
Introduction

The Guidance Notes have been issued in accordance with Guidance of Cyprus Bar Association based on the Prevention and Supervision of Money Laundering Activities Law of 2007(as it has been amended).

What is money laundering?

Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. It also aims to allow the criminals to maintain control over those proceeds and, ultimately, to provide a legitimate cover for their source of funds.

• Typical stages of ML:

- Placement – the physical disposal of the initial proceeds derived from illegal activity.
- Layering – separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity. Such transactions are often channeled via shell companies or companies with nominee shareholders and/or nominee directors.
- Integration – the provision of apparent legitimacy to criminally derived wealth. Integration schemes place the laundered proceeds back into the economy appearing as normal business funds.

• Predicate offences.

They are all criminal offences punishable with maximum imprisonment exceeding one year from which proceeds or assets were derived.

Examples:

- (i) Premeditated murder
- (ii) Drug trafficking
- (iii) Illicit trading in arms
- (iv) Trading in stolen objects
- (v) Abduction



- (vi) Extortion of money
- (vii) Contravention of Nuclear Material Law
- (viii) Contravention of Chemical Weapons Law
- (ix) Attempt of murder
- (x) Living from the earnings of prostitution
- (xi) Offences in relation to the corruption of public or private officers

• For the purpose of ML offences it does not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not.

Offences

(i) Failure to report

It is an offence for any person, including an accountant or auditor in practice or elsewhere, who, in the course of his trade, profession, business or employment, acquires knowledge or reasonable suspicion that another person is engaged in money laundering not to report his knowledge or suspicion, as soon as it is reasonably practical after the information came to his attention, to a police officer or to MOKAS. In case of a firm's employees, internal reporting to the MLCO will satisfy the reporting requirement.

Failure to report is punishable by a maximum of, 5 years imprisonment or a fine not exceeding EUR 5000 or both.

(ii) Tipping-off

It is also an offence for a person to prejudice the search and investigation in respect of prescribed offences by making a disclosure, either to the person who is the subject of a suspicion on any third party, knowing or suspecting that the authorities are carrying out such investigation and search.

Tipping-off under these circumstances is punishable by imprisonment not exceeding 5 years.



Procedures to prevent Money Laundering

The firm must establish and maintain specific policies and procedures against money laundering, designed to achieve two purposes:

- facilitate the recognition and reporting of suspicious transactions
 - "know-your-client" principle + maintenance of adequate record keeping procedures (should a client come under investigation, the firm will be able to provide its part of the audit trail).
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- **Client identification procedures;**
 - **Record-keeping procedures in relation to clients' identity and their transactions;**
 - **Procedure of internal reporting to the ML Compliance officer;**
 - **Other internal control and communication procedures for the purpose of forestalling and preventing ML;**
 - **Training of employees**
 - aware of procedures + legislation
 - recognition and handling of suspicious transactions

Failure to comply: EUR 5,000 fine by Supervisory Authority

Non supervised persons - Fine Up to EUR 5,000
- 2 years prison

Criminal offences: under Cyprus law

- **Client Identification Procedures**

Cypriot residents

- name (all names used)
 - date of birth
 - address
 - profession or occupation
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- Good copy of passport, but must be certified in an acceptable way (by somebody who sees the client face to face).
 - Current permanent address should be verified (recent utility bill)

Non-Cypriot residents

- For those with whom we have FACE-TO-FACE contact:
 - passport
 - address
 - confirmation of identity and address with a reputable financial institution or professional adviser (in the prospective client's home/residence country).
- For those with NO FACE-TO-FACE contact: We must be EXTRA VIGILANT

Possible procedures:

- associated firm or reliable professional adviser in client's home country could confirm identity (or as an agent to check personal verification details).
- or
- copy of the passport authenticated by an attorney or consulate
- or
- verification details covering true name, current permanent address and verification of Signature could be checked with a reputable credit or financial institution or professional advisor in the prospective client's home country.

Identification of companies and other organizations

- Higher risk of ML
- Particular care should be taken to verify the legal existence and to ensure that any person purporting to act on its behalf is authorized to do so.
- The principal requirement is to identify those who have ultimate control (or-who will benefit from it).
- Enquiries should be made to confirm that the entity exists for a legitimate trading or economic purpose and that the controlling principals can be identified.
- No further steps to verify identity will be required where prospective client is
 - a company quoted on a recognized stock exchange;or
 - a subsidiary of such a company

However, the evidence that the prospective client falls into one of these categories should be recorded. Also, evidence that any individual representing the company has the necessary authority to do so should be sought and retained.

Where the applicant for business is as unquoted company, the firm should identify:

- the principal directors
- the Shareholders
- signatories (in the event of opening a bank account)
- the beneficial owners
- any nominees (if applicable)

In addition, the following documents should normally be obtained:

- True copies of all certificate of the Company
- True copy of Memorandum and Articles of Association

The firm, may also make a credit reference agency search or take, a reference from a bank or from another professional adviser.

Trusts and nominees

When a firm is asked to act for trustees or nominees, the identity of all major parties should be identified, including

- the trustees
- the settlor
- the principal beneficiaries

When a firm receives money on behalf of a trust, it is important to ensure that the source of the receipt is properly identified, that the nature of the transaction is understood, and that payments are made only in accordance with the terms of the trust and are properly authorized in writing by the trustee.

- **Record-keeping procedures**

The firm should keep records concerning client identification and details transaction such that:

- requirements of the legislation and guidance notes are fully met
- competent third parties will be able to assess the firm's observance of money Laundering policies and procedures;
and
- any transactions effected via the firm can be reconstructed.
- The records should be retained for at least 5 years from the date when the firm's relationship with the client was terminated or a transaction was completed.
- Where formalities to end a business relationship have not been undertaken, but a period of 5 years has elapsed since the date when the last transaction was carried out, then the 5 year retention period commences on the date of the completion of all activities taking place in the course of the last transaction.

- **Transaction records**

- The precise nature of the records required is not specified but the objective is to ensure that in any subsequent investigation the firm can provide MOKAS with its part of the audit trail.
- For each transaction, consideration should be given to retaining a record of:
 - the name and address of client;
 - the name and address of the counter party;
 - the form of instruction or authority;
 - the account details for which any funds were paid;
 - the form and destination of payment made by the business to the client.

- Records may be retained in hard-copy format, or electronic or other form (but information must be presented in a visible and legible form to MOKAS, if requested)

- **Recognition and reporting of suspicious transactions**

- Firm must know enough about the client's business to recognize that a transaction, or series of transactions, is unusual.

(Understand the ROLE and PURPOSE of a company)

- Is the transaction consistent with the normal activities of the client?
 - size
 - rational
 - in line with established pattern of transactions

- The Laws require that any knowledge or suspicions of ML should be promptly reported to a Police Officer or to MOKAS. (The Laws provide that such a disclosure is not a breach of the duty of confidentiality owed by firm to their clients by virtue of the contractual relationship existing between them).

- In certain circumstances the suspicion may be aroused after the transaction of service has been completed. Subsequent disclosure is allowed, provided that such disclosure is made on the person's concerned initiative and as soon as it is reasonable for him/her to make it.
- The Laws require that firms establish internal reporting procedure and that they appoint a person (the ML Compliance Officer, MLCO) to whom employees should report knowledge or suspicion of transactions or activities involving ML. Once the employee has reported his/her suspicion to the MLCO he/she is considered to have fully satisfied his/her statutory requirements

Good practice to include in client services agreements or terms of business letters a passage which places clients on notice of the firm's potential reporting obligations. Also, include a statement that Cyprus law governs the provision of the firm's services and Cypriot courts have exclusive jurisdiction.

Appointment and role of the Money Laundering Compliance Officer

- Firm must appoint a MLCO
- Firm should communicate to MOKAS the name and position of the MLCO
- The role and responsibilities of the MLCO should be clearly specified by the firm and documented in appropriate manuals and/or job descriptions.
- As a minimum duties of MLCO should include:
 - (a) Receive from firm employees information of knowledge of suspicion of ML
 - (b) To consider and evaluate the information reported by the employees. This information should be recorded and returned on file.

- (c) If, following the evaluation the MLCO decides to notify MOKAS, to complete a written report and submit to MOKAS as soon as possible (see specimen report in Guidance). All such reports should be kept on file.
- (d) If, following the evaluation the MLCO decides not to notify MOKAS, to fully document the reason for such a decision.
- (e) MLCO acts as a first point of contact with MOKAS following a report to MOKAS.
- (f) MLCO responds to requests from MOKAS.
- (g) MLCO provides advice and guidance to others in the firm on ML matters.
- (h) MLCO acquires the knowledge and skills required to improve firm's internal procedures for recognizing and reporting ML suspicions.
- (i) MLCO determines whether the firm's employees need further training in relation to ML.
- (j) MLCO is primarily responsible towards ICPAC in implementing the Guidance note in relation to ML.

Internal Reporting Procedures and Records

Firm should introduce measures to assist functions of MLCO. Should ensure:

- all employees know to whom they should be reporting ML knowledge of suspicion.
- There is a clear reporting chain for ML knowledge or suspicion to be passed without delay to MLCO.
- All employees should have a direct route to the MLCO, but advisable to report also to responsible partner/manager because they may have additional knowledge.
- May decide to have assistant MLCOs within departments.
- All reports to MLCO should be documented (full details of the client and of the information giving rise to the suspicion).
- MLCO should (when receiving a report):
 - acknowledge receipt of the report
 - provide a reminder to avoid "tipping off"
 - all internal enquiries in relation to the report should be documented.

Good practice:

- to inform reporting persons of the MLCO's decisions and of the results of investigations
- records of suspicions reported internally but not to MOKAS to be retained for 5 years from date of transactions.

External reporting procedures

- All MLCO reports should be sent to MOKAS (address, etc. in Guidance). Use Appendix A of the Guidance for report format.
- After filing a report to MOKAS, firm should adhere to instructions given by MOKAS, (particularly as to whether or not continue a transaction or the business relationship).
- Conflict between obligation to report ML and constructive trust if firm suspects that the true owner of the money/property is not the client but some other person who lost possession due ML/criminal action of the client, then two things arise:
 - duty to report suspicious ML to MOKAS
 - and

- duty to constructive trustee to rightful owner

In such cases, to minimize potential liability of the firm, the following procedures should be followed:

- MLCO reports to MOKAS the facts and belief that there is potential constructive trust. Neither the client nor my third party should be tipped off.
 - MOKAS will evaluate the information and determine whether the “consent” to undertake the transaction can be issued.
 - If any chance of the firm will be liable as a constructive trustee, the firm,
 - should take legal advice
 - may be advised to apply to Court for directions before any other action (i.e. before reporting to MOKAS), except in cases where:
 - (i) firm knows/suspects that another person is engaged in drug or terrorist ML; and
 - (ii) information came to firm’s attention in the course of its trade, profession, business or employment
- then: there is an obligation to disclose the information to MOKAS asap, even before the court directions. Firm, in such cases, should inform MOKAS of the sensitive nature of its obligations as constructive trustee and should take legal advice asap.

Education and Training

Generally, firm should take appropriate measures to make partners/managers/employees aware of:

- policies and procedures maintained to prevent ML
- the requirements of the Laws