-xogħol li jagħmel l-assigurat:

Iżda dawk il-poloz ma għandu jkun fihom ebda klawżola ta' ċessjoni u ma jistgħux jiġu użati bhala kollaterali għal xi self.

(2) Ebda haġa li tinsab f'dan ir-regolament ma għandha tapplika f'ċirkostanzi li jaqgħu taht Każ 2 (suspett).

Proċeduri ta' zamma ta' *records*.

9. (1) Il-proċeduri ta' zamma ta' *records* mantenuti minn Persuna Indikata għandhom jitqiesu li jkunu skond id-disposizzjonijiet ta' dan ir-regolament jekk ikunu jipprovdu għaż-żamma, għall-perjodu preskritt, ta' dawn ir-*records* li ġejjin:-

(a) għar-rigward ta' xi relazzjoni kummerċjali li tiġi fformata jew ta' transazzjoni ta' darba biss li tiġi ġestita, *record* li jkun jindika ix-xorta tal-prova ta' l-identità ta' persuna miksub taht proċeduri mantenuti skond dawn ir-regolamenti, u li jkun fih kopja tal-provi ta' l-identità u li jkun jipprovdi informazzjoni biżżejjed biex ikunu jistgħu jinkisbu mill-ġdid id-dettalji dwar l-identità ta' persuni li jkunu jinsabu fil-provi rilevanti.

(b) *record* li jkun fih dettalji dwar il-kummerċ kollu li jkun sar minn dik il-persuna filwaqt li tkun għaddejja relazzjoni kummerċjali stabbilita.

(2) Ghall-finijiet tas-subregolament (1), il-perjodu ordnat ghandu jkun il-perjodu ta' mill-inqas hames snin li jibdedew ghaddejin -

(a) relattivament ghal dawk ir- *records* li hemm deskritti fil-paragrafu (a), mid-data li fiha jkun tlesta l-kummerç rilevanti; u

(b) relattivament ghal dawk ir- *records* li hemm deskritti fil-paragrafu (b), mid-data li fiha jkunu tlestew it-trattativi kollha li jkunu ghaddejin filwaqt li tkun qed issir it-transazzjoni in kwistjoni:

Izda ghar-rigward ta' *records* relattivi ghal transazzjoni ta' darba biss jew serje ta' transazzjonijiet ta' darba biss, il-perjodu hawn qabel imsemmi ta' mill-inqas hames snin ghandu jibda ghaddej mid-data tat-tlestija tat-transazzjoni ta' darba biss jew l-ahhar minn serje ta' transazzjonijiet ta' darba biss.

(3) Ghall-finijiet tal-paragrafu 2(a) id-data meta jitlesta l-kummerç rilevanti ghandha, skond il-każ, titqies bhala d-data meta -

(a) f'çirkostanzi li jaqghu taht Każ 1 (negozjati), it-tlestija tar-relazzjoni kummerçjali li ghar-rigward tal-formazzjoni taghha jkun ingabar ir- *record* taht dan ir-regolament,

(b) f'çirkostanzi li jaqghu taht Każ 2 (suspett) jew Każ 3 (transazzjoni kbira singola), l-ghemil tat-transazzjoni ta' darba biss jew l-ahhar minn serje ta' transazzjonijiet ta' darba biss li dwarha jkun ingabar ir- *record* taht dan ir-regolament, u

(c) f'çirkostanzi li jaqghu taht Każ 4 (serje ta' transazzjonijiet), l-ghemil ta' l-ahhar transazzjoni ta' darba biss f'serje ta' transazzjonijiet ta' darba biss li dwarha jkun ingabar ir- *record* taht dan ir-regolament,

u meta l-formalitajiet mehtieġa biex titlesta relazzjoni kummerçjali ma jkunux ġew osservati, imma jkun skada żmien ta' hames snin mid-data meta tkun saret l-ahhar transazzjoni filwaqt ta' dik ir-relazzjoni, ghaldaqstant id-data ta' dik it-transazzjoni ghandha tiġi ttrattata bhala d-data meta jkun tlesta l-kummerç rilevanti.

10. (1) Il-proċeduri ta' rapporti interni mantenuti minn Persuna Indikata ghandhom jitqiesu li jkunu skond id-disposizzjonijiet ta' dan ir-regolament jekk dawn ikunu jipprovdu dwar -

Proċeduri ta' rapporti interni.

(a) uffiċjal li jirrapporta li jkun impjegat minn Persuna Indikata li għandu jsirilha rapport ta' kull informazzjoni jew haġ'ohra li twassal għall-gharfien jew suspett li xi persuna ohra tkun qeghda taghmel *money laundering*;

(b) il-konsiderazzjoni ta' dak ir-rapport mill-uffiċjal li jirrapporta jew minn xi impjegat mahtur għaldaqstant iehor tal-Persuna Indikata, skond kull informazzjoni rilevanti ohra, bil-għan li jiġi stabbilit jekk l-informazzjoni jew haġ'ohra li tkun tinsab fir-rapport tkunx twassal jew le għal gharfien jew suspett li persuna ohra tkun qed taghmel *money laundering*;

(ċ) l-aċċess raġonevoli li uffiċjal li jirrapporta jew impjegat mahtur għaldaqstant iehor ikollu għal informazzjoni li tkun għand il-Persuna Indikata u li din tista' tkun ta' ghajjnuna għall-finijiet ta' konsiderazzjoni tar-rapport; u

(d) il-proċedura li biha kull gharfien jew suspett li persuna ohra tkun qed taghmel *money laundering* kif stabbilit mill-uffiċjal li jirrapporta jew minn xi impjegat mahtur għaldaqstant iehor jiġi rrapportat skond ir-regolament 11.

(2) Uffiċjal li jirrapporta jew impjegat mahtur għaldaqstant iehor tal-Persuna Indikat jista' jiżvela informazzjoni li jkun kiseb fil-kors ta' proċeduri ta' rapporti interni taht dawn ir-regolamenti lill-uffiċjal li jirrapporta jew lil impjegat mahtur għaldaqstant iehor ta' Persuna Indikata ohra jew Persuni Indikati ohrajn li jkunu jagħmlu parti mill-istess grupp ta' kumpanniji tal-Persuna Indikata ta' qabel.

(3) Għandha awtorità ta' sorveljanza tadotta proċeduri ta' rapporti interni skond id-disposizzjonijiet tal-paragrafu (1). Jekk awtorità ta' sorveljanza tonqos milli tadotta dawn il-proċeduri skond id-disposizzjonijiet ta' dan ir-regolament, dan ma jkunx jikkostitwixxi reat imma jistgħu jittiehdu proċeduri dixxiplinari kontra l-uffiċjali jew l-impjegati involuti.

(4) Kull uffiċjal jew impjegat ta' Persuna Indikata jew awtorità ta' sorveljanza li jiżvela lill-persuna involuta jew lil xi terza parti li ma jkunx l-uffiċjal li jirrapporta jew impjegat mahtur għaldaqstant iehor kif hemm imsemmi fis-subregolament (2) li tkun qed issir investigazzjoni konformement mad-disposizzjonijiet ta' dan ir-regolament, jew li tkun għet mghoddija informazzjoni lill-Korp għall-Analisi ta' Informazzjoni Finanzjarja konformement ma' dan ir-regolament jew mar-regolament 11, ikun hati ta' reat u jista', meta jinsab hati, jehel multa ta' mhux iżjed minn Lm20,000 (ghoxrin elf lira Maltija)

jew prigunerija ghal żmien ta' mhux iżjed minn sentejn jew dik il-multa u prigunerija flimkien.

11. (1) Meta awtorità ta' sorveljanza, sew filwaqt li tkun ghaddejja bil-hidma tagħha ta' sorveljanza sew b'xi mod iehor li jkun, jew Persuna Indikata –

Rapportagġ ta' evidenza ta' *money laundering*.

(a) tikseb xi informazzjoni, u

(b) tkun tal-fehma li dik l-informazzjoni tkun tindika li xi persuna jkollha jew setgħet kienet qeghda tagħmel *money laundering*, dik l-awtorità ta' sorveljanza jew Persuna Indikata għandha, kemm jista' jkun raġonevolment prattikabbli malajr, tiżvela dik l-informazzjoni, bis-sostenn tad-dokumentazzjoni ta' identifikazzjoni rilevanti, lill-Korp għall-Analisi ta' Informazzjoni Finanzjarja.

(2) Persuni Identifikati li jkunu għaddejin b'attività rilevanti taht il-paragrafu (a) jew il-paragrafu (ċ) tat-tifsira ta' "attività rilevanti" ma għandhomx ikunu marbuta bid-disposizzjonijiet tas-subregolament (1) jekk dik l-informazzjoni tiġi riċevuta jew miksuba filwaqt li tkun qeghda tiġi aċċertata l-pożizzjoni legali għall-klijent tagħhom jew ikunu qeghdin jaqdu r-responsabbiltà tagħhom li jiddefendu jew jirrapprezentaw lil dak il-klijent fi proċeduri ġudizzjarji, jew f'dak li jirrigwardhom, inklużi pariri fuq l-għemil jew l-evitar ta' proċeduri, kemm jekk dik l-informazzjoni tiġi riċevuta jew miksuba qabel, matul jew wara dawk il-proċeduri.

12. Kull informazzjoni mikxufa taht dawn ir-regolamenti għandha tintuża biss f'dak li għandu x'jaqsam ma' investigazzjonijiet dwar attivitajiet ta' *money laundering*.

Użu ta' informazzjoni żvelata.

13. Komunikazzjoni jew żvelar bonafidi li jsiru minn awtorità ta' sorveljanza jew minn Persuna Indikata jew minn impjegat jew direttur ta' awtorità ta' sorveljanza jew Persuna Indikata bħal dik skond dawn ir-regolamenti ma għandhomx jiġu ttrattati bħala ksur tad-dmir ta' segretezza professjonali jew ta' xi restrizzjoni oħra (sew jekk imposta b'xi statut jew xort'oħra) dwar l-iżvelar ta' informazzjoni u ma għandhiex tkun tinvolvi lil dik l-awtorità ta' sorveljanza jew Persuna Indikata jew lid-diretturi jew l-impjegati ta' dik l-awtorità ta' sorveljanza jew Persuna Indikata f'xi responsabbiltà ta' liema xorta tkun.

Eżoneru mid-dmir ta' segretezza professjonali.

14. Il-Korp għall-Analisi ta' Informazzjoni Finanzjarja, bi ftehim ma' l-awtorità ta' sorveljanza rilevanti, tista' tirregola l-proċeduri skond ma jista' jkun meħtieġ biex id-disposizzjonijiet ta' dawn ir-regolamenti jingiebu fis-seħh. Dawk il-proċeduri għandhom jorbtu lil persuni li jkunu

Regolament ta' proċeduri.

qeghdin jaghmlu xi kummerç finanzjarju rilevanti jew xi attività rilevanti.

Disposizzjonijiet
transitorji.

15. Ebda haġa li tinsab f'dawn ir-regolamenti ma ghandha tehtieg li persuna li tkun qeghda taghmel xi attività rilevanti ghandha taghmel proċeduri skond dawn ir-regolamenti li jkunu jehtiegu li jinkisbu provi, relattivament ghal xi relazzjoni kummerċjali ffurmata minnha qabel id-data meta jibdew isehhu dawn ir-regolamenti, dwar l-identità tal-persuna li magħha tkun giet iffurmata dik ir-relazzjoni, u kull relazzjoni bhal dik ghandha tiġi trattata bhallikieku kienet relazzjoni kummerċjali stabbilita:

Iżda meta jkun hemm xi dubju jew ikunu saru tibdiliet fiċ-ċirkostanzi li jinkwadraw fihom ir-relazzjoni kummerċjali stabbilita, il-proċess ta' identifikazzjoni ghandu jsir skond dawn ir-regolamenti.

Ihassar l-A.L. 195
ta' l-1994.

16. Ir-Regolamenti ta' l-1994 kontra *Money Laundering*, huma b'dawn imhassra.

L.N. 199 of 2003

**PREVENTION OF MONEY LAUNDERING ACT
(CAP. 373)**

Prevention of Money Laundering Regulations, 2003

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

1. The title of these regulations is the Prevention of Money Laundering Regulations, 2003. Citation.

2. In these regulations – Interpretation.

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

“business relationship” means any arrangement between two or more persons, at least one of which is acting in the course of either relevant financial business or relevant activity, where-

(a) the purpose or effect of the arrangement is to facilitate a frequent or habitual course of dealings between the persons concerned; and

(b) the total amount of any payment or payments to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made;

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

“Case 2” (suspicions) means any case where, in respect of any transaction, any person handling the transaction knows or suspects that the applicant for business is, or may be, engaged in

money laundering, or that the transaction is carried out on behalf of another person who is, or may be, engaged in money laundering;

“Case 3” (single large transaction) means any case where, in respect of any transaction, payment is to be made by or to the applicant for business of the amount of Lm5,000 (five thousand Maltese liri) or more;

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

(a) it appears at the outset to a person dealing with any of the transactions that –

(i) the transactions are carried out by the same person and are of a similar character, and

(ii) the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is Lm5,000 (five thousand Maltese liri) or more; or

(b) at any later stage it appears to such a person that the provisions of sub-paragraphs (a) (i) and (ii) above are satisfied;

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

“criminal activity” has the same meaning as is assigned to the term in the Prevention of Money Laundering Act;

“established business relationship” means a business relationship formed by a person acting in the course of either relevant financial business or relevant activity where that person has obtained, under procedures maintained by him in accordance with the provisions of these regulations, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business;

“Financial Intelligence Analysis Unit” has the same meaning as is assigned to the term in the Prevention of Money Laundering Act;

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

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

“one-off transaction” means any transaction (including the opening of an account and a safe custody facility) other than a transaction carried out in the exercise of an established business relationship formed by a person acting either in the course of relevant financial business or in the course of relevant activity;

“relevant financial business” means-

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

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

(c) life assurance business carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Insurance Business Act or the Insurance Brokers and Other Intermediaries Act;

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

(e) a collective investment scheme licensed, or required to be licensed, under the provisions of the Investment Services Act;

(f) any activity carried on by a person pursuant to a valid stockbroker's licence issued under the provisions of the Investment Services Act;

(g) any activity carried on by a person pursuant to a valid licence of a Recognised Investment Exchange issued under the provisions of the Financial Markets Act;

(h) any activity which is associated with a business falling within paragraphs (a) to (g) above;

“relevant activity” means the activity of the following legal or natural persons when acting in the exercise of their profession:

(a) auditors, external accountants and tax advisors;

(b) real estate agents;

(c) notaries and other independent legal professionals in relation to assisting in the planning or execution of transactions for their clients concerning the:

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

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

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

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

(v) creation, operation or management of trusts, companies or similar structures;

or by acting on behalf of and for their client in any financial or real estate transaction:

Provided that where a natural person undertakes any of the above professional activities as an employee of a legal person, the obligations under these regulations shall apply to that legal person;

(d) nominee companies and licensed nominees acting as nominee shareholders or trustees, authorised under the Malta Financial Services Authority Act;

(e) dealers in precious stones or metals, or works of art or similar goods and auctioneers whenever payment is made in cash in an amount equal to Lm5,000 (five thousand Maltese liri) or more;

(f) any activity which is associated with an activity falling within paragraphs (a) to (e) above;

“reputable jurisdiction” means any country having appropriate legislative measures for the prevention of money laundering, taking into account that country’s membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering;

“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;

(c) the Competent Authority nominated under the Banking Act, the Financial Institutions Act, the Investment Services Act, the Insurance Business Act, or the Insurance Brokers and Other Intermediaries Act;

(d) the Registrar of Companies acting under article 193 of the Commercial Partnerships Ordinance and under articles 403 to 423 of the Companies Act;

(e) an inspector appointed under article 30 of the Insurance Business Act;

(f) a person appointed under article 20 or article 22 of the Banking Act;

(g) a person appointed under article 14 or article 15 of the Financial Institutions Act;

(h) a person appointed under article 13 or article 14 of the Investment Services Act;

(i) the Lotteries and Gaming Authority acting under the Lotteries and Other Games Act and the Gaming Act, the Gaming Act Regulations, 1998 and any regulations issued thereunder; and

(j) an inspector appointed under article 17 of the Lotteries and Other Games Act.

Systems and training to prevent money laundering.

3. (1) No Subject Person shall form a business relationship or carry out any one-off transaction with an applicant for business unless that Subject Person:

(a) maintains the following procedures established in relation to that business:

(i) identification procedures in accordance with the provisions of these regulations;

(ii) record-keeping procedures in accordance with the provisions of these regulations; and

(iii) internal reporting procedures in accordance with the provisions of regulation 10;

(b) takes appropriate measures from time to time for the purposes of making employees aware of:

(i) the procedures under the provision of sub-paragraph (a), and any other relevant policies that are maintained by him; and

(ii) the provisions of the Prevention of Money Laundering Act, and of these regulations; and

(c) provides employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering.

(2) Any Subject Person who contravenes the provisions of this regulation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding Lm20,000 (twenty thousand

Maltese liri) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(3) In determining whether a Subject Person has complied with any of the requirements of paragraph (1), a court shall consider:

(a) any relevant guidance or procedures issued, approved or adopted by the Financial Intelligence Analysis Unit with the concurrence of a supervisory authority, which applies to that Subject Person; and

(b) in a case where no guidance or procedures falling within the provisions of sub-paragraph (a) apply, any other relevant guidance issued by a body which regulates, or is representative of, any trade, profession, business or employment carried on by that Subject Person.

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

(5) In this regulation, the term “employees” means employees whose duties include the handling of either relevant financial business or relevant activity.

4. Where an offence against the provisions of regulation 3 is committed by a body or other association of persons, be it corporate or unincorporate, every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Offences by bodies corporate and unincorporated associations.

5. (1) Subject to the provisions of regulations 6 and 8, identification procedures maintained by a Subject Person shall be deemed to be in accordance with the provisions of this regulation if in Cases 1 to 4 they require, as soon as it is reasonably practicable after contact is first made between that Subject Person and an applicant for business concerning any particular business relationship or one-off transaction-

Identification procedures; business relationships and transactions.

(a) the production by the applicant for business of satisfactory evidence of his identity; or

(b) the taking of such measures specified in the procedures as will produce such evidence of identity and where that evidence is not obtained, the procedures shall require that the business in question shall not proceed or shall proceed only in accordance with any direction made by the Financial Intelligence Analysis Unit.

Without prejudice to the above, where to refrain in such manner is impossible or is likely to frustrate efforts of investigating a suspected money laundering operation that business shall proceed on condition that a report is immediately lodged with the Financial Intelligence Analysis Unit in accordance with regulation 11.

(2) For the purposes of these regulations, evidence of identity shall be deemed to be satisfactory if –

(a) it is reasonably capable of establishing that the applicant is the person he claims to be; and

(b) the person who obtains the evidence is satisfied, in accordance with the established internal procedures and policies of the business concerned, that it does establish that fact.

(3) In determining for the purposes of these regulations what is reasonably practicable in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including, in particular:

(a) the nature of the business relationship or transaction concerned such that a Subject Person is able to establish the business profile of the applicant for business;

(b) whether it is possible to obtain the evidence before commitments are entered into between the parties or before money is exchanged; and

(c) in relation to Case 3 (single large transaction) or Case 4 (series of transactions), the earliest stage at which there are reasonable grounds for presuming that the total amount payable by an applicant for business is Lm5,000 (five thousand Maltese liri) or more.

(4) Where, following the identification procedures under these regulations, in an established business relationship doubts have arisen or changes have occurred in the circumstances surrounding that

established business relationship, then the identification process shall be repeated in accordance with these regulations.

(5) Subject Persons shall examine with special attention any complex or large transactions and any transactions which are particularly likely, by their very nature, to be related to money laundering.

6. (1) Where an applicant for business would, apart from this sub-regulation, be required under identification procedures in accordance with the provisions of regulation 5, to produce evidence of his identity, but-

Identification procedures: payment by post, etc.

(a) the circumstances are such that a payment is to be made by the applicant for business; and

(b) it is reasonable in all the circumstances -

(i) for the payment to be sent by post or by any electronic means which is effective to transfer funds; or

(ii) for the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means;

subject to the provisions of paragraph (3), the fact that the payment is debited from an account held in the applicant's name at a credit institution within the meaning of article 2(1) of the Banking Act, shall be capable of constituting the required evidence of identity.

(2) For the purposes of paragraph 1(b), it shall be immaterial whether the payment or its details are sent or given to a Subject Person or to some other person acting on his behalf.

(3) The provisions of subregulation (1) shall not have effect to the extent that:

(a) Case 2 (suspicion) applies to the circumstances of the payment; or

(b) the payment is made by any person in the course of opening an account with a credit institution within the meaning of article 2(1) of the Banking Act.

Identification
procedures:
transactions on
behalf
of another.

7. (1) Subject to the exemptions provided in regulation 8, the provisions of this regulation apply in relation to a Subject Person where an applicant for business is or appears to be acting otherwise than as principal.

(2) In all identification procedures maintained by a Subject Person it shall be deemed to be in accordance with this regulation if, in a case to which the provisions of subregulation (1) of this regulation apply:

(a) they require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting in addition to identification of the applicant for business; and

(b) they require that, where such measures cannot be taken, the business relationship or one-off transaction shall only proceed as provided for under regulation 5(1).

(3) In determining, for the purposes of subregulation (2), what constitutes reasonable measures in any particular case, regard shall be had to best practice which, for the time being, is followed in the relevant field of business and is applicable to the circumstances of the case.

(4) For the purposes of subregulation (2), it shall be reasonable for a Subject Person to obtain from the applicant for business a written declaration, accompanied by the relevant supporting documentary evidence, in which he discloses satisfactory identification of his principal:

Provided that-

(i) where the principal is a body corporate, satisfactory identification shall also be disclosed of all directors and of all qualifying shareholders. For the purpose of this regulation a qualifying shareholding means a shareholding of 10% or more of the equity shares of the principal;

(ii) the applicant for business is duly authorised in writing by the principal.

(5) (a) Where the applicant for business is acting on behalf of a body corporate, the shareholding of which includes a qualifying shareholding as defined in subregulation (4) held under a nominee, trustee or other fiduciary arrangement, a Subject Person shall not

undertake any business with or provide any service to such applicant for business unless that applicant for business discloses the identity of the beneficial owners or beneficiaries of the qualifying shareholding and produces the relevant authenticated identification documentation. Such disclosure procedures shall also apply where there are changes in beneficial ownership or beneficiaries.

(b) Where the applicant for business is acting as a nominee shareholder, trustee or under any other fiduciary arrangement, a Subject Person shall not undertake any business with or provide any service to such applicant for business unless that applicant for business discloses the identity of the beneficial owners of the shares held by him or of the trust beneficiaries or of his principal, as the case may be, and produces the relevant authenticated identification documentation. Such disclosure procedures shall also apply where there are changes in beneficial ownership, beneficiaries or principal.

(6) An applicant for business who makes a false declaration for the purposes of this regulation shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding Lm20,000 (twenty thousand Maltese liri) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

8. (1) Subject to the provisions of subregulation (2), identification procedures under the provisions of these regulations shall not require any steps to be taken to obtain evidence of any person's identity-

Identification procedures, exemptions.

(a) where there are reasonable grounds for believing that the applicant for business is a person who is authorised to undertake relevant financial business or is a person who is licensed or otherwise authorised under the laws of a reputable jurisdiction to carry out any activity which is equivalent to relevant financial business;

(b) where any transaction is carried out with a third party pursuant to an introduction effected by a person in respect of whom there are reasonable grounds for believing that that person is authorised to undertake relevant financial business or is a person who is licensed or otherwise authorised under the laws of a reputable jurisdiction to carry out any activity which is equivalent to relevant financial business, and who provides the name of the third party and gives an assurance that he has obtained evidence as to the identity of the third party:

Provided that the Subject Person shall ensure that supporting identification documentation is available or may be made available if required by the relevant authorities.

(c) in relation to life insurance business in respect of which a premium is payable in one instalment of an amount not exceeding Lm1,000 (one thousand Maltese liri);

(d) in relation to life insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed Lm500 (five hundred Maltese liri); and

(e) in relation to insurance policies in respect of pension schemes taken out by virtue of a contract of employment or the insured's occupation:

Provided that such policies contain no surrender clause and may not be used as collateral for a loan.

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

Record-keeping
procedures.

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

(a) in relation to any business relationship that is formed or a one-off transaction that is carried out, a record indicating the nature of the evidence of a person's identity obtained under procedures maintained in accordance with these regulations, comprising a copy of the evidence of identity and providing sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained.

(b) a record containing details relating to all transactions carried out by that person in the course of an established business relationship.

(2) For the purposes of subregulation (1), the prescribed period shall be the period of at least five years commencing with-

(a) in relation to such records as are described in paragraph (a), the date on which the relevant financial business was completed; and

(b) in relation to such records as are described in paragraph (b), the date on which all dealings taking place in the course of the transaction in question were completed:

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

(3) For the purposes of paragraph 2(a) the date on which relevant business is completed shall, as the case may be, be deemed to be the date of-

(a) in circumstances falling within Case 1 (negotiations), the ending of the business relationship in respect of whose formation the record under this regulation was compiled,

(b) in circumstances falling within Case 2 (suspicion) or Case 3 (single large transaction), the carrying out of the one-off transaction or the last of a series of one-off transactions in respect of which the record under this regulation was compiled, and

(c) in circumstances falling within Case 4 (series of transactions), the carrying out of the last one-off transaction in a series of one-off transactions in respect of which the record under this regulation was compiled,

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

10. (1) Internal reporting procedures maintained by a Subject Person, shall be deemed to be in accordance with the provisions of this regulation if they provide for-

Internal reporting procedures.

(a) a reporting officer employed by the Subject Person to whom a report is to be made of any information or other matter which gives rise to a knowledge or suspicion that another person is engaged in money laundering;

(b) consideration of such report by the reporting officer or by another designated employee of the Subject Person, in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the

report does give rise to a knowledge or suspicion that another person is engaged in money laundering;

(c) reasonable access for the reporting officer or other designated employee to any information held by the Subject Person which may be of assistance for the purposes of considering the report; and

(d) a procedure whereby any knowledge or suspicion that another person is engaged in money laundering determined by the reporting officer or other designated employee is reported in accordance with regulation 11.

(2) It shall be lawful for the reporting officer or other designated employee of the Subject Person to disclose information obtained in the course of internal reporting procedures under these regulations to the reporting officer or other designated employee of another Subject Person or Persons forming part of the same group of companies of the former Subject Person.

(3) A supervisory authority shall maintain internal reporting procedures in accordance with the provisions of paragraph (1). The failure of a supervisory authority to maintain such procedures in accordance with the provisions of this regulation shall not constitute an offence but may be the subject of disciplinary proceedings against the officials or employees concerned.

(4) Any official or employee of a Subject Person or a supervisory authority who discloses to the person concerned or to a third party not being the reporting officer or other designated employee as referred to in subregulation (2) that an investigation is being carried out pursuant to the provisions of this regulation, or that information has been transmitted to the Financial Intelligence Analysis Unit pursuant to this regulation or regulation 11, shall be guilty of an offence and liable on conviction to a fine (*multa*) not exceeding Lm20,000 (twenty thousand Maltese liri) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Reporting of
evidence
of money
laundering.

11. (1) Where a supervisory authority, either in the course of its supervisory work or in any other way, or a Subject Person -

(a) obtains any information, and

(b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering that supervisory authority or Subject Person shall, as soon as is

reasonably practicable, disclose that information, supported by the relevant identification documentation, to the Financial Intelligence Analysis Unit.

(2) Subject Persons carrying out a relevant activity under paragraph (a) or paragraph (c) of the definition of “relevant activity” shall not be bound by the provisions of subregulation (1) if such information is received or obtained in the course of ascertaining the legal position for their client or performing their responsibility of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

12. Any information disclosed under these regulations shall be used only in connection with investigations of money laundering activities.

Use of disclosed information.

13. 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.

Exoneration from the duty of professional secrecy.

14. The Financial Intelligence Analysis Unit, with the concurrence of the relevant supervisory authority, may issue procedures as may be required for the carrying into effect of the provisions of these regulations. Such procedures shall be binding on persons carrying out relevant financial business or relevant activity.

Power to issue Procedures.

15. Nothing in these regulations contained shall require a person who is carrying out a relevant activity to maintain procedures in accordance with these regulations which require evidence to be obtained, in respect of any business relationship formed by him before the date on which these regulations come into force, as to the identity of the person with whom that relationship has been formed, and any such relationship shall be treated as if it were an established business relationship:

Transitory provisions.

Provided that where a doubt has arisen or changes have occurred in the circumstances surrounding the established business relationship

the identification process shall be carried out in accordance with these regulations.

Repeal of L.N.
195 of 1994.

16. The Prevention of Money Laundering Regulations, 1994 are hereby repealed.