

SUBSIDIARY LEGISLATION 373.01

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

*Amended by:
L.N. 42 of 2006.*

12th August, 2003

LEGAL NOTICE 199 of 2003, as amended by Legal Notice 42 of 2006.

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

Title.
*Amended by:
L.N. 42 of 2006.*

2. In these regulations -

Interpretation.
*Amended by:
L.N. 42 of 2006.*

"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" (suspicion) 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 the funding of terrorism, or that the transaction is carried out on behalf of another person who is, or may be, engaged in money laundering or the funding of terrorism;

"Case 3" (single large transaction) means any case where, in respect of any transaction, payment is to be made by or to the applicant for business of the amount of five thousand Maltese liri (Lm 5,000) or more;

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

- (a) it appears at the outset to a person dealing with any of the transactions that -
 - (i) the transactions are carried out by the same person and are of a similar character, and
 - (ii) the total amount, in respect of all of the transactions, which is payable by or to the

applicant for business is five thousand Maltese liri (Lm 5,000) or more; or

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

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

Cap. 370. "collective investment scheme", "participants" 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 it in the Companies Act;

Cap. 373. "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;

Cap. 373. "Financial Intelligence Analysis Unit" has the same meaning as is assigned to the term in the Prevention of Money Laundering Act;

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

Cap. 386. "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;

Cap. 373. "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;

"politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and shall include their immediate family members or persons known to be close associates of such persons, but shall not include middle ranking or more junior officials;

"relevant financial business" means -

- (a) any business of banking or any business of an electronic money institution, carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Banking Act; Cap. 371.
- (b) any activity carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Financial Institutions Act; Cap. 376.
- (c) 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; Cap. 403.
Cap. 404.
- (d) investment business carried on by a person or institution licensed, or required to be licensed, under the provisions of the Investment Services Act; Cap. 370.
- (e) a collective investment scheme licensed, or required to be licensed, under the provisions of the Investment Services Act; Cap. 370.
- (f) any activity carried on by a person pursuant to a valid stockbroker's licence issued under the provisions of the Investment Services Act; Cap. 370.
- (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; Cap. 345.
- (h) any activity which is associated with a business falling within paragraphs (a) to (g);

"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; 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 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;

- Cap. 330. (d) nominee companies and licensed nominees acting as nominee shareholders authorised under the Malta Financial Services Authority Act;
- Cap. 331. (e) any person providing trustee or any other fiduciary service, whether authorised or otherwise, in terms of the Trusts and Trustees Act;
- (f) casino licensee;
- (g) 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 five thousand Maltese liri (Lm 5,000) or more;
- (h) any activity which is associated with an activity falling within paragraphs (a) to (g);
- "reputable jurisdiction" means any country having appropriate legislative measures for the prevention of money laundering and for combating the funding of terrorism, taking into account that country's membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism;
- "subject person" means any legal or natural person carrying out either relevant financial business or relevant activity;
- "supervisory authority" means -
- Cap. 371.
Cap. 376.
Cap. 370.
Cap. 403.
Cap. 404. (a) the Central Bank of Malta;
- (b) the Malta Financial Services Authority;
- Cap. 168.
Cap. 386. (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;
- Cap. 403. (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;
- Cap. 371. (f) a person appointed under article 20 or article 22 of the Banking Act;
- Cap. 376. (g) a person appointed under article 14 or article 15 of the Financial Institutions Act;
- Cap. 370. (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, and any regulations issued thereunder; Cap. 438.
Cap. 400.
- (j) an inspector appointed under article 17 of the Lotteries and Other Games Act; Cap. 438.
- (k) the Comptroller of Customs when carrying out duties under any regulations that may be issued from time to time in terms of article 7 of the External Transactions Act; Cap. 233.

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

Cap. 9.

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:

Systems and training to prevent money laundering and the funding of terrorism.
Amended by:
L.N. 42 of 2006.

- (a) maintains the following procedures established in relation to that business:
 - (i) customer due diligence, including 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) applies the procedures established under paragraph (a) when entering into or undertaking non face-to-face relationships or transactions;
- (c) takes appropriate measures from time to time for the purposes of making employees aware of:
 - (i) the procedures under the provision of paragraph (a), and any other relevant policies that are maintained by him; and
 - (ii) the provisions of the Prevention of Money Laundering Act; of the Sub-Title Of Acts of Terrorism, Funding of Terrorism and Ancillary Offences of Title IVA of Part II of Book First of the Criminal Code; and of these regulations; and Cap. 373.
- (d) 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 or the funding of terrorism. Cap. 9.

(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 twenty thousand Maltese liri (Lm 20,000) 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 subregulation (1), a court shall consider:

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

(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.

Offences by bodies corporate and unincorporated associations.
Amended by:
L.N. 42 of 2006.

4. (1) 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.

(2) Without prejudice to subregulation (1), where the offence is committed by a body or other association of persons, be it corporate or unincorporated, such body or association shall be liable to an administrative penalty of not less than Lm500 (five hundred Maltese liri) and not more than Lm2,000 (two thousand Maltese liri).

(3) Administrative penalties under subregulation (2) shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance provided that in the latter case the accumulated penalty shall not exceed Lm20,000 (twenty thousand Maltese liri).

Identification procedures; business relationships and transactions.
Amended by:
L.N. 42 of 2006.

5. (1) Subject persons shall not keep anonymous accounts or accounts in fictitious names such that the true beneficial owner is not known.

(2) Subject to the provisions of regulations 6 and 8, customer due diligence, including 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 the subject person and the applicant for business concerning any particular business relationship or one-off transaction -

- (a) the production by the applicant for business of satisfactory evidence of his identity and the

verification of such 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, or where the subject person knows or suspects that the transaction may be related to money laundering or the funding of terrorism, 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 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 11.

(3) 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.

(4) 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 five thousand Maltese liri (Lm 5,000) or more.

(5) Where, following the customer due diligence, including 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 customer due diligence, including identification process, shall be repeated in accordance with these regulations.

(6) Subject persons shall examine with special attention, and to the extent possible, the background and purpose of any complex or

large transactions and any transactions which are particularly likely, by their nature, to be related to money laundering or the funding of terrorism.

(7) Subject persons shall pay special attention to business relationships and transactions with persons, companies and undertakings, including those carrying out relevant financial business or a relevant activity, from a non-reputable jurisdiction, and, where the provisions of subregulation (6) apply to such transactions, subject persons shall proceed accordingly.

(8) In addition to complying with the other provisions of this regulation, a casino licensee shall:

Cap. 400.

- (a) not allow any person to enter the casino unless such person has been satisfactorily identified pursuant to the provisions of article 25 of the Gaming Act;
- (b) identify, by the production of an identification document, in accordance with the provisions of subregulation (9), any person who, whilst in the casino exchanges cash, a cheque or bank draft, whether such is drawn on a local or a foreign credit institution, or who otherwise makes a credit or a debit card payment in exchange for chips or tokens in excess of Lm2,000 (two thousand Maltese liri) for use in the casino;
- (c) identify, by the production of an identification document, in accordance with the provisions of subregulation (9), any person who, whilst in the casino exchanges cash, exchanges chips or tokens after playing a game or games, the value of which exceeds Lm2,000 (two thousand Maltese liri);
- (d) ensure that the particulars relating to the identity of a person exchanging chips or tokens the value of which exceeds Lm 2,000 (two thousand Maltese liri) is matched with, and cross referred to, the particulars relating to the identity of the person exchanging cash, cheques or bank drafts, or making a credit or debit card payment in exchange for those chips or tokens, and shall further ensure that chips or tokens are derived from winnings made whilst playing a game or games at the casino; and
- (e) ensure that the provisions of paragraphs (b) to (d) are also applied in cases where in any one gaming session a person carries out transactions which are individually for an amount of less than Lm2,000 (two thousand Maltese liri) but which in aggregate exceed such amount.

(9) Notwithstanding the provisions of subregulation (8) and without prejudice to the provisions of regulation 11, the casino licensee shall further record the particulars relating to the identity of a person playing a game or games in the casino where the casino licensee or any casino employee has any knowledge or suspicion that such person is, or may be, engaging in money laundering or the

funding of terrorism.

5A. (1) In addition and without prejudice to the customer due diligence, including identification procedures required by these regulations, in establishing cross-border correspondent banking and other similar relationships, subject persons carrying out relevant financial business shall ensure that they fully understand and document the nature of the business activities of their correspondent institution, including the adequacy and effectiveness of their internal controls for the prevention of money laundering and the funding of terrorism.

Correspondent banking, branches and subsidiaries.
Added by:
L.N. 42 of 2006.

(2) The procedures for the establishment of correspondent relationships in accordance with subregulation (1) shall require the prior approval of senior management for the establishment of such relationships in, or with respondent institutions from, a non-reputable jurisdiction.

(3) Subject persons shall ensure that the principles of regulation 3(1) are applied to their branches or subsidiaries that are not located in a reputable jurisdiction to the extent that is allowed by the relevant national laws and, where this is not possible, subject persons shall immediately inform the Financial Intelligence Analysis Unit and the relevant supervisory authority as applicable.

5B. (1) Subject persons shall develop and establish effective customer acceptance policies and procedures that are not restrictive in allowing the provision of financial and other services to the public in general but that, as a minimum, include:

Customer acceptance policy.
Added by:
L.N. 42 of 2006.

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

(2) The Financial Intelligence Analysis Unit may, in consultation with the relevant competent supervisory authority, where applicable, and on a non-discriminatory basis, determine that subject persons, or a category of subject persons, apply simplified measures in compliance with these regulations where the risk of money laundering or the funding of terrorism appears low and where adequate checks and controls are already otherwise applied.

(3) Any simplified measures as may be determined and applied under subregulation (2) shall not be applied in circumstances falling within Case 2 (suspicion).

5C. (1) Customer acceptance policies established under regulation 5B shall be conducive to enabling subject persons to determine whether an applicant for business is a politically exposed person.

Politically exposed persons.
Added by:
L.N. 42 of 2006.

(2) With regards to politically exposed persons residing in a

foreign country, the procedures established under subregulation (1) shall require the approval of senior management for establishing such business relationships.

(3) In conducting enhanced ongoing monitoring of business relationships established under subregulation (2), subject persons shall ensure that the internal procedures include adequate measures to establish the source of wealth and funds that are involved in these business relationships or transactions.

Identification
procedures:
payment by post,
etc.
*Amended by:
L.N. 42 of 2006.*

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

- (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;

Cap. 371.

subject to the provisions of subregulation (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 subregulation (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.

Cap. 371.

(4) For the purposes of subregulation (1)(b) details of payment shall include the name, address and account number of the applicant for business and, where an account number is not available, then a unique identifying number which allows the transaction to be traced back to the applicant for business shall be used whilst the address may be also substituted by the national identity card number as verified.

(5) The details of payment accompanying a transfer of funds as required under subregulation (4) shall be verified against independently sourced documents:

Provided that for payments under Lm500 (five hundred

Maltese liri) the paying institution may determine the extent of such verification.

(6) Where information required under subregulation (4) is missing or incomplete when receiving inward funds, subject persons may either reject the transfer or ask for complete information to be submitted:

Provided that where the transfer is rejected or where circumstances warrant that the funds be made available to the beneficiary and the missing information is not received, subject persons shall proceed as provided for in regulation 5(2).

(7) The provisions of subregulations (4), (5), and (6) shall not apply where:

- (a) the funds are transferred through a transaction carried out by the use of a credit or debit card or any other similar payment instrument where a unique identifying number allowing the transaction to be traced to the payer accompanies the transfer;
- (b) both the payer and the payee are acting on their own behalf and are persons authorised to undertake relevant financial business or who are licensed or otherwise authorised under the laws of a reputable jurisdiction to carry out any activity which is equivalent to relevant financial business.

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.

Identification procedures: transactions on behalf of another. Amended by: L.N. 42 of 2006.

(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) apply:

- (a) they require reasonable measures to be taken for the purpose of establishing and verifying the identity of any person on whose behalf the applicant for business is acting in addition to the 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(2).

(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, a body of persons, or any other form of legal entity or arrangement, satisfactory identification shall also be disclosed of all directors, and where such principal does not have directors, of all such other persons vested with its administration and representation, and, other than in the case of a company listed on a recognised stock exchange, a domestic public authority, a state corporation, or any other category of customers where such customers present a low risk of money laundering or the funding of terrorism as may be determined by the Financial Intelligence Analysis Unit in terms of regulation 5B(2), satisfactory identification shall also be disclosed of all persons having a qualifying interest in such principal, including, where applicable, the identity of the beneficial owners or beneficiaries of the qualifying interest;
 - (ii) the applicant for business is duly authorised in writing by the principal;
 - (iii) for the purposes of this regulation a qualifying interest means a shareholding of 25% or more of the equity shares in the principal, or a share of 25% or more of the total contributions made to the principal or of the total assets of the principal, as the case may be.
- (5) (a) Where the applicant for business is acting on behalf of a body corporate, a body of persons, trust or any other form of legal entity or arrangement in which there is a qualifying interest 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 interest 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 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 twenty thousand Maltese liri (Lm 20,000) 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), customer due diligence, including 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.
Amended by:
L.N. 42 of 2006.

