COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 10 January 2006

MONEYVAL (2005) 20
ADDENDUM

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

SELECT COMMITTEE OF EXPERTS
ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT ON C Y P R U S

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

ANNEXES

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ANNEX 1

DETAILS OF ALL PERSONS AND BODIES MET ON THE ON-SITE MISSION

- The Unit for Combating Money Laundering (MOKAS) – The FIU
- The Police (Representatives of the Criminal Investigation Department of the Police Headquarters, the Financial Crime Unit and the Drugs Law Enforcement Unit)
- Ministry of Justice and Public Order (Central Authority for International Co-operation)
- Customs and Excise Department
- Minister of Finance
- Central Bank of Cyprus – Supervisory Authority for the Banks and Money Transmitters
- Supervisory Authority for the Co-operative Credit and Saving Banks
- Securities and Exchange Commission – Supervisory Authority for the Stock Exchange
- Supervisory Authority for the Insurance Companies
- Representatives from Cypra Life Insurance Company
- Director and Representatives of the Stock Exchange
- Association of Commercial Banks
- Association of International Banking Units (IBUs)
- Cyprus Stock Exchange Members Association
- Council of the Cyprus Financial Services Companies Association
- Council of the Cyprus Bar Association – Supervisory Authority for Lawyers
- Council of Certified Public Accountants – Supervisory Authority for Accountants / Auditors
- Representatives of …… (an investment company)
- President of the District Court of Nicosia
- Ministry of Interior – Authority for the registration of Associations and Clubs
- Registrar of Companies and Official Receiver
- The Laiki Bank
- Representatives of the Legal and Accountancy Professions
- The Hellenic Bank
- A Representative of the Prosecution Service
- Central Information Service
- Cyprus International Financial Services Association
- Russian International Business Association.

A N N E X 2 A

61(I) of 1996
25(I) of 1997
41(I) of 1998
120(I) of 1999
152(I) of 2000
118(I) of 2003
185(I) of 2004*

THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW

(English translation and Consolidation prepared and issued by the Law Commissioner's Office)

THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW

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B. Temporary Orders

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A LAW TO PROVIDE FOR THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES

PART I - INTRODUCTORY PROVISIONS

Short title.

1. This Law may be cited as the Prevention and Suppression of Money Laundering Activities Law of 1996.

61(I) of 1996
25(I) of 1997
41(I) of 1998.

Interpretation.

2.-(1) For the purposes of this Law, unless the context otherwise requires-

"Advisory Authority" means the Advisory Authority for Combating Money Laundering which is established under section 55;

"Attorney-General" means the Attorney-General of the Republic;

"bonds" includes shares, debentures and other securities issued by a legal person irrespective of whether they constitute a charge on the property of the said legal person;

"civil proceedings" means any proceedings of a civil nature which are not of a criminal nature;

"conclusion of criminal proceedings" with its cognate expressions means-

(a) the withdrawal of a charge under section 91 of the Criminal Procedure Law;

Cap. 155.
93 of 1972
2 of 1975
12 of 1975
41 of 1978
162 of 1989
142 of 1991
9(I) of 1992
10(I) of 1996
89(I) of 1997
54(I) of 1998.

(b) the entering of nolle prosequi under section 154 of the Criminal Procedure Law;

(c) the acquittal of the accused by the court of first instance or on appeal by the Supreme Court;

(d) pardon by the President of the Republic;

(e) sentencing for a prescribed offence without the issue of a confiscation order;

(f) the full compliance with a confiscation order either by paying the amount due or by serving the term of imprisonment in lieu of payment of the amount due;

"court" means an assize court or a district court in the exercise of its criminal jurisdiction and for the purposes of section 38 (Procedure for the enforcement of foreign orders) has the meaning ascribed to it in Part IV of this Law;

"criminal proceedings" means any criminal proceedings within the meaning ascribed thereto in the Courts of Justice Law; 14 of 1960
50 of 1962
11 of 1963
8 of 1969
40 of 1970
58 of 1972
1 of 1980
35 of 1982
29 of 1983
91 of 1983
16 of 1984
51 of 1984
83 of 1984
93 of 1984
18 of 1985
71 of 1985
89 of 1985
96 of 1986
317 of 1987
49 of 1988
64 of 1990
136 of 1991
149 of 1991
237 of 1991
42(I) of 1992
43(I) of 1992
102(I) of 1992
26(I) of 1993
82(I) of 1995
102(I) of 1996
4(I) of 1997

53(I) of 1997
90(I) of 1997
27(I) of 1998
53(I) of 1998.

"dividend" includes interest, any kind of income derived from securities and any income derived from the distribution of profits of a unit trust;

"drug trafficking" means doing or being concerned in doing any of the following acts in or out of the Republic;

(a) Producing or supplying a controlled drug, where the production or supply is prohibited by the Narcotic Drugs and Psychotropic Substances Law or any other corresponding law;

29 of 1977.

(b) transporting or storing a controlled drug where possession of the drug contravenes the Narcotic Drugs and Psychotropic Substances Law or any other corresponding law; 29 of 1977.

(c) importing or exporting a controlled drug, where the importation or exportation is prohibited by the Narcotic Drugs and Psychotropic Substances Law or the Customs and Excise Law or any other related law; 29 of 1977.

(d) entering into an agreement or arrangement for the purpose of-

(i) assisting or facilitating a person to retain the proceeds from drug trafficking or to retain control on such proceeds;

(ii) securing or disposing funds derived from drug trafficking so as to enable the person involved in drug trafficking to acquire property by way of investment;

"drug trafficking offence" means an offence committed in contravention-

(a) of sections 4, 5, 5A, 6, 7, 9, 12, 20, 21, 22, 25 and 26 of the Narcotic Drugs and Psychotropic Substances Law; 29 of 1977, 67 of 1983, 20(I) of 1992, 2(a) of 41(I) of 1998.

(b) of sections 39, 40, 48, 49, 55, 191 and 193 of the Customs and Excise Law; 82 of 1967, 57 of 1969, 4 of 1971, 45 of 1973, 12 of 1977, 104 of 1987, 98 of 1989, 5 of 1991, 2(a) of 41(I) of 1998.

(c) of sections 20 (c) and 20(d) of the Criminal Code in connection with the commission of any of the offences referred to in paragraphs (a) and (b) above; Cap. 154, 3 of 1962, 43 of 1963, 41 of 1964, 69 of 1964, 70 of 1965, 5 of 1967, 58 of 1967, 44 of 1972, 92 of 1972, 29 of 1973, 59 of 1974, 3 of 1975, 13 of 1979, 10 of 1981, 46 of 1982, 86 of 1983, 186 of 1986, 111 of 1989, 236 of 1991, 6(I) of 1994, 3(I) of 1996, 99(I) of 1996, 36(I) of 1997, 40(I) of 1998, 45(I) of 1998.

(d) of section 370 of the Criminal Code in connection with the commission of any of the offences referred to in paragraph (a) and (b) above;

(e) of section 371 of the Criminal Code in connection with the commission of any of the offences referred to in paragraph (a) above;

"government stocks" includes development bonds, short term government bonds without interest, saving bonds and any other security issued in the name of a specific person but does not include a saving bond or any other security which is not issued to the bearer;

"immovable ownership or property" has the same meaning as in the Immovable Property (Tenure, Registration and Valuation) Law; Cap. 224.
A3 of 1960
78 of 1965
10 of 1966
75 of 1968
51 of 1971
2 of 1978
16 of 1980
23 of 1982
68 of 1984
82 of 1984
86 of 1985
189 of 1986
12 of 1987
74 of 1988
117 of 1988
43 of 1990
65 of 1990
30(I) of 1992
90(I) of 1992
6(I) of 1993
58(I) of 1994
40(I) of 1996
31(I) of 1998.

"instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a predicate offence;

"laundering offences" (or money laundering offences as known internationally) means the offences referred to in section 4;

"movable property or movables" means any property which is not immovable;

"predicate offence" means the offences referred to in section 5;

"prescribed offences" means the offences referred to in section 3;

"property" means movable and immovable property wherever located;

"Republic" means the Republic of Cyprus;

"Supervisory Authorities" means the authorities established under section 60;

"Unit" means the Unit for Combating Money Laundering established under section 53;

"unit trusts" means any trust established for the purpose or having the effect of providing for persons having funds available for investment facilities the right of participation as beneficiaries under the trust in any profits or income arising from the acquisition, management or disposal of any property whatsoever;

(2) The words and phrases set out in the first column are interpreted in the sections of this Law set out in the second column:

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(3) References in this Law to offences include offences committed before the commencement of this Law, but the courts have no obligation to exercise any of the powers conferred on them by this Law in connection with a criminal case for the commission of a prescribed offence instituted before the commencement of this Law. 2(b) of 41(I) of 1998.

3. This Law shall have effect in relation to the offences referred to below and which for the purposes of this Law shall be referred to as prescribed offences: Prescribed offences.

(a) laundering offences;

(b) predicate offences.

4.-(1) Every person who- Laundering offences.

(a) knows or b) at the material time ought to have known that any kind of property constitutes proceeds-

(i) and converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting in any way any person who is involved in the commission of the predicate offence to carry out any of the above actions or acts in any other way in order to evade the legal consequences of his actions;

(ii) conceals or disguises the true nature, the source, location, disposition, movement of and rights in relation to, property or ownership of this property;

(iii) acquires, possesses or uses such property;

(iv) participates in, associates, co-operates, conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above;

(v) provides information in relation to investigations that are carried out for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence,

commits an offence punishable by fourteen years' imprisonment or by a pecuniary penalty or by both of these penalties in the case of (a) above, or by five years' imprisonment or by a pecuniary penalty or by both in the case of (b) above.

(2) For the purposes of subsection (1)-

(a) it shall not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not;

(b) a laundering offence may be committed by the offenders of a predicate offence as well;

(c) the knowledge, intention or purpose which are required as elements of the offences referred to in subsection (1) may be inferred from objective and factual circumstances.

Predicate offences.

5.-(1) Predicate offences are the criminal offences as a result of which proceeds were generated that may become the subject of a laundering offence as defined in section 4 and they are the following:

(a) Premeditated murder;

(b) drug trafficking offence;

(c) offences in relation to illicit importation, exportation, trade, disposition, possession, transfer and trafficking of firearms and ammunitions;

(d) offences in relation to importation, exportation, purchasing, selling, disposition, possession, transfer of stolen objects, works of art, antiquities and tokens of cultural heritage;

(e) abduction of a minor or of a mentally retarded person or of any other person against his will for any unlawful purpose;

(f) extortion of money or of property of any kind by the use or threat of use of force or by any other illicit act;

(g) offences in contravention of the provisions of the Convention on the Physical Protection of Nuclear Material (Ratification and Other Provisions) Law of 1998; — 3(III) of 1998. 3 of 41(I) of 1998.

(h) offences in contravention of the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Ratification) Law of 1998; — 8(III) of 1998. 3 of 41(I) of 1998.

(i) attempt of murder; — 3 of 41(I) of 1998.

(j) living from the earnings of prostitution and offences in relation to the procuration and defilement of women and minors; — 3 of 41(I) of 1998.

(k) offences in relation to the corruption of public or private officers; — 3 of 41(I) of 1998.

(l) any other offence or category of offences punishable by imprisonment for a period exceeding twenty-four months and which the Council of Ministers may prescribe by an order published in the Official Gazette of the Republic as a predicate offence. 3 of 41(I) of 1998.

PART II - CONFISCATION ORDERS, TEMPORARY ORDERS AND OTHER MEASURES

A. Confiscation Orders

Inquiry in order to determine whether the accused acquired proceeds.

6.-(1) A Court which has convicted a person for a predicate offence shall, before sentencing, proceed with an inquiry in order to determine whether the accused acquired any proceeds from the commission of a predicate offence, by applying the procedure set out in this Part of the Law or the procedure referred to in Part VI.

(2) For the procedure set out in this Part to be applied, the Attorney General shall so decide by submitting a relevant application to the Court. The Court may make a confiscation order if the procedure under this Part is applied or impose a corresponding pecuniary penalty if the procedure under Part VI is applied.

Assessing the proceeds from the commission of a predicate offence.

7.-(1) For the purposes of this Law-

(a) all payments which have been made to the accused or to any other person at any time before or after the commencement of this Law in connection with the Commission of a predicate offence are deemed to be proceeds of the accused from the commission of a predicate offence irrespective of whether this has been committed by the accused himself or another person.

(b) the value of the proceeds acquired by the accused from the commission of a predicate offence is the aggregate value of payments or other rewards made to him or the product of a predicate offence.

4 of 41(I) of 1998.

(2) The Court may, for the purpose of determining whether the accused has acquired proceeds from the commission of a predicate offence and of assessing the value of these proceeds, assume, unless the contrary is proved under the circumstances of a case, that-

(a) any property acquired by the accused after committing the said offence or transferred into his name at any time during the last six years prior to the commencement of criminal proceedings against him, was acquired by him as early as the court considers that it has been so acquired in the form of payment or reward connected with the commission of a predicate offence;

(b) any expenditure incurred by the accused during the above period was met out of payments or rewards made to him in connection with a predicate offence committed by him;

(c) for the purpose of valuing such property, he received the property free of any charge or any interest of any other persons in it.

(3) The provisions of subsection (2) shall not apply if-

(a) it is proved that they do not apply to the accused; or

(b) the court considers that there would be a serious risk of injustice against the accused, if they were to apply.

(4) Where the court decides not to apply the provisions of subsection (2), it shall set out the reasons for taking such a decision.

(5) For the purposes of assessing the value of the proceeds acquired by the accused from the commission of a predicate offence, if a confiscation order had previously been made against him, the court shall not take into account any of his proceeds from the commission of a predicate offence that are shown to the court to have been taken into account in determining the amount referred to in the said order.

Confiscation order.

8.-(1) Where the court, after the conduct of an inquiry under this Part, determines that the accused has acquired proceeds, it shall, before sentencing him for the offence for which he has been convicted or for offences which the court can take into consideration in sentencing-

(a) make a confiscation order for the recovery of the amount of proceeds in accordance with section 9 as assessed and determined under section 7;

(b) make an order for the confiscation of instrumentalities;

and shall, thereafter, impose any of the penalties which it has the competence to impose.

(2) The making of a confiscation order is not affected by any provision in any other law limiting the power of the court in the imposition of pecuniary penalties.

Procedure for enforcing a confiscation order.
Table.
Cap.155.

9.-(1) Without prejudice to the power of the court mentioned in sections 17 to 19, the effect of a confiscation order shall be the same as the effect of imposing a pecuniary penalty and the Table in section 128 of the Criminal Procedure Law shall be replaced for the purposes of this Law by the following:

TABLE

First column	Second column
An amount not exceeding £50	7 days
An amount exceeding £50 but not exceeding £100	14 days
An amount exceeding £100 but not exceeding £500	30 days
An amount exceeding £500 but not exceeding £1.000	60 days
An amount exceeding £1.000 but not exceeding £2.000	90 days
An amount exceeding £2.000 but not exceeding £5.000	6 months
An amount exceeding £5.000 but not exceeding £10.000	9 months
An amount exceeding £10.000 but not exceeding £20.000	12 months
An amount exceeding £20.000 but not exceeding £50.000	18 months
An amount exceeding £50.000 but not exceeding £100.000	2 years
An amount exceeding £100.000 but not exceeding £250.000	3 years
An amount exceeding £250.000 but not exceeding one million pounds	5 years
An amount exceeding one million pounds	10 years

(2) The provisions of subsection (1) of this section shall also apply where a confiscation order is made under section 28 (Confiscation order where the accused has died or absconded) and the defendant had absconded and subsequently appeared.

10. The enforcement of an order for the confiscation of means shall be effected by forfeiture by following instructions that may be given by the court according to the kind of instrumentality.

Procedure for enforcing an order for the confiscation of instrumentalities.

11.-(1) The prosecution, together with the application of the Attorney General for an inquiry under section 6 (Inquiry in order to determine whether the accused acquired proceeds) or under sections 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) or within such a time limit as the court may direct, submits a statement of allegations in which facts and particulars are set out in relation to the inquiry for the determination of whether the accused has acquired proceeds from the commission of a predicate offence or to an assessment of the value of the proceeds and, if the accused, in accordance with the procedure prescribed in this section, admits the correctness of the content of the said statement or of a part thereof, the court for the purposes of such inquiry and assessment may treat such an admission as conclusive proof of the facts and particulars to which it relates.

Statement of facts and particulars.

(2) Following the submission by the prosecution of the statement of facts and particulars under subsection (1), the court, if satisfied that a copy of it has been served on the accused, calls upon him to declare whether he admits any of the allegations contained in the statement and to submit a statement in relation to those of the allegations he does not admit (hereinafter to be referred as a "statement in rebuttal") in which he shall indicate the particulars and the reasons on which he intends to rely both in rebutting the allegation of the prosecution and in determining the amount that may be received from his realizable property. The statement in rebuttal is submitted within such a period of time as the court may direct or within three days from the service of the statement of facts and particulars on the accused by the prosecution.

(3) Failure of the accused to comply with any of the directions of the court shall be treated for the purposes of this section as an admission of all the facts and particulars contained in the statement of facts and particulars.

(4) Where in the statement of rebuttal allegations are included which are relevant to determining the amount that may be realized at the time the confiscation order is made and the prosecution accepts all or some of these allegations or a part thereof, the court may treat such acceptance on the part of the prosecution, for the purposes of such determination, as conclusive proof of the allegations to which it relates.

(5) The acceptance of allegations either by the prosecution or by the accused is made orally before the court unless the court otherwise directs.

(6) The admission made by the accused for the purposes of this section shall not be admissible as evidence in any other criminal proceedings.

(7) The court may set a date for the conduct of the inquiry and adjourn it whenever it appears to the court necessary to do so.

(8) The court delivers a reasoned decision on all matters of the inquiry.

Amount to be recovered under a confiscation order.

12.-(1) Subject to the provisions of subsection (2), the amount to be recovered under a confiscation order shall be the amount which the court assesses to be representative of the value of the proceeds of the accused from the commission of a predicate offence.

(2) If the court is satisfied that the amount that may be realised at the time the confiscation order is made is less than the amount the court has assessed to be representative of the value of the proceeds of the accused from the commission of a predicate offence, the amount to be recovered under the confiscation order shall be the amount which, in the opinion of the court, might in fact be so secured from the realizable property. In such a case, the order also mentions the amount which ought to have been recovered as the amount representing the proceeds of the accused from the commission of a predicate offence.

(3) Where the court comes to the conclusion that the amount which may be recovered from the realizable property of the accused is less than the amount which ought to have been recovered, it may make an order for the cancellation of this difference or for postponement of its recovery if such an order is, in the opinion of the court, just and expedient having regard to the reasons giving rise to this difference.

Realizable property and other principal terms.

13.-(1) In this Law, subject to the provisions of subsection (2), "realizable property" means-

(a) any property held by the accused; and

(b) any property held by another person to whom the accused has directly or indirectly made a gift prohibited by this Law.

(2) Property is not realizable if such property is subject to forfeiture by virtue of an order of the court made in criminal proceedings.

(3) For the purposes of sections 11 (Statement of facts and particulars) and 12 (Amount to be recovered under a confiscation order), the amount that may be realized, at the time a confiscation order is made, is made up of-

(a) the total value of all realizable property held by the accused at the time the order is made;

(b) plus the total value, at the time the order is made, of all gifts prohibited by this Law;

(c) less, the total of obligations which in accordance with subsection (6) below have priority at the time the order is made.

(4) Subject to the following provisions of this section, the value of property, other than cash, is-

(a) the market value of the property, when such property belongs absolutely to one person;

(b) when another person has an interest in such property, the market value of the property less the amount required to pay off the interest of the other person and to discharge any encumbrance, other than an encumbrance based on a charging order.

(5) Subject to the provisions of this section, reference in this Law to the value of a gift means the value of the property in the open market at the time the confiscation order is made or at the time the gift is made, if at that time the value of this property was higher than its value at the time the order was made.

(6) For the purposes of subsection (3) above the obligations of the accused that have priority over other obligations, are:

(a) the obligations for the payment of pecuniary penalties imposed before the confiscation order was made or for other amounts due by virtue of order of the court made before the confiscation order was made;

(b) his obligation for the payment of amounts which would have been included among the preferential debts of the accused, if at the time the confiscation order was made he was declared bankrupt or, in the case of a company, a winding up order was made;

(c) any other bona fide claim against the accused to which the court considers appropriate to grant priority on such terms as the court under the circumstances of the case deems just;

and "Preferential debts" in this subsection means:

(i) in relation to bankruptcy, the debts to be paid in priority under section 38 of the Bankruptcy Law or any other law, as if the date on which the confiscation order was made was the date on which the receiving order of the company was made; Cap. 5. 49 of 1985 197 of 1986.

(ii) in relation to the winding up of a company, the debts to be paid in priority, under section 300 of the Companies Law or any other law, as if the date the confiscation order was made was the date the winding up order was made; Cap. 113. 9 of 1968 76 of 1977 17 of 1979 105 of 1985 198 of 1986 19 of 1990 46(I) of 1992 41(I) of 1994 15(I) of 1995 21(I) of 1997.

(iii) in relation both to the bankruptcy of a natural person and the winding up of a company, the claims mentioned in paragraph (c) of subsection (6) above.

(7) Gifts, including gifts made before the commencement of this Law, which are prohibited gifts under this Law are-

(a) those made by the accused at any time during the last six years prior to the institution of criminal proceedings against him; and

(b) those made by the accused at any time and relate to property-

(i) received by the accused in connection with a predicate offence committed by him or any other person; or

(ii) which in whole or in part, directly or indirectly, represent property received by the accused in connection with a predicate offence committed by him or by another person.

(8) For the purposes of this Law the accused is to be treated as making a gift where he transfers property to another directly or indirectly for a consideration the value of which is significantly less than the actual value of the property at the time of transfer. In such a case, the preceding provisions of this section shall apply as if the accused has made a gift of that part of the property which by comparison to the total value of the property represents the proportion of the difference between the value of the consideration he accepted for the transfer of the property and the actual value of the property at the time of transfer.

B. Interim Orders

14.-(1) The court may make a restraint order where- Restraint order.

(a) criminal proceedings have been instituted and have not been concluded or are about to be instituted in the Republic against a person for the commission of a predicate offence, or an application by the Attorney General has been made under sections 28 (Confiscation order where accused has died or absconded), 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) of this Law; or

(b) the Unit possesses information which creates a reasonable suspicion that a person may be charged with the commission of a laundering offence; and

(c) the court is satisfied that there is a reasonable ground to believe that-

(i) where an application under section 36 is submitted, the provisions of subsection (3) of the same section are fulfilled; and

(ii) the person mentioned in paragraphs (a) and (b) above has benefited from the commission of a predicate offence.

(2) A restraint order made under subsection (1) prohibits transactions in any way in realizable property. The prohibition shall be subject to such conditions and exceptions as may be specified in the order.

(3) A restraint order may apply-

(a) to all realizable property held by a specific person whether the property is described in the order or not; and

(b) to realizable property held by a specific person which was transferred to him after the order was made.

(4) This section shall not apply in relation to any property which is subject to a charging order made under section 15 (Charging order).

(5) A restraint order-

(a) may be made following an ex parte application by the Attorney-General; and

(b) shall provide for service of notice to all persons affected by the order.

(6) A restraint order-

(a) may be discharged or varied in relation to the property concerned;

(b) shall be discharged when the criminal proceedings against the accused for the offences with which he is charged are concluded;

(c) shall be discharged if an application under section 35 (Reconsideration of a case) or section 36 (Re-assessment of proceeds) is not submitted within a reasonable, in the opinion of the court, period of time.

(7) The court may at any time after the making of a restraint order, appoint a receiver-

(a) to take possession of any realizable property and place it under his custody; and

(b) to manage or otherwise deal with the said property, in accordance with the directions of the court.

(8) The court may, on appointing a receiver, impose such conditions as it considers necessary and may direct any person in possession of the property in respect of which the receiver was appointed to give possession of it to the receiver.

(9) For the purposes of this section the expression "dealing with property", without prejudice to its generality, includes-

(a) making a payment towards a debt with a view to reducing the same; and

(b) removing or transporting the property out of the Republic.

(10) Where the court has made a restraint order the realizable property may be seized for the purpose of preventing its transportation or removal out of the Republic.

(11) Property seized under subsection (10) above shall be subject to the instructions of the court.

(12) The court shall not exercise the powers conferred on it under this section-

(a) if it is satisfied that the promotion of a procedure or application is delayed without any reasonable ground, or

(b) if the Attorney-General declares that he does not intend to promote the said procedure or application.

Charging order.

15.-(1) The court has the power to make a charging order before or after a confiscation order is made but a charging order shall only be made before a confiscation order is made where-

(a) criminal proceedings have been instituted and have not been completed or are about to be instituted in the Republic against a person for the commission of a predicate offence, or an application by the Attorney-General has been made under sections 28 (Confiscation order where accused has died or absconded), 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) of this Law; or

(b) the Unit possesses information which creates a reasonable suspicion that a person may be accused of the commission of a laundering offence; and

(c) the court is satisfied that there is a reasonable ground to believe that-

(i) where an application under section 36 is submitted (Re-assessment of proceeds), the provisions of subsection (3) of the same section are satisfied; and

(ii) the person mentioned in paragraphs (a) and (b) above has benefited from the commission of a predicate offence.

(2) An order made under subsection (1) shall be called a charging order and, notwithstanding the provisions of other laws, it shall create a charge on the realizable property specified in the order, with the purpose of securing payment to the Republic-

(a) of an amount equal to the value of the property charged, where a confiscation order has not been made; and

(b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(3) A charging order is made following an ex parte application by the Attorney General.

(4) Subject to subsection (6) below, a charge may be imposed by a charging order only on-

(a) any interest the accused has in realizable property either of the kind mentioned in subsection (5) or under a trust;

(b) any interest in realizable property held by any other person either of the kind mentioned in subsection (5) or under a trust and to whom the accused has made a gift prohibited under this Law.

(5) Subject to the provisions of subsection (12), the kinds of assets referred to in subsection (4) above are:

(a) immovable property;

(b) the following bonds:
(i) government stocks,

(ii) bonds of any legal body incorporated in the Republic;

(iii) bonds of any legal body incorporated outside the Republic being stocks registered in a register kept at any place within the Republic;

(c) units of any unit trust in respect of which a register of the unit holders is kept at any place within the Republic;

(d) funds in court.

(6) Where a court makes a charging order on any interest in any asset of the kind mentioned in paragraphs (b) and (c) of subsection (5) above, it may order that the charge be extended so as to cover any interest on dividend or on interest payable in respect of the asset.

(7) The court may make an order discharging or varying the charging order and in any case shall make an order discharging the charging order if the proceedings for

the offence have been concluded or the amount of the payment which is secured by the charge is paid into court or if the applications under sections 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds) are not submitted within a reasonable, in the opinion of the court, period of time.

(8) A charging order may be made either without conditions or subject to conditions as to the service of a notification to any person holding an interest in the property to which the order relates or as to the time when the charge is to become enforceable or as to other matters.

(9) The making of a charging order, in respect of the assets in paragraphs (b), (c), and (d) of subsection (5) above, has all or some of the following effects which the court may specify, subject to such conditions and directions as it may consider necessary or supplementary to the effect or effects so specified:

(a) the creation of a charge in favour of the Republic in the property for which the order is made by the payment of the amount mentioned in subsection (1) with priority of the interest of the Republic as against any other debt or obligation of the accused which has not previously been the subject of a charging order made in respect of the same assets, or as against any other charges not created prior to the making of the order in any legal way;

(b) the prohibition of transfers, sales, payments or other dealings in respect of the subject matter of the order, without prejudice to the enforcement of court decisions or orders made before the making of the order;

(c) the prohibition of payment of dividends to the debtor in respect of the subject matter of the order;

(d) in the case of a unit trust, the prohibition of any acquisition of the units or any dealing in connection with the units by any natural or legal person which performs functions under the trust.

After the service of the order to any person under this subsection, a duty is created for such person to comply with the order and further, if such person keeps any record in respect of the registration of a transfer or any other dealings in relation to the subject matter of the order, to enter into such record all the registrations or amendments which are consequential to the making of the order.

(10) A charging order made in respect of immovable property is deposited with the District Lands Office of the district where the property affected is situated and thereafter the provisions of sections 57, 60 and 61 of the Civil Procedure Law are applied with the necessary adjustments as if- Cap. 6. 11 of 1965 161 of 1989 228 of 1989.

(a) the charging order was a judgement of the Court for debt; and

(b) the depositing of the order constituted registration of a judgement of the court for debt.

(11) Every order of the court varying or discharging a charging order on immovable property is deposited with the District Lands Office of the district where the property affected is situated and the District Lands Officer amends or deletes accordingly the relevant entry in the register kept under section 60 of the Civil Procedure Law.

(12) (a) The Council of Ministers may by Regulations amend subsection (5) by adding or removing assets which, in its opinion, ought to have been added or deleted, provided that in the case of addition of new assets such addition does not entail any other amendments of the Law.

(b) Regulations made under this subsection are laid before the House of Representatives for approval and following that the provisions of subsection (2) of section 3 of the Laying before the House of Representatives Regulations issued under the authority of a Law, Law of 1989 apply. 99 of 1989 227 of 1990 27(I) of 1992.

(13) The court shall not exercise the powers conferred on it under this section-

(a) if it is satisfied that the promotion of a procedure or application is delayed without any reasonable ground; or

(b) if the Attorney-General declares that he does not intend to promote the said procedure or application.

Supplementary provisions.

16.-(1) The court may make an order discharging orders made under sections 14 (Restraint order) and 15 (Charging order) before the making of a confiscation order, if the contemplated criminal proceedings have not commenced within a reasonable period of time or within the period of time specified by the court in making the order.

(2) When the powers under section 14 and 15 are exercised before the commencement of the criminal proceedings, then-

(a) the reference to the accused made in this Law shall be interpreted as a reference to the person mentioned in section 14(1)(a) and section 15(1)(a);

(b) the reference to realizable property made in this Law shall be interpreted as if criminal proceedings against the person mentioned in section 14(1)(a) or in section 15(1)(a) for the commission of a predicate offence were commenced immediately before the making of an order under sections 14 (Restraint order) and 15 (Charging order).

C. Other measures

17.-(1) After a confiscation order is made for which there was no appeal and which remains unenforced, the court may on application by the prosecution exercise the following powers: Appointment of a receiver.

(a) appoint a receiver for the realization of the property;

(b) empower the receiver so appointed or a receiver appointed under subsection (7) of section 14 or under other provisions which relate to the making of charging orders-

(i) to enforce any charge imposed under section 15 on realizable property or on interest or dividend payable in respect of such property; and

(ii) subject to such conditions or exceptions as the court thinks appropriate to take possession of any other realizable property not affected by a charge;

(c) to order any person having possession of realizable property to give possession of it to any such receiver;

(d) to empower any such receiver to realize realizable property in such manner as the court may direct;

(e) to order any person holding an interest in realizable property to make such payment to the receiver in respect of any interest held by the accused, or, as the case may be, the recipient of a prohibited gift, and then the court may, after the payment is made, order the transfer, grant or extinction of any interest in the property.

(2) Paragraphs (c), (d) and (e) of subsection (1) above do not apply to property affected by a charge created under section 15 (Charging order).

(3) The court shall not exercise the powers conferred upon it by paragraphs (b) (i), (d) and (e) of subsection (1), unless satisfied that a reasonable opportunity has been given to the persons holding an interest in the property to make representations to the court.

(4) A receiver appointed under this section has the same powers, to the extent to which they do not contradict the provisions of this Law, as if he were appointed for the purposes of sale, disposition or realization of assets charged with a charging order for the satisfaction of a civil debt under the Charging Orders Law. 31(I) of 1992.

Order for sale of bonds.

18.-(1) Subject to the provisions of subsection (4), where the subject matter of a charging order is the property mentioned in paragraphs (b) and (c) of subsection (5) of section 15 (Charging order), the disposal, sale or realization of such property can only be effected by an order of the court made on the application of the prosecution or of a receiver appointed under section 17 (Appointment of receiver) and which is called an order for sale of bonds.

(2) The court, when making an order for sale of bonds, may impose such conditions as it may consider necessary for safeguarding the interests of any person having an interest in the sale of the said bonds.

(3) The court, before making an order for the sale of bonds, secures the views of all interested persons including the views of the Registrar of Companies and Official Receiver, as well as the views of the directors of companies or other legal persons, with a view to ascertaining the interests in the property under a charge which might be affected by its sale, realization or disposition. For this purpose, the court may give such directions as it considers in the circumstances proper and necessary.

(4) An order for the sale of bonds can only be made after the making of a confiscation order.

(5) Where the subject-matter of a charging order is shares in a company, their sale is only effected by public auction, unless the court otherwise directs and, subsequently, the provisions of the Charging Orders Law shall apply as if the charging order were made for a civil debt under that Law.

31(I) of 1992.

Application of proceeds from the realization of property.

19.-(1) The sums specified in subsection (2) which are in the hands of a receiver, whether appointed under section 14 (Restraint order) or 17 (Appointment of a receiver) or with a view to enforcing a charging order, shall be applied on behalf of the accused in accordance with the provisions of subsection (4), towards the satisfaction of the amount due under the confiscation order and such amount is reduced accordingly after the deductions of the sums specified in subsection (3).

(2) The sums applied under subsection (1) are:

(a) the proceeds of the enforcement of any charge imposed under section 15 (Charging order);

(b) the proceeds of the realization of property under section 14 or 17 other than by enforcement of a charge;

(c) any other sums belonging to the accused.

(3) Irrespective of the provisions of section 126 of the Criminal Procedure Law, the sums which are deducted from the sums specified in subsection (2), before the reduction of the amount due under a confiscation order, are: Cap. 155.

(a) the remuneration and expenses of the receiver;

(b) any sum paid by the prosecution under section 24(2) (Receiver. Supplementary provisions);

(c) payments effected by order of the court.

(4) The sums specified in subsection (2) are applied as follows:

(a) the sums specified in subsection (3) are paid in the order in which they are enumerated in the said subsection, unless the court otherwise directs;

(b) any balance shall be treated as if it were a fine and is applied for the satisfaction of the amount payable under the confiscation order;

(c) if after the amount payable under the confiscation order has been fully paid there is any balance, it is distributed among the persons who had a right over the property which has been realized in such proportions as the court may direct, after giving a reasonable opportunity to such persons to make representations to the court.

General principles in exercising certain powers.

20. The following basic principles apply to the powers conferred on the court under sections 15 (Charging order) and 19 (Application of proceeds from the realization of property) or on a receiver appointed under sections 14 (Restraint order) and 17 (Appointment of a receiver) or in pursuance of a charging order:

(a) in the case of realizable property held by a person to whom the accused has directly or indirectly made a prohibited gift, the power is exercised with a view to realizing no more than the value of the gift;

(b) the powers shall be exercised with a view to allowing any person other than the accused or the recipient of any prohibited gift, to retain or recover the value of any property belonging to him;

(c) in exercising those powers, no account shall be taken of any obligations of the accused or of the recipient of any prohibited gift which conflict with the obligation to satisfy the confiscation order;

(d) subject to the above principles, the power shall be exercised with a view to satisfying the amount due under a confiscation order by recovering the current value of the realizable property.

21.-(1) If on any application by the accused in respect of a confiscation order or of the receiver appointed under section 17 (Appointment of a receiver), or on the application for the making of a charging order, the court is satisfied that the realizable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, it may, subject to subsection (2), vary the confiscation order: Variation of a confiscation order.

(a) by substituting for the amount to be recovered under the confiscation order such lesser amount as the court considers just; and

(b) by substituting for the terms of imprisonment prescribed by section 126 of the Criminal Procedure Law and section 9 (Procedure for enforcing a confiscation order. Table) of this Law in respect of the amount to be recovered under the order, a shorter period corresponding, in accordance with the above provisions, to the lesser amount which will be recovered. Cap.155.

(2) For the purposes of subsection (1) above:

(a) in the case of realizable property held by a person who has been adjudged bankrupt, the amount of that property which could be distributed among the creditors of the bankrupt shall be treated as property which cannot be recovered, but:

(b) any inadequacy in the realizable property which appears to the court to be attributable wholly or partly to anything done by the accused for the purpose of preserving from any risk of realization under this Law any property held by a person to whom the accused had directly or indirectly made a prohibited gift shall not be treated as property which cannot be recovered.

(3) The application for variation of the confiscation order is made in writing and is supported by a sworn statement in verification of the facts on which it is based and such application is served on the prosecution and on other affected persons as the court may direct.

(4) For the purposes of this section "court" means the court which made the confiscation order or any other court of similar jurisdiction.

22.-(1) Where a person holding realizable property is adjudged bankrupt, for the purposes of the Bankruptcy Law the following are excluded from the bankrupt's estate- Bankruptcy of the accused. Cap.5 49 of 1985 197 of 1986.

(a) property which is the subject of a restraint order made before the order adjudging him bankrupt; and

(b) any proceeds of property realized by virtue of sections 14(6), 17(1)(d) and 17(1)(e) being in the hands of a receiver appointed under section 14 (Restraint order) or 17 (Appointment of a receiver).

(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 14 to 18 or on a receiver appointed for the purposes of those sections shall not be exercised in relation to any property of the bankrupt which, under section 41 of the Bankruptcy Law, is subject to distribution among his creditors. Cap. 5.

(3) Subsection (1) above does not affect the enforcement of a charging order made before the making of a bankruptcy order or made in respect of property which was subject to a restraint order when the order adjudging him bankrupt was made.

(4) Nothing in the Bankruptcy Law shall be taken as restricting in any way the exercise of the powers referred to in subsection (2).

(5) Where the Official Receiver acts as a provisional receiver under sections 9 and 10 of the Bankruptcy Law and the property of the debtor is subject to a restraint order, such property shall be administered according to the directions of the court without prejudice to a lien for any expenses, including the remuneration of the receiver, incurred in respect of such property. Cap. 5.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a prohibited gift, the provisions of section 46 of the Bankruptcy Law- Cap. 5.

(a) shall not apply in respect of the making of the gift if-

(i) the gift was made at any time when criminal proceedings for the commission of a predicate offence had been instituted against him and not concluded;

(ii) the gift was made at the time when an application against him, under sections 28 (Confiscation order where the accused has died or absconded) 35 (Reconsideration of a case) or 36 (Re-assessment of proceeds), was pending; or

(iii) the property of the person to whom the gift was made is subject to a restraint or charging order, but

(b) shall apply after the conclusion of the criminal proceedings for the commission of a predicate offence, provided account is taken of any realizations under this Law of property held by the person to whom the gift was made.

23.-(1) Where realizable property is held by a company in respect of which an order for winding up was made or a resolution has been passed by the company for a voluntary winding up, the functions of the liquidator or provisional liquidator shall not be exercised in relation to- Winding up of a company holding realizable property.

(a) property subject to a restraint order made before the relevant date, as specified in subsection (4);

(b) any proceeds of property realized by virtue of sections 14(6), 17(1)(d) or 17(1)(e) which are in the hands of a receiver appointed under section 14 (Restraint order) or 17 (Appointment of a receiver):

Provided that out of such property any expenses, including the remuneration of the liquidator or provisional liquidator, properly incurred in the winding up in respect of the property, shall be payable.

(2) In the case of a company for which a winding up order was made or a resolution has been passed by the company for its voluntary winding up, the powers conferred on the court under sections 14 to 18 or on a receiver appointed under the said sections shall not be exercised in relation to any realizable property held by the company in relation to which the liquidator could exercise his functions if by such exercise-

(a) he is prevented from exercising those functions for the purpose of distribution to the company's creditors of any property held by the company; or

(b) he is prevented from paying out any expenses, including the remuneration of the liquidator or any provisional liquidator, properly incurred in the winding up of the company in respect of the said property:

Provided that nothing in the Companies Law shall be taken as restricting in any way the exercise of these powers. Cap. 113.
9 of 1968
76 of 1977
17 of 1979
105 of 1985
198 of 1986
19 of 1990
46(I) of 1992
41(I) of 1994
15(I) of 1995
21(I) of 1997.

(3) Subsection (2) above does not affect the enforcement of a charging order made before the relevant date or in relation to property which was the subject of a restraint order at the relevant date, as such date is defined in subsection (4).

(4) For the purposes of this section:

"company" means a company which is wound up on the basis of the provisions of the Companies Law;

"relevant date" means-

(a) the date on which the resolution for the voluntary winding up of the company has been passed in the cases where-

(i) no winding up order has been made; or

(ii) a winding up order was made, but before the filing of the petition for the winding up of the company by the court, such resolution was passed by the company;

(b) in any other case where such an order has been made, the date of the making of the order.

Receiver. Supplementary provisions.

24.-(1) A receiver appointed under section 14 (Restraint order) or 17 (Appointment of a receiver) or in pursuance of a charging order shall not be liable to any person in respect of any loss or damage resulting from any action of his in relation to property of this person which was not realizable, provided that the said receiver-

(a) would have been entitled to take such action if such property was realizable;

(b) believed or had reasonable grounds for believing that he was entitled to take such action; and

(c) the loss or damage was not caused by his negligence.

(2) If any amounts due in respect of the remuneration or expenses of a receiver appointed for the purposes of this Law, remain unpaid by reason of the fact that there are no available amounts for the payment of such remuneration and expenses in accordance with section 19(3), then such unpaid amounts are paid by the Republic.

Compensation.

25.-(1) According to the provisions of this section, the court may order compensation to be paid to any person who had realizable property, in the case where the criminal proceedings which were instituted against him for the commission of a predicate offence-

(a) did not result in a conviction; or

(b) resulted in a conviction but such conviction was quashed on appeal and no conviction for any other predicate offence was substituted.

(2) The claim for compensation is made by action.

(3) The court orders compensation under section 25(1) above if it is satisfied that-

(a) there has been serious default on the part of a person participating in the investigation or prosecution of the offence or offences concerned and that but for that default, the proceedings would not have been instituted or continued, and

(b) the plaintiff has suffered substantial loss in consequence of anything done in relation to his property by virtue of any order of the court under sections 14 to 18 both inclusive.

(4) The amount of compensation shall be such as the court considers just taking into account all the circumstances of the case.

(5) The provisions of this section shall not apply where the court makes a confiscation order under section 28 (Confiscation order where accused has died or absconded).

Special defences for persons assisting another for the commission of laundering offences.

26.-(1) In criminal proceedings against a person in relation to the provision of assistance to another in the commission of a laundering offence in contravention of the provisions of section 4 (Laundering offences), it shall constitute a defence for the accused if he proves that he intended to disclose to a police officer or to the Unit his suspicion or belief, or the facts on which he bases his suspicion or belief, in respect of the agreement or arrangement and that his failure to do so was based on reasonable grounds.

(2) Where a person discloses to a police officer or to the Unit his suspicion or belief that any funds or investments are derived from or used in connection with a predicate offence or any matter on which such a suspicion or belief is based-

(a) the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by contract; and

(b) if he does any act in contravention of section 4 (Laundering offences) and the disclosure is related to the act concerned, this person shall not commit the offence of assisting another to commit a laundering offence under the said section, if the following conditions are satisfied:

(i) the said act was done with the consent of the police officer or Unit after the aforesaid disclosure; or

(ii) if the act was done before the disclosure, the disclosure was made on his initiative and without delay as soon as it was reasonable for him to make such disclosure.

(3) Where a person is, at the material time, an employee of another person whose activities are supervised by one of the authorities established under section 60 (Supervisory Authorities), subsections (1) and (2) above shall apply in respect of disclosures or intended disclosures to the competent person in accordance with the procedure the employer wishes to establish for the purposes of such disclosures, and these disclosures shall have the same effect as disclosures or intended disclosures to a police officer or Unit.

Other offences in connection with laundering offences.

27.-(1) A person who-

(a) knows or reasonably suspects that another person is engaged in laundering offences, and

(b) the information on which that knowledge or reasonable suspicion is based, comes to his attention in the course of his trade, profession, business or employment,

shall commit an offence if he does not disclose the said information to a police officer or to the Unit as soon as is reasonably practicable after it comes to his attention.

(2) It shall not constitute an offence for an advocate to fail to disclose any privileged information which has come to his attention.

(3) No criminal proceedings shall be brought against a person for the commission of the offences referred to in subsection (1), without the express approval of the Attorney General.

(4) An offence under this section shall be punishable by imprisonment not exceeding five years or by a pecuniary penalty not exceeding three thousand pounds or by both of these penalties.

Confiscation order where the accused has died or absconded.

28.-(1) Subject to the provisions of subsection (3) and upon the application of the Attorney-General, the court which has convicted a person for the commission of a predicate offence may make a confiscation order under section 8 (Confiscation order) against an accused who has died or absconded.

(2) The Attorney-General, together with his application under subsection (1), or within such a time limit as the Court may direct, shall submit a statement of allegations which sets out facts and particulars relevant to the inquiry for the determination of whether the accused has acquired any proceeds from the commission of a predicate offence or to the assessment of the said proceeds.

(3) The court shall not make a confiscation order under subsection (1) unless-

(a) it is satisfied that the Attorney-General has taken reasonable steps to contact him; and

(b) any person who is likely to be affected by the making of a confiscation order by the court, has been given the opportunity to appear before the court and make representations.

(4) Where the court has made a confiscation order under this section and the accused subsequently appears before the court for the purpose of imposition of a penalty on him in relation to the same offence, subsection (1) of section 8 (Confiscation order) of this Law shall not apply so far as his appearance before the Court is in respect of the same offence.

29.-(1) This section shall apply where the court has made a confiscation order under section 28 (Confiscation order where the accused has died or absconded) in respect of an accused who had absconded and subsequently returned.

Power to set aside a confiscation order where the accused who had absconded returns.

(2) The court, upon an application by the accused and after hearing the views of the Attorney-General, may set aside the confiscation order if it considers expedient and just to do so.

30.-(1) This section shall apply where the court has made a confiscation order under section 28 in respect of an accused who had absconded and subsequently returned.

Variation of a confiscation order made under section 28.

(2) Where the accused claims that-

(a) the value of the proceeds from the commission of a predicate offence in respect of the period for which the assessment had been made; or

(b) the amount which could have been realized at the time the confiscation order was made was smaller than the amount of the confiscation order,

he may submit an application to the court for the consideration of the above claims.

(3) Where the court in view of the evidence submitted before it, accepts the allegation of the accused-

(a) it shall make a new assessment under section 7 (Assessment of proceeds from the commission of a predicate offence); and

(b) may, if it considers just after taking into consideration all the circumstances of the case, vary the amount of the confiscation order.

5 of 41(I) of 1998.

31.-(1) Where proceedings are being carried out before a Court for- Prohibition of publicizing information.

(a) the issue of a warrant of arrest, under the Criminal Procedure Law, against a person for whom there is evidence that he has committed a prescribed offence under section 3; or Cap. 155.

(b) the making of interim orders under this Law against a person for whom there is evidence that he has committed a prescribed offence, provided that no criminal proceedings for the commission of such offence have been instituted in the Republic against this person,

the court may order that the proceedings be conducted in the absence of representatives of the Press and other mass media or other persons not directly interested in or affected by the proceedings and to prohibit the publication of any information in relation to the said proceeding.

(2) Any person who publishes information in contravention of the directions of the court under subsection (1), shall commit an offence punishable by one year's imprisonment or by a pecuniary penalty of one thousand pounds or by both of these penalties.

(3) No criminal proceedings shall be instituted by virtue of this section without the express approval of the Attorney General.

D. Freezing and confiscation orders of property
Against an absent suspect

32.-(1) Subject to the provisions of subsection (2) and upon the application of the Attorney General, a Court may make an order for the freezing of property of a suspect who is outside the jurisdiction of the Republic or has died. Freezing order of property against an absent suspect.

(2) The court shall make a freezing order under subsection (1), if satisfied by affidavit or other evidence that-

(a) there is prima facie evidence against the suspect for the commission of a prescribed offence; and

(b) the property of the suspect may be converted or transferred or removed outside the jurisdiction of the Republic for the purpose of concealing or disguising its illicit origin.

(3) The freezing order shall have effect for six months but the court may extend its validity for up to a period of one year if reasonable grounds concur.

Order of confiscation of property against an absent suspect.

33.-(1) Subject to the provisions of subsection (2) and upon the application of the Attorney-General, a court may make an order for confiscation of property against a suspect who is outside the jurisdiction of the Republic or has died.

(2) The court shall make the confiscation order under subsection (1) if the suspect does not appear before the court during the validity of the freezing order made under section 32 (Freezing order of property against an absent suspect) and if it is satisfied that;

(a) The prosecution has taken reasonable steps to contact him; and

(b) any person who is likely to be affected by the making of a confiscation order has been given the opportunity to make representations, if he so wishes, before the court in respect of the making of the order.

(3) Where the court has made a confiscation order under this section and the suspect is subsequently brought before the court in respect of a prescribed offence for which a confiscation order has been made, Part II of this Law shall not apply in respect of the said offence, but the provisions of Part III shall apply mutatis mutandis.

Compensation paid to an absent suspect against whom an order for the freezing or confiscation of his property was made.

34.-(1) This section shall apply where-

(a) the court has made a freezing order under section 32 (Freezing order of property against an absent suspect) or a confiscation order under section 33 (Confiscation of property order against an absent suspect) against a suspect who was outside the jurisdiction of the Republic; and

(b) the suspect is subsequently put on trial for the same offence and acquitted.

(2) The court which acquits the defendant shall set aside the freezing or confiscation order.

(3) Upon an action made by the person who had property, the court may order compensation to be paid to this person if satisfied that the person concerned has suffered loss as a result of the making of the freezing or confiscation order under section 32 or 33, as the case may be.

(4) The amount of the compensation shall be such as the court considers just having taken into account all the circumstances of the case.

PART III - RECONSIDERATION AND REVISION OF CONFISCATION ORDERS

Reconsideration of a case.

35.-(1) Where-

(a) Because of lack of evidence, the Court-

(i) did not make an inquiry under section 6 (Inquiry in order to determine whether the accused acquired proceeds); or

(ii) made an inquiry under section 6 but it was not ascertained whether the accused acquired proceeds from the commission of a predicate offence; and

(b) the Attorney General-

(i) has secured evidence which was not available on the date of conviction of the accused; and

(ii) believes that this evidence would have led the court to determine that the defendant had benefited from the commission of a predicate offence if an inquiry under section 6 was made on the date of conviction of the accused,

the Attorney General may ask the court to consider the evidence he has secured in accordance with subsection (b) of this section.

(2) The court shall make a confiscation order under section 8 (Confiscation order) if, having considered the evidence given under section 6 and bearing in mind all the circumstances of the case, it considers it expedient to do so. 6 of 41(I) of 1998.

(3) For the purposes of this section and where the court has decided to proceed with an inquiry under this section, the provisions of this Law which would have applied if the inquiry were made on the date of conviction of the accused, shall apply mutatis mutandis.

(4) No application shall be considered by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(5) This section shall not apply where the court has imposed a penalty under Part VI.

Re-assessment of proceeds.

36.-(1) Where the Attorney-General is of the opinion that the real value of the proceeds of the accused from the commission of a predicate offence was greater than their assessed value, the Attorney General may apply to the court for the consideration of the evidence on which he based his opinion.

(2) For the purposes of subsection (1)-

"assessed value" means the value of the proceeds of the accused from the commission of a predicate offence as assessed by the court under section 7 of this Law;

"real value" means the value of the proceeds of the accused from a predicate offence which was committed-

(a) in the period to which the assessment of section 7 refers; or

(b) in any earlier period.

(3) The court if-

(a) having considered the evidence given under subsection (1); and

(b) having been satisfied that the real value of the proceeds of the accused is greater than their assessed value, (because their real value was greater than the assessed amount or because their value increased subsequently),

it may make a fresh assessment of the amount which must be recovered from the accused under section 8 (Confiscation order).

(4) The court may take into account any payment or other reward received by the accused on or after the date of the assessment under section 7 (Assessing the proceeds from the commission of a predicate offence), if the Attorney-General shows that the said payment or reward was received by the accused in connection with the commission of a predicate offence:

Provided that for the purposes of this subsection, the court shall not make the assumptions required by section 7.

(5) Where, as a result of the new assessment required above, the amount to be recovered exceeds the amount that had been assessed under section 7 the court-

(a) may substitute for the amount to be recovered under the confiscation order such greater amount as it considers just, and

(b) where the court replaces the amount of the order, it shall also replace the terms of imprisonment prescribed by section 128 of the Criminal Procedure Law and by section 9 of this Law. Cap. 155.

(6) No application shall be considered by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(7) For the purposes of this Part, "the date of conviction" means-

(a) the date on which the accused was convicted; or

(b) the date of the last conviction where the accused appeared for the imposition of a sentence in respect of more than one conviction, and those convictions were not all made on the same date.

PART IV - INTERNATIONAL CO-OPERATION

37. For the purposes of this Part: Interpretation of principal terms.

"appeal" for the purposes of subsection 3(a) of section 38 (Procedure for the enforcement of foreign orders) shall include any proceedings the object of which is the setting aside of a judgement of the court or the retrial of the case or the stay of its execution;

"Convention" means- 2 of 25(I) of 1997.

(a) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was ratified by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Ratification) Law; and 49 of 1990.

(b) the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime which was ratified by the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Ratification) Law of 1995. 18(III) of 1995.

"court" means the President or a Senior District Judge of the District Court of Nicosia;

"foreign country" means a country which at the time of submitting an application for the execution of a foreign order is a Contracting Party to the Convention;

"foreign order" means an order made by a court of a foreign country, which is made for the purposes of the Convention or legislation enacted for the purpose of implementing the Convention and shall include-

(a) Orders for the confiscation of proceeds and instrumentalities as these are defined in the Convention;

(b) restraint orders and orders for the seizure of property made temporarily for the purposes of future confiscation of proceeds and instrumentalities;

(c) any order which the Council of Ministers may, by notification published in the Official Gazette of the Republic, wish to include in the term "foreign order".

Procedure for the enforcement of external orders.

38.-(1) The request for enforcement shall be submitted by or on behalf of a foreign country to the Ministry of Justice and Public Order which, if satisfied that the request comes from a foreign country and concerns a foreign order within the meaning of this Part, shall thereafter transmit the request to the Unit which submits it to the court.

(2) Subject to the provisions of subsection (3), the court, after a request of a foreign country is transmitted to it, shall register the foreign order for the purpose of its enforcement.

(3) The court shall register an external order, if satisfied that-

(a) At the time of registration the external order was in force and enforceable;

(b) where the external order was made in the absence of the accused, the accused received notice of the proceedings in time to enable him to present his case and state his views;

(c) the enforcement of the order would not be contrary to the interests of justice of the Republic;

(d) the grounds for refusal of co-operation mentioned in Article 18 of the Convention do not concur.

Effect of registration.

39.-(1) Subject to the provisions of subsection (2) of this section, a foreign order registered by virtue of section 38 (Procedure for the enforcement of foreign orders) shall become enforceable as if the order had been made by a competent court of the Republic under this Law.

(2) The enforcement of the order may be subject to a term of the foreign country that the penalty of imprisonment or other deprivation of liberty, in case there is compliance with the order, shall not be imposed.

7 of 41(I) of 1998.

(3) Where the foreign order concerns the confiscation of proceeds or property, the proceeds or property may, after the enforcement of the said order, be distributed among the competent authorities of the foreign country and the Republic of Cyprus.

Cancellation of registration.

40. The court shall cancel the registration of a foreign order if it appears to the court that the order has been complied with-

(a) by the payment of the amount due under the order; or

(b) by the imprisonment of the person against whom the order was made for the reason that he did not comply therewith; or

(c) in any other way that may be provided for under the legislation of a foreign country.

41.-(1) A foreign order may be amended or revised only by a court or any other competent authority of the foreign country which made the order. External order shall be binding.

(2) The court, when exercising the powers conferred upon it by section 39 (Effect of registration) as well as other powers in respect of the execution of a foreign order, shall be bound by the findings as to the facts in so far as they are stated in the conviction or decision of a court of the foreign country or in so far as such conviction or judicial decision is implicitly based on them.

42.-(1) Where in the foreign order there is a reference to a sum of money to be received in the currency of another country, this amount shall be converted into the currency of the Republic at the rate of exchange ruling at the time the request for registration was made. Amount of an order.

(2) Under no circumstances shall the total value of the confiscated property exceed the sum of money to be paid which is referred to in the foreign order.

43.-(1) Sections 14 to 23 both inclusive shall also apply in cases of foreign orders subject to any amendments or limitations that the Council of Ministers may wish to prescribe by regulations made under this Law. Supplementary provisions.

(2) The Council of Ministers may include in the Regulations any other provision it considers necessary for the better implementation of this Part and in particular anything relating-

(a) to the proof of any matter or thing;

(b) to the circumstances which in any foreign country may be considered as constituting the commencement or conclusion of procedures for the making of an external order.

(3) Where on the request of or on behalf of a foreign country the court is satisfied that proceedings have been instituted but not concluded in this country during which a foreign order may be made, the court shall make a restraint or charging order by applying sections 14 and 15 of this Law-

(a) in the same way in which they would apply in respect of proceedings which were instituted in the Republic but not concluded against a person accused of commission of a prescribed offence;

(b) as if the reference to a confiscation order was a reference to a foreign order and the reference to an application by the prosecutor was a reference to a request from or on behalf of the foreign country;

(c) subject to the amendments prescribed in the Regulations made under this section.

(4) The application of this section shall not depend upon the making of Regulations and until Regulations are made, the sections referred to in subsection (1) shall apply without any amendment or limitations.

PART V - ORDERS FOR THE DISCLOSURE OF INFORMATION

Interpretation of terms.

44. For the purposes of this Part-

"information" means any kind of oral or written communication and includes information contained in a computer;

"privileged information" means-

(a) a communication between an advocate and a client for the purposes of obtaining professional legal advice or professional legal services in relation to legal proceedings whether these have started or not, which would in any legal proceedings be protected from disclosure by virtue of the privilege of confidentiality under the law in force at the relevant time;

Provided that a communication between an advocate and a client for the purposes of committing a prescribed offence shall not constitute privileged information;

(b) any other information which is not admissible in court for the protection of the public interest under the law in force at the relevant time.

Order for disclosure.

45.-(1) Irrespective of any provisions in other laws, for the purposes of inquiry in relation to prescribed offences or in relation to inquiry for the determination of proceeds or instrumentalities, the court may, on the application of the investigator of the case, make an order for disclosure under the provisions of this Part.

(2) For the purposes of this section, inquiry shall also include an inquiry conducted abroad and investigator of the case in respect of investigation conducted abroad shall include any investigator under the provisions of any relevant law of the Republic who cooperates with the investigator of the case.

(3) Any person to whom an order of disclosure is addressed under section 46 (Conditions for the making of an order for disclosure), shall have an obligation to notify forthwith the investigator about any subsequent change in the information that has already been given under this section.

Conditions for the making of an order for disclosure.

46.-(1) The court before which an application for the making of an order for disclosure is submitted, may, if satisfied that the conditions of subsection (2) are fulfilled, make an order called order for disclosure, addressed to the person who appears to the court to be in possession of the information to which the application relates, calling upon the said person to disclose or produce the said information to the investigator or any other person specified in the order within seven days or within such a longer or shorter period of time as the court may specify in the order if it considers expedient under the circumstances.

(2) The conditions referred to in subsection (1) are that:

(a) there is a reasonable ground for suspecting that a specified person has committed or has benefited from the commission of a predicate offence;

(b) there is reasonable ground for suspecting that the information to which the application relates is likely to be, whether by itself or together with other information, of substantial value to the investigations for the purposes of which the application for disclosure has been submitted;

(c) the information does not fall within the category of privileged information;

(d) there is a reasonable ground for believing that it is in the public interest that the information should be produced or disclosed, having regard to:

(i) the benefit likely to result for the investigation from the disclosure or provision of the said information; and

(ii) the circumstances under which the person in possession of the information holds it.

(3) The order for disclosure-

(a) may also be made in relation to information which is in the possession of a government officer;

(b) shall have effect despite any obligation for secrecy or other restriction upon the disclosure of information imposed by law or otherwise;

(c) shall not confer any right for production or disclosure of information which is privileged.

Information contained in a computer.

47. Where the required information is contained in a computer-

(a) if the order directs the disclosure of such information, the order shall be enforced by the disclosure of this information in a visible and legible form;

(b) if the order directs the handing over of the information to the investigator or other person, the order shall be enforced by the handing over of the information to the investigator in a form which is visible, legible and portable.

Offences.

48. Any person making a disclosure which may impede or prejudice the interrogation and investigation carried out in respect of prescribed offences or the ascertainment of proceeds, knowing or suspecting that the said interrogation and investigation are taking place, shall be guilty of an offence punishable by imprisonment not exceeding five years.

PART VI - SUMMARY INQUIRY

Conduct of a summary inquiry.

49.-(1) The procedure of inquiry followed under this section, called summary inquiry, shall relate to the cases where the kind or amount of the benefit may be more easily determined by an evaluation of the financial position of the accused and his family.

(2) For the purposes of this Part-

"financial position of the accused" shall include the income of the accused derived from any source and all the movable and immovable property which he had or acquired in the last six years before his conviction;

"family of the accused" shall include his father, mother, spouse and descendants.

(3) The inquiry referred to in this Part shall be conducted upon the application of the Attorney-General where the court which has convicted a person of the commission of a predicate offence believes that there are reasonable grounds to conduct an inquiry for the purpose of imposing an appropriate pecuniary penalty in respect of the proceeds which the accused might have acquired from the commission of the offence.

Procedure to be followed.

50. The summary inquiry shall be conducted under section 6 (Inquiry in order to determine whether the accused acquired proceeds) and in accordance with the following provisions:

(a) the court shall call upon the accused to give particulars of any matter relevant to the imposition of the penalty including the financial position of the accused and his family. The particulars must be supported by receipts, titles and other documents verifying their correctness;

(b) the examination of the accused is conducted by the court through which questions are submitted by the prosecution and by the advocate of the accused. The court, if it considers expedient, may allow the cross-examination and re-examination of the accused by the prosecution and by the advocate of the accused respectively;

(c) the accused may after the conclusion of his examination by the court call witnesses and adduce any evidence in support of his allegations following which the prosecution may call witnesses and adduce evidence in rebuttal;

(d) the witnesses called to give evidence under subsection (c) above shall be cross-examined and re-examined as if they were witnesses testifying in criminal proceedings;

(e) if at the conclusion of the inquiry the accused fails to give sufficient and satisfactory explanations regarding the manner in which he acquired the various assets owned by him or his family and regarding any other matter relevant to section 7 (Assessing the proceeds from the commission of a predicate offence), the court may proceed on the assumption that:

(i) any property of his or part thereof acquired at any time during the last six years prior to the institution of criminal proceedings and for which no satisfactory explanations were given or which were not supported by satisfactory evidence, has been acquired with proceeds from the commission of a predicate offence;

(ii) any property of his family or part thereof for which no sufficient or satisfactory explanations were given and which has been transferred at any time during the last six years prior to the institution of proceedings against him was the subject of a gift which was made by the accused for the purpose of avoiding the consequences of the Law.

(f) the court, after having determined that the accused benefited from the commission of a predicate offence and subject to subsection (3) of section 49 (Conduct of summary inquiry), may impose a pecuniary penalty without prejudice to the power of the court to impose any other additional penalty;

(g) the court, in assessing the fine to be imposed, takes into account the benefit the accused had from the commission of a predicate offence as such benefit was determined in an inquiry under this section;

(h) the court may, for the purpose of making an inquiry under this section, make any order in order to compel the accused or any other person to attend and to testify or to produce anything relevant to the inquiry.

False statements.

51. A person called as a witness before the court in relation to an inquiry carried out under this Part and who knowingly gives false or inaccurate information shall commit an offence punishable by four years imprisonment.

Enforcing a pecuniary penalty.

52.-(1) The court for the purpose of enforcing a pecuniary penalty may, if it considers expedient, appoint a receiver who shall have the same functions as if he were appointed under section 17 (Appointment of a receiver).

(2) Subject to subsection (1), the provisions of section 9 (Procedure for enforcing a confiscation order. Table) shall apply for the enforcement of a pecuniary penalty as if the reference made in that section to a confiscation order were a reference to a pecuniary penalty imposed after an inquiry had been conducted under this Part.

(3) Notwithstanding the provisions of any other law regarding the manner of enforcement of orders for the payment of pecuniary penalties, an inquiry conducted by the court for the purposes of this Part shall also be deemed to be an inquiry conducted under section 119 of the Criminal Procedure Law and the court shall not impose a pecuniary penalty which in the light of the findings of the inquiry cannot be collected either from the property of the accused or by setting aside transfers and gifts of property to members of his family.

PART VII
UNIT FOR COMBATING MONEY LAUNDERING OFFENCES, ADVISORY AUTHORITY FOR COMBATING MONEY LAUNDERING OFFENCES

Composition of the Unit for Combating Money Laundering Offences.

53.-(1) A Unit for Combating Money Laundering Offences (hereinafter called "Unit") shall be established and shall be composed of representatives of the Attorney-General, the Chief of Police and the Director of the Department of Customs and Excise who shall be appointed by the Attorney-General, the Chief of Police and the Director of the Department of Customs and Excise, respectively.

(2) The members of the Unit shall be appointed by detachment and by name and the duration of their appointment shall be at least three years.

(3) The members of the Unit shall be deemed to be investigators by virtue of section 5 of the Criminal Procedure Law. Cap. 155.

(4) The Unit is presided by a representative of the Attorney-General of the Republic. 8 of 41(I) of 1998.

Functions of the Unit.

54.-(1) The Unit, *inter alia*, shall-

(a) be responsible for the gathering, classification, evaluation and analysis of information relevant to laundering offences;

(b) conduct investigations whenever there are reasonable grounds for believing that a laundering offence has been committed;

(c) co-operate with the corresponding Units abroad, for the purposes of investigation of laundering offences by the exchange of information and by other relevant ways of co-operation. 9 of 41(I) of 1998.

(d) issue directives for the better exercise of its functions. 9 of 41(I) of 1998.

(2) For purposes of subsection (1)

(a) members of the Unit, upon the making of a judicial order, may enter any premises including premises of a financial institution; and

(b) the Unit may, upon a relevant application to the court, secure an order for the disclosure of information.

(3) Any report made at a police station in respect of the commission of a prescribed offence shall be transmitted forthwith to the Unit by the officer in charge of the said police station.

Advisory Authority for Combating Money Laundering Offences.

55.-(1) The Council of Ministers shall establish an Advisory Authority for Combating Money Laundering Offences (hereinafter referred to as "Advisory Authority") which shall be composed of a representative of-

(a) The Central Bank of Cyprus;

(b) all other supervisory authorities;

(c) the Ministry of Finance;

(d) the Ministry of Justice and Public Order;

(e) the Attorney-General;

(f) the Association of Commercial Banks;

(g) the Cyprus Bar Association, the Institute of Certified Public Accountants of Cyprus and other professional bodies which the Council of Ministers may prescribe.

(h) any other organisation or service the Council of Ministers may prescribe.

(2) The Advisory Authority shall be presided by the representative of the Ministry of Justice and Public Order or in case he is absent by the representative of the Central Bank of Cyprus.

(3) The Advisory Authority shall be in quorum where at least five members are present at the meeting.

Powers of the Advisory Authority.

56. The Advisory Authority shall-

(a) inform the Council of Ministers of any measures taken and the general policy applied against money laundering offences;

(b) advise the Council of Ministers about additional measures which, in its opinion, should be taken for the better implementation of this Law;

(c) promote the Republic internationally as a country which complies with all the conventions, resolutions and decisions of international bodies in respect of combating laundering offences.

PART VIII
SPECIAL PROVISIONS IN RESPECT OF RELEVANT FINANCIAL BUSINESS

57. For the purposes of this Part- Interpretation of principal terms.

"applicant for business" means a person seeking to form a business relationship or carry out a one-off transaction, with a person who is carrying out relevant financial business in or from within the Republic;

"business relationship" means any arrangement between two or more persons where-

(a) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and

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

"one-off transaction" means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant financial business;

"relevant financial business" means the business of being engaged in the carrying out of:-

(a) any activity listed in section 61 (Relevant financial business) of this Law;

(b) any other activity defined by the Council of Ministers as such by an order amending section 61 of this Law published in the Official Gazette of the Republic.

58.-(1) No person shall, in the course of relevant financial business carried on by him in or from within the Republic, form a business relationship, or carry out an one-off transaction with or on behalf of another, unless that person- Procedures to prevent money laundering offences.

(a) applies the following procedures in relation to that business-

(i) identification procedures in accordance with sections 62-65 of this Law;

(ii) record-keeping procedures in accordance with section 66 (Record keeping procedures) of this Law;

(iii) internal reporting procedures, in accordance with section 67 (Internal reporting procedures) of this Law;

(iv) such other procedures of internal control and communication, as may be appropriate for the purposes of forestalling and preventing money laundering;

(b) takes appropriate measures from time to time for the purposes of informing employees whose duties include the handling of relevant financial business about-

(i) the procedures under sub-section 1(a) above which are followed by him and which relate to the relevant financial business in question, and

(ii) the legislation relating to money laundering; and

(c) provides from time to time for the training of his employees 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 offences.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence punishable by imprisonment of two years or by a pecuniary penalty of two thousand pounds or by both of these penalties.

(3) In determining whether a person has complied with the requirements of sub-section (1) above, a court may take into account-

(a) any relevant supervisory or regulatory guidance which applies to that person;

(b) where no guidance falling within sub-section 1(a) above applies, any other relevant instructions issued by the professional body that regulates, or represents the business or work carried on by that person.

Offences by bodies corporate, partnerships and unincorporated associations.

59.-(1) Where an offence under section 58 (Procedures to prevent money laundering) above committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of an offence and shall be liable to imprisonment of two years or to a pecuniary penalty of two thousand pounds or to both of these penalties.

(2) Where the affairs of a body corporate are managed or controlled by shareholders who are not directors, managers, secretaries or other officers, sub-section (1) above shall apply in relation to the acts and omissions of the shareholder concerned in connection with the exercise of his managerial functions as if he were a director of a body corporate.

(3) Where an offence under section 58 above is committed by an unincorporated association, and is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who manages or controls the association, he as well as the association, shall be guilty of an offence and shall be liable to imprisonment of two years' imprisonment or to a pecuniary penalty of two thousand pounds or to both of these penalties.

Supervisory Authorities.

60.-(1) The Supervisory authority-

(a) in relation to persons who have a licence under the relevant laws of the Republic to carry on banking business in or from the Republic, shall be the Central Bank of Cyprus;

(b) in relation to persons carrying out relevant financial business, other than that referred to in paragraph (a) above, shall be designated by the Council of Ministers which may designate one or more supervisory authorities.

(2) It shall be the principal duty of a supervisory authority to assess and supervise compliance, by persons falling under its area of supervisory responsibility, with the provisions of this part of the Law.

(3) A Supervisory authority may, at its discretion, issue directions or circulars to persons falling within its supervisory responsibility, to assist them in complying with this part of the Law.

(4) Where the Supervisory authority is of the opinion that a person falling within its supervisory responsibility has failed to comply with the provisions of this Part, it shall refer the matter to the Attorney-General.

(5) Where a Supervisory authority-

(a) possesses information, and

(b) is of the opinion that any person subject to its supervision may have been engaged in a money laundering offence,

it shall, as soon as is reasonably practicable, transmit the information to the Unit as soon as possible.

(6) No criminal proceedings shall be instituted under subsection (4) without the prior express consent of the Attorney-General.

61. Relevant financial business includes the following: Relevant financial business.

(1) Acceptance of deposits by the public.

(2) Lending money to the public.

(3) Finance leasing, including hire purchase financing.

(4) Money transmission services.

(5) Issue and administration of means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).

(6) Guarantees and commitments.

(7) Trading on one's own account or on account of customers in-

(a) Stocks or securities including cheques, bills of exchange, bonds, certificates of deposits,

(b) foreign exchange,

(c) financial futures and options,

(d) exchange and interest rate instruments,

(e) transferable instruments.

(8) Participation in share issues and the provision of related services.

(9) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues and consultancy services as well as services in the areas of mergers and acquisitions of businesses.

(10) Money broking.

(11) Investment services, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investment" includes long-term insurance contracts, whether or not associated with investment schemes.

(12) Safe custody services.

(13) Custody and trustee services in relation to stocks.

62.-(1) Identification procedures followed by a person are in accordance with this Law if in the circumstances set out in subsection (2) below they require, as soon as is reasonably practicable, after the first contact between that person and an applicant for business, concerning any particular business relationship or one-off transaction- Identification procedures.

(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 satisfactory evidence of his identity,

and the procedures are in accordance with this Law if they require that where that evidence is not obtained as specified in (a) and (b) above, the business relationship or one-off transaction in question shall not proceed any further.

(2) The circumstances mentioned in subsection (1) above are those where-

(a) the parties form or resolve to form a business relationship between them;

(b) in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in a money laundering offence, or that the transaction is carried out on behalf of another person engaged in a money laundering offence.

(c) in respect of any one-off transaction, payment is to be made by or to the applicant for business of a sum of ten thousand pounds or more;

(d) in respect of two or more one-off transactions, where:

(i) it appears at the outset to a person handling the transactions-
- that the transactions are linked, and
- that the total sum, in respect of all of the transactions, which is payable by or to the applicant for business is ten thousand pounds or more;

(ii) at any later stage, it comes to the attention of such a person that the requirements of sub-paragraph (i) of subsection (2)(d) above are satisfied.

(3) The procedures referred to in sub-section (1) above are in accordance with this Law if, when a report is made whether in accordance with section 67 (Internal reporting procedures) or directly to the Unit, in circumstances falling within paragraph (b) of subsection (2), they provide for steps to be taken in relation to the one-off transaction in question in accordance with any directions that may be given by the Unit.

(4) In this Law references to satisfactory evidence of a person's identity shall be construed in accordance with sub-section (1) of section 65 (Supplementary provisions) below.

63.-(1) This section shall apply where, in relation to a person who is bound by section 62(1) above, an applicant for business acts on behalf of another person. Transactions on behalf of another person.

(2) Subject to the provisions of subsection (3) below, identification procedures followed by a person are in accordance with this Law if, in a case to which this Law applies, 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.

(3) In determining, for the purposes of sub-section (2) above, what constitutes reasonable measures in any particular case, all the circumstances of the case shall be taken into account and, in particular, to the best practice which, at the material time, is followed in the relevant field of business and which is applicable to those circumstances.

64. From the identification procedures under sections 62 and 63 are exempted those clients for whom there are reasonable grounds for believing that they are persons who are bound by the provisions of section 58 (Procedures to prevent money laundering) of this Law. Exemptions.

65.-(1) For the purposes of the provisions relating to identification procedures, proof of identity is satisfactory if- Supplementary provisions.

(a) It is reasonably possible to establish that the applicant is the person he claims to be; and

(b) the person who examines the evidence is satisfied, in accordance with the procedures followed under this Law in relation to the relevant financial business concerned, that the applicant is actually the person he claims to be.

(2) In determining, for the purposes of subsection (1) of section 62 (Identification procedures) above, the time limit in which satisfactory evidence of a person's identity has to be obtained, 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 one-off transaction concerned;

(b) the geographical location of the applicant for business;

(c) whether it is practical to obtain the evidence before commitments are entered into between the parties or before money passes;

(d) in relation to the circumstances mentioned in subsection (2)(c) or (d) of section 62 (Identification procedures) above, the time of the initial stage at which there are reasonable grounds for believing that the total amount payable by an applicant for business is ten thousand pounds or more.

66.-(1) Record-keeping procedures followed by any person are in accordance with this Law if they require the keeping, for the prescribed period, of the following records: Record-keeping procedures.

(a) In all cases where, in relation to any business relationship that is formed or one-off transaction that is carried out, evidence of a person's identity is obtained under procedures followed in accordance with sections 62 (Identification procedures) or 63 (Transactions on behalf of another person), a record that contains this evidence and-

(i) includes a copy of the evidence;

(ii) in a case where it is not reasonably practicable to comply with (i) above, which provides sufficient information which enables the details as to a person's identity to be recovered; and

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

(2) For the purposes of sub-section (1) above, the prescribed period is, subject to sub-section (3) below, the period of at least five years commencing with-

(a) In relation to the records described in sub-section (1)(a), the date on which the relevant business was completed within the meaning of sub-section (3) below; and

(b) in relation to the records described in sub-section (1)(b), the date on which all activities taking place in the course of the transaction in question were completed.

(3) For the purposes of subsection (2)(a) above, the date on which relevant business is completed is, as the case may be-

(a) In circumstances falling under paragraph (a) of section 62(2), the date of termination of the business relationship in respect of the formation of which, the record under sub-section (1)(a) above was compiled;

(b) in circumstances where the formalities necessary to terminate 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, the date of completion of all the activities taking place in the course of the last transaction shall be treated as the date on which the business relationship was terminated;

(c) in circumstances falling under paragraphs (b) or (c) of section 62(2), the date of completion of all the activities taking place in the course of the one-off transaction in respect of which the record under sub-section (1)(a) above was compiled;

(d) in circumstances falling within paragraph (d) of section 62(2), the date of completion of all the activities taking place in the course of the last one-off transaction in respect of which the record under sub-section (1)(a) above was compiled.

67. Internal reporting procedures followed by a person are in accordance with this Law if they include provisions- Internal reporting procedures.

(a) Identifying a person ("the competent person") to whom a report is to be made about any information or other matter which comes to the attention of the person handling relevant financial business and which, in the opinion of the person handling that business, proves or creates suspicions that another person is engaged in a money laundering offence;

(b) requiring that any such report be considered in the light of all other relevant information by the competent person, or by another designated person, for the purpose of determining whether or not the information or other matter contained in the report proves this fact or creates such suspicion;

(c) allowing the person to whom the examination of a report in accordance with paragraph (b) above has been assigned to have access to other information which may be of assistance to him and which is available to the person responsible for maintaining the said internal reporting procedures; and

(d) for securing that the information or other matter contained in the report is transmitted to the Unit where the person who has considered the report under the above procedures ascertains or has reasonable suspicions that another person is engaged in a money laundering offence.

PART IX - MISCELLANEOUS PROVISIONS

68. A court which adjudicates applications for the making of any order under this Law shall apply civil proceedings including the standard of proof applicable in these proceedings. Application of civil proceedings.

69.-(1) The court may make an order setting aside any prohibited gift with a view to enforcing a confiscation order or a pecuniary penalty. Setting aside of gifts.

(2) The court, before making the order for the setting aside of the gift, shall afford the person in possession of the property which constitutes the subject-matter of the gift the opportunity to express his views and to give reasons why the setting aside of the gift should not be ordered.

(3) Where the person in possession of the subject-matter of the gift is a minor, the opportunity mentioned in subsection (2) shall be afforded to his guardian.

(4) The court may order that any property, after the setting aside of the gift in pursuance of the provisions of subsection (1), be registered provisionally for the purposes of enforcement of any order of the court in the name of the receiver or other person specified in the order.

(5) Any property which is the subject-matter of an order under subsection (1) shall be disposed in accordance with the directions of the court.

(6) For the purposes of this section the provisions of subsection (8) of section 13 shall apply.

Extradition of a person who has committed a prescribed offence.

70. Notwithstanding the provisions of any other Law, a prescribed offence shall constitute an offence for the purposes of extradition of fugitives under the relevant law.

Service of orders.

71. Service of an order made under this Law to a supervisory authority shall be deemed as service to all the persons who are subject to the control of the supervisory authority:

Provided that the supervisory authority shall be obliged to notify forthwith all the persons subject to its control about the order made under this Law.

Rules of Court.

72.-(1) The Supreme Court may make rules for the better implementation of the provisions of this Law.

(2) Until rules of court are made, the courts shall apply the existing rules of court according to the nature of the proceedings with such variations or modifications as are considered necessary.

Repeal and reservation. 39(I) of 1992.

73.-(1) Upon the enactment of this Law, the Confiscation of Proceeds of Trafficking of Narcotic Drugs and Psychotropic Substances Law of 1992 shall be repealed without prejudice to any act or action that was done or instituted under the repealed Law.

(2) Any proceedings that were instituted under the repealed Law, shall continue on the basis of the provisions of this Law.

A LAW AMENDING THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 1996

NO. 120(I) OF 1999

The House of Representatives votes as follows:

Short Title.
61(I) of 1996
25(I) of 1997
41(I) of 1998.

1. This Law may be cited as the Prevention and Suppression of Money Laundering Activities (Amendment) Law of 1999 and shall be read in conjunction with The Prevention and Suppression of Money Laundering Activities Laws of 1996 to 1998 (hereinafter to be referred to as the "Principal Law") and the Principal and this Law shall be together referred to as The Prevention and Suppression of Money Laundering Activities Laws of 1996 to 1999.

Amendment of Section 2 of the Principal Law.

2. Section 2 of the Principal Law is amended by the insertion in the appropriate alphabetical order of the following new definition:

" "proceeds" means any kind of property which has been generated by the commission of a predicate offence".

Amendment of Section 4 of the Principal Law.

3. Section 4 of the Principal Law is amended by the substitution of paragraphs (a) and (b) of Article (1) after the words "Every person who at the relevant time" before subparagraph (i), with the following words:

"… knows or ought to have known that any kind of property constitutes proceeds from the commission of a predicate offence, is engaged in the following activities."

Amendment of Section 7 of the Principal Law.

4. Section 7 of the Principal Law is amended by the deletion from paragraph (a) of Article (2) of the words "acquired in the form of payment or reward connected with the commission of a predicate offence" and their substitution with the words "constitutes proceeds, payment or reward from the commission of a predicate offence".

Amendment of Section 62 of the Principal Law.

5. Article (2) of Section 62 of the Principal Law is amended by the substitution in paragraph (c) (third line) and in sub-paragraph (i) of paragraph (d) (sixth line) respectively, of the words "ten thousand pounds" with the words "eight thousand pounds".

Amendment of Section 65 of the Principal Law.

6. Paragraph (d) of Article (2) of Section 65 of the Principal Law is amended by the substitution of the words "ten thousand pounds" (sixth line) with the words "eight thousand pounds".

Official Gazette, Supplement I(I)
No. 3357, 15.10.99

A LAW AMENDING THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 1996 TO 1999

NO. 152(I) OF 2000

The House of Representatives votes as follows:

Short Title.
61(I) of 1996
25(I) of 1997
41(I) of 1998
120(I) of 1999.

1. This Law may be cited as the Prevention and Suppression of Money Laundering Activities (Amendment) Law of 2000 and shall be read in conjunction with The Prevention and Suppression of Money Laundering Activities Laws of 1996 to 1999 (hereinafter to be referred to as the "principal law") and the principal law and this law shall be together referred to as The Prevention and Suppression of Money Laundering Activities Laws of 1996 to 2000.

Substitution of Section 5 of the principal law.

2. Section 5 of the principal law is substituted with the following new section:

"Predicate offences.

5. Predicate offences are all criminal offences punishable with imprisonment with a maximum limit exceeding one year as a result of which proceeds have been generated which may constitute the subject of a laundering offence, as defined in section 4."

Official Gazette, Supplement I(I)
No. 3449, 17.11.2000

A LAW AMENDING THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAWS OF 1996 TO 2000 NO 118(I) OF 2003

The House of Representative votes as follows:

Short Title.

61 (I) of 1996
25 (I) of 1997
41 (I) of 1998
120 (I) of 1999
150 (I) of 2000

1. The present Law will be cited as the Prevention and Suppression of Money Laundering Activities (Amendment) Law of 2003 and will be read in conjunction with the Prevention and Suppression of Money Laundering Activities Laws of 1996 to 2000 (hereinafter to be referred to as the "principal Law") and the principal law and the present Law shall be together referred to as the Prevention and Suppression of Money Laundering Activities Laws of 1996 to 2003.

Amendment of section 6 of the principal law.

2. Article (1) of section 6 of the principal law is amended with the substitution of the word "predicate" (first line), with the word "prescribed".

Amendment of section 13 of the principal law.

3. Paragraph (a) of article (7) of section 13 of the principal law is amended with the substitution of the word "and" (second line) with the word "or".

Substitution of the side tittle of section 16 of the principal law.

4. The side title of section 16 of the principal law is substituted with the following new side title:
"Cancellation of restraint and charging orders".

Amendment of section 26 of the principal law.

5. Article (2) of section 26 of the principal law is amended with the insertion at the end of this article of the following new paragraph (c):
"(c) the non-execution or the delay in the execution of an order by the said person, upon instructions of the Unit, with regard to sums or investments referred to above, shall not constitute violation of any contractual or other obligation of the said person or/and his/her employers."

Amendment of section 37 of the principal law.

6. Section 37 of the principal law is amended with the insertion of the following paragraph, in the interpretation of the term "Convention":
"(c) the Treaty on Mutual Assistance in Penal Matters between Cyprus – USA"

Amendment of section 38 of the principal law.

7. Article (1) of section 38 of the principal law is amended as follows:
(a) With the substitution of the words "in the Minister of Justice and Public Order who" (second line) with the words "in the Ministry of Justice and Public Order which"; and
(b) with the insertion after the word "application" (fourth line), of the words "to the Unit which it submits".

Amendment of section 45 of the principal law.

8. Article (1) of section 45 of the principal law, is amended with the substitution of the words "Irrespective of any provisions in other laws" with the words "Without prejudice to the provisions of other Laws, in relation to the receipt of information or documents in the course of investigating the possible commitment of offences."

Amendment of section 53 of the principal law.

9. Section 53 of the principal law is amended with the insertion immediately after article (4) of the following new article:
"(5) Without prejudice to the remaining provisions of the present section, operational posts may be created for the needs of the Unit, under the Law Office of the Republic."

Amendment of section 55 of the principal law.

10. Article (2) of section 55 of the principal law, is amended with the substitution of the words “the representative of the Ministry of Justice and Public Order or in the case he is absent by the representative of Central Bank of Cyprus” (first to third line) with the words “the Attorney General of the Republic or his representative.”

Amendment of the title of Part VIII of the principal law.

11. The title of Part VIII of the principal law is amended with the insertion after the word “FINANCIAL” of the words “AND OTHER”.

Amendment of section 57 of the principal law.

12. Section 57 of the principal law is amended as follows:

(a) With the deletion from paragraph (a) of the definition of “business relationship” of the word “and” (third line) and the insertion after paragraph (b) of this definition, of the following new paragraph:

“(c) the arrangement relates to the provision of services”; and

(b) With the insertion after the definition of “relevant financial business” of the following new definition:

““other business” means any other business activity, apart from financial business for which the provisions of the present law apply”.

Amendment of section 58 of the principal law.

13. Section 58 of the principal law is amended as follows:

(a) With the insertion in article (1) of the words “and other” after the word “financial” (first line) and in paragraph (a) of article (1) of the words “and other”, before the word “financial” (first line);

(b) With the substitution of sub-paragraph (iv) of paragraph (a) of article (1) with the following new subparagraph:

“(iv) such other appropriate procedures of internal control, communication and detailed examination of any transaction which by its nature may be considered to be associated with money laundering for the purpose of preventing or forestalling money laundering” ; and

(c) With the substitution of article (2) with the following new article:

“(2)(a) Any person who allegedly fails to comply with the provisions of this section, after giving him the opportunity to be heard, is subject to an administrative fine of up to three thousands pounds which is imposed by the competent Supervisory Authority.

(b) Lawyer or auditor who allegedly fails to comply with the provisions of this section, is referred to by the competent Supervisory Authority to the competent Disciplinary body which decides accordingly.

(c) Any other person who is not included in paragraphs (a) and (b) of the present article and is not subject to supervision by any Supervisory Authority and violates the provisions of this section is guilty of an offence punishable, in case of conviction by imprisonment of two years or by a pecuniary penalty of up to three thousand pounds or by both of these penalties”.

Amendment of section 60 of the principal law.

14. Section 60 of the principal law is amended with the deletion of article (4) and the renumbering of article (5) to article (4) and article (6) to article (5), after deleting from the latter the words “under subsection (4)” (first line).

Amendment of section 61 of the principal law.

15. Section 61 of the principal law is amended by the insertion after the word “financial” (first line) of the words “and other”, as well as the following new paragraphs:

“(14) Insurance policies taken in the General Insurance Sector by a company registered in Cyprus according to the Companies Law, either as resident or oversea company, but which carries on insurance business exclusively outside the Republic.

(15) Exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their customers in the context of carrying on relevant financial business.

(16) Exercise of professional activities on behalf of independent lawyers, with the exception of privileged information, when they participate, whether –

(a) by assisting in the planning or execution of transactions for their clients concerning the -

1. buying and selling of real property or business entities;
2. managing of client money, securities or other assets;
3. opening or management of bank, savings or securities accounts;
4. organization of contributions necessary for the creation, operation or management of companies;
5. creation, operation or management of trusts, companies or similar structures;

(b) or by acting on behalf and for the account of their clients in any financial or real estate transaction”.

Amendment of section 62 of the principal law.

16. Section 62 of the principal law is amended by the insertion at the end of that section of the following new article:

“(5) The provisions of the present section do not apply –

(a) In the case that the sum of the periodic insurance premiums to be paid in a given year does not exceed EUR1.000 or EUR2.500 where a single premium is to be paid;

(b) in cases of 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 a s collateral for a loan”.

Amendment of the principal law by the insertion of a new section.

17. The principal law is amended by the insertion immediately after section 62 of the following new section:

"Distance business relationships or transactions

62.A When establishing business relationships or carrying out an one-off transaction or a series of one-off transactions which exceed EUR15.000, with a customer, who is not physically present, in order to verify the customer's identity, it is required:-

(i) the production of additional documentary evidence; or

(ii) supplementary measures to verify or certify the documents supplied; or

(iii) the receipt of confirmatory certification by an institution or organization operating in a member state of the European Union; or

(iv) the first payment in the context of the business relationship or one off transactions to be made through an account maintained in the customer's name with a credit institution operating in a member state of the European Union".

Amendment of section 64 of the principal law.

18. Section 64 of the principal law is substituted with the following new section:

"Exemptions

64. From the identification procedures under sections 63 and 64 are exempted –

(a) Persons which are subject to the provisions of section 58 of this Law;

(b) Financial institutions incorporated in countries which apply, in the opinion of the competent Supervisory Authority, procedures for the prevention of money laundering which are equivalent with those provided in Part VIII of the present Law".

Amendment of the principal law by the insertion of a new section.

19. The principal law is amended by the insertion immediately after section 67 of the following new section:

"Non-execution or delay in the execution of a customer's transaction by a person engaged in relevant financial business

67A. The non-execution or the delay in the execution of any transaction for the account of a customer by a person engaged in relevant financial business, as defined in section 61 of the present law, due to the non provision of sufficient details or information for the nature of the transaction and/or the parties involved, as required by Guidance Notes or circulars issued in accordance with section 60(3) of the present law by the competent Supervisory Authority in respect of procedures for customer identification and record keeping, shall not constitute breach of any contractual or other obligation of the said person towards its customer".

Official Gazette, Supplement I(I)
No. 3742, 25/7/2003

A LAW AMENDING THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITES LAWS OF 1996 TO 2003

NO 185(I)/2004

Short title.

1. The present Law will be cited as the Prevention and Suppression of Money Laundering Activities (Amendment) Law of 2004 and will be read in conjunction with the Prevention and Suppression of Money Laundering Activities Laws of 1996 to 2003 (hereinafter to be referred to as the "principal Law") and the principal law and the present Law shall be together referred to as the Prevention and Suppression of Money Laundering Activities Law of 1996 to 2004.

Amendment of section 46 of the principal law.

2. Article 46 of the principal law is amended with the addition in paragraph (3) of the following paragraph (d):

"(d) it is served only to the persons who possess the information which is mentioned in the application."

Amendment of the principal law with the deletion of article 59.

3. The principal law is amended with the deletion of article 59 and the renumbering of the articles followed that.

Amendment of article 61 of the principal law.

4. Article 61 of the principal law is amended with the addition of the following paragraphs:

(17) Any of the services which are defined in Part I and III of the First Annex of the Investment Services Firms Act of 2002 to 2003, which are from time to time in force and which are provided in relation to financial instruments listed in Part III of the same Annex.

(18) Dealing in real estate transactions, conducted by real estate Agents, according to the provisions of the Real Estate Agents Law, which are from time to time in force.

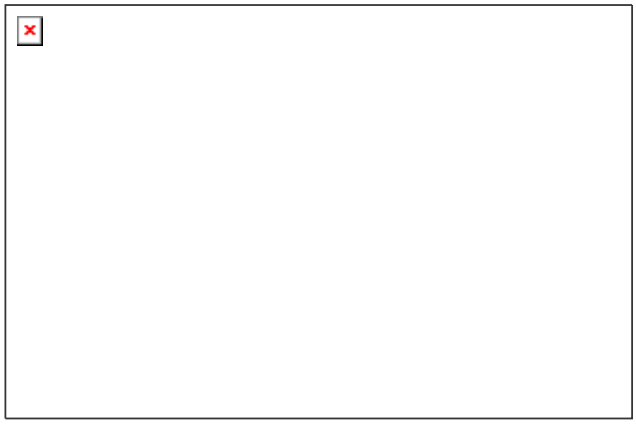
(19) Dealings in precious stones or metals, whenever payment is made in cash and in an amount of EUR 15.000 or more.

Amendment of article 64 of the principal law.

5. Article 64 of the principal law, as amended with Law No. 118(I)/2003, is amended with the deletion of numbers 63 and 64 and their renumbering with numbers 62 and 63.

ERP/GD
23.3.05
/eva/nomosxedia/amendment law 185(I)/2004

A N N E X 2 B (first part)
AML Guidance Note to Banks, issued by the Central Bank of Cyprus in November 2004 (G-Banks)



CENTRAL BANK OF CYPRUS

BANKING SUPERVISION AND REGULATION DIVISION

SUPERVISION OF INTERNATIONAL BANKS, REGULATION AND FINANCIAL STABILITY DEPARTMENT

PREVENTION OF MONEY LAUNDERING

GUIDANCE NOTE TO BANKS

IN ACCORDANCE WITH SECTION 60(3) OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 1996

(SECOND ISSUE)

NOVEMBER 2004

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1. THE MAIN PROVISIONS OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW (LAW 61 (I) OF 1996 AS AMENDED)

1.1 Purpose

1.1.1. The main purpose of Law 61(I) of 1996 as subsequently amended (hereinafter to be referred to as "the Law") is to define and criminalise the laundering of proceeds generated from all serious criminal offences and provide for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes. It also places special responsibilities upon banks, financial institutions and professionals which are required to take preventive measures against money laundering by adhering to prescribed procedures for customer identification, record keeping, education and training of their employees and reporting of suspicious transactions. The main provisions of the Law, which are of direct interest to banks and their employees, are as follows:

1.2 Prescribed offences (Section 3 of the Law)

1.2.1. The Law has effect in respect of offences which are referred to as "prescribed offences" and which comprise of:

(i) money laundering offences; and

(ii) predicate offences.

1.3 Money Laundering offences (Section 4 of the Law)

1.3.1. Under the Law, every person who knows or ought to have known that any kind of property is proceeds from a predicate offence is guilty of an offence if he carries out any of the following:

(i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a predicate offence to evade the legal consequences of his actions;

(ii) conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property;

(iii) acquires, possesses or uses such property;

(iv) participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above;

(v) provides information with respect to investigations that are being performed for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence.

1.3.2. Commitment of the above offences is punishable on conviction by a maximum of fourteen (14) years imprisonment or a fine or both of these penalties, in the case of a person knowing that the property is proceeds from a predicate offence or by a maximum of five (5) years imprisonment or a fine or both of these penalties, in the case he ought to have known.

1.4 Defences for persons assisting money laundering and duty to report (Section 26 of the Law)

1.4.1. It is a defence, under Section 26 of the Law, in criminal proceedings against a person in respect of assisting another to commit a money laundering offence that he intended to disclose to a police officer or the Unit for Combating Money Laundering (hereinafter to be referred to as "MOKAS") his suspicion or belief that the agreement or arrangement related to proceeds from a predicate offence and that his failure to make the disclosure was based on reasonable grounds. Also, under Section 26 of the Law, any such disclosure should not be treated as a breach of any restriction imposed by contract.

1.4.2. In the case of employees of persons whose activities are supervised by one of the authorities established under Section 60, the Law recognises that the disclosure may be made to a competent person (e.g. a Money Laundering Compliance Officer) in accordance with established internal procedures and such disclosure shall have the same effect as a disclosure made to a police officer or MOKAS.

1.5 Powers of MOKAS to order the non-execution or delay in the execution of a transaction (Section 26(2)(c) of the Law)

1.5.1. Section 26(2)(c) of the Law empowers MOKAS to give instructions to banks and financial institutions for the non-execution or the delay in the execution of a transaction. Banks are required to promptly comply with such instructions and provide MOKAS with all necessary co-operation. It is noted that, as per the above Section, in such a case no breach of any contractual or other obligation may arise and banks are, therefore, protected from any possible claims from customers.

1.6 Predicate offences (Section 5 of the Law)

1.6.1. Predicate offences are all criminal offences punishable with imprisonment exceeding one year from which proceeds were generated that may become the subject of a money laundering offence. Proceeds means any kind of property which has been generated by the commission of a predicate offence.

1.6.2. On 22 November 2001, the House of Representatives enacted the Ratification Law of the United Nations Convention for Suppression of the Financing of Terrorism. As a result of the above, terrorist financing is considered to be a criminal offence punishable with 15 years imprisonment or a fine of C£1 mn or both of these penalties. Furthermore, the above Law contains a specific section which provides that terrorist financing and other linked activities are considered to be predicate offences for the purposes of Cyprus's anti-money laundering legislation i.e. the Prevention and Suppression of Money Laundering Activities Law of 1996. Consequently, suspicions of possible terrorist financing activities should be immediately disclosed to MOKAS under Section 26 of the Law.

1.6.3. For the purposes of money laundering offences it does not matter whether the predicate offence is subject to the jurisdiction of Courts in Cyprus or not (Section 4(2) of the Law).

1.7 Failure to report (Section 27 of the Law)

1.7.1. It is an offence for any person 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. Failure to report in these circumstances is punishable on conviction by a maximum of five (5) years imprisonment or a fine not exceeding Cy£3.000 (three thousand pounds) or both of these penalties.

1.8 Tipping - off (Section 48 of the Law)

1.8.1. Further to the offence described in paragraph (v) of part 1.3.1 above, it is also an offence for any person to prejudice the search and investigation of money laundering offences by making a disclosure, either to the person who is the subject of a suspicion or any third party, knowing or suspecting that the authorities are carrying out such an investigation and search. "Tipping-off" under these circumstances is punishable with imprisonment up to five (5) years.

1.9 Relevant financial and other business (Section 61 of the Law)

1.9.1. The Law recognises the important role of the financial sector, accountants and lawyers for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all financial institutions, including banks as well as professionals engaged in "relevant financial and other business", which is defined to include the activities listed below:

(i) Deposit taking;

(ii) Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transactions including forfeiting);

(iii) Finance leasing, including hire purchase financing;

(iv) Money transmission services;

(v) Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);

(vi) Guarantees and commitments;

(vii) Trading for own account or for account of customers in:-

(a) money market instruments (cheques, bills, certificates of deposits etc.);

(b) foreign exchange;

(c) financial futures and options;

(d) exchange and interest rate instruments;

(e) transferable instruments;

(viii) Underwriting share issues and the participation in such issues;

(ix) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues including the areas of mergers and acquisitions of business;

(x) money broking;

(xi) Investment business, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investment" includes long term insurance contracts, whether linked long-term or not;

(xii) Safe custody services;

(xiii) Custody and trustee services in relation to stocks.

(xiv) Insurance policies taken in the General Insurance Sector by a company registered in Cyprus according to the Companies Law, either as a resident or an overseas company, but which carries on insurance business exclusively outside Cyprus.

(xv) Exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their customers in the context of carrying on relevant financial business.

(xvi) Exercise of professional activities on behalf of independent lawyers, with the exception of privileged information, when they participate, whether –

a) by assisting in the planning or execution of transactions for their clients concerning the –

1. buying and selling of real property or business entities;

2. managing of client money, securities or other assets;

3. opening or management of bank, savings or securities accounts;

4. organisation of contributions necessary for the creation, operation or management of companies;

5. creation, operation or management of trusts, companies or similar structures;

(b) or by acting on behalf and for the account of their clients in any financial or real estate transaction.

(xvii) Any services prescribed in Part I and II of Annex One of the Investment Firms Laws of 2002 to 2003 currently in force which are provided in connection with the financial instruments numbered in Part II of the same Annex.

(xviii) Transactions on real estate by real estate agents by virtue of the provisions of the Real Estate Agents Laws currently in force.

(xix) Dealings in precious metals and stones whenever payment is made for cash and in an amount of EUR15.000 or more.

1.10 Procedures to prevent money laundering (Section 58 of the Law)

1.10.1. The Law requires all persons carrying on financial and other business, as defined above, to establish and maintain specific policies and procedures to guard against their business and the financial system in general being used for the purposes of money laundering. In essence these procedures are designed to achieve two purposes: firstly, to facilitate the recognition and reporting of suspicious transactions and, secondly, to ensure through the strict implementation of the "know-your-customer" principle and the maintenance of adequate record keeping procedures, should a customer

come under investigation, that the bank is able to provide its part of the audit trail. The Law requires that all persons engaged in relevant financial and other business institute a number of procedures. In fact, it is illegal for any person, in the course of relevant financial and other business, to form a business relationship or carry out an one-off transaction with or for another, unless the following procedures are instituted:

(i) **Identification procedures of customers**;

(ii) **Record keeping procedures** in relation to customers' identity and their transactions;

(iii) **Internal reporting procedures** to a competent person - (e.g. a Money Laundering Compliance Officer) appointed to receive and consider information that give rise to knowledge or suspicion that a customer is engaged in money laundering activities;

(iv) **Such other appropriate procedures of internal control, communication and detailed examination** of any transaction which by its nature may be considered to be associated with money laundering for the purpose of preventing and forestalling money laundering.

(v) **Measures for making employees aware** of the above procedures to prevent money laundering and of the legislation relating to money laundering; and

(vi) **Provision of training to their employees** in the recognition and handling of transactions suspected to be associated with money laundering.

1.10.2. The purpose of the Guidance Notes issued by the Central Bank of Cyprus, as the supervisory authority of banks in Cyprus, is to provide a practical interpretation of the requirements of the Law in respect to business carried on by banks and to indicate good banking practice.

1.10.3. Where the CBC forms the opinion that a bank has failed to comply with the provisions of Section 58 of the Law it may, after giving the opportunity to the bank to be heard, impose an administrative fine of up to C£3.000 (Section 58(2) of the Law).

1.11 "Non-face to face" customers (Section 62A of the Law)

1.11.1. Section 62A of the Law requires persons subject to the anti-money laundering preventive measures prescribed therein to take additional measures for identifying customers when establishing business relationships or entering into an one-off transaction or a series of one-off transactions which exceed EUR 15.000 with a customer who is not physically present for identification purposes ("non-face-to face customers"). In such an event, banks are required to adhere to the following:

(i) obtain from the customer additional documentary evidence; or

(ii) take supplementary measures to verify or certify the documents supplied; or

(iii) receive a confirmation of identity by an institution or organisation operating in a Member State of the European Union; or

(iv) demand that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution operating in a Member State of the European Union.

1.12 Supervisory authorities (Section 60 of the Law)

1.12.1. The Law designates the Central Bank of Cyprus as the supervisory authority for all persons licensed to carry on banking business in or from within Cyprus. In this regard, the Central Bank of Cyprus has, therefore, been assigned with the duty of assessing compliance of all banks with the special provisions of the Law in respect of their business.

1.12.2. Under Section 60(3) of the Law, the Central Bank of Cyprus, in its capacity as a supervisory authority, is empowered to issue Guidance Notes to all banks in Cyprus in order to assist them in achieving compliance with the Law.

1.12.3. Furthermore, supervisory authorities are empowered by virtue of Section 58(2)(a) of the Law to impose an administrative fine of up to C£3.000 to any person under their supervision who allegedly fails to take the preventive measures against money laundering prescribed in the Law.

The Law provides that the allegedly non-compliant person should first given the opportunity to be heard before a Supervisory Authority determines the imposition of the administrative fine.

1.13 Exemption from identification procedures (Section 64 of the Law)

1.13.1. Section 64 of the Law exempts from the requirement to produce satisfactory evidence of identity, when entering into a business relationship or carrying out an one-off transaction, the following:

(i) Persons who engage in relevant financial and other business, as per Section 61 of the Law, and are obliged to take the preventive measures prescribed in Section 58 of the Law; and

(ii) Credit institutions incorporated in countries which apply, in the opinion of the Central Bank of Cyprus, procedures for the prevention of money laundering which are equivalent to those provided in the Law.

1.14 Confiscation orders (Section 8 of the Law)

1.14.1. Courts in Cyprus are empowered to make a confiscation order, on application by the Attorney General, on the assets of a person, including funds held on deposit with banks, if they determine that a person has benefited from committing a predicate offence. A confiscation order can be made before a person is sentenced or otherwise dealt with in respect of any predicate offence.

1.15 Restraint and charging orders (Sections 14 and 15 of the Law)

1.15.1. Courts in Cyprus may also, by a restraint order, prohibit any person from dealing with any realisable property. In addition, they may also make a charging order, under Section 15 of the Law, on realisable property (immovable property and securities).

1.16 Non-execution or delay in the execution of a customer's transaction (Section 67A)

1.16.1. Section 67A of the Law protects banks from a possible claim for damages from a customer in the event of refusal to execute or delay in executing any transaction for the account of that customer due to failure by the customer or any other party involved to provide sufficient details or information for the nature of the transaction and/or the parties involved as required by the Guidance Notes issued by the Central Bank of Cyprus.

1.17 Orders for the disclosure of information (Section 45 of the Law)

1.17.1. Courts in Cyprus may, on application by the investigator, make an order for the disclosure of information by a person who appears to the Court to be in possession of the information to which the application relates. Such an order applies irrespective of any legal or other provision which creates an obligation for the maintenance of secrecy or imposes any constraints on the disclosure of information. As already stated under paragraph 1.8 above in relation to "tipping off", a person who makes any disclosure which is likely to obstruct or prejudice an investigation into the commitment of a predicate offence, knowing or suspecting that the investigation is taking place, is guilty of an offence.

1.18 Service of orders to a supervisory authority (Section 71 of the Law)

1.18.1. Service of an order made under this Law to a supervisory authority shall be deemed as service to all persons who are subject to the control of the supervisory authority. Provided that the supervisory authority concerned shall be obliged to notify forwith all the persons subject to its control about the order made under the Law.

2. CUSTOMER IDENTIFICATION AND DUE DILIGENCE PROCEDURES

2.1 Introduction

2.1.1. The Law requires institutions such as banks carrying on financial business to maintain customer identification procedures in accordance with Sections 62 to 65 of the Law. The essence of these requirements is that except where the Law states that customer identification need not be made (Section 64 of the Law) a bank must always verify the identity of all its customers.

2.1.2. Having sufficient information about a customer and making use of that information for the purposes of identification underpins all other anti-money laundering procedures and is the most effective weapon against being used to launder the proceeds of crime, including terrorist financing. In addition to minimising the risk of being used for illicit activities, it provides protection against fraud, enables suspicious transactions/activities to be recognised and protects banks from reputational and financial risks.

2.1.3. Generally a bank should never establish a business relationship or carry out an "one-off transaction" until all relevant parties to the relationship have been identified and the nature and size of the business they expect to conduct has been established. Once an on-going business relationship has been established, any regular business undertaken for that customer should be assessed against the expected pattern of activity of the customer. Any unexplained activity can then be examined to determine whether there is a suspicion of money laundering.

2.1.4. The Law does not specify what may or may not represent "adequate evidence" of identity. In this regard, this Guidance Note sets out the practice to which banks should adhere in order to comply with the requirements of the Law on the subject of customer identification.

2.2 Timing of identification

2.2.1. The Law requires that identification must be carried out as soon as is reasonably practicable after contact is first made between a bank and a prospective customer. What constitutes "reasonably practicable" time span must be determined in the light of all the circumstances including the nature of the business relationship and/or transactions, the geographical location of the parties and whether it is practical to obtain the evidence before commitments are entered into or the execution of any transaction on behalf of the customer. As a rule, banks are expected to promptly seek and obtain satisfactory evidence of identity of their customers at the time of establishing an account relationship and prior to the execution of any banking transactions or the provision of any services whatsoever.

2.3 Customer acceptance policy

2.3.1. Banks should develop clear customer acceptance policies and procedures in line with the provisions of the Law and the contents of this Guidance Note. These policies and procedures need to provide for enhanced due diligence procedures for high risk customers such as companies with nominee shareholders or bearer share capital, trusts and nominees of third persons, politically exposed persons, client accounts opened by professional intermediaries, customers who have been introduced by professional intermediaries, non-EU corespondent bank accounts and non-resident customers from non-cooperative countries and territories. Banks' policies and procedures should take into account factors such as the customers' background, country of origin, anticipated level and nature of the business activities and the expected origin of the funds.

2.4 Renewal of customer identification

2.4.1. Banks need to ensure that customer identification records remain up-to-date and relevant throughout the business relationship. In this respect, a bank must undertake, on a regular basis, or whenever it has doubts about the veracity of the identification data, reviews of existing records, especially for high-risk customers. Doubts may arise where a suspicion of money laundering may be formed for that customer or there is a material change in the customer's pattern of transactions or account activity which is inconsistent with the customer's existing business profile. If, as a result of these reviews, at any time throughout the business

relationship, the bank becomes aware that it lacks sufficient information about an existing customer, it should take all necessary action to obtain the missing information as quickly as possible.

2.5 Exemption from identification

2.5.1. Section 64 of the Law exempts from the need to verify the identity of the following:

(i) Persons who engage in relevant financial and other business listed in Section 61 of the Law and are subject to the anti-money laundering preventive measures of the Law designated in Section 58; and

(ii) Credit institutions incorporated in countries which apply, in the opinion of the Central Bank of Cyprus, procedures for the prevention of money laundering which are equivalent with those provided in Cyprus's anti-money laundering legislation.

2.5.2. By virtue of the Section 64(ii) of the Law, the Central Bank of Cyprus determines that Member States of the European Union are considered to have equivalent anti-money laundering measures to Cyprus and, therefore, banks in Cyprus are not required to apply customer identification procedures and verify the identity of credit institutions operating in any Member State of the European Union when entering into business relationships with them. The Central Bank of Cyprus shall consider applications from banks for granting exemption from the application of customer identification procedures with respect to non-EU credit institutions on a case-by-case basis.

2.6 Identification procedures –General principles and requirements

2.6.1. Prohibition of secret, anonymous and numbered accounts as well as accounts in fictitious names

Banks are prohibited from opening and maintaining secret, anonymous or numbered accounts or accounts in fictitious names or accounts not in the full name(s) of the holder(s) as per the identification documents. It is noted that according to the Banking (Amendment) (No.3) Law of 2004 (Law 231 (I) of 2004) details of a customer's identity i.e. the name, address, number of national identity card or passport number and country of issue, should be added to the details appearing on a customer's statement of account.

2.6.2. **Failure or refusal to provide identification evidence**

The failure or refusal by a prospective customer applying for the opening of an account or the establishment of a business relationship to provide satisfactory identification evidence within a reasonable timeframe and without adequate explanation may lead to a suspicion that the customer is engaged in money laundering. In such circumstances, banks should not open the account, commence business relations or perform an one-off transaction and should consider making a suspicion report to MOKAS based on the information in their possession.

2.6.3. **Risk based approach to identification**

A risk-based approach as to what is reasonable evidence of identity should be adopted when obtaining identification data. The extent and number of checks on a customer's identity can vary depending on the perceived risk relating to the type of service, product or account sought by the customer and the estimated turnover of the account. The source of funds, i.e. how the payment was made, from where and by who, must always be recorded to provide an audit trail. However, for higher risk products, accounts or customers, additional steps should be taken to discover the source of wealth, i.e. how the funds were acquired and their origin.

2.6.4. **Establishing customers' business profile**

A bank should establish to its satisfaction that it is dealing with a real person (natural or legal) and obtain sufficient evidence of identity to establish that a prospective customer is who he/she claims to be. Banks should take reasonable measures to identify the beneficial owner(s) of accounts and one-off transactions and for legal persons, understand the ownership and control structure of the customer. Irrespective of the customer's type (natural, unincorporated, legal) a bank should request and obtain sufficient information on its customers' business activities and expected pattern of transactions. This information should be collected at the outset of the relationship with the aim of constructing the customer's business profile and, as a minimum, should include:

(i) the purpose and reason for opening the account or requesting the provision of services;

(ii) the anticipated level and nature of the activity to be undertaken;

(iii) the anticipated account turnover, the expected origin of the funds to be credited in the account and expected destination of outgoing payments; and

(iv) the customer's sources of wealth or income, size and nature of business/professional activities.

2.6.5. **Verification procedures of identity**

The verification procedures necessary to establish the identity of the prospective customer should basically be the same whatever type of account or service is required. The best identification documents possible should be obtained from the prospective customer i.e. those that are the most difficult to obtain illicitly. However, it must be appreciated that no single form of identification can be fully guaranteed as genuine or representing correct identity and consequently the identification process will generally need to be cumulative. For practical purposes a person's residential/business address is an essential part of identity and thus there needs to be separate verification of the current permanent address of the prospective customer. The evidence of identity required should be obtained from documents issued by reputable sources. Where practical, file copies of the supporting evidence should be retained. Alternatively, the reference numbers and other relevant details should be recorded.

2.6.6. **Customers who have been refused banking services by another bank**

When a bank is approached by a customer requesting the establishment of an account relationship or any other banking services and the bank becomes aware or has any reason to believe that the customer has been refused a bank account or other services by another bank in Cyprus or abroad, then the bank should treat that customer as a high risk customer and apply enhanced due diligence measures. In this respect, the senior management's approval should be obtained for opening the account or providing the service and transactions passing through the account should be subject to close monitoring.

2.6.7. **Joint Accounts**

In respect of joint accounts the identity of all account holders, not only the first named, should normally be ascertained in accordance with the procedures set out below for natural persons.

2.7 Specific identification issues

2.7.1. Natural persons residing in Cyprus

2.7.1.1. The following information should be obtained from prospective customers who are natural persons residing in Cyprus:

(i) true name and/or names used;

(ii) current permanent address in Cyprus, including postal code;

(iii) date of birth;

(iv) details of profession or occupation/employment.

2.7.1.2. The name or names used should be verified by reference to a document obtained from a reputable source which bears a photograph. There are obviously a wide range of documents that customers might produce as evidence of their identity. However, it is pointed out that according to the Banking (Amendment) (No3) Law of 2004 (Law 231(I) of 2004) the identification of a customer's identity should be based on an official identity card or passport submitted by the real owner of the account.

2.7.1.3. In addition to the name verification, it is important that the current permanent address should also be verified. Some of the best means of verifying address are:

(i) record of home visit.

(ii) requesting sight of a recent utility bill, local authority tax bill, bank statement (to guard against forged or counterfeit documents care should be taken to check that the documents offered are originals);

(iii) checking the telephone directory.

2.7.1.4. In addition to the above, an introduction from a respected customer personally known to the Manager, or from a trusted member of staff, may assist the verification procedure. Details of the introduction should be recorded on the customer's file.

2.7.2. **Natural persons not residing in Cyprus**

2.7.2.1. For prospective customers who are not normally residing in Cyprus, it is important that verification procedures similar to those for customers residing in Cyprus should be carried out and the same information obtained.

2.7.2.2. For those prospective customers not residing in Cyprus who make face to face contact, passports and, where they exist, official national identity cards should always be available and copies of the pages containing the relevant information should be obtained. In addition, banks are advised, if in any doubt, to seek to verify identity, (passport, national identity card or documentary evidence of address), with an Embassy or Consulate of the country of issue in Cyprus or a professional intermediary or a reputable credit or financial institution in the customer's country of residence.

2.7.2.3. Information concerning residence and nationality is also useful in assessing whether a customer is resident in a high –risk country designated by FATF as "non-cooperative". Both residence and nationality can also be necessary, in a non-money laundering context, for preventing breaches of the United Nations or European Union financial sanctions against certain countries or persons to which Cyprus has agreed to adopt. Consequently, the number, date and country of issue of a customer's passport should always be recorded.

2.7.3. **Non-face-to face customers**

2.7.3.1. Whenever a prospective customer requests the opening of an account, the bank should preferably hold a personal interview with that customer and seek to obtain directly all identification details. It is possible, however, that a bank may be asked to open an account via post or the internet for a customer, especially for non-residents, who do not present themselves for a personal interview. In such an event, banks should apply the standard customer identification and due diligence procedures as applied for prospective customers whom they meet face-to-face and obtain the same documentation. However, due to the difficulty in matching the customer with the identification documentation, banks should apply additional measures to mitigate the

risks attached to the establishment of such relationships. Section 62A of the Law provides that when a bank is requested to establish a business relationship or carry out an one-off transaction or a series of an one-off transactions by a customer who is not physically present, then the bank concerned is required to take at least one additional measure to verify the customers' identity. The Law provides that one of the following additional measures can be taken:

(i) the production of additional documentary evidence; or

(ii) supplementary measures to verify or certify the documents supplied; or

(iii) the receipt of confirmatory certification by an institution or organization operating in a member state of the European Union; or

(iv) the first payment in the context of the business relationship or one off transactions to be made through an account maintained in the customer's name with a credit institution operating in a member state of the European Union.

2.7.3.2. Practical procedures which can be applied to implement the measures referred in the paragraph above for the purpose of mitigating the higher risk of non-face-to face customers might include the following:

(i) direct confirmation of the prospective customer's true name, address and signature from a bank operating in his/her country of residence;

(ii) introduction letter from a professional intermediary (lawyer or accountant or other) in Cyprus or abroad who, subject to the criteria listed in paragraph 2.8.7 below, has an agreement with the bank to introduce business;

(iii) the customer supplies the bank with the original documentary evidence e.g. passport, national identity card, which is subsequently returned by registered and secured mail; and

(iv) telephone contact with the customer before opening the account on an independently verified home or business number.

2.7.4. **Accounts of clubs, societies and charities**

2.7.4.1. In the case of accounts to be opened in the name of clubs, societies and charities, a bank should satisfy itself as to the legitimate purpose of the organisation by requesting sight of the constitution and registration documents with the authorities. Where there is more than one signatory to the account, the identity of all authorised signatories should be verified in line with the identification requirements for natural persons.

2.7.5. **Accounts of unincorporated businesses/partnerships**

2.7.5.1. In the case of partnerships and other unincorporated businesses whose partners/directors/beneficial owners are not existing customers of the bank, the identity of the principal beneficial owners/controllers and authorised signatories should be verified in line with the requirements for natural persons. Furthermore, in the case of partnerships, banks should also obtain the original or copy of the certificate of registration. Banks should also obtain evidence of the trading address of the business or partnership and ascertain the nature of its business.

2.7.5.2. In cases where a formal partnership arrangement exists, a mandate from the partnership authorising the opening of an account and conferring authority on those who will operate it, should be obtained.

2.7.6. **Accounts of corporate customers**

2.7.6.1. Because of the difficulties of identifying beneficial ownership, corporate accounts are one of the most likely vehicles for money laundering, particularly when fronted by a legitimate trading company.

2.7.6.2. Before a business relationship is established, measures should be taken by way of a company search and/or other commercial enquiries to ensure that the applicant company has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated. In addition, if changes to the company structure or ownership occur subsequently or suspicions are aroused by a change in the profile of payments through a company account, further checks should be made.

2.7.6.3. The verification of the identity of a company comprises the establishment of the following:

(i) its registered number;

(ii) its registered corporate name and any trading names used;

(iii) its registered address and any separate principal trading addresses;

(iv) the identity of its directors;

(v) the identity of all those persons duly authorised to operate the accounts;

(vi) in the case of private and non-listed public companies, the identity of the registered shareholders and, where the registered shareholders act as nominees, the identity of the principal ultimate beneficial owners; and

(vii) the company's business profile (see paragraph 2.6.4. above).

2.7.6.4. The bank must request and obtain the following documents:

(i) the company's Certificate of Incorporation;

(ii) Certificate of registered office;

(iii) Certificate of directors and secretary;

(iv) in the case of private companies, Certificate of registered shareholders;

(v) Memorandum and Articles of Association;

(vi) a resolution of the Board of Directors to open an account and conferring authority to those who will operate it;

For companies incorporated outside Cyprus, banks should request and obtain documents, wherever they exist, similar to the above.

2.7.6.5. The identity of the persons mentioned in (iv), (v) and (vi) in sub-paragraph 2.7.6.3 above must be established in accordance with the procedures for the verification of the identity of natural persons or corporate customers, as the case may be.

2.7.6.6. In the case of public companies listed on a recognised stock exchange, banks are not required, due to the practical difficulties emanating from their widespread ownership, as well as the regulatory and disclosure requirements applicable to them, to verify the identify of the registered shareholders/beneficial owners and their directors. A list of recognised stock exchange is set out in Appendix 1.

2.7.6.7. The term beneficial owner mentioned in sub-paragraph 2.7.6.3 (vi) above refers to the natural person(s) who ultimately own or exercise effective control over a company. Principal beneficial owners are considered to be persons with direct or indirect interests of 5% or more in a company's share capital. Banks must verify the identities of a sufficient number of principal beneficial owners of private companies and non-listed public companies so that the aggregate shareholding of such persons identified is not less than 75% of a company's share capital. In the case of a company requesting the opening of a bank account whose direct / immediate and principal shareholder is another company registered in Cyprus or abroad, banks are required, before opening the account, to ascertain the identity of the natural person(s) who is/are the principal/ultimate beneficial shareholder(s) and/or is/are controlling the said company. Identification of the natural person(s) who is/are the ultimate beneficial shareholder(s)/owner(s) and/or is/are controlling the investing company should be carried out irrespective of the layers of companies behind the company requesting the opening of the account.

2.7.6.8. Apart from principal beneficial owners identified above, banks must also look for the persons who have the ultimate control over a company's business and assets. Ultimate control will often rest with those persons who have the power to manage funds, accounts or investments without requiring authorisation and who would be in a position to override internal procedures. In such circumstances, banks must also obtain identification evidence for any other person(s) who exercises ultimate control as described above even if that person has no

direct or indirect interest or an interest of less than 5% in a company's share capital.

2.7.6.9. In cases where the major shareholder of a company requesting the opening of an account is a trust set up in Cyprus or abroad, banks are required to ascertain the identity of the trustees, settlor and beneficiaries of the trust.

2.7.7. **Non-face-to face corporate customers**

2.7.7.1. The same requirements prescribed in Section 62A of the Law and paragraph 2.7.3 of this Guidance Note in respect of natural persons, apply for corporate customers which seek to establish an account relationship via the post or internet. The bank should take supplementary measures to ensure that the company or business corporation exists at the business address provided for a legitimate purpose.

2.7.8. **Safe custody and safety deposit boxes**

2.7.8.1. Particular precautions need to be taken in relation to requests to hold boxes, parcels and sealed envelopes in safe custody. Where such facilities are made available to non-account holders, the identification procedures set out in this Guidance Note should be followed.

2.8 Procedures for high risk customers

2.8.1. **Accounts in the names of companies whose shares are in the form of bearer**

2.8.1.1. Banks may accept as customers companies whose own shares or those of their holding companies (if any) have been issued or may be issued in the form of bearer shares provided that the prospective corporate customer fulfils one of the undermentioned prerequisites:

(i) Its shares or those of its holding company are listed on a recognised stock exchange (please refer to Appendix 1);

(ii) It is authorised as a collective investment scheme, under the laws of properly regulated and supervised jurisdictions;

(iii) Its shares are beneficially owned or controlled by governments or governmental undertakings;

2.8.1.2. Banks may also open accounts and establish business relationships with companies whose own shares or those of their holding companies (if any) have been issued or may be issued to bearer and do not meet the prerequisites mentioned in the previous paragraph provided that the following additional measures are taken:

(i) The identity and business profile of the principal and ultimate beneficial owner(s) of the company is ascertained before opening the account.

(ii) The bank concerned takes physical custody of the bearer share certificates while the account relationship is maintained or obtains a confirmation from another bank operating in Cyprus or a member state of the European Union that it has under its own custody the bearer share certificates and, in case of their release, shall inform it accordingly.

(iii) When the account is opened, it should be closely monitored. At least twice a year, a review should be carried out and a note prepared summarising the results of the review which must be kept in the customer's file. At frequent intervals, the bank should compare the estimated against the actual turnover of the account. Any serious deviation, should be investigated, and the findings recorded in the relevant customer's file.

(iv) If the opening of the account has been recommended by a professional intermediary (lawyer/accountant), at least once every year the lawyer or accountant who has introduced the customer must confirm that the capital base and the shareholding structure of the company or that of its holding company (if any) has not been altered by the issue of new bearer shares or the cancellation of existing ones. If the account has been opened directly by the company, then the confirmation should be provided by the company's directors.

(v) When the company's beneficial ownership changes, then the bank should consider whether it is advisable to allow the account to continue operating.

2.8.2. **Accounts in the names of trusts or nominees of third persons**

2.8.2.1. A bank must always establish the identity of a trustee or nominee acting in relation to a trust or third party in accordance with the identification procedures for natural persons or corporate customers as the case may be.

2.8.2.2. A bank must also take all additional measures deemed appropriate under the circumstances for the purpose of establishing the identity of any person or persons on whose behalf and for their benefit a trustee or nominee is acting by verifying the identity of all the settlors and the true beneficiaries.

2.8.3. **"Client accounts" opened by professional intermediaries**

2.8.3.1. Lawyers, accountants, stockbrokers and other professional intermediaries frequently hold funds on behalf of their clients in "client accounts" opened with banks. Such accounts may be general or pooled accounts holding the funds of many clients or they may be opened specifically for a single client.

2.8.3.2. In the case of client accounts opened for a single client, the banks should verify the identity of the person (underlying beneficiary) on whose behalf the professional intermediary is acting in accordance with the customer identification procedures for natural persons or corporate customers as the case may be.

2.8.3.3. In the case of general or pooled "client accounts", banks should accept their establishment provided that they are satisfied that the professional intermediary meets the criteria listed in paragraph 2.8.7. below and reliance can, therefore, be placed on his/her customer identification and due diligence procedures. In such a case, banks are required to establish the identity of the underlying beneficiaries of transactions in line with the procedure prescribed in paragraph 2.8.7.1(iii) below only when a single transaction or a series of linked transactions exceeds the threshold limit of EURO 15.000. For transactions equal to or less than the above limit,

banks may waive the identification requirement provided that they have no grounds either to suspect that the transaction may be associated with the laundering of illicit funds or that the transaction is part of a series of linked transactions, the total sum of which exceeds EURO 15.000.

2.8.4. **Politically Exposed Persons ("PEPs")**

2.8.4.1. Business relationships with individuals holding important public positions in a foreign country and with natural or legal persons closely related to them, may expose a bank to enhanced risks if the potential customer seeking to establish an account is a Politically Exposed Person ("PEP"), a member of his immediate family or a close associate originating especially from a country which is widely known to face problems of bribery, corruption and financial irregularity and whose anti-money laundering statutes and regulations are not in line with international standards. Banks should assess which countries with which they maintain business relationships are most vulnerable to corruption. One source of information is the Transparency International Corruption Perceptions Index which can be found on the web-site of Transparency International at www.transparency.org.

2.8.4.2. For the purposes of this Guidance Note, “PEPs”, “immediate family” and “close associate” are defined as follows:

(i) Politically Exposed Persons ("PEPs") are individuals who are or have been entrusted with prominent public functions in a foreign country. It includes a senior figure in the executive, legislative, administrative, military or judicial branches of a government (elected or non-elected), a senior figure of a major political party, or a director/senior executive of a government owned corporation. It also includes any corporate entity, partnership or trust relationship that has been established by, or for the benefit of, a Politically Exposed Person.

(ii) “Immediate family” typically includes the person's parents, siblings, spouse, children in laws, grandparents and grandchildren.

(iii) “Close associate” typically includes a person who is widely and publicly known to maintain an unusually close relationship with a Politically Exposed Person and includes a person who is in a position

to conduct substantial domestic and international financial transactions on the Politically Exposed Person's behalf.

2.8.4.3. Banks should adopt the following additional due diligence measures when they open an account and maintain a business relationship with a PEP:

(i) Put in place appropriate computerised risk management systems to determine whether a prospective customer is a PEP;

(ii) the decision to establish an account relationship with a PEP should always be taken by the bank's senior management and communicated to the bank's Money Laundering Compliance Officer;

(iii) at the time of establishing an account relationship with a PEP, the bank should obtain adequate documentation to ascertain not only his/her identity but also to assess his/her business reputation (e.g. references from third parties);

(iv) banks should establish the business profile of the account holder by obtaining the information prescribed in paragraph 2.6.4 above. The profile of the expected business activity should form the basis for the future monitoring of the account. The profile should be regularly reviewed and updated. Banks should be particularly cautious and most vigilant where their customers are involved in businesses which appear to be most vulnerable to corruption such as trading in oil, arms, cigarettes and alcoholic drinks; and

(v) The account should be subject to annual review in order to determine whether to allow the account to continue operating. A note should be prepared summarising the results of the review by the bank officer in charge of the account. The note should be submitted for consideration and approval to the bank's senior management through the bank's Money Laundering Compliance Officer.

2.8.5. **"Old customer accounts"**

2.8.5.1. By virtue of the Guidance Notes issued by the Central Bank of Cyprus on 17 September, 2001, 26 November, 2001 and 29 March, 2002, (now repealed and incorporated in the present Guidance Note) for the prevention of money laundering, banks were required when opening

accounts for companies with nominee shareholders or client accounts for professional intermediaries or accounts in the name of trusts or nominees of third persons, to ascertain, without any exception, the identity of the natural persons who are the principal / ultimate beneficial owners and/or all settlors/beneficiaries (in the case of trusts). The above Guidance Notes did not have retrospective effect and were applicable to account relationships established after the date of their issue. As a result, for accounts opened before the above dates, banks were not obliged to verify the identity of natural persons who are the principal / ultimate owners/beneficiaries ("old customer accounts"). Customer identification records in respect of "old customer accounts", as defined above, should be updated by requesting and obtaining information sufficient to construct or reconstruct their business profile in accordance with the requirements of this Guidance Note as well as identification data on the natural persons who are the principal / ultimate owners / beneficiaries whenever any of the following events take place:

(i) An individual transaction takes place which appears to be unusual and/or significant compared to the normal pattern of the "old customer's account" activity or business profile;

(ii) there is a material change in the "old customer's" circumstances and documentation standards such as:

  (a) change of directors/secretary,

  (b) change of registered nominee shareholders,

  (c) change of registered office,

  (d) change of trustee(s),

  (e) change of corporate name and/or trading name(s) used,

  (f) change of principal trading partner(s) and/or new business activities undertaken,

(iii) There is a material change in the way that the existing "old customer account" relationship is operating such as:

- Change of the authorised signatories to the account.
- Request for opening new accounts or the provision of new banking services and/or products.

2.8.5.2. Banks should ensure that whenever they become aware of any of the said events in relation to an "old customer account", all relevant information data is obtained as quickly as possible for the purpose of identifying the natural persons who are the principal / ultimate beneficial owners and constructing the customer's business profile.

2.8.6. **Non-EU Correspondent Bank Accounts**

2.8.6.1. Banks may open in their own books correspondent accounts for a non-EU banking institution (the "respondent bank") provided that all of the following practices are adopted:

(i) The respondent bank maintains a physical presence in the form of a fully-fledged office carrying on real banking business in its country of incorporation i.e. the respondent bank is not a "shell bank". Confirmation of the existence of a bank and its regulated status should be checked by one of the following means:

(a) Checking with the home country Central Bank or relevant supervisory body; or

(b) checking with a correspondent bank in the same country; or

(c) obtaining from the bank evidence of its licence or authorisation to conduct financial and/or banking business.

Additional information on banks worldwide can be obtained from "The Bankers' Almanac", "Thomsons' Directories" or any of the international business information services.

(ii) The respondent bank employs adequate procedures to prevent money laundering, including terrorist financing activities. In this regard, banks should obtain and evaluate information on the respondent bank's customer acceptance policy and identification procedures as well as anti-money laundering controls in general;

(iii) The bank collects sufficient information to understand fully the nature of the respondent's business activities, beneficial ownership, management and places of operations;

(iv) The decision to establish the correspondent account should be taken by the bank's senior management;

2.8.6.2. Provided that the prerequisites (i) to (iv) mentioned in the paragraph above are met, banks should obtain the prior written approval of the Central Bank of Cyprus for opening correspondent accounts for banks incorporated in the following jurisdictions:

1. Anguilla
2. Antigua and Barbuda
3. Cook Islands
4. British Virgin Islands
5. Dominica
6. Grenada
7. Marshall Islands
8. Montenegro
9. Montserrat
10. Nauru
11. Niue
12. Palau
13. Samoa
14. Sao Tome & Principe
15. Seychelles
16. St. Kitts and Nevis
17. St. Lucia
18. St. Vincent and the Grenadines
19. Turks & Caicos

2.8.6.3. The application to the Central Bank of Cyprus for opening a correspondent account in the name of a bank incorporated in a jurisdiction mentioned in the sub-paragraph (v) above should include the details of sub-paragraphs (i) to (iii) of paragraph 2.8.6.1 mentioned above and should be submitted by the Money Laundering Compliance Officer at the following address:

Central Bank of Cyprus,
Supervision of International Banks, Regulation and Financial Stability Department
80 Kennedy Avenue,
P. Box 25529,
1395 Nicosia
Facsimile number: 22-378049
E-mail: SpyrosStavrinakis@centralbank.gov.cy

2.8.7. **Reliance on business introducers for customer identification and performance of due diligence**

2.8.7.1. In accordance with the provisions of the Law banks themselves are legally obliged to apply identification procedures in all instances, including one off transactions and non-face to face contacts. The Law does **not** provide for the delegation of the above obligation to any third party such as a business introducer. In the light of the above, this part of the Guidance Note should **not** interpreted in any way that banks can detract from their ultimate responsibility for customer identification and verification and to know their customers and business activities. Reliance on customer identification performed by professional intermediaries or third party introducers should, therefore, be regarded as an additional internal control measure, highly recommended by the Central Bank of Cyprus for banks, and should be placed upon only when all of the following criteria are met:

(i) the bank's MLCO or Compliance Department has assessed the customer identification and due diligence procedures employed by the professional intermediary or third party introducer and has found them to be in line with the generally acceptable international standards and as rigorous as those employed by the bank itself. A record of the assessment should be prepared and kept in a separate file maintained for each professional intermediary or third party introducer;

(ii) the professional intermediary or third party introducer is subject to regulation and supervision by an appropriate competent authority in Cyprus or abroad for money laundering purposes;

(iii) all relevant identification data and other documentation pertaining to the customer's identity should be submitted duly certified as being true copy of the original by the professional intermediary or third party introducer to the bank at the time of submitting the application for opening the account, providing a service, or executing an one-off transaction; and

(iv) the bank reaches an agreement with the professional intermediary or third party introducer by which it is permitted at any stage, to verify

the due diligence procedures performed by the professional intermediary or introducer for the purposes of preventing money laundering.

2.8.8. **Higher risk countries- Non-cooperative countries and territories ("NCCTs")**

2.8.8.1. The Financial Action Task Force's ("FATF") Forty Recommendations constitute today's primary internationally recognised standards for the prevention and detection of money laundering. The Government of Cyprus has formally endorsed FATF's Forty Recommendations and has directly assured the President of FATF that the competent authorities of Cyprus will take all necessary actions to ensure full compliance and implementation of the Recommendations. In this regard, the Central Bank of Cyprus is committed for the implementation of FATF's Forty Recommendations and all its other related initiatives in an effort to reduce the vulnerability of the banking system to money laundering activities.

2.8.8.2. In February, 2000 FATF engaged in a major initiative to identify non-cooperative countries and territories ("NCCTs") in the fight against money laundering. In this respect, FATF has issued a report setting out twenty five criteria against which countries and territories are evaluated for the purpose of identifying relevant detrimental rules and practices in their anti money laundering systems that are in breach of FATF's Forty Recommendations and prevent international cooperation in this area. Since June, 2000, and following an evaluation of a number of countries against the above set of criteria, FATF has been publishing lists of jurisdictions which were, from time to time, being identified as non-cooperative. The current list of NCCTs is set out in "Appendix 2" to this Guidance Note.

2.8.8.3. In view of the aforementioned, all banks are required to apply the following:

(i) Exercise additional monitoring procedures and pay special attention to business relations and transactions with persons, including companies and financial institutions, from countries included on the NCCTs list; and

(ii) Whenever the above transactions have no apparent economic or visible lawful purpose, their background and purpose should be examined and the findings established in writing. If a bank cannot satisfy itself as to the legitimacy of the transaction, then a suspicious transaction report should be filed with MOKAS.

3. RECORD KEEPING PROCEDURES

3.1 Introduction

The Law requires, under Section 66, banks to retain records concerning customer identification and details of transactions for use as evidence in any possible investigation into money laundering. This is an essential constituent of the audit trail procedures that the Law seeks to establish.

3.2 Records of customer identification and transactions

3.2.1. The Law specifies, under Section 66, that, where evidence of a customer's identity is required, the records retained must include the following:

(i) A record that indicates the **customer's identity** obtained in accordance with the procedures provided in the Law and which comprises either a copy of the evidence or which provides sufficient information to enable details as to a person's identity to be re-obtained.

(ii) A record containing **details relating to all transactions** carried out by that customer in the course of relevant financial business.

3.2.2. The prescribed period is at least five years commencing with the date on which the relevant business or all activities taking place in the course of transactions were completed.

3.2.3. In accordance with the Law, the date when the relationship with the customer has ended is the date of:

(i) the carrying out of an one-off transaction or the last in the series of one-off transactions; or

(ii) the ending of the business relationship i.e. the closing of the account or accounts; or

(iii) if the business relationship has not formally ended, the date on which the last transaction was carried out.

3.2.4. MOKAS needs to be able to compile a satisfactory audit trail for suspected laundered money and to be able to establish the business profile of any suspect account. To satisfy this requirement, banks must ensure that in the case of a money laundering investigation by MOKAS, they will be able to provide the following information:

(i) the identity of the account holder(s)

(ii) the identity of the beneficial owner(s) of the account

(iii) the identity of the authorised signatory(ies) to the account;

(iv) the volume of funds or level of transactions flowing through the account;

(v) connected accounts;

(vi) for selected transactions:

(a) the origin of the funds;

(b) the type and amount of the currency involved;

(c) the form in which the funds were placed or withdrawn i.e. cash, cheques, wire transfers etc.;

(d) the identity of the person undertaking the transaction;

(e) the destination of the funds;

(f) the form of instructions and authority;

(g) the type and identifying number of any account involved in the transaction;

3.3 Format of Records

3.3.1. It is recognised that copies of all documents cannot be retained indefinitely. Prioritisation is, therefore, a necessity. Although the Law prescribes a period of retention, where the records relate to on-going investigations, they should be retained until it is confirmed by MOKAS that the case has been closed.

3.3.2. The retention of hard-copy evidence creates excessive volume of records to be stored. Therefore, retention may be in other formats other than original documents, such as electronic or other form. The overriding objective is for the banks to be able to retrieve the relevant information without undue delay and in a cost-effective manner.

3.3.3. When setting a document retention policy, banks are, therefore, advised to consider both the statutory requirements and the potential needs of MOKAS.

3.3.4. Section 47 of the Law provides that where relevant information is contained in a computer, the information must be presented in a visible and legible form which can be taken away by MOKAS.

3.4 Funds transfers

3.4.1. The extensive use of electronic payment and message systems by criminals to move funds rapidly in different jurisdictions has complicated the investigation trail. Investigations are at times even more difficult to pursue when the identity of the original ordering customer or ultimate beneficiary of a funds transfer is not clearly shown in an electronic payment message instruction.

3.4.2. For the purpose of this Guidance Note:

(i) **Funds transfer** refers to any transaction carried out by a bank on behalf of an originator person (both natural or legal) by electronic means (SWIFT or otherwise) with a view to making an amount of money available to a beneficiary person (both natural or legal) at another financial institution; and

(ii) the originator is the person maintaining an account with a bank, or where there is no account, the person that places an order with the bank to perform a funds transfer.

3.4.3. It is of the utmost importance to include full information on the originator of all funds transfers made by electronic means, both domestic and international, regardless of the payment message system used. The records of electronic payments and relevant messages must be treated in the same way as any other records in support of entries in the account and kept for a minimum of five years.

3.4.4. All outgoing transfers performed by banks in excess of US$ 1.000 should contain accurate and meaningful information on the originator. In this respect, all outgoing transfers must always include the name, the account number and address of the originator. In the absence of an account, banks should include a unique reference number which will permit the subsequent tracing of the transaction. The address of the originator may be substituted with the customer identification number or date and place of birth or the national identity number or, in the case of legal entities, its registration number with the competent authority.

3.4.5. For outgoing funds transfers equal to or below US$ 1.000 banks may not include in the relevant message the full originator information but such information should always be retained and be made available to the intermediary or beneficiary bank upon request.

3.4.6. Banks should make sure that incoming funds transfers in excess of US$ 1.000 also include the above information for the ordering customer. In cases where any of the information mentioned in paragraph 3.4.4 is missing, banks should contact the originator's bank and request that information be made available before proceeding with the execution of the transaction. Section 67A of the Law provides protection to banks from possible claims from their customers for non-execution or delay in applying incoming funds to the credit of their accounts. Hence, as per Section 67A, non-execution or delay in the execution of any transaction for the account of customer due to the non provision of sufficient details or information for the nature of the transaction and/or the parties involved, as required by the Guidance Notes issued by the Central Bank of Cyprus, does not constitute breach of any contractual or other obligation owed by the bank to its customers. If full originator information is not eventually made available,

then the beneficiary's bank should consider filing a suspicious transaction report with MOKAS.

3.4.7. Where the size and nature of incoming funds transfers are unusual or inconsistent with the beneficiary's financial condition, nature of operations and business profile, then background information should be sought and obtained from the beneficiary in regard to the underlying transaction and the circumstances of the transfer. If the bank continues to have suspicions as to the legitimacy of the source of the funds, then the originator's bank may be contacted for further details and information. In case that the bank fails to receive sufficient information to its complete satisfaction, that will be capable of dissolving any suspicions that may have arisen, then the whole matter should be reported to MOKAS in accordance with the provisions of the Law.

4. CASH DEPOSITS IN FOREIGN CURRENCY NOTES

4.1 Prohibition to accept cash deposits

4.1.1. Banks should not accept cash deposits in foreign currency notes in excess of US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent **per calendar year** from any person (resident or non-resident) or a group of connected persons.

4.1.2. Banks should also not accept cash deposits below the threshold limit of US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent from a person or group of connected persons, resident or non-resident, where the cash deposit forms part of a series of linked cash deposits whose aggregate amount is in excess of US$100.000 (one hundred thousand US Dollars) or equivalent per calendar year.

4.2 Definitions of connected persons and linked cash deposits

4.2.1. For the purposes of this Guidance Note, a group of connected persons is defined to be:

(i) members of a family, i.e. husband, wife, children;

(ii) an individual and an enterprise in which the individual and any member(s) of his/her family is a partner or shareholder or director or has control in any other way;

(iii) an individual and a company in which the individual is a manager or has a material interest either on his own or together with any member(s) of his/her family or together with any partners;

(iv) if the person is a legal entity, its holding company, subsidiaries, fellow subsidiaries, associated companies or entities which have a material interest in that person; and

(v) two or more persons, natural or legal, which are inter-dependently financially or are connected in such a manner that may be viewed as a single risk.

4.2.2. A cash deposit should be considered to be linked to other cash deposits when the bank knows or suspects that a person is seeking to make lodgement of cash in different accounts either with the same or different banks so that the total of each deposit is below US$100.000 (one hundred thousand US Dollars) or equivalent but the total of all deposits exceeds US$100.000 (one hundred thousand US Dollars) or equivalent in a given calendar year.

4.3 . <u>Acceptance of cash deposits with the Central Bank of Cyprus's approval</u>

4.3.1 Cash deposits, as described hereinbelow, should be accepted only with the prior written approval of the Central Bank of Cyprus:

(i) Single cash deposits in foreign currency notes in excess of US$100.000 (one hundred thousand US Dollars) or equivalent.

(ii) Cash deposits below the threshold limit of US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent as a result of which the aggregate amount of all cash deposits in a calendar year accepted from the same customer or group of connected customers will exceed US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent; and

(iii) Cash deposits below the threshold limit of US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent from a customer who presents a "Declaration of Imported/Exported Currency/Bank Notes and/or Gold" Form, completed in accordance with The Capital Movement Law 115(I)/2003, which shows that at the time of his arrival in Cyprus he/she imported and declared foreign currency notes in excess of US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent.

4.3.2 Requests for permission shall be made in writing by the Money Laundering Compliance Officer of the bank concerned who shall provide full details on the customer and his activities and explain the nature of the transaction and source of the cash money. The Money Laundering Compliance Officer should also confirm that the bank has fully applied the customer identification and due diligence procedures prescribed in the Central Bank of Cyprus's Guidance Notes for the prevention of money laundering and

that the funds involved are not suspected to be associated with illicit activities, including terrorist finance. All such requests should be sent by e-mail or mail or facsimile at the following address:

Central Bank of Cyprus,
Supervision of International Banks, Regulation and Financial Stability Department
80 Kennedy Avenue,
P. Box 25529,
1395 Nicosia
Facsimile number: 22-378049
E-mail: SpyrosStavrinakis@centralbank.gov.cy

4.4 Exempted cash deposits

4.4.1. Notwithstanding the above, the following exemptions apply:

(i) Cash deposits of foreign currency notes from banks licensed to carry on banking business in Cyprus; and

(ii) cash deposits in excess of US$ 100.000 (one hundred thousand US Dollars) or equivalent for which a specific permission is obtained from the Central Bank of Cyprus.

5. THE ROLE OF THE MONEY LAUNDERING COMPLIANCE OFFICER

5.1 Appointment of a Money Laundering Compliance Officer

5.1.1. The Law, in accordance with Sections 58 and 67, requires that banks institute internal reporting procedures and that they identify a person (hereinafter to be referred to as "the Money Laundering Compliance Officer") to whom the bank's employees should report their knowledge or suspicion of transactions/activities involving money laundering.

5.1.2. In accordance with the provisions of the Law, all banks should proceed with the appointment of a Money Laundering Compliance Officer. The person so appointed should be sufficiently senior to command the necessary authority. Banks may also wish to appoint Assistant Money Laundering Compliance Officers by division, district or otherwise for the purpose of passing internal suspicion reports to the Chief Money Laundering Compliance Officer. Banks should communicate to the Central Bank of Cyprus the names and positions of persons whom they appoint, from time to time, to act as Money Laundering Compliance Officers.

5.2 Duties of Money Laundering Compliance Officers

5.2.1. The role and responsibilities of Money Laundering Compliance Officers, including those of Chief and Assistants, should be clearly specified by banks and documented in appropriate manuals and/or job descriptions.

5.2.2. As a minimum, the duties of a Money Laundering Compliance Officer should include the following:

(i) To receive information from the bank's employees which is considered by the latter to be knowledge of money laundering activities or which is cause for suspicion connected with money laundering. A specimen of such an internal report (hereinafter to be referred to as "Internal Money Laundering Suspicion Report") is attached, as “Appendix 5”, to this Guidance Note. All such reports should be kept on-file.

(ii) To validate and consider the information received as per paragraph (i) above by reference to any other relevant information and discuss the circumstances of the case with the reporting employee concerned and, where appropriate, with the employee’s superior(s). The evaluation of

the information reported to the Money Laundering Compliance Officer should be recorded and retained on file. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Internal Evaluation Report") is attached, as “Appendix 6”, to this Guidance Note.

(iii) If following the evaluation described in paragraph (ii) above, the Money Laundering Compliance Officer decides to notify MOKAS, then he should complete a written report and submit it to MOKAS the soonest possible. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Report to the Unit for Combating Money Laundering (“MOKAS”)” is attached, as “Appendix 7”, to this Guidance Note. All such reports should be kept on file.

(iv) If following the evaluation described in paragraph (ii) above, the Money Laundering Compliance Officer decides not to notify MOKAS then he/she should fully explain the reasons for such a decision on the "Money Laundering Compliance Officer's Internal Evaluation Report" which should, as already stated, be retained on file

(v) The Money Laundering Compliance Officer acts as a first point of contact with MOKAS, upon commencement of and during an investigation as a result of filing a report to MOKAS under (iii) above.

(vi) The Money Laundering Compliance Officer responds to requests from MOKAS and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with MOKAS.

(vii) The Money Laundering Compliance Officer provides advice and guidance to other employees of the bank on money laundering matters.

(viii) The Money Laundering Compliance Officer acquires the knowledge and skills required which should be used to improve the bank's internal procedures for recognising and reporting money laundering suspicions.

(ix) The Money Laundering Compliance Officer determines whether the bank's employees need further training and/or knowledge for the purpose of learning to combat money laundering and organises appropriate training sessions/seminars.

(x) The Money Laundering Compliance Officer is primarily responsible, in consultation with the bank's senior management and the bank's Internal Audit and Compliance Departments, towards the Central Bank of Cyprus, in implementing the various Guidance Notes issued by the Central Bank of Cyprus under Section 60(3) of the Law as well as all other instructions/ recommendations issued by the Central Bank of Cyprus, from time to time, on the prevention of the criminal use of the banking system for the purpose of money laundering. The Money Laundering Compliance Officer also maintains the overall responsibility for the timely and correct submission to the Central Bank of Cyprus of the "Monthly Statement of Large Cash Deposits and Funds Transfers", by explaining the relevant Central Bank instructions for the completion of the above return to the bank's employees who are responsible for the preparation of the return. The Money Laundering Compliance Officer is also expected to be able to deal with all enquiries that the Central Bank of Cyprus may wish to raise in connection with the information included in the above return.

(xi) The Money Laundering Compliance Officer is expected to avoid errors and/or omissions in the course of discharging his duties and, most importantly, when validating the reports received on money laundering suspicions, as a result of which a report to MOKAS may or may not be filed. He is also expected to act honestly and reasonably and to make his determination in good faith. In this connection, it should be emphasised that the Money Laundering Compliance Officer's decision may be subject to the subsequent review of the Central Bank of Cyprus which, in the course of examining and evaluating the anti-money laundering procedures of banks and their compliance with the provisions of the Law, is legally empowered to report to MOKAS any transaction or activities for which it forms the suspicion that money laundering may have been carried out.

5.3 Annual Reports of Money Laundering Compliance Officers

5.3.1. Money Laundering Compliance Officers have also the additional duty of preparing an Annual Report which is a tool for assessing a bank's level of compliance with its obligations laid down in the Law and the Central Bank of Cyprus's Guidance Notes for the prevention of money laundering.

5.3.2. The Money Laundering Compliance Officer's Annual Report should be prepared within two months from the end of each calendar year (i.e. by the end of February, the latest) and should be submitted to the bank's Chief Executive/Senior Management for consideration. In the case of a bank operating in Cyprus in the form of a branch, the Annual Report should be submitted to the bank's Chief Executive/Senior Management at the Head Office in its country of origin. It is expected that the banks' Chief Executives/Senior Management will then take all action as deemed appropriate under the circumstances to remedy any deficiencies identified in the Annual Report. A copy of the Annual Report shall also be forwarded within the same time limit specified above, to the Supervision of International Banks, Regulation and Financial Stability Department of the Central Bank of Cyprus to assist the latter in the discharge of its supervisory functions.

5.3.3. The Money Laundering Compliance Officer’s Annual Report should deal with money laundering preventive issues pertaining to the year under review and, as a minimum, cover the following:

(i) Information on changes in the Law and the Central Bank of Cyprus's Guidance Notes which took place during the year and measures taken and/or procedures introduced for securing compliance with the above changes;

(ii) information on the ways by which the effectiveness of the customer identification and due diligence procedures have been managed and tested for compliance with Central Bank of Cyprus’s Guidance Notes and the bank’s customer acceptance policy and procedures.

(iii) material deficiencies and weaknesses identified by the Money Laundering Compliance Officer or the bank's internal audit and compliance departments in anti-money laundering policies and procedures, outlining the seriousness of the issue and any risk implications and, outlining the action taken and/or the recommendations made for rectifying the situation;

(iv) the number of internal money laundering suspicion reports received from employees, broken down by district, division, branch and any observations thereon;

(v) any perceived deficiencies and weaknesses in the anti-money laundering internal reporting procedures and recommendations for change;

(vi) any other information concerning communication with staff on money laundering prevention issues;

(vii) the number of suspicious reports submitted to MOKAS with information on the main reasons for suspicion and highlights of any particular trends;

(viii) summary figures, on an annualised basis, of customers' total cash deposits and incoming/outgoing funds transfers in excess of US$10.000 and US$500.000 respectively (together with comparative figures for the previous year) as reported to the Central Bank of Cyprus in the "Monthly Statement of Large Cash Deposits and Funds Transfers" and comments on material changes observed compared with the previous year;

(ix) information on the co-operation with MOKAS and figures on the requests for information received from MOKAS concerning suspicious cases reported and the number of disclosure court orders received by the bank under the Law for the production of information relating to other money laundering investigations;

(x) information on the training courses/seminars attended by the Money Laundering Compliance Officer and any other educational material received;

(xi) information on training provided to staff, outlining the courses/ seminars organised, their duration, the number and position of employees attending, names and qualifications of the instructor(s) and specifying whether the courses/seminars were developed in-house or by an external organisation /consultant.

(xii) recommendations for additional human and technical resources which might be required to ensure compliance with the provisions of the Law and the Central Bank of Cyprus's Guidance Notes issued thereunder.

6. RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS/ ACTIVITIES TO MOKAS

6.1 Introduction

6.1.1. Section 27 of the Law requires that any knowledge or suspicion of money laundering should be promptly reported to a Police Officer or MOKAS. The Law also provides, under Section 26, that such a disclosure cannot be treated as a breach of the duty of confidentiality owed by banks to their customers by virtue of the contractual relationship existing between them.

6.1.2. The Law also recognises, under Section 26, that suspicions may only be aroused after the transaction has been completed and, therefore, allows subsequent disclosure provided that such disclosure is made on the person's concerned initiative and as soon as it is reasonable for him to make it.

6.1.3. In case of bank employees, the Law recognises, under Section 26, that internal reporting to the Money Laundering Compliance Officer will satisfy the reporting requirement imposed by virtue of Section 27 i.e. once a bank employee has reported his/her suspicion to the Money Laundering Compliance Officer he or she is considered to have fully satisfied his/her statutory requirements, under Section 27.

6.2 Examples of suspicious transactions/activities

6.2.1. Although it is difficult to define a suspicious transaction, as the types of transactions which may be used by money launderers are almost unlimited, a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account. It is, therefore, imperative that bankers know enough about their customers' business in order to recognise that a transaction or a series of transactions is unusual or suspicious.

6.2.2. A potential money launderer will attempt to use any service offered by a bank as a means of changing the nature of money from dirty to clean. This process could possibly range from a simple cash transaction to much more sophisticated and complex transactions. A list containing examples of what might constitute suspicious transactions/activities, is attached as “Appendix 3” to this Guidance Note. This list is not all inclusive but can help bankers recognising the most basic ways through which money can be laundered. The possible identification of any of the types of transactions/activities listed in the above Appendix should prompt further investigation by seeking

additional information and/or explanations as to the source and origin of the funds the nature of the underlying transaction and the circumstances surrounding the particular activity.

6.3 Reporting of suspicious transactions/activities to MOKAS

6.3.1. All Money Laundering Compliance Officers' Reports to MOKAS should be sent or delivered at the following address:

Unit for Combating Money Laundering ("MOKAS"),
The Law Office of the Republic,
27 Katsoni Street, 2nd & 3rd Floors,
CY-1082 Nicosia.
Tel.: 22 446018, Fax: 22 317063
E-mail: mokas@mokas.law.gov.cy
Contact person:
Mrs Eva Rossidou – Papakyriakou,
Head of the Unit for Combating Money Laundering ("MOKAS")

6.3.2. The form attached to this Guidance Note, as "Appendix 7", should be used and followed at all times when submitting a report to MOKAS. Disclosures can be forwarded to MOKAS by post or by facsimile message or by hand.

6.4 Co-operation with MOKAS

6.4.1. Having made a disclosure report, a bank may subsequently wish to terminate its relationship with the customer concerned for commercial or risk avoidance reasons. In such an event, however, banks should exercise particular caution, as per Section 48 of the Law, not to alert the customer concerned that a disclosure report has been made. Close liaison with the MOKAS should, therefore, be maintained in an effort to avoid any frustration to the investigations conducted.

6.4.2. After making the disclosure, banks are expected to adhere to any instructions given by the MOKAS and, in particular, as to whether or not to continue or suspend a transaction. It is noted that Section 26(2)(c) of the Law empowers MOKAS to instruct banks to refrain from executing or delay the execution of a customer's order without such action constituting a violation of any contractual or other obligation of the bank and its employees.

7 PRUDENTIAL REPORTING TO THE CENTRAL BANK OF CYPRUS

7.1 Submission of prudential returns

7.1.1. As from September, 1990, all banks in Cyprus have been submitting a monthly return on their large cash deposits and incoming and outgoing wire funds transfers. The submission of the above monthly return has proved to be particularly useful as it provided the opportunity to banks initially to evaluate and, subsequently, to reinforce their systems of internal control and monitoring of their operations for the purpose of early identification and detection of transactions and business relationships which may be unusual and/or carry enhanced risk of being involved in money laundering operations. Attached as "Appendix 4" to this Guidance Note is the form of the "Monthly Statement of Large Cash Deposits and Funds Transfers" as well as explanations and instructions for its completion.

7.2 Adjustment of banks' computerised accounting systems

7.2.1. To the above end, the Central Bank of Cyprus requires from all banks to adjust their computerised accounting systems so as to be able to identify promptly all cash deposits and funds transfers in excess of the limits specified for reporting in the monthly return. The early detection of cash and wire funds transactions will enable the reporting of complete and accurate information in the monthly return and will also enhance the ability of banks to identify and monitor transactions which are considered to involve higher risk of being associated with money laundering activities.

8 INTERNAL CONTROL PROCEDURES AND RISK MANAGEMENT

8.1 Introduction

8.1.1. In addition to the procedures relating to customer identification, record keeping and internal reporting, Section 58 of the Law requires that banks apply appropriate procedures for internal control, communication and detailed examination of any transaction which by its nature may be considered to be associated with money laundering for the purpose of preventing or forestalling money laundering.

8.2 Duty to establish procedures

8.2.1. Effective money laundering preventive procedures embrace routines for proper management oversight, systems and controls, segregation of duties, training and other related policies. The Board of Directors of the bank and its Senior Management should be fully committed to an effective money laundering preventive programme by establishing appropriate procedures and ensuring their effectiveness. Banks have an obligation to ensure that:

(i) All their employees know to whom they should be reporting money laundering knowledge or suspicion;

(ii) there is a clear reporting chain under which money laundering knowledge or suspicion is passed without delay to the Chief Money Laundering Compliance Officer either directly or through the Assistant Money Laundering Compliance Officer;

(iii) internal policies, procedures and controls for the prevention of money laundering are documented in an appropriate manual which is communicated to management and all employees in charge of customers' operations;

(iv) explicit responsibility is allocated within the bank for ensuring that the bank's policies and procedures are managed effectively and are in full compliance with the Central Bank of Cyprus's Guidance Notes; and

(v) the bank's internal audit and/or compliance department reviews and evaluates, at regular intervals, the effectiveness and adequacy of policies and procedures introduced by the bank for preventing money laundering and verify compliance with the provisions of Central Bank of Cyprus's Guidance Notes. Findings and criticisms of the internal audit and/or compliance departments should be followed up to ensure the rectification of any weaknesses which may have been observed.

8.3 On-going monitoring of accounts and transactions

8.3.1. On-going monitoring of customers' accounts and transactions is an essential aspect of effective money laundering preventive procedures. Banks should have an understanding of normal and reasonable account activity of their customers as well as of their business profile so that they have a means of identifying transactions which fall outside the regular pattern of an account's activity. Without such knowledge, they would not be able to discharge the duty to report suspicious transactions/activities to MOKAS.

8.3.2. Section 58(b)(iv) of the Law requires banks, inter-alia, to examine in detail any transaction which by its nature may be associated with money laundering. The background and purpose of such transactions should, as far as possible be examined by taking care not to breach Section 48 of the Law concerning tipping-off. The extent of the examination of transactions and monitoring of accounts needs to be risk-sensitive. For all accounts, banks should have systems in place to be able to aggregate balances and activity of all connected accounts on a fully consolidated basis and detect unusual or suspicious patterns of activity. This can be done by establishing limits for a particular class or category of accounts (e.g. high risk accounts) or transactions (e.g. cash deposits and wire transfers) in excess of a threshold limit). Particular attention should be paid to all transactions that exceed these limits. Certain types of transactions should alert banks to the possibility that the customer is conducting unusual or suspicious activities. They may include transactions that do not appear to make economic or commercial sense or that involve large amounts of cash or other monetary instruments or sizeable incoming transfers that are not consistent with the normal and expected transactions of the customer. Very high account turnover, inconsistent with the size of the balance, may indicate that funds are being "washed" through the account.

8.3.3. For higher risk accounts banks should ensure that they have adequate management information systems to provide Managers and Money Laundering Compliance Officers with timely information needed to identify, analyse and effectively monitor higher risk customer accounts. Banks should set key indicators for such accounts, taking note of the background of the customer, such as the country of origin and source of funds, the type of transactions involved and other risk factors. The types of reports that may be needed include reports of missing account opening documentation, data on customers' identity, transactions made through a customer account that are unusual, and aggregations of a customer's total relationship with the bank. All banks are required to report to the Central Bank of Cyprus that they have actually installed and put into operation adequate management information systems for the on-going monitoring of accounts and transactions, by 30 June, 2005, the latest.

8.3.4. Senior management in charge of private banking business should know the personal circumstances of the bank's high risk customers and be alert to sources of third party information. Significant transactions by these customers should be approved by senior management.

9. EDUCATION AND TRAINING OF EMPLOYEES

9.1. The Law requires, under Section 58, that adequate training be provided to all bank employees in the recognition and handling of transactions suspected to be associated with money laundering. As a means of assistance for the discharge of the said legal obligation, banks should refer to the parts of this Guidance Note which deal with the **"Recognition and Reporting of Suspicious Transactions/Activities to MOKAS"** and **"Prudential Reporting to the Central Bank of Cyprus".**

9.2. Also, under Section 58 of the Law, banks are required to take appropriate measures to make their employees aware of:

(i) The policies and procedures put in place to prevent money laundering including those for identification, record keeping and internal reporting;

(ii) The legislation relating to money laundering.

9.3. The effectiveness of the procedures and recommendations contained in this Guidance Note and other relevant instructions issued by the Central Bank of Cyprus on the subject of money laundering depends on the extent to which staff of banks appreciate the serious nature of the background against which the Law has been enacted and are fully aware of their responsibilities. Staff must also be aware of their own personal statutory obligations. They can be personally liable for failure to report information in accordance with internal procedures. All staff must, therefore, be encouraged to co-operate and to provide a prompt report of any knowledge or suspicion of transactions involving money laundering. It is, therefore, important that banks introduce comprehensive measures to ensure that staff are fully aware of their responsibilities. In this regard, banks are required to establish a programme of continuous training so that their staff is adequately trained in procedures to prevent money laundering.

9.4. The timing and content of training for various sectors of staff will need to be adapted by the bank for its own needs. Training requirements should have a different focus for new staff, front-line staff, compliance staff or staff dealing with new customers. New staff should be educated in the importance of money laundering preventive policies and the basic requirements at the bank. Front-line staff members who deal directly with the public should be trained to verify the identity of new customers, to exercise due diligence in handling accounts of existing customers on an ongoing basis and to detect

patterns of suspicious activity. Regular refresher training should be provided to ensure that staff are reminded of their responsibilities and are kept informed of new developments. It is crucial that all relevant staff fully understand the need for and implement money laundering preventive policies consistently. A culture within banks that promotes such understanding is the key to successful implementation.

10. REPEAL/CANCELLATION OF PREVIOUS GUIDANCE NOTES AND SUPPLEMENTS/AMENDMENTS

10.1. The following Guidance Notes and their Supplements/Amendments issued under Section 60(3) of the Law are, hereby, repealed and cancelled:

Edition	Title	Date of issue
Guidance Note	(a) Customer Identification Procedures (b) Record Keeping Procedures (c) Recognition of Suspicious Transactions (d) Appointment and Duties of Money Laundering Compliance Officers, Internal Reporting of Suspicious Transactions and Reporting of Suspicious Transactions to the Unit for Combating Money Laundering (e) Education and Training of Bank Employees	29 November, 1999
Guidance Note	Prohibition in accepting cash deposits in foreign currency notes in excess of US$100.000 or other foreign exchange equivalent.	7 November, 2000
Supplement 1 to Guidance Note issued on 29 November, 1999.	Amendment of the Monthly Statement of Large Cash Deposits and Funds Transfers by reporting monthly cash deposits in excess of US$100.000 or equivalent for which the Central Bank of Cyprus's approval has been given	14 November, 2000
Guidance Note	The opening and maintenance of accounts by "banks" incorporated in certain jurisdictions.	23 November, 2000
Supplement 1 to Guidance Note issued on 23 November, 2000	The opening and maintenance of accounts by "banks" incorporated in the Republic of Montenegro	30 March, 2001
Supplement 1 to the Guidance Note issued on 7 November, 2000	Cash Deposits in Foreign Currency Notes by the same customer or group of connected customers	30 July, 2001

Amendment 1 to Guidance Note issued on 29 November, 1999	Application of the "know your customer" principle in relation to: - corporate customers - accounts in the names of trustees or nominees of third persons	17 September, 2001
Supplement 1 to Amendment 1 of the Guidance Note issued on 29 November, 1999.	Application of the "know your customer" principle in relation to: - corporate customers - accounts in the names of trustees or nominees of third persons	26 November, 2001
Guidance Note	Preparation and submission to the Central Bank of Cyprus of an Annual Report by Money Laundering Compliance Officers.	4 February, 2002
Supplement 2 to Amendment 1 of the Guidance Note issued on 29 November, 1999.	Application of the "know your customer" principle in relation to: - principal beneficial owners/controllers of corporate customers - "client accounts" - -politically exposed persons	29 March, 2002
Guidance Note	The implementation of additional monitoring procedures, paying special attention and reporting to the Unit for Combating Money Laundering all transactions with countries designated by the FATF as non-cooperative ("NCCTs") which have no apparent economic or visible lawful purpose	20 January, 2003
Guidance Note	- Identification of the principal/ultimate beneficial owners of "old customer accounts"	2 February, 2003
Supplement 1 to the Guidance Note issued on 20 January, 2003	Imposition of additional counter-measures against Ukraine in line with the Financial Action Task Force's decision	5 February, 2003
Amendment 1 to Supplement 2 to the Guidance Note issued on 29 November, 1999.	Waiving the identification requirement for transactions going through "client accounts" whose value is below EURO 15.000	20 February, 2003
Supplement 2 to the Guidance Note issued on 20 January, 2003	Removal of Grenada from the list of Non-Cooperative Countries and Territories ("NCCTs") and withdrawal of additional counter measures against Ukraine.	20 February, 2003
Supplement 3 to the Guidance Note issued on 20 January, 2003	Removal of St. Vincent & the Grenadines from the list of Non-Cooperative Countries and Territories ("NCCTs").	9 July, 2003

Supplement 4 to the Guidance Note issued on 20 January, 2003	Application by the FATF of counter measures against Myanmar (Burma).	1 December, 2003
Supplement 5 to the Guidance Note issued on 20 January, 2003	Removal of Ukraine and Egypt from the list of Non-Cooperative Countries and Territories ("NCCTs").	5 March, 2004

List of Recognised Stock Exchanges

1. Luxembourg Stock Exchange
2. Amsterdam Stock Exchange
3. Oslo Stock Exchange
4. Lisbon Stock Exchange
5. Oporto Stock Exchange
6. Madrid Stock Exchange
7. Barcelona Stock Exchange
8. Bilbao Stock Exchange
9. Valencia Stock Exchange
10. Stockholm Stock Exchange
11. Zurich Stock Exchange
12. Geneva Stock Exchange
13. Basle Stock Exchange
14. Lausanne Stock Exchange
15. International Stock Exchange *
16. Vienna Stock Exchange
17. Brussels Stock Exchange
18. Copenhagen Stock Exchange
19. Helsinki Stock Exchange
20. Paris Stock Exchange
21. Lyon Stock Exchange
22. Marseille Stock Exchange
23. Nansy Stock Exchange
24. Lille Stock Exchange
25. Bordeaux Stock Exchange
26. Nantes Stock Exchange
27. Berlin Stock Exchange
28. Bremen Stock Exchange
29. Dusseldorf Stock Exchange
30. Frankfurt Stock Exchange

31. Hamburg Stock Exchange
32. Hannover Stock Exchange
33. Munchen Stock Exchange
34. Stuttgart Stock Exchange
35. Milan Stock Exchange
36. Bologna Stock Exchange
37. Firenze Stock Exchange
38. Genova Stock Exchange
39. Napoli Stock Exchange
40. Palermo Stock Exchange
41. Roma Stock Exchange
42. Torino Stock Exchange
43. Trieste Stock Exchange
44. Venezia Stock Exchange
45. Athens Stock Exchange
46. New York Stock Exchange
47. Tokyo Stock Exchange
48. NASDAQ Stock Market
49. American Stock Exchange
50. Australian Stock Exchange
51. New Zealand Stock Exchange
52. Stock Exchange of Hong Kong
53. Stock Exchange of Singapore
54. Stock Exchange of Thailand
55. Kuala Lumpur Stock Exchange

* The International Stock Exchange includes the London Stock Exchange and the Irish Stock Exchange

APPENDIX 2

List of non-cooperative countries and territories ("NCCTs") as at November 2004

1. Cook Islands
2. Indonesia
3. Myanmar
4. Nauru
5. Nigeria
6. Philippines

APPENDIX 3

EXAMPLES OF SUSPICIOUS TRANSACTIONS/ACTIVITIES

1. Cash and other banking transactions

(i) Unusually large cash deposits made to the account of an individual or company whose ostensible business activities would normally be generated by cheques and other payment instruments.

(ii) Substantial increases in cash deposits of any individual or business without apparent cause, especially if such deposits are subsequently transferred within a short period out of the account and/or to a destination not normally associated with the customer.

(iii) Customers who deposit cash by means of numerous credit slips so that the total of each deposit is unremarkable, but the total of all the credits is significant.

(iv) Company accounts whose transactions, both deposits and withdrawals, are denominated in cash rather than the forms of debit and credit normally associated with commercial operations (e.g. cheques, Letters of Credit, Wire Transfers, etc.).

(v) Customers who constantly pay-in or deposit cash to cover requests for bankers' drafts, money transfers or other negotiable and readily marketable money instruments.

(vi) Customers who seek to exchange large quantities of low denomination notes for those of higher denomination.

(vii) Frequent exchange of cash into other currencies.

(viii) Branches that have much more cash transactions than usual. (Head Office statistics should detect aberrations in cash transactions.)

(ix) Customers whose deposits contain counterfeit notes or forged instruments.

(x) Customers transferring large sums of money to or from overseas locations with instructions for payment in cash.

(xi) Large cash deposits using night safe facilities, thereby avoiding direct contact with the bank.

(xii) Purchasing or selling of foreign currencies in substantial amounts by cash settlement despite the customer having an account with the bank.

(xiii) Numerous deposits of small amounts, through multiple branches of the same bank or by groups of individuals who enter a single branch at the same time. The money is then frequently transferred to another account, often in another country.

2. <u>Transactions through bank accounts</u>

(i) Multiple transactions carried out on the same day at the same branch of a bank but with an apparent attempt to use different teller.

(ii) Customers who have numerous accounts and pay in amounts of cash to each of them in circumstances in which the total of credits would be a large amount.

(iii) Any individual or company whose account shows virtually no normal personal banking or business related activities, but is used to receive or disburse large sums which have no obvious purpose or relationship to the account holder and/or his business (e.g. a substantial increase in turnover on an account).

(iv) Customers who appear to have accounts with several banks within the same locality, especially when the bank is aware of a regular consolidation process from such accounts prior to a request for onward transmission of the funds.

(v) Matching of payments out with credits paid in by cash on the same or previous day.

(vi) Paying in large third party cheques inconsistent with the customer's account activity.

(vii) Accounts that receive relevant periodic deposits and are dormant in other periods.

(viii) Large cash withdrawals from a previously dormant/inactive account, or from an account which has just received an unexpected large credit from abroad.

(ix) Greater use of safe deposit facilities by individuals. The use of sealed packets deposited and withdrawn.

(x) Companies' representatives avoiding contact with the branch.

(xi) Customers who decline to provide information that in normal circumstances would make the customer eligible for credit or for other banking services that would be regarded as valuable.

(xii) Large number of individuals making payments into the same account without an adequate explanation.

(xiii) An account for which several persons have signature authority, yet these persons appear to have no relation among each other (either family ties or business relationship).

3. Investment related transactions

(i) Purchasing of securities to be held by the bank in safe custody, where this does not appear appropriate given the customer's apparent standing.

(ii) Back to back deposit/loan transactions with subsidiaries of, or affiliates of, overseas financial institutions in known non-cooperative jurisdictions.

(iii) Requests by customers for investment management services (either foreign currency or securities) where the source of the funds is unclear or not consistent with the customer's apparent standing.

(iv) Large or unusual settlements of securities transactions in cash form.

(v) Buying and selling of a security with no discernible purpose or in circumstances which appear unusual.

4. Wire transfer/ international activity

(i) The bank acts as an intermediary for the transfer of funds from a bank outside Cyprus to another bank also outside Cyprus, without any direct knowledge of the originator and/or the beneficiary of the said funds. The transfer is not in favour of a customer of the intermediary bank or any other bank operating in Cyprus.

(ii) Use of Letters of Credit and other methods of trade finance to move money between countries where such trade is not consistent with the customer's usual business.

(iii) Customers who make regular and large payments, including wire transactions, that cannot be clearly identified as bona fide transactions to, or receive regular and large payments from countries which are commonly associated with the production, processing or marketing of drugs.

(iv) Building up of large balances, not consistent with the known turnover of the customer's business, and subsequent transfer to account(s) held overseas.

(v) Unexplained electronic funds transfers by customers on an in and out basis or without passing through an account.

(vi) Frequent requests for travelers' cheques, foreign currency drafts or other negotiable instruments to be issued.

(vii) Frequent paying in of travellers' cheques, foreign currency drafts particularly if originating from overseas.

(viii) Numerous wire transfers received in an account when each transfer is below the reporting requirement in the remitting country.

(ix) Wire transfer activity to/from a non-cooperative jurisdiction without an apparent business reason, or when it is inconsistent with the customer's business or history.

(x) Wire transfers to or for an individual where information on the originator, or the person on whose behalf the transaction is conducted is not provided with the wire transfer.

(xi) Many small, incoming wire transfers of funds received, which are almost immediately, all or most are wired to a country in a manner inconsistent with the customer's business or history.

(xii) Large incoming wire transfers on behalf of a foreign client with little or no explicit reason.

(xiii) Wire activity that is unexplained, repetitive, or shows unusual patterns. Payments or receipts with no apparent links to legitimate contracts, goods, or services.

5. Correspondent Accounts

(i) Wire transfers in large amounts, where the correspondent account has not previously been used for similar transfers;

(ii) The routing of transactions involving a Respondent Bank through several jurisdictions and/or financial institutions prior to or following entry into the bank without any apparent purpose other than to disguise the nature, source, ownership or control of the funds;

(iii) Frequent or numerous wire transfers either to or from the correspondent account of a Respondent Bank originating from or going to a non-cooperative jurisdiction.

6. Secured and unsecured lending

(i) Customers who repay problem loans unexpectedly.

(ii) Request to borrow against assets (i.e. a security or a guarantee), held by a third party where the origin of the assets is not known or the assets are inconsistent with the customer's standing (back-to-back loans).

(iii) Requests by a customer for a bank to provide or arrange finance where the source of the customer's financial contribution to a deal is unclear, particularly where property is involved.

7. Customers who provide insufficient or suspicious information

(i) A customer is reluctant to provide complete information when opening an account about the nature and purpose of its business, anticipated account activity, prior banking relationships, names of its officers and directors, or information on its business location. He usually provides minimal or misleading information that is difficult or expensive for the bank to verify.

(ii) A customer provides unusual or suspicious identification documents that cannot be readily verified.

(iii) A customer’s home/business telephone is disconnected.

(iv) The customer's background differs from that which would be expected based on his or her business activities.

(v) A customer makes frequent or large transactions and has no record of past or present employment experience.

8. Activity inconsistent with the customer's business profile

(i) The transaction patterns of a business show a sudden change inconsistent with normal activities.

(ii) A large volume of cashier's cheques, money orders, and/or wire transfers deposited into, or purchased through, an account when the nature of the account holder's business would not appear to justify such activity.

(iii) A retail business has dramatically different patterns of cash deposits from similar businesses in the same general location.

(iv) Ship owning and ship management companies engaged in transactions or activities unconnected to shipping business.

9. Characteristics of the customer or his business activity

(i) Shared address for individuals involved in cash transactions, particularly when the address is also a business location and/or does not seem to correspond to the stated occupation (for example student, unemployed, self-employed, etc).

(ii) Stated occupation of the customer is not commensurate with the level or type of activity (for example, a student or an unemployed individual who receives or sends large numbers of wire transfers or who makes daily maximum cash withdrawals at multiple locations over a wide geographic area).

(iii) Regarding non-profit or charitable organisations, financial transactions for which there appears to be no logical economic purpose or in which

there appears to be no link between the stated activity of the organisation and the other parties in the transaction.

(iv) A safe deposit box is opened on behalf of a commercial entity when the business activity of the customer is unknown or such activity does not appear to justify the use of a safe deposit box.

(v) Unexplained inconsistencies arising from the process of identifying or verifying the customer (for example, regarding previous or current country of residence, country of issue of the passport, countries visited according to the passport, and documents furnished to confirm name, address and date of birth).

APPENDIX 4

Statement of Large Cash Deposits and Funds Transfers

Month: ....., 200...

Reporting Bank: .....

Notes on completion

1. In the event of a query or any difficulty in completion of this return (which cannot be resolved by referring to the explanatory notes for its completion contained in this Guidance Note) please contact the Supervision of International Banks, Regulation and Financial Stability Department of the Central Bank of Cyprus (Telephone No.: 22-714400, Facsimile No.: 22-378049).

2. This statement is to be presented to:

   Central Bank of Cyprus,
   Supervision of International Banks, Regulation and Financial Stability Department
   80 Kennedy Avenue,
   P.O. Box 25529,
   CY-1395 Nicosia.

within **15 calendar days** from the end of each month.

3. Enter amounts in US dollars and to the nearest thousand omitting 000's

FOR OFFICIAL USE ONLY		
ACTION	**DATE**	**INITIALS**
1. Received	.....	.....
2. Checked	.....	.....
3. Reviewed	.....	.....
4. Entered	.....	.....

PRIVATE AND CONFIDENTIAL

Statement of Large Cash Deposits and Funds Transfers
Month: ..... , 200...
Reporting Bank: .....

1.	Cash deposits of foreign currency notes in excess of US$10.000 or equivalent	
(a)	Total number of transactions	_____
(b)	Total number of customer accounts affected	_____
		US$000
(c)	Total amount of US dollar cash deposits in excess of US$10.000	_____
(d)	Total amount of cash deposits in other currencies in excess of US$10.000 equivalent	_____
Total		=====

2.	Inward funds transfers in favour of customers in excess of US$500.000 or equivalent	
(a)	Total number of transactions	_____
(b)	Total number of customer accounts affected	_____
		US$000
(c)	Total amount of US dollar inward funds transfers in excess of US$500.000	_____
(d)	Total amount of inward funds transfers in other currencies in excess of US$500.000 equivalent	_____
Total		=====

3. Outward Funds Transfers in favour of customers in excess of US$500.000 or equivalent

(a)	Total number of transactions	_____
(b)	Total number of customer accounts affected	_____
		US$000
(c)	Total amount of US dollar outward funds transfers in excess of US$500.000	_____
(d)	Total amount of outward fund transfers effected in other currencies in excess of US$500.000 equivalent	_____
Total		=====

4. Reporting of knowledge of suspicions connected with money laundering

(a)	Total number of Internal Money Laundering Suspicion Reports submitted by bank employees to the Money Laundering Compliance Officer	_____
(b)	Total number of Money Laundering Compliance Officers' Reports submitted to the Unit for Combating Money Laundering ("MOKAS")	_____

I confirm that the above figures extracted from the bank's books and records are true and accurate and this statement has been completed in accordance with the explanations and instructions of the Central Bank of Cyprus.

Date:……..

…….

(Money Laundering Compliance Officer)

EXPLANATIONS AND INSTRUCTIONS FOR COMPLETING THE MONTHLY STATEMENT OF LARGE CASH DEPOSITS AND FUNDS TRANSFERS

Introduction

The monthly Statement of Large Cash Deposits and Funds Transfers must provide a brief picture of the total amount of cash deposits of foreign currency notes that banks have accepted during the month under review, as well as the total amount of funds transfers - as defined below - in foreign currency.

1. Cash deposits in US Dollars or other foreign currencies

   This item includes cash deposits of foreign currency notes in excess of US$10.000 or equivalent in other foreign currency per transaction.

   Sub-category 1(c) must include the total amount of cash deposits in excess of US$10.000 that the bank has accepted during the month under review.

   Sub-category (d) must include the total amount of cash deposits in foreign currencies other than the US Dollar in excess of US$10.000 equivalent, which the bank has accepted during the month under review. This amount must be converted into US Dollars, according to the US Dollar / foreign currency closing exchange rate on the day each transaction was carried out.

   Exemptions:

   Cash deposits of foreign currency notes from the following categories are exempted and should not be included under “Cash deposits” in the monthly statement submitted to the Central Bank of Cyprus:

   (a) Deposits from banks licensed by the Central Bank of Cyprus to carry on banking business in Cyprus.

   (b) Deposits from government and semi-governmental organisations

2. Inward funds transfers in favour of customers in excess of US$500.000 or equivalent

   This item includes inward funds transfers originating from a customer's account kept with a bank outside Cyprus in favour of a customer maintaining an account with the bank which are in excess of US$500.000 or equivalent in other foreign currency per transaction.

   Exemptions:

   The following funds transfers are exempted and should not be included in the monthly statement submitted to the Central Bank:

   a) Transfers from another customer's account maintained with the same bank; and

   b) Inward funds transfers received by order of customers maintaining accounts with other banks in Cyprus.

3. Outward funds transfers by order of customers in excess of US$500.000 or equivalent

   This item includes outward funds transfers by order of a customer maintaining an account with the bank in favour of a customer maintaining an account with a bank outside Cyprus.

   Exemptions:

   The following funds transfers are exempted and should not be included in the monthly statement submitted to the Central Bank:

   a) Transfers to another customer's account maintained with the same bank; and

   b) Outward funds transfers made in favour of customers maintaining accounts with other banks in Cyprus.

4. Reporting of knowledge or suspicions connected with money laundering

Sub-category 4(a) must include the number of Internal Money Laundering Suspicion Reports submitted by bank employees to the Money Laundering Compliance Officer during the month under review.

Sub-category 4(b) must include the number of reports submitted by the Money Laundering Compliance Officer to MOKAS during the month under review.

INTERNAL MONEY LAUNDERING SUSPICION REPORT

REPORTER

Name: ..... Tel.....
Branch/Dept. ..... Fax.....
Position .....

CUSTOMER

Name: ....
Address: ....
..... Date of birth .....
Contact/Tel/Fax ..... Occupation/Employer .....
..... Details on employer: .....
Passport No ..... Nationality .....
ID Card No ..... Other ID .....

INFORMATION/SUSPICION

Brief description of activities/transaction ....
....
....

Reason(s) for suspicion ....
....
....

REPORTER'S SIGNATURE ..... **Date** .....

FOR MONEY LAUNDERING COMPLIANCE OFFICER'S USE

Date received ..... Time received ..... Ref .....
MOKAS Advised Yes/No Date ..... Ref .....

APPENDIX 6

MONEY LAUNDERING COMPLIANCE OFFICER'S INTERNAL EVALUATION REPORT

Reference ..... Customer.... .....

Reporter ..... Branch/Dept. .....

ENQUIRIES UNDERTAKEN (Brief description)

.....

.....

.....

DOCUMENTS RESEARCHED/ATTACHED

.....

.....

.....

DETERMINATION/DECISION

.....

.....

.....

FILE REFERENCE .....

MONEY LAUNDERING
COMPLIANCE OFFICER'S Signature ..... ……Date.....

APPENDIX 7

MONEY LAUNDERING COMPLIANCE OFFICER'S REPORT TO THE UNIT FOR COMBATING MONEY LAUNDERING ("MOKAS")

I. GENERAL INFORMATION

Name of bank _____
Branch's address where account is kept _____
Date when a business relationship started or "one – off" transaction was carried out _____
Type of account(s) and number(s) _____
_____
_____

II. DETAILS OF NATURAL PERSON(S) AND/OR LEGAL ENTITY(IES) INVOLVED IN THE SUSPICIOUS TRANSACTION(S)

(A) NATURAL PERSONS

	Beneficial owner(s) of the account(s)	Authorised signatory(ies) to the account(s)
Name(s)	_____	_____
	_____	_____
Residential address(es)	_____	_____
	_____	_____
	_____	_____
	_____	_____

Business address(es)	_____	_____
	_____	_____
	_____	_____
	_____	_____
Occupation(s) and Employer(s)	_____	_____
	_____	_____
	_____	_____
	_____	_____
Date and place of birth	_____	_____
	_____	_____
	_____	_____
	_____	_____
Nationality and passport number(s)	_____	_____
	_____	_____
	_____	_____
	_____	_____

(B) LEGAL ENTITIES

Company's name, country
and date of incorporation _____
_____
_____

Business address _____
_____
_____

Main activities_____
_____

	Name	Nationality and passport number	Date of birth	Residential address	Occupation and employer
Registered shareholder(s)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Beneficial shareholder(s) (if different from above)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Directors	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Authorised signatory(ies) to the account(s)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____

III. DETAILS OF SUSPICIOUS ACTIVITY

DEBIT TRANSACTIONS	Type	Amount	Date	Beneficiary	Beneficiary's bank

CREDIT TRANSACTIONS	Type	Amount	Date	Originator	Originator's bank

(3) OTHER TRANSACTIONS
(please explain) _____
_____
_____
_____

(4) KNOWLEDGE/SUSPICION OF
MONEY LAUNDERING
(please explain, as fully as possible,
the knowledge or suspicion
connected with money laundering) _____
_____
_____
_____

IV OTHER INFORMATION

– Other accounts and banking services
used (deposit and loan accounts,
credit cards, off-the-Balance Sheet
commitments) _____
_____
_____

– Accounts with other banks in Cyprus
or abroad, (if known) _____
_____
_____

– Other customers' accounts kept with
the bank connected with the
suspicious transactions _____
_____
_____

MONEY LAUNDERING
COMPLIANCE OFFICER'S Signature ..... Date .....

NB: The above report should be accompanied by photocopies of the following:

1. For natural persons, the relevant pages of customers' passports or ID card evidencing identity.
2. For legal entities, certificates of incorporation, directors and shareholders.
3. All documents relating to the suspicious transaction(s) (i.e. Swift messages, bank advice slips, correspondence etc.).

A N N E X 2 B (second part)
AML Directive to co-operative credit institutions, issued by the Co-operative Societies' Supervision and Development Authority (G-Banks)

CO-OPERATIVE SOCIETIES' SUPERVISION AND DEVELOPMENT AUTHORITY

PREVENTION OF MONEY LAUNDERING

DIRECTIVE TO CO-OPERATIVE CREDIT INSTITUTIONS IN ACCORDANCE WITH SECTION 60(3) OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 1996-2004

MAY 2005

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1. THE MAIN PROVISIONS OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW (LAW 61 (I) OF 1996 AS AMENDED)

1.1 Purpose

1.1.1. The main purpose of Law 61(I) of 1996 as subsequently amended (hereinafter to be referred to as "the Law") is to define and criminalise the laundering of proceeds generated from all serious criminal offences and provide for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes. It also places special responsibilities upon credit institutions, financial institutions and professionals which are required to take preventive measures against money laundering by adhering to prescribed procedures for customer identification, record keeping, education and training of their employees and reporting of suspicious transactions. The main provisions of the Law, which are of direct interest to Co-operative Credit Institutions (**CCI**) and their employees, are as follows:

1.2 Prescribed offences (Section 3 of the Law)

1.2.1. The Law has effect in respect of offences which are referred to as "prescribed offences" and which comprise of:

(i) money laundering offences; and

(ii) predicate offences.

1.3 Money Laundering offences (Section 4 of the Law)

1.3.1. Under the Law, every person who knows or ought to have known that any kind of property is proceeds from a predicate offence is guilty of an offence if he carries out any of the following:

(i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a predicate offence to evade the legal consequences of his actions;

(ii) conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property;

(iii) acquires, possesses or uses such property;

(iv) participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above;

(v) provides information with respect to investigations that are being performed for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence.

1.3.2. Commitment of the above offences is punishable on conviction by a maximum of fourteen (14) years imprisonment or a fine or both of these penalties, in the case of a person knowing that the property is proceeds from a predicate offence or by a maximum of five (5) years imprisonment or a fine or both of these penalties, in the case he ought to have known.

1.4 Defences for persons assisting money laundering and duty to report (Section 26 of the Law)

1.4.1. It is a defence, under Section 26 of the Law, in criminal proceedings against a person in respect of assisting another to commit a money laundering offence that he intended to disclose to a police officer or the Unit for Combating Money Laundering (hereinafter to be referred to as "MOKAS") his suspicion or belief that the agreement or arrangement related to proceeds from a predicate offence and that his failure to make the disclosure was based on reasonable grounds. Also, under Section 26 of the Law, any such disclosure should not be treated as a breach of any restriction imposed by contract.

1.4.2. In the case of employees of persons whose activities are supervised by one of the authorities established under Section 60, the Law recognises that the disclosure may be made to a competent person (e.g. a Money Laundering Compliance Officer) in accordance with established internal procedures and such disclosure shall have the same effect as a disclosure made to a police officer or MOKAS.

1.5 Powers of MOKAS to order the non-execution or delay in the execution of a transaction (Section 26(2)(c) of the Law)

1.5.1. Section 26(2)(c) of the Law empowers MOKAS to give instructions to credit and financial institutions for the non-execution or the delay in the execution of a transaction. Credit institutions are required to promptly comply with such instructions and provide MOKAS with all necessary cooperation. It is noted that, as per the above Section, in such a case no breach of any contractual or other obligation may arise and credit institutions are, therefore, protected from any possible claims from customers.

1.6 Predicate offences (Section 5 of the Law)

1.6.1. Predicate offences are all criminal offences punishable with imprisonment exceeding one year from which proceeds were generated that may become the subject of a money laundering offence. Proceeds means any kind of property which has been generated by the commission of a predicate offence.

1.6.2. On 22 November 2001, the House of Representatives enacted the Ratification Law of the United Nations Convention for Suppression of the Financing of Terrorism. As a result of the above, terrorist financing is considered to be a criminal offence punishable with 15 years imprisonment or a fine of C£1 mn or both of these penalties. Furthermore, the above Law contains a specific section which provides that terrorist financing and other linked activities are considered to be predicate offences for the purposes of Cyprus's anti-money laundering legislation i.e. the Prevention and Suppression of Money Laundering Activities Law of 1996. Consequently, suspicions of possible terrorist financing activities should be immediately disclosed to MOKAS under Section 26 of the Law.

1.6.3. For the purposes of money laundering offences it does not matter whether the predicate offence is subject to the jurisdiction of Courts in Cyprus or not (Section 4(2) of the Law).

1.7 Failure to report (Section 27 of the Law)

1.7.1 It is an offence for any person 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. Failure to report in these circumstances is punishable on conviction by a maximum of five (5) years imprisonment or a fine not exceeding Cy£3.000 (three thousand pounds) or both of these penalties.

1.8 Tipping - off (Section 48 of the Law)

1.8.1. Further to the offence described in paragraph (v) of part 1.3.1 above, it is also an offence for any person to prejudice the search and investigation of money laundering offences by making a disclosure, either to the person who is the subject of a suspicion or any third party, knowing or suspecting that the authorities are carrying out such an investigation and search. "Tipping-off" under these circumstances is punishable with imprisonment up to five (5) years.

1.9 Relevant financial and other business (Section 61 of the Law)

1.9.1. The Law recognises the important role of the financial sector, accountants and lawyers for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all financial institutions, including credit institutions as well as professionals engaged in "relevant financial and other business", which is defined to include the activities listed below:

(i) Deposit taking;

(ii) Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transactions including forfeiting);

(iii) Finance leasing, including hire purchase financing;

(iv) Money transmission services;

(v) Issuing and administering means of payment (e.g. credit cards, travellers' cheques);

(vi) Guarantees and commitments;

(vii) Trading for own account or for account of customers in:-

(a) money market instruments (cheques, bills, certificates of deposits etc.);

(b) foreign exchange;

(c) financial futures and options;

(d) exchange and interest rate instruments;

(e) transferable instruments;

(viii) Underwriting share issues and the participation in such issues;

(viii)

(ix) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues including the areas of mergers and acquisitions of business;

(x) money broking;

(xi) Investment business, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investment" includes long term insurance contracts, whether linked long-term or not;

(xii) Safe custody services;

(xiii) Custody and trustee services in relation to stocks.

(xiv) Insurance policies taken in the General Insurance Sector by a company registered in Cyprus according to the Companies Law, either as a resident or an overseas company, but which carries on insurance business exclusively outside Cyprus.

(xv) Exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their customers in the context of carrying on relevant financial business.

(xvi) Exercise of professional activities on behalf of independent lawyers, with the exception of privileged information, when they participate, whether –

(a) by assisting in the planning or execution of transactions for their clients concerning the -

1. buying and selling of real property or business entities;

2. managing of client money, securities or other assets;

3. opening or management of bank, savings or securities accounts;

4. organisation of contributions necessary for the creation, operation or management of companies;

5. creation, operation or management of trusts, companies or similar structures;

(b) or by acting on behalf and for the account of their clients in any financial or real estate transaction.

(xvii) Any services prescribed in Part I and II of Annex One of the Investment Firms Laws of 2002 to 2003 currently in force which are provided in connection with the financial instruments numbered in Part II of the same Annex.

(xviii) Transactions on real estate by real estate agents by virtue of the provisions of the Real Estate Agents Laws currently in force.

(xix) Dealings in precious metals and stones whenever payment is made for cash and in an amount of EUR15.000 or more.

1.10 Procedures to prevent money laundering (Section 58 of the Law)

1.10.1 The Law requires all persons carrying on financial and other business, as defined above, to establish and maintain specific policies and procedures to guard against their business and the financial system in general being used for the purposes of money laundering. In essence these procedures are designed to achieve two purposes: firstly, to facilitate the recognition and reporting of suspicious transactions and, secondly, to ensure through the strict implementation of the "know-your-customer" principle and the maintenance of adequate record keeping procedures, should a customer come under investigation, that the CCI is able to provide its part of the audit trail. The Law requires that all persons engaged in relevant financial and other business institute a number of procedures. In fact, it is illegal for any person, in the course of relevant financial and other business, to form a business relationship or carry out an one-off transaction with or for another, unless the following procedures are instituted:

(i) **Identification procedures of customers**;

(ii) **Record keeping procedures** in relation to customers' identity and their transactions;

(iii) **Internal reporting procedures** to a competent person - (e.g. a Money Laundering Compliance Officer) appointed to receive and consider information that give rise to knowledge or suspicion that a customer is engaged in money laundering activities;

(iv) **Such other appropriate procedures of internal control, communication and detailed examination** of any transaction which by its nature may be considered to be associated with money laundering for the purpose of preventing and forestalling money laundering.

(v) **Measures for making employees aware** of the above procedures to prevent money laundering and of the legislation relating to money laundering; and

(vi) **Provision of training to their employees** in the recognition and handling of transactions suspected to be associated with money laundering.

1.10.2. The purpose of the Directive issued by the Commissioner of CSSDA (the supervisory authority of CCIs in Cyprus) is to provide a practical interpretation of the requirements of the Law in respect to business carried on by CCIs.

1.10.3. Where the Commissioner forms the opinion that a CCI has failed to comply with the provisions of Section 58 of the Law it may, after giving the opportunity to the CCI to be heard, impose an administrative fine of up to C£3.000 (Section 58(2) of the Law).

1.11 "Non-face to face" customers (Section 62A of the Law)

1.11.1 Section 62A of the Law requires persons subject to the anti-money laundering preventive measures prescribed therein to take additional measures for identifying customers when establishing business relationships or entering into an one-off transaction or a series of one-off transactions which exceed EUR15.000 with a customer who is not physically present for identification purposes ("non-face-to face customers"). In such an event, CCIs are required to adhere to the following:

(i) obtain from the customer additional documentary evidence; or

(ii) take supplementary measures to verify or certify the documents supplied; or

(iii) receive a confirmation of identity by an institution or organisation operating in a Member State of the European Union; or

(iv) demand that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution operating in a Member State of the European Union.

1.12 Supervisory authorities (Section 60 of the Law)

1.12.1 The Law designates the CSSDA as the supervisory authority for all Co-operative Credit Institutions licensed to carry on financial activities in or from within Cyprus. In this regard, the CSSDA has, therefore, been assigned with the duty of assessing compliance of all CCIs with the special provisions of the Law in respect of their business.

1.12.2 Under Section 60(3) of the Law, the CSSDA, in its capacity as a supervisory authority, is empowered to issue Directives to all CCIs in Cyprus in order to assist them in achieving compliance with the Law.

1.12.3 Furthermore, supervisory authorities are empowered by virtue of Section 58(2)(a) of the Law to impose an administrative fine of up to C£3.000 to any person under their supervision who allegedly fails to take the preventive measures against money laundering prescribed in the Law. The Law provides that the allegedly non-compliant person should first given the opportunity to be heard before a Supervisory Authority determines the imposition of the administrative fine.

1.13 Exemption from identification procedures (Section 64 of the Law)

1.13.1 Section 64 of the Law exempts from the requirement to produce satisfactory evidence of identity, when entering into a business relationship or carrying out an one-off transaction, the following:

(i) Persons who engage in relevant financial and other business, as per Section 61 of the Law, and are obliged to take the preventive measures prescribed in Section 58 of the Law; and

(ii) Credit institutions incorporated in countries which apply, in the opinion of the Commissioner, procedures for the prevention of money laundering which are equivalent to those provided in the Law.

1.14 Confiscation orders (Section 8 of the Law)

1.14.1 Courts in Cyprus are empowered to make a confiscation order, on application by the Attorney General, on the assets of a person, including funds held on deposit with CCIs, if they determine that a person has benefited from committing a predicate offence. A confiscation order can be made before a person is sentenced or otherwise dealt with in respect of any predicate offence.

1.15 Restraint and charging orders (Sections 14 and 15 of the Law)

1.15.1 Courts in Cyprus may also, by a restraint order, prohibit any person from dealing with any realisable property. In addition, they may also make a charging order, under Section 15 of the Law, on realisable property (immovable property and securities).

1.16 Non-execution or delay in the execution of a customer's transaction (Section 67A)

1.16.1 Section 67A of the Law protects credit institutions from a possible claim for damages from a customer in the event of refusal to execute or delay in executing any transaction for the account of that customer due to failure by the customer or any other party involved to provide sufficient details or information for the nature of the transaction and/or the parties involved as required by the Directives issued by the Commissioner.

1.17 Orders for the disclosure of information (Section 45 of the Law)

1.17.1 Courts in Cyprus may, on application by the investigator, make an order for the disclosure of information by a person who appears to the Court to be in possession of the information to which the application relates. Such an order applies irrespective of any legal or other provision which creates an obligation for the maintenance of secrecy or imposes any constraints on the disclosure of information. As already stated under paragraph 1.8 above in relation to "tipping off", a person who makes any disclosure which is likely to obstruct or prejudice an investigation into the commitment of a predicate offence, knowing or suspecting that the investigation is taking place, is guilty of an offence.

1.18 Service of orders to a supervisory authority (Section 71 of the Law)

1.18.1 Service of an order made under this Law to a supervisory authority shall be deemed as service to all persons who are subject to the control of the supervisory authority. Provided that the supervisory authority concerned shall be obliged to notify forwith all the persons subject to its control about the order made under the Law.

2. CUSTOMER IDENTIFICATION AND DUE DILIGENCE PROCEDURES

2.1 Introduction

2.1.1. The Law requires institutions such as CCIs carrying on financial business to maintain customer identification procedures in accordance with Sections 62 to 65 of the Law. The essence of these requirements is that except where the Law states that customer identification need not be made (Section 64 of the Law) a CCI must always verify the identity of all its customers.

2.1.2. Having sufficient information about a customer and making use of that information for the purposes of identification underpins all other anti-money laundering procedures and is the most effective weapon against being used to launder the proceeds of crime, including terrorist financing. In addition to minimising the risk of being used for illicit activities, it provides protection against fraud, enables suspicious transactions/activities to be recognised and protects CCIs from reputational and financial risks.

2.1.3. Generally a CCI should never establish a business relationship or carry out an "one-off transaction" until all relevant parties to the relationship have been identified and the nature and size of the business they expect to conduct has been established. Once an on-going business relationship has been established, any regular business undertaken for that customer should be assessed against the expected pattern of activity of the customer. Any unexplained activity can then be examined to determine whether there is a suspicion of money laundering.

2.1.4. The Law does not specify what may or may not represent "adequate evidence" of identity. In this regard, this Directive sets out the practice to which CCIs should adhere in order to comply with the requirements of the Law on the subject of customer identification.

2.2 Timing of identification

2.2.1. The Law requires that identification must be carried out as soon as is reasonably practicable after contact is first made between a CCI and a prospective customer. What constitutes "reasonably practicable" time span must be determined in the light of all the circumstances including the nature of the business relationship and/or transactions, the geographical location of the parties and whether it is practical to obtain the evidence before commitments are entered into or the execution of any transaction on behalf of the customer. As a rule, CCIs are expected to promptly seek and obtain satisfactory evidence of identity of their customers at the time of establishing an account relationship and prior to the execution of any financial transactions or the provision of any services whatsoever.

2.3 Customer acceptance policy

2.3.1. CCIs should develop clear customer acceptance policies and procedures in line with the provisions of the Law and the contents of this Directive. These policies and procedures need to provide for enhanced due diligence procedures for high risk customers such as companies with nominee shareholders or bearer share capital, trusts and nominees of third persons, politically exposed persons, client accounts opened by professional intermediaries, customers who have been introduced by professional intermediaries, non-EU correspondent credit institutions accounts and non-resident customers from non-cooperative countries and territories. CCIs' policies and procedures should take into account factors such as the customers' background, country of origin, anticipated level and nature of the business activities and the expected origin of the funds.

2.4 Renewal of customer identification

2.4.1. CCIs need to ensure that customer identification records remain up-to-date and relevant throughout the business relationship. In this respect, a CCI must undertake, on a regular basis, or whenever it has doubts about the veracity of the identification data, reviews of existing records, especially for high-risk customers. Doubts may arise where a suspicion of money laundering may be formed for that customer or there is a material change in the customer's pattern of transactions or account activity which is inconsistent with the customer's existing business

profile. If, as a result of these reviews, at any time throughout the business relationship, the CCI becomes aware that it lacks sufficient information about an existing customer, it should take all necessary action to obtain the missing information as quickly as possible.

2.5 Exemption from identification

2.5.1. Section 64 of the Law exempts from the need to verify the identity of the following:

(i) Persons who engage in relevant financial and other business listed in Section 61 of the Law and are subject to the anti-money laundering preventive measures of the Law designated in Section 58; and

(ii) Credit institutions incorporated in countries which apply, in the opinion of the Commissioner, procedures for the prevention of money laundering which are equivalent with those provided in Cyprus's anti-money laundering legislation.

2.5.2. By virtue of the Section 64(b) of the Law, the Commissioner determines that Member States of the European Union are considered to have equivalent anti-money laundering measures to Cyprus and, therefore, CCIs in Cyprus are not required to apply customer identification procedures and verify the identity of credit institutions operating in any Member State of the European Union when entering into business relationships with them. The Commissioner shall consider applications from CCIs for granting exemption from the application of customer identification procedures with respect to non-EU credit institutions on a case-by-case basis.

2.6 Identification procedures –General principles and requirements

2.6.1. Prohibition of secret, anonymous and numbered accounts as well as accounts in fictitious names

CCIs are prohibited from opening and maintaining secret, anonymous or numbered accounts or accounts in fictitious names or accounts not in the full name(s) of the holder(s) as per the identification documents. It is noted that according to the Co-Operative Societies (Amendment) (No.2) Law of 2004 (Law 230 (I) of 2004) details of a customer's identity i.e. the name, address, number of national identity card or passport number and country of issue, should be added to the details appearing on a customer's statement of account.

2.6.2. **Failure or refusal to provide identification evidence**

The failure or refusal by a prospective customer applying for the opening of an account or the establishment of a business relationship to provide satisfactory identification evidence within a reasonable timeframe and without adequate explanation may lead to a suspicion that the customer is engaged in money laundering. In such circumstances, CCIs should not open the account, commence business relations or perform an one-off transaction and should consider making a suspicion report to MOKAS based on the information in their possession.

2.6.3. **Risk based approach to identification**

A risk-based approach as to what is reasonable evidence of identity should be adopted when obtaining identification data. The extent and number of checks on a customer's identity can vary depending on the perceived risk relating to the type of service, product or account sought by the customer and the estimated turnover of the account. The source of funds, i.e. how the payment was made, from where and by whom, must always be recorded to provide an audit trail. However, for higher risk products, accounts or customers, additional steps should be taken to discover the source of wealth, i.e. how the funds were acquired and their origin.

2.6.4. **Establishing customers' business profile**

A CCI should establish to its satisfaction that it is dealing with a real person (natural or legal) and obtain sufficient evidence of identity to establish that a prospective customer is who he/she claims to be. CCIs should take reasonable measures to identify the beneficial owner(s) of accounts and one-off transactions and for legal persons, understand the ownership and control structure of the customer. Irrespective of the customer's type (natural, unincorporated, legal) a CCI should request and obtain sufficient information on its customers' business activities and expected pattern of transactions. This information should be collected at the outset of the relationship with the aim of constructing the customer's business profile and, as a minimum, should include:

(i) the purpose and reason for opening the account or requesting the provision of services;

(ii) the anticipated level and nature of the activity to be undertaken;

(iii) the anticipated account turnover, the expected origin of the funds to be credited in the account and expected destination of outgoing payments; and

(iv) the customer's sources of wealth or income, size and nature of business/professional activities.

2.6.5. **Verification procedures of identity**

The verification procedures necessary to establish the identity of the prospective customer should basically be the same whatever type of account or service is required. The best identification documents possible should be obtained from the prospective customer i.e. those that are the most difficult to obtain illicitly. However, it must be appreciated that no single form of identification can be fully guaranteed as genuine or representing correct identity and consequently the identification process will generally need to be cumulative. For practical purposes a person's residential/business address is an essential part of identity and thus there needs to be separate verification of the current permanent address of the prospective customer. The evidence of identity required should be obtained from documents issued by reputable sources. Where practical, file copies of the supporting evidence should be retained. Alternatively, the reference numbers and other relevant details should be recorded.

2.6.6. **Customers who have been refused financial services by another credit institution**

When a CCI is approached by a person requesting the establishment of an account relationship or any other financial services and the CCI becomes aware or has any reason to believe that the customer has been refused an account or other services by another credit institution in Cyprus or abroad, then the CCI should treat that customer as a high risk customer and apply enhanced due diligence measures. In this respect, the senior management's approval should be obtained for opening the account or providing the service and transactions passing through the account should be subject to close monitoring.

2.6.7. **Joint Accounts**

In respect of joint accounts the identity of all account holders, not only the first named, should normally be ascertained in accordance with the procedures set out below for natural persons.

2.7 Specific identification issues

2.7.1. Natural persons residing in Cyprus

2.7.1.1. The following information should be obtained from prospective customers who are natural persons residing in Cyprus:

(i) true name and/or names used;

(ii) current permanent address in Cyprus, including postal code;

(iii) date of birth;

(iv) details of profession or occupation/employment.

2.7.1.2. The name or names used should be verified by reference to a document obtained from a reputable source which bears a photograph. There are obviously a wide range of documents that customers might produce as evidence of their identity. However, it is pointed out that according to the Co-Operative Societies (Amendment) (No.2) Law of 2004 (Law 230 (I) of 2004) the identification of a customer's identity should be based on an official identity card or passport submitted by the real owner of the account.

2.7.1.3. In addition to the name verification, it is important that the current permanent address should also be verified. Some of the best means of verifying address are:

(i) record of home visit.

(ii) requesting sight of a recent utility bill, local authority tax bill, credit institution statement (to guard against forged or counterfeit documents care should be taken to check that the documents offered are originals);

(iii) checking the telephone directory.

2.7.1.4. In addition to the above, an introduction from a respected customer personally known to the Manager, or from a trusted member of staff, may assist the verification procedure. Details of the introduction should be recorded on the customer's file.

2.7.2. **Natural persons not residing in Cyprus**

2.7.2.1. For prospective customers who are not normally residing in Cyprus, it is important that verification procedures similar to those for customers residing in Cyprus should be carried out and the same information obtained.

2.7.2.2. For those prospective customers not residing in Cyprus who make face to face contact, passports and, where they exist, official national identity cards should always be available and copies of the pages containing the relevant information should be obtained. In addition, CCIs are advised, if in any doubt, to seek to verify identity, (passport, national identity card or documentary evidence of address), with an Embassy or Consulate of the country of issue in Cyprus or a professional intermediary or a reputable credit or financial institution in the customer's country of residence.

2.7.2.3. Information concerning residence and nationality is also useful in assessing whether a customer is resident in a high –risk country designated by FATF as "non-cooperative". Both residence and nationality can also be necessary, in a non-money laundering context, for preventing breaches of the United Nations or European Union financial sanctions against certain countries or persons to which Cyprus has agreed to adopt. Consequently, the number, date and country of issue of a customer's passport should always be recorded.

2.7.3. **Non-face-to face customers**

2.7.3.1. Whenever a prospective customer requests the opening of an account, the CCI should preferably hold a personal interview with that customer and seek to obtain directly all identification details. It is possible, however, that a CCI may be asked to open an account via post or the internet for a customer, especially for non-residents, who do not present themselves for a personal interview. In such an event, CCIs should apply the standard customer identification and due diligence procedures as applied for prospective customers whom they meet face-to-face and obtain the same documentation. However, due to the difficulty in matching the customer with the identification

documentation, CCIs should apply additional measures to mitigate the risks attached to the establishment of such relationships. Section 62A of the Law provides that when a CCI is requested to establish a business relationship or carry out an one-off transaction or a series of an one-off transactions by a customer who is not physically present, then the CCI concerned is required to take at least one additional measure to verify the customers' identity. The Law provides that one of the following additional measures can be taken:

(i) the production of additional documentary evidence; or

(ii) supplementary measures to verify or certify the documents supplied; or

(iii) the receipt of confirmatory certification by an institution or organization operating in a member state of the European Union; or

(iv) the first payment in the context of the business relationship or one off transactions to be made through an account maintained in the customer's name with a credit institution operating in a member state of the European Union.

2.7.3.2. Practical procedures which can be applied to implement the measures referred in the paragraph above for the purpose of mitigating the higher risk of non-face-to face customers might include the following:

(v) direct confirmation of the prospective customer's true name, address and signature from a credit institution operating in his/her country of residence;

(vi) introduction letter from a professional intermediary (lawyer or accountant or other) in Cyprus or abroad who, subject to the criteria listed in paragraph 2.8.7 below, has an agreement with the CCI to introduce business;

(vii) the customer supplies the CCI with the original documentary evidence e.g. passport, national identity card, which is subsequently returned by registered and secured mail; and

(viii) telephone contact with the customer before opening the account on an independently verified home or business number.

2.7.4. **Accounts of clubs, societies and charities**

2.7.4.1. In the case of accounts to be opened in the name of clubs, societies and charities, a CCI should satisfy itself as to the legitimate purpose of the organisation by requesting sight of the constitution and registration documents with the authorities. Where there is more than one signatory to the account, the identity of all authorised signatories should be verified in line with the identification requirements for natural persons.

2.7.5. **Accounts of unincorporated businesses/partnerships**

2.7.5.1. In the case of partnerships and other unincorporated businesses whose partners/directors/beneficial owners are not existing customers of the CCI, the identity of the principal beneficial owners/controllers and authorised signatories should be verified in line with the requirements for natural persons. Furthermore, in the case of partnerships, CCIs should also obtain the original or copy of the certificate of registration. CCIs should also obtain evidence of the trading address of the business or partnership and ascertain the nature of its business.

2.7.5.2. In cases where a formal partnership arrangement exists, a mandate from the partnership authorising the opening of an account and conferring authority on those who will operate it, should be obtained.

2.7.6. **Accounts of corporate customers**

2.7.6.1. Because of the difficulties of identifying beneficial ownership, corporate accounts are one of the most likely vehicles for money laundering, particularly when fronted by a legitimate trading company.

2.7.6.2. Before a business relationship is established, measures should be taken by way of a company search and/or other commercial enquiries to ensure that the applicant company has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated. In addition, if changes to the company structure or ownership occur subsequently or suspicions are aroused by a change in the profile of payments through a company account, further checks should be made.

2.7.6.3. The verification of the identity of a company comprises the establishment of the following:

(xx) its registered number;

(xxi) its registered corporate name and any trading names used;

(xxii) its registered address and any separate principal trading addresses;

(xxiii) the identity of its directors;

(xxiv) the identity of all those persons duly authorised to operate the accounts;

(xxv) in the case of private and non-listed public companies, the identity of the registered shareholders and, where the registered shareholders act as nominees, the identity of the principal ultimate beneficial owners; and

(xxvi) the company's business profile (see paragraph 2.6.4. above).

2.7.6.4. The CCI must request and obtain the following documents:

(i) the company's Certificate of Incorporation;

(ii) Certificate of registered office;

(iii) Certificate of directors and secretary;

(iv) in the case of private companies, Certificate of registered shareholders;

(v) Memorandum and Articles of Association;

(vi) a resolution of the Board of Directors to open an account and conferring authority to those who will operate it;

For companies incorporated outside Cyprus, CCIs should request and obtain documents, wherever they exist, similar to the above.

2.7.6.5. The identity of the persons mentioned in (iv), (v) and (vi) in sub-paragraph 2.7.6.3 above must be established in accordance with the procedures for the verification of the identity of natural persons or corporate customers, as the case may be.

2.7.6.6. In the case of public companies listed on a recognised stock exchange, CCIs are not required, due to the practical difficulties emanating from their widespread ownership, as well as the regulatory and disclosure requirements applicable to them, to verify the identify of the registered shareholders/beneficial owners and their directors. A list of recognised stock exchange is set out in Appendix 1.

2.7.6.7. The term beneficial owner mentioned in sub-paragraph 2.7.6.3 (vi) above refers to the natural person(s) who ultimately own or exercise effective control over a company. Principal beneficial owners are considered to be persons with direct or indirect interests of 5% or more in a company's share capital. CCIs must verify the identities of a sufficient number of principal beneficial owners of private companies and non-listed public companies so that the aggregate shareholding of such persons identified is not less than 75% of a company's share capital. In the case of a company requesting the opening of an account whose direct / immediate and principal shareholder is another company registered in Cyprus or abroad, CCIs are required, before opening the account, to ascertain the identity of the natural person(s) who is/are the principal/ultimate beneficial shareholder(s) and/or is/are controlling the said company. Identification of the natural person(s) who is/are the ultimate beneficial shareholder(s)/owner(s) and/or is/are controlling the investing company should be carried out irrespective of the layers of companies behind the company requesting the opening of the account.

2.7.6.8. Apart from principal beneficial owners identified above, CCIs must also look for the persons who have the ultimate control over a company's business and assets. Ultimate control will often rest with those persons who have the power to manage funds, accounts or investments without requiring authorisation and who would be in a position to override internal procedures. In such circumstances, CCIs must also obtain identification evidence for any other person(s) who exercises ultimate

control as described above even if that person has no direct or indirect interest or an interest of less than 5% in a company's share capital.

2.7.6.9. In cases where the major shareholder of a company requesting the opening of an account is a trust set up in Cyprus or abroad, CCIs are required to ascertain the identity of the trustees, settlor and beneficiaries of the trust.

2.7.7. **Non-face-to face corporate customers**

2.7.7.1. The same requirements prescribed in Section 62A of the Law and paragraph 2.7.3 of this Directive in respect of natural persons, apply for corporate customers which seek to establish an account relationship via the post or internet. The CCI should take supplementary measures to ensure that the company or business corporation exists at the business address provided for a legitimate purpose.

2.7.8. **Safe custody and safety deposit boxes**

2.7.8.1. Particular precautions need to be taken in relation to requests to hold boxes, parcels and sealed envelopes in safe custody. Where such facilities are made available to non-account holders, the identification procedures set out in this Directive should be followed.

2.8 Procedures for high risk customers

2.8.1. **Accounts in the names of companies whose shares are in the form of bearer**

2.8.1.1. CCIs may accept as customers companies whose own shares or those of their holding companies (if any) have been issued or may be issued in the form of bearer shares provided that the prospective corporate customer fulfils one of the undermentioned prerequisites:

(i) Its shares or those of its holding company are listed on a recognised stock exchange (please refer to Appendix 1);

(ii) It is authorised as a collective investment scheme, under the laws of properly regulated and supervised jurisdictions;

(iii) Its shares are beneficially owned or controlled by governments or governmental undertakings;

2.8.1.2. CCIs may also open accounts and establish business relationships with companies whose own shares or those of their holding companies (if any) have been issued or may be issued to bearer and do not meet the prerequisites mentioned in the previous paragraph provided that the following additional measures are taken:

(i) The identity and business profile of the principal and ultimate beneficial owner(s) of the company is ascertained before opening the account.

(ii) The CCI concerned takes physical custody of the bearer share certificates while the account relationship is maintained or obtains a confirmation from another credit institution operating in Cyprus or a member state of the European Union that it has under its own custody the bearer share certificates and, in case of their release, shall inform it accordingly.

(iii) When the account is opened, it should be closely monitored. At least twice a year, a review should be carried out and a note prepared summarising the results of the review which must be kept in the customer's file. At frequent intervals, the CCI should compare the estimated against the actual turnover of the account. Any serious deviation, should be investigated, and the findings recorded in the relevant customer's file.

(iv) If the opening of the account has been recommended by a professional intermediary (lawyer/accountant), at least once every year the lawyer or accountant who has introduced the customer must confirm that the capital base and the shareholding structure of the company or that of its holding company (if any) has not been altered by the issue of new bearer shares or the cancellation of existing ones. If the account has been opened directly by the company, then the confirmation should be provided by the company's directors.

(v) When the company's beneficial ownership changes, then the CCI should consider whether it is advisable to allow the account to continue operating.

2.8.2. **Accounts in the names of trusts or nominees of third persons**

2.8.2.1. A CCI must always establish the identity of a trustee or nominee acting in relation to a trust or third party in accordance with the identification procedures for natural persons or corporate customers as the case may be.

2.8.2.2. A CCI must also take all additional measures deemed appropriate under the circumstances for the purpose of establishing the identity of any person or persons on whose behalf and for their benefit a trustee or nominee is acting by verifying the identity of all the settlors and the true beneficiaries.

2.8.3. **"Client accounts" opened by professional intermediaries**

2.8.3.1. Lawyers, accountants, stockbrokers and other professional intermediaries frequently hold funds on behalf of their clients in "client accounts" opened with credit institutions. Such accounts may be general or pooled accounts holding the funds of many clients or they may be opened specifically for a single client.

2.8.3.2. In the case of client accounts opened for a single client, the CCIs should verify the identity of the person (underlying beneficiary) on whose behalf the professional intermediary is acting in accordance with the customer identification procedures for natural persons or corporate customers as the case may be.

2.8.3.3. In the case of general or pooled “client accounts”, CCIs should accept their establishment provided that they are satisfied that the professional intermediary meets the criteria listed in paragraph 2.8.7. below and reliance can, therefore, be placed on his/her customer identification and due diligence procedures. In such a case, CCIs are required to establish the identity of the underlying beneficiaries of transactions in line with the procedure prescribed in paragraph 2.8.7.1(iii) below only when a single transaction or a series of linked transactions exceeds the threshold limit of EURO 15.000. For transactions equal to or less than the above limit, CCIs may waive the identification requirement provided that they have no grounds either to suspect that the transaction may be associated with the laundering of illicit funds or that the transaction is part of a series of linked transactions, the total sum of which exceeds EURO 15.000.

2.8.4. **Politically Exposed Persons ("PEPs")**

2.8.4.1. Business relationships with individuals holding important public positions in a foreign country and with natural or legal persons closely related to them, may expose a CCI to enhanced risks if the potential customer seeking to establish an account is a Politically Exposed Person ("PEP"), a member of his immediate family or a close associate originating especially from a country which is widely known to face problems of bribery, corruption and financial irregularity and whose anti-money laundering statutes and regulations are not in line with international standards. CCIs should assess which countries with which they maintain business relationships are most vulnerable to corruption. One source of information is the Transparency International Corruption Perceptions Index which can be found on the web-site of Transparency International at www.transparency.org.

2.8.4.2. For the purposes of this Directive, “PEPs”, “immediate family” and “close associate” are defined as follows:

(i) Politically Exposed Persons ("PEPs") are individuals who are or have been entrusted with prominent public functions in a foreign country. It includes a senior figure in the executive, legislative, administrative, military or judicial branches of a government (elected or non-elected), a senior figure of a major political party, or a director/senior executive of a government owned corporation. It also includes any corporate entity, partnership or trust relationship that has been established by, or for the benefit of, a Politically Exposed Person.

(ii) “Immediate family” typically includes the person's parents, siblings, spouse, children in laws, grandparents and grandchildren.

(iii) “Close associate” typically includes a person who is widely and publicly known to maintain an unusually close relationship with a Politically Exposed Person and includes a person who is in a position to conduct substantial domestic and international financial transactions on the Politically Exposed Person's behalf.

2.8.4.3. CCIs should adopt the following additional due diligence measures when they open an account and maintain a business relationship with a PEP:

(i) Put in place appropriate computerised risk management systems to determine whether a prospective customer is a PEP;

(ii) the decision to establish an account relationship with a PEP should always be taken by the CCI's senior management and communicated to the CCI's Money Laundering Compliance Officer;

(iii) at the time of establishing an account relationship with a PEP, the CCI should obtain adequate documentation to ascertain not only his/her identity but also to assess his/her business reputation (e.g. references from third parties);

(iv) CCIs should establish the business profile of the account holder by obtaining the information prescribed in paragraph 2.6.4 above. The profile of the expected business activity should form the basis for the future monitoring of the account. The profile should be regularly reviewed and updated. CCIs should be particularly cautious and most vigilant where their customers are involved in businesses which appear to be most vulnerable to corruption such as trading in oil, arms, cigarettes and alcoholic drinks; and

(v) The account should be subject to annual review in order to determine whether to allow the account to continue operating. A note should be prepared summarising the results of the review by the CCI officer in charge of the account. The note should be submitted for consideration and approval to the CCI's senior management through the CCI's Money Laundering Compliance Officer.

2.8.5. **"Old customer accounts"**

2.8.5.1. By virtue of the Directives issued on 7 July, 1998 and 30 July, 1999, (now repealed and incorporated in the present Directive) for the prevention of money laundering, CCIs were required when opening accounts for companies with nominee shareholders or client accounts for professional intermediaries or accounts in the name of trusts or nominees of third persons, to ascertain, without any exception, the identity of the natural persons who are the principal/ultimate beneficial owners and/or all settlors/beneficiaries (in the case of trusts). The above Directives did not have retrospective effect and were applicable to account relationships established after the date of their issue. As a result, for accounts opened before the above dates, CCIs were not obliged to verify the identity of natural persons who are the principal / ultimate owners/beneficiaries ("old customer accounts"). Customer identification records in respect of "old customer accounts", as defined above, should be updated by requesting and obtaining information sufficient to construct or reconstruct their business profile in accordance with the requirements of this Directive as well as identification data on the natural persons who are the principal / ultimate owners / beneficiaries whenever any of the following events take place:

(i) An individual transaction takes place which appears to be unusual and/or significant compared to the normal pattern of the "old customer's account" activity or business profile;

(ii) there is a material change in the "old customer's" circumstances and documentation standards such as:

(g) change of directors/secretary,

(h) change of registered nominee shareholders,

(i) change of registered office,

(j) change of trustee(s),

(k) change of corporate name and/or trading name(s) used,

(l) change of principal trading partner(s) and/or new business activities undertaken,

(iii) There is a material change in the way that the existing "old customer account" relationship is operating such as:

- Change of the authorised signatories to the account.
- Request for opening new accounts or the provision of new financial services and/or products.

2.8.5.2. CCIs should ensure that whenever they become aware of any of the said events in relation to an "old customer account", all relevant information data is obtained as quickly as possible for the purpose of identifying the natural persons who are the principal / ultimate beneficial owners and constructing the customer's business profile.

2.8.6. **Non-EU Correspondent credit institution Accounts**

2.8.6.1. CCIs may open in their own books correspondent accounts for a non-EU credit institution (the "respondent credit institution") provided that all of the following practices are adopted:

(i) The respondent credit institution maintains a physical presence in the form of a fully-fledged office carrying on real financial business in its country of incorporation i.e. the respondent credit institution is not a "shell credit institution". Confirmation of the existence of a credit institution and its regulated status should be checked by one of the following means:

(d) Checking with the home country supervisory body; or

(e) checking with a correspondent credit institution in the same country; or

(f) obtaining from the credit institution evidence of its licence or authorisation to conduct financial business.

Additional information on credit institutions worldwide can be obtained from "The Bankers' Almanac", "Thomsons' Directories" or any of the international business information services.

(ii) The respondent credit institution employs adequate procedures to prevent money laundering, including terrorist financing activities. In this regard, CCIs should obtain and evaluate information on the respondent

credit institution's customer acceptance policy and identification procedures as well as anti-money laundering controls in general;

(iii) The CCI collects sufficient information to understand fully the nature of the respondent's business activities, beneficial ownership, management and places of operations;

(iv) The decision to establish the correspondent account should be taken by the CCI's senior management;

2.8.6.2. Provided that the prerequisites (i) to (iv) mentioned in the paragraph above are met, CCIs should obtain the prior written approval of the Commissioner for opening correspondent accounts for credit institutions incorporated in the following jurisdictions:

10. Anguilla
11. Antigua and Barbuda
12. Cook Islands
13. British Virgin Islands
14. Dominica
15. Grenada
16. Marshall Islands
17. Montenegro
18. Montserrat
20. Nauru
21. Niue
22. Palau
23. Samoa
24. Sao Tome & Principe
25. Seychelles
26. St. Kitts and Nevis
27. St. Lucia
28. St. Vincent and the Grenadines
29. Turks & Caicos

2.8.6.3. The application to the Commissioner for opening a correspondent account in the name of a credit institution incorporated in a jurisdiction mentioned in the sub-paragraph (v) above should include the details of sub-paragraphs (i) to (iii) of paragraph 2.8.6.1 mentioned above and should be submitted by the Money Laundering Compliance Officer at the following address:

Co-Operative Societies' Supervision and Development Authority,
1423 Nicosia
Facsimile number: 22-401592.

2.8.7. **Reliance on business introducers for customer identification and performance of due diligence**

2.8.7.1. In accordance with the provisions of the Law CCIs themselves are legally obliged to apply identification procedures in all instances, including one off transactions and non-face to face contacts. The Law does **not** provide for the delegation of the above obligation to any third party such as a business introducer. In the light of the above, this part of the Directive should **not** interpreted in any way that CCIs can detract from their ultimate responsibility for customer identification and verification and to know their customers and business activities. Reliance on customer identification performed by professional intermediaries or third party introducers should, therefore, be regarded as an additional internal control measure, highly recommended by the Commissioner, and should be placed upon only when all of the following criteria are met:

(i) the CCI's MLCO or Compliance Department has assessed the customer identification and due diligence procedures employed by the professional intermediary or third party introducer and has found them to be in line with the generally acceptable international standards and as rigorous as those employed by the CCI itself. A record of the assessment should be prepared and kept in a separate file maintained for each professional intermediary or third party introducer;

(ii) the professional intermediary or third party introducer is subject to regulation and supervision by an appropriate competent authority in Cyprus or abroad for money laundering purposes;

(iii) all relevant identification data and other documentation pertaining to the customer's identity should be submitted duly certified as being true copy of the original by the professional intermediary or third party introducer to the CCI at the time of submitting the application for opening the account, providing a service, or executing an one-off transaction; and

(iv) the CCI reaches an agreement with the professional intermediary or third party introducer by which it is permitted at any stage, to verify the due diligence procedures performed by the professional intermediary or introducer for the purposes of preventing money laundering.

2.8.8. **Higher risk countries- Non-cooperative countries and territories ("NCCTs")**

2.8.8.1. The Financial Action Task Force's ("FATF") Forty Recommendations constitute today's primary internationally recognised standards for the prevention and detection of money laundering. The Government of Cyprus has formally endorsed FATF's Forty Recommendations and has directly assured the President of FATF that the competent authorities of Cyprus will take all necessary actions to ensure full compliance and implementation of the Recommendations. In this regard, the Commissioner is committed for the implementation of FATF's Forty Recommendations and all its other related initiatives in an effort to reduce the vulnerability of the system to money laundering activities.

2.8.8.2. In February, 2000 FATF engaged in a major initiative to identify non-cooperative countries and territories ("NCCTs") in the fight against money laundering. In this respect, FATF has issued a report setting out twenty five criteria against which countries and territories are evaluated for the purpose of identifying relevant detrimental rules and practices in their anti money laundering systems that are in breach of FATF's Forty Recommendations and prevent international cooperation in this area. Since June, 2000, and following an evaluation of a number of countries against the above set of criteria, FATF has been publishing lists of jurisdictions which were, from time to time, being identified as non-cooperative. The current list of NCCTs is set out in "Appendix 2" to this Directive.

2.8.8.3. In view of the aforementioned, all CCIs are required to apply the following:

(i) Exercise additional monitoring procedures and pay special attention to business relations and transactions with persons, including companies and financial institutions, from countries included on the NCCTs list; and

(ii) Whenever the above transactions have no apparent economic or visible lawful purpose, their background and purpose should be examined and the findings established in writing. If a CCI cannot satisfy itself as to the legitimacy of the transaction, then a suspicious transaction report should be filed with MOKAS.

3. RECORD KEEPING PROCEDURES

3.1 Introduction

The Law requires, under Section 66, CCIs to retain records concerning customer identification and details of transactions for use as evidence in any possible investigation into money laundering. This is an essential constituent of the audit trail procedures that the Law seeks to establish.

3.2 Records of customer identification and transactions

3.2.1. The Law specifies, under Section 66, that, where evidence of a customer's identity is required, the records retained must include the following:

(i) A record that indicates the **customer's identity** obtained in accordance with the procedures provided in the Law and which comprises either a copy of the evidence or which provides sufficient information to enable details as to a person's identity to be re-obtained.

(ii) A record containing **details relating to all transactions** carried out by that customer in the course of relevant financial business.

3.2.2. The prescribed period is at least five years commencing with the date on which the relevant business or all activities taking place in the course of transactions were completed.

3.2.3. In accordance with the Law, the date when the relationship with the customer has ended is the date of:

(i) the carrying out of an one-off transaction or the last in the series of one-off transactions; or

(ii) the ending of the business relationship i.e. the closing of the account or accounts; or

(iii) if the business relationship has not formally ended, the date on which the last transaction was carried out.

3.2.4. MOKAS needs to be able to compile a satisfactory audit trail for suspected laundered money and to be able to establish the business profile of any suspect account. To satisfy this requirement, CCIs must ensure that in the case of a money laundering investigation by MOKAS, they will be able to provide the following information:

(xxvii) the identity of the account holder(s)

(xxviii) the identity of the beneficial owner(s) of the account

(xxix) the identity of the authorised signatory(ies) to the account;

(xxx) the volume of funds or level of transactions flowing through the account;

(xxxi) connected accounts;

(xxxii) for selected transactions:

(a) the origin of the funds;

(b) the type and amount of the currency involved;

(c) the form in which the funds were placed or withdrawn i.e. cash, cheques, wire transfers etc.;

(d) the identity of the person undertaking the transaction;

(e) the destination of the funds;

(f) the form of instructions and authority;

(g) the type and identifying number of any account involved in the transaction;

3.3 Format of Records

3.3.1. It is recognised that copies of all documents cannot be retained indefinitely. Prioritisation is, therefore, a necessity. Although the Law prescribes a period of retention, where the records relate to on-going investigations, they should be retained until it is confirmed by MOKAS that the case has been closed.

3.3.2. The retention of hard-copy evidence creates excessive volume of records to be stored. Therefore, retention may be in other formats other than original documents, such as electronic or other form. The overriding objective is for the CCIs to be able to retrieve the relevant information without undue delay and in a cost-effective manner.

3.3.3. When setting a document retention policy, CCIs are, therefore, advised to consider both the statutory requirements and the potential needs of MOKAS.

3.3.4. Section 47 of the Law provides that where relevant information is contained in a computer, the information must be presented in a visible and legible form which can be taken away by MOKAS.

3.4 Funds transfers

3.4.1. The extensive use of electronic payment and message systems by criminals to move funds rapidly in different jurisdictions has complicated the investigation trail. Investigations are at times even more difficult to pursue when the identity of the original ordering customer or ultimate beneficiary of a funds transfer is not clearly shown in an electronic payment message instruction.

3.4.2. For the purpose of this Directive:

(i) **Funds transfer** refers to any transaction carried out by a CCI on behalf of an originator person (both natural or legal) by electronic means (SWIFT or otherwise) with a view to making an amount of money available to a beneficiary person (both natural or legal) at another financial institution; and

(ii) the originator is the person maintaining an account with a credit institution, or where there is no account, the person that places an order with the credit institution, to perform a funds transfer.

3.4.3. It is of the utmost importance to include full information on the originator of all funds transfers made by electronic means, both domestic and international, regardless of the payment message system used. The records of electronic payments and relevant messages must be treated in the same way as any other records in support of entries in the account and kept for a minimum of five years.

3.4.4. All outgoing transfers performed by CCIs in excess of US$1.000 should contain accurate and meaningful information on the originator. In this respect, all outgoing transfers must always include the name, the account number and address of the originator. In the absence of an account, CCIs should include a unique reference number which will permit the subsequent tracing of the transaction. The address of the originator may be substituted with the customer identification number or date and place of birth or the national identity number or, in the case of legal entities, its registration number with the competent authority.

3.4.5. For outgoing funds transfers equal to or below US$1.000 CCIs may not include in the relevant message the full originator information but such information should always be retained and be made available to the intermediary or beneficiary credit institution upon request.

3.4.6. CCIs should make sure that incoming funds transfers in excess of US$1.000 also include the above information for the ordering customer. In cases where any of the information mentioned in paragraph 3.4.4 is missing, CCIs should contact the originator's credit institution and request that information be made available before proceeding with the execution of the transaction. Section 67A of the Law provides protection to CCIs from possible claims from their customers for non-execution or delay in applying incoming funds to the credit of their accounts. Hence, as per Section 67A, non-execution or delay in the execution of any transaction for the account of customer due to the non provision of sufficient details or information for the nature of the transaction and/or the parties involved, as required by the Directives issued by the Commissioner, does not constitute breach of any contractual or other obligation owed by the CCI to its customers. If full

originator information is not eventually made available, then the CCI should consider filing a suspicious transaction report with MOKAS.

3.4.7. Where the size and nature of incoming funds transfers are unusual or inconsistent with the beneficiary's financial condition, nature of operations and business profile, then background information should be sought and obtained from the beneficiary in regard to the underlying transaction and the circumstances of the transfer. If the CCI continues to have suspicions as to the legitimacy of the source of the funds, then the originator's credit institution may be contacted for further details and information. In case that the CCI fails to receive sufficient information to its complete satisfaction, that will be capable of dissolving any suspicions that may have arisen, then the whole matter should be reported to MOKAS in accordance with the provisions of the Law.

4. CASH DEPOSITS IN FOREIGN CURRENCY NOTES

4.1 Prohibition to accept cash deposits

4.1.1. CCIs should not accept cash deposits in foreign currency notes in excess of US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent **per calendar year** from any person (resident or non-resident) or a group of connected persons.

4.1.2. CCIs should also not accept cash deposits below the threshold limit of US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent from a person or group of connected persons, resident or non-resident, where the cash deposit forms part of a series of linked cash deposits whose aggregate amount is in excess of US$100.000 (one hundred thousand US Dollars) or equivalent per calendar year.

4.2 Definitions of connected persons and linked cash deposits

4.2.1. For the purposes of this Directive, a group of connected persons is defined to be:

(i) members of a family, i.e. husband, wife, children;

(ii) an individual and an enterprise in which the individual and any member(s) of his/her family is a partner or shareholder or director or has control in any other way;

(iii) an individual and a company in which the individual is a manager or has a material interest either on his own or together with any member(s) of his/her family or together with any partners;

(iv) if the person is a legal entity, its holding company, subsidiaries, fellow subsidiaries, associated companies or entities which have a material interest in that person; and

(v) two or more persons, natural or legal, which are inter-dependently financially or are connected in such a manner that may be viewed as a single risk.

4.2.2. A cash deposit should be considered to be linked to other cash deposits when the CCI knows or suspects that a person is seeking to make lodgement of cash in different accounts either with the same or different credit institutions so that the total of each deposit is below US$100.000 (one hundred thousand US Dollars) or equivalent but the total of all deposits exceeds US$100.000 (one hundred thousand US Dollars) or equivalent in a given calendar year.

4.3 . <u>Acceptance of cash deposits with the Commissioner's approval</u>

4.3.1 Cash deposits, as described herein below, should be accepted only with the prior written approval of the Commissioner:

(i) Single cash deposits in foreign currency notes in excess of US$100.000 (one hundred thousand US Dollars) or equivalent.

(ii) Cash deposits below the threshold limit of US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent as a result of which the aggregate amount of all cash deposits in a calendar year accepted from the same customer or group of connected customers will exceed US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent; and

(iii) Cash deposits below the threshold limit of US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent from a customer who presents a "Declaration of Imported/Exported Currency/Bank Notes and/or Gold" Form, completed in accordance with The Capital Movement Law 115(I)/2003, which shows that at the time of his arrival in Cyprus he/she imported and declared foreign currency notes in excess of US$100.000 (one hundred thousand US Dollars) or other foreign currency equivalent.

4.3.2 Requests for permission shall be made in writing by the Money Laundering Compliance Officer of the CCI concerned who shall provide full details on the customer and his activities and explain the nature of the transaction and source of the cash money. The Money Laundering Compliance Officer should also confirm that the CCI has fully applied the customer identification and due diligence procedures prescribed in the Commissioner 's Directives for the prevention of money laundering and that the funds

involved are not suspected to be associated with illicit activities, including terrorist finance. All such requests should be sent by e-mail or mail or facsimile at the following address:

Commissioner of the Co-operative Societies Supervision and Development Authority
1423 Nicosia
Facsimile number: 22-401592
E-mail: commissioner@cssda.gov.cy

4.4 Exempted cash deposits

4.4.1. Notwithstanding the above, the following exemptions apply:

(i) Cash deposits of foreign currency notes from credit institutions licensed to carry on financial activities in Cyprus; and

(ii) Cash deposits in excess of US$100.000 (one hundred thousand US Dollars) or equivalent for which a specific permission is obtained from the Commissioner.

5 THE ROLE OF THE MONEY LAUNDERING COMPLIANCE OFFICER

5.1 Appointment of a Money Laundering Compliance Officer

5.1.1. The Law, in accordance with Sections 58 and 67, requires that CCIs institute internal reporting procedures and that they identify a person (hereinafter to be referred to as "the Money Laundering Compliance Officer") to whom the CCIs' employees should report their knowledge or suspicion of transactions/activities involving money laundering.

5.1.2. In accordance with the provisions of the Law, all CCIs should proceed with the appointment of a Money Laundering Compliance Officer. The person so appointed should be sufficiently senior to command the necessary authority. CCIs may also wish to appoint Assistant Money Laundering Compliance Officers by division, district or otherwise for the purpose of passing internal suspicion reports to the Chief Money Laundering Compliance Officer. CCIs should communicate to the Commissioner the names and positions of persons whom they appoint, from time to time, to act as Money Laundering Compliance Officers.

5.2 Duties of Money Laundering Compliance Officers

5.2.1. The role and responsibilities of Money Laundering Compliance Officers, including those of Chief and Assistants, should be clearly specified by CCIs and documented in appropriate manuals and/or job descriptions.

5.2.2. As a minimum, the duties of a Money Laundering Compliance Officer should include the following:

(i) To receive information from the CCI's employees which is considered by the latter to be knowledge of money laundering activities or which is cause for suspicion connected with money laundering. A specimen of such an internal report (hereinafter to be referred to as "Internal Money Laundering Suspicion Report") is attached, as "Appendix 5", to this Directive. All such reports should be kept on-file.

(ii) To validate and consider the information received as per paragraph (i) above by reference to any other relevant information and discuss the circumstances of the case with the reporting employee concerned and, where appropriate, with the employee's superior(s). The evaluation of

the information reported to the Money Laundering Compliance Officer should be recorded and retained on file. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Internal Evaluation Report") is attached, as “Appendix 6”, to this Directive.

(iii) If following the evaluation described in paragraph (ii) above, the Money Laundering Compliance Officer decides to notify MOKAS, then he should complete a written report and submit it to MOKAS the soonest possible. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Report to the Unit for Combating Money Laundering (“MOKAS”)” is attached, as “Appendix 7”, to this Directive. All such reports should be kept on file.

(iv) If following the evaluation described in paragraph (ii) above, the Money Laundering Compliance Officer decides not to notify MOKAS then he/she should fully explain the reasons for such a decision on the "Money Laundering Compliance Officer's Internal Evaluation Report" which should, as already stated, be retained on file

(v) The Money Laundering Compliance Officer acts as a first point of contact with MOKAS, upon commencement of and during an investigation as a result of filing a report to MOKAS under (iii) above.

(vi) The Money Laundering Compliance Officer responds to requests from MOKAS and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with MOKAS.

(vii) The Money Laundering Compliance Officer provides advice and guidance to other employees of the CCI on money laundering matters.

(viii) The Money Laundering Compliance Officer acquires the knowledge and skills required which should be used to improve the CCI’s internal procedures for recognising and reporting money laundering suspicions.

(ix) The Money Laundering Compliance Officer determines whether the CCI’s employees need further training and/or knowledge for the purpose of learning to combat money laundering and organises appropriate training sessions/seminars.

(x) The Money Laundering Compliance Officer is primarily responsible, in consultation with the CCI's senior management and the CCI's Internal Audit and Compliance Departments, towards the Commissioner, in implementing the various Directives issued by the Commissioner under Section 60(3) of the Law as well as all other instructions/ recommendations issued by the Commissioner, from time to time, on the prevention of the criminal use of the financial system for the purpose of money laundering. The Money Laundering Compliance Officer also maintains the overall responsibility for the timely and correct submission to the Commissioner of the "Monthly Statement of Large Cash Deposits and Funds Transfers", by explaining the relevant Commissioner instructions for the completion of the above return to the CCI's employees who are responsible for the preparation of the return. The Money Laundering Compliance Officer is also expected to be able to deal with all enquiries that the Commissioner may wish to raise in connection with the information included in the above return.

(xi) The Money Laundering Compliance Officer is expected to avoid errors and/or omissions in the course of discharging his duties and, most importantly, when validating the reports received on money laundering suspicions, as a result of which a report to MOKAS may or may not be filed. He is also expected to act honestly and reasonably and to make his determination in good faith. In this connection, it should be emphasised that the Money Laundering Compliance Officer's decision may be subject to the subsequent review of the Commissioner which, in the course of examining and evaluating the anti-money laundering procedures of CCIs and their compliance with the provisions of the Law, is legally empowered to report to MOKAS any transaction or activities for which it forms the suspicion that money laundering may have been carried out.

5.3 Annual Reports of Money Laundering Compliance Officers

5.3.1. Money Laundering Compliance Officers have also the additional duty of preparing an Annual Report which is a tool for assessing a CCI's level of compliance with its obligations laid down in the Law and the Commissioner's Directives for the prevention of money laundering.

5.3.2. The Money Laundering Compliance Officer's Annual Report should be prepared within two months from the end of each calendar year (i.e. by the end of February, the latest) and should be submitted to the CCI's Chief Executive/Senior Management for consideration. In the case of a CCI operating in Cyprus in the form of a branch, the Annual Report should be submitted to the CCI's Chief Executive/Senior Management at the Head Office in its country of origin. It is expected that the CCI's Chief Executives/Senior Management will then take all action as deemed appropriate under the circumstances to remedy any deficiencies identified in the Annual Report.

5.3.3. A copy of the Annual Report shall also be forwarded within the same time limit specified above, to the Commissioner to assist the latter in the discharge of its supervisory functions.

5.3.4. The Money Laundering Compliance Officer's Annual Report should deal with money laundering preventive issues pertaining to the year under review and, as a minimum, cover the following:

(i) Information on changes in the Law and the Commissioner 's Directives which took place during the year and measures taken and/or procedures introduced for securing compliance with the above changes;

(ii) information on the ways by which the effectiveness of the customer identification and due diligence procedures have been managed and tested for compliance with Commissioner's Directives and the CCI's customer acceptance policy and procedures.

(iii) material deficiencies and weaknesses identified by the Money Laundering Compliance Officer or the CCI's internal audit and compliance departments in anti-money laundering policies and procedures, outlining the seriousness of the issue and any risk implications and, outlining the action taken and/or the recommendations made for rectifying the situation;

(iv) the number of internal money laundering suspicion reports received from employees, broken down by district, division, branch and any observations thereon;

(v) any perceived deficiencies and weaknesses in the anti-money laundering internal reporting procedures and recommendations for change;

(vi) any other information concerning communication with staff on money laundering prevention issues;

(vii) the number of suspicious reports submitted to MOKAS with information on the main reasons for suspicion and highlights of any particular trends;

(viii) summary figures, on an annualised basis, of customers' total cash deposits and incoming/outgoing funds transfers in excess of US$10.000 and US$500.000 respectively (together with comparative figures for the previous year) as reported to the Commissioner in the "Monthly Statement of Large Cash Deposits and Funds Transfers" and comments on material changes observed compared with the previous year;

(ix) information on the co-operation with MOKAS and figures on the requests for information received from MOKAS concerning suspicious cases reported and the number of disclosure court orders received by the CCI under the Law for the production of information relating to other money laundering investigations;

(x) information on the training courses/seminars attended by the Money Laundering Compliance Officer and any other educational material received;

(xi) information on training provided to staff, outlining the courses/ seminars organised, their duration, the number and position of employees attending, names and qualifications of the instructor(s) and specifying whether the courses/seminars were developed in-house or by an external organisation /consultant.

(xii) recommendations for additional human and technical resources which might be required to ensure compliance with the provisions of the Law and the Commissioner‘s Directives issued thereunder.

6. Recognition and Reporting of Suspicious Transactions/ Activities to Mokas

6.1 Introduction

6.1.1 Section 27 of the Law requires that any knowledge or suspicion of money laundering should be promptly reported to a Police Officer or MOKAS. The Law also provides, under Section 26, that such a disclosure cannot be treated as a breach of the duty of confidentiality owed by CCIs to their customers by virtue of the contractual relationship existing between them.

6.1.2 The Law also recognises, under Section 26, that suspicions may only be aroused after the transaction has been completed and, therefore, allows subsequent disclosure provided that such disclosure is made on the person's concerned initiative and as soon as it is reasonable for him to make it.

6.1.3 In case of CCI's employees, the Law recognises, under Section 26, that internal reporting to the Money Laundering Compliance Officer will satisfy the reporting requirement imposed by virtue of Section 27 i.e. once a CCI employee has reported his/her suspicion to the Money Laundering Compliance Officer he or she is considered to have fully satisfied his/her statutory requirements, under Section 27.

6.2 Examples of suspicious transactions/activities

6.2.1 Although it is difficult to define a suspicious transaction, as the types of transactions which may be used by money launderers are almost unlimited, a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account. It is, therefore, imperative that CCIs know enough about their customers' business in order to recognise that a transaction or a series of transactions is unusual or suspicious.

6.2.2 A potential money launderer will attempt to use any service offered by a CCI as a means of changing the nature of money from dirty to clean. This process could possibly range from a simple cash transaction to much more sophisticated and complex transactions. A list containing examples of what might constitute suspicious transactions/activities, is attached as "Appendix 3" to this Directive. This list is not all inclusive but can help CCIs recognising the most basic ways through which money can be laundered. The possible identification of any of the types of transactions/activities listed in the above Appendix should prompt further investigation by seeking

additional information and/or explanations as to the source and origin of the funds the nature of the underlying transaction and the circumstances surrounding the particular activity.

6.3 Reporting of suspicious transactions/activities to MOKAS

6.3.1 All Money Laundering Compliance Officers' Reports to MOKAS should be sent or delivered at the following address:

Unit for Combating Money Laundering ("MOKAS"),
The Law Office of the Republic,
27 Katsoni Street, 2nd & 3rd Floors,
CY-1082 Nicosia.
Tel.: 22 446018, Fax: 22 317063
E-mail: mokas@mokas.law.gov.cy
Contact person:
Mrs Eva Rossidou – Papakyriakou,
Head of the Unit for Combating Money Laundering ("MOKAS")

6.3.2 The form attached to this Directive, as "Appendix 7", should be used and followed at all times when submitting a report to MOKAS. Disclosures can be forwarded to MOKAS by post or by facsimile message or by hand.

6.4 Co-operation with MOKAS

6.4.1 Having made a disclosure report, a CCI may subsequently wish to terminate its relationship with the customer concerned for commercial or risk avoidance reasons. In such an event, however, CCIs should exercise particular caution, as per Section 48 of the Law, not to alert the customer concerned that a disclosure report has been made. Close liaison with the MOKAS should, therefore, be maintained in an effort to avoid any frustration to the investigations conducted.

6.4.2 After making the disclosure, CCIs are expected to adhere to any instructions given by the MOKAS and, in particular, as to whether or not to continue or suspend a transaction. It is noted that Section 26(2)(c) of the Law empowers MOKAS to instruct CCIs to refrain from executing or delay the execution of a customer's order without such action constituting a violation of any contractual or other obligation of the CCI and its employees.

7. Prudential reporting to the commissioner

7.1 Submission of prudential returns

7.1.1. As from September, 1990, all CCIs in Cyprus have been submitting a monthly return on their large cash deposits and incoming and outgoing wire funds transfers. The submission of the above monthly return has proved to be particularly useful as it provided the opportunity to CCIs initially to evaluate and, subsequently, to reinforce their systems of internal control and monitoring of their operations for the purpose of early identification and detection of transactions and business relationships which may be unusual and/or carry enhanced risk of being involved in money laundering operations. Attached as "Appendix 4" to this Directive is the form of the "Monthly Statement of Large Cash Deposits and Funds Transfers" as well as explanations and instructions for its completion.

7.2. Adjustment of CCIs' computerised accounting systems

7.2.1. To the above end, the Commissioner requires from all CCIs to adjust their computerised accounting systems so as to be able to identify promptly all cash deposits and funds transfers in excess of the limits specified for reporting in the monthly return. The early detection of cash and wire funds transactions will enable the reporting of complete and accurate information in the monthly return and will also enhance the ability of CCIs to identify and monitor transactions which are considered to involve higher risk of being associated with money laundering activities.

8 Internal Control Procedures and Risk Management

8.1 Introduction

8.1.1 In addition to the procedures relating to customer identification, record keeping and internal reporting, Section 58 of the Law requires that CCIs apply appropriate procedures for internal control, communication and detailed examination of any transaction which by its nature may be considered to be associated with money laundering for the purpose of preventing or forestalling money laundering.

8.2. Duty to establish procedures

8.2.1 Effective money laundering preventive procedures embrace routines for proper management oversight, systems and controls, segregation of duties, training and other related policies. The Board of Directors of the CCI and its Senior Management should be fully committed to an effective money laundering preventive programme by establishing appropriate procedures and ensuring their effectiveness. CCIs have an obligation to ensure that:

(i) All their employees know to whom they should be reporting money laundering knowledge or suspicion;

(ii) there is a clear reporting chain under which money laundering knowledge or suspicion is passed without delay to the Chief Money Laundering Compliance Officer either directly or through the Assistant Money Laundering Compliance Officer;

(iii) internal policies, procedures and controls for the prevention of money laundering are documented in an appropriate manual which is communicated to management and all employees in charge of customers' operations;

(iv) explicit responsibility is allocated within the CCI for ensuring that its policies and procedures are managed effectively and are in full compliance with the Commissioner's Directives; and

(v) the CCI's internal audit and/or compliance department reviews and evaluates, at regular intervals, the effectiveness and adequacy of policies and procedures introduced by the CCI for preventing money

laundering and verify compliance with the provisions of the Commissioner's Directives. Findings and criticisms of the internal audit and/or compliance departments should be followed up to ensure the rectification of any weaknesses which may have been observed.

8.3 On-going monitoring of accounts and transactions

8.3.1 On-going monitoring of customers' accounts and transactions is an essential aspect of effective money laundering preventive procedures. CCIs should have an understanding of normal and reasonable account activity of their customers as well as of their business profile so that they have a means of identifying transactions which fall outside the regular pattern of an account's activity. Without such knowledge, they would not be able to discharge the duty to report suspicious transactions/activities to MOKAS.

8.3.2 Section 58(b)(iv) of the Law requires CCIs, inter-alia, to examine in detail any transaction which by its nature may be associated with money laundering. The background and purpose of such transactions should, as far as possible be examined by taking care not to breach Section 48 of the Law concerning tipping-off. The extent of the examination of transactions and monitoring of accounts needs to be risk-sensitive. For all accounts, CCIs should have systems in place to be able to aggregate balances and activity of all connected accounts on a fully consolidated basis and detect unusual or suspicious patterns of activity. This can be done by establishing limits for a particular class or category of accounts (e.g. high risk accounts) or transactions (e.g. cash deposits and wire transfers) in excess of a threshold limit). Particular attention should be paid to all transactions that exceed these limits. Certain types of transactions should alert CCIs to the possibility that the customer is conducting unusual or suspicious activities. They may include transactions that do not appear to make economic or commercial sense or that involve large amounts of cash or other monetary instruments or sizeable incoming transfers that are not consistent with the normal and expected transactions of the customer. Very high account turnover, inconsistent with the size of the balance, may indicate that funds are being "washed" through the account.

8.3.3 For higher risk accounts CCIs should ensure that they have adequate management information systems to provide Managers and Money Laundering Compliance Officers with timely information needed to identify, analyse and effectively monitor higher risk customer accounts. CCIs should set key

indicators for such accounts, taking note of the background of the customer, such as the country of origin and source of funds, the type of transactions involved and other risk factors. The types of reports that may be needed include reports of missing account opening documentation, data on customers' identity, transactions made through a customer account that are unusual, and aggregations of a customer's total relationship with the CCI. All CCIs are required to report to the Commissioner that they have actually installed and put into operation adequate management information systems for the on-going monitoring of accounts and transactions, by 30 June, 2005, the latest.

8.3.4 CCI's senior management in charge of financial services should know the personal circumstances of the credit institution's high risk customers and be alert to sources of third party information. Significant transactions by these customers should be approved by the CCI's senior management.

9. Education and Training of Employees

9.1. The Law requires, under Section 58, that adequate training be provided to all CCIs' employees in the recognition and handling of transactions suspected to be associated with money laundering. As a means of assistance for the discharge of the said legal obligation, CCIs should refer to the parts of this Directive which deal with the "Recognition and Reporting of Suspicious Transactions/Activities to MOKAS" and "Prudential Reporting to the Commissioner".

9.2. Also, under Section 58 of the Law, CCIs are required to take appropriate measures to make their employees aware of:

(i) The policies and procedures put in place to prevent money laundering including those for identification, record keeping and internal reporting;

(ii) The legislation relating to money laundering.

9.3. The effectiveness of the procedures and recommendations contained in this Directive and other relevant instructions issued by the Commissioner on the subject of money laundering depends on the extent to which staff of CCIs appreciate the serious nature of the background against which the Law has been enacted and are fully aware of their responsibilities. Staff must also be aware of their own personal statutory obligations. They can be personally liable for failure to report information in accordance with internal procedures. All staff must, therefore, be encouraged to co-operate and to provide a prompt report of any knowledge or suspicion of transactions involving money laundering. It is, therefore, important that CCIs introduce comprehensive measures to ensure that staff are fully aware of their responsibilities. In this regard, CCIs are required to establish a programme of continuous training so that their staff is adequately trained in procedures to prevent money laundering.

9.4. The timing and content of training for various sectors of staff will need to be adapted by the CCI for its own needs. Training requirements should have a different focus for new staff, front-line staff, compliance staff or staff dealing with new customers. New staff should be educated in the importance of money laundering preventive policies and the basic requirements at the CCI. Front-line staff members who deal directly with the public should be trained to verify the identity of new customers, to exercise due diligence in handling accounts of existing customers on an ongoing basis and to detect patterns of suspicious activity. Regular refresher training should be provided to ensure that staff are reminded of their responsibilities and are kept informed of new

developments. It is crucial that all relevant staff fully understand the need for and implement money laundering preventive policies consistently. A culture within CCIs that promotes such understanding is the key to successful implementation.

10. Repeal/Cancellation of Previous Directives

The Directive issued on 30 July 1999 under Section 60(3) of the Law is, hereby, repealed and cancelled.

List of Recognised Stock Exchanges

1. Luxembourg Stock Exchange
2. Amsterdam Stock Exchange
3. Oslo Stock Exchange
4. Lisbon Stock Exchange
5. Oporto Stock Exchange
6. Madrid Stock Exchange
7. Barcelona Stock Exchange
8. Bilbao Stock Exchange
9. Valencia Stock Exchange
10. Stockholm Stock Exchange
11. Zurich Stock Exchange
12. Geneva Stock Exchange
13. Basle Stock Exchange
14. Lausanne Stock Exchange
15. International Stock Exchange *
16. Vienna Stock Exchange
17. Brussels Stock Exchange
18. Copenhagen Stock Exchange
19. Helsinki Stock Exchange
20. Paris Stock Exchange
21. Lyon Stock Exchange
22. Marseille Stock Exchange
23. Nansy Stock Exchange
24. Lille Stock Exchange
25. Bordeaux Stock Exchange
26. Nantes Stock Exchange
27. Berlin Stock Exchange
28. Bremen Stock Exchange
29. Dusseldorf Stock Exchange
30. Frankfurt Stock Exchange

31. Hamburg Stock Exchange
32. Hannover Stock Exchange
33. Munchen Stock Exchange
34. Stuttgart Stock Exchange
35. Milan Stock Exchange
36. Bologna Stock Exchange
37. Firenze Stock Exchange
38. Genova Stock Exchange
39. Napoli Stock Exchange
40. Palermo Stock Exchange
41. Roma Stock Exchange
42. Torino Stock Exchange
43. Trieste Stock Exchange
44. Venezia Stock Exchange
45. Athens Stock Exchange
46. New York Stock Exchange
47. Tokyo Stock Exchange
48. NASDAQ Stock Market
49. American Stock Exchange
50. Australian Stock Exchange
51. New Zealand Stock Exchange
52. Stock Exchange of Hong Kong
53. Stock Exchange of Singapore
54. Stock Exchange of Thailand
55. Kuala Lumpur Stock Exchange

* The International Stock Exchange includes the London Stock Exchange and