- (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 one thousand Maltese liri (Lm 1,000);
- (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 five hundred Maltese liri (Lm 500); 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.
Amended by:
L.N. 42 of 2006.

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;
- (c) in relation to regulations 5(6) and 5(7) a record of the findings of the examination of the background and purpose of such relationships and transactions.

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

Provided that, in relation to records relating to 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 subregulation (2)(a) the date on which relevant financial business or relevant activity is completed shall, as the case may be, be deemed to be the date of -

- (a) in circumstances falling within Case 1 (negotiations), the ending of the business relationship in respect of whose formation the record under this regulation was compiled,
- (b) in circumstances falling within Case 2 (suspicion) 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 financial business or relevant activity was completed.

(4) Without prejudice to subregulations (1) to (3), both inclusive, a casino licensee shall also maintain records in relation to all identification processes under regulation 5(7) in accordance with the provisions of article 25(2) of the Gaming Act.

Cap. 400.

(5) Subject persons shall ensure that all customer identification, due diligence records and transaction records and information are made available on a timely basis to the Financial Intelligence Analysis Unit and, as may be allowed by law, to other relevant competent authorities, for the purposes of the prevention of money laundering and the funding of terrorism.

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.
Amended by:
L.N. 42 of 2006.

- (a) a reporting officer designated 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 or the funding of terrorism;
- (b) consideration of such report by the reporting officer or by another designated employee of the subject person, in the light of all other relevant information, for the purpose of determining whether or not the information or other matter contained in the report does give rise to a knowledge or suspicion that another person is engaged in money laundering or the funding of terrorism;
- (c) reasonable access for the reporting officer or other designated employee to any information held by the subject person which may be of assistance for the purposes of considering the report; and
- (d) a procedure whereby any knowledge or suspicion that another person is engaged in money laundering or the funding of terrorism 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:

- (a) forming part of the same group of companies of the former subject person; or

(b) where the subject persons are acting in terms of a principal and broker or principal and agent relationship.

(3) A supervisory authority shall maintain internal reporting procedures in accordance with the provisions of subregulation (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 twenty thousand Maltese liri (Lm 20,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Reporting of
evidence of money
laundering or the
funding of
terrorism.
Amended by:
L.N. 42 of 2006.

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 or the funding of terrorism,

that supervisory authority or subject person shall, as soon as is reasonably practicable, but not later than three working days from when the suspicion first arose, 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.

(3) Where, following a submission of a disclosure as in subregulation (1), or for any other reason as is allowed by law, the Financial Intelligence Analysis Unit demands additional information, a subject person shall comply as soon as is reasonably practicable but not later than five working days from when the demand is first made unless that subject person makes representations justifying why the requested information cannot be submitted within the said time and the Financial Intelligence Analysis Unit, at its discretion and after having considered such representations, extends such time as is reasonably necessary to

obtain the information, whereupon the subject person shall submit the information requested within the time as extended.

(4) A subject person who contravenes the provisions of this regulation, or who fails to disclose information as required by subregulation (1) or who fails to submit information demanded under subregulation (3), shall be liable to an administrative penalty of not less than Lm100 (one hundred Maltese liri) and not more than Lm1,000 (one thousand Maltese liri).

(5) Administrative penalties under subregulation (4) shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing and may be imposed either as a one time penalty or on a daily cumulative basis until compliance provided that in the latter case the accumulated penalty shall not exceed Lm 5,000 (five thousand Maltese liri).

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

Use of disclosed information.
Amended by:
L.N. 42 of 2006.

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 due diligence including 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.
Amended by:
L.N. 42 of 2006.

Provided that where a doubt has arisen or changes have occurred in the circumstances surrounding the established business relationship the customer due diligence including the identification process shall be carried out in accordance with these regulations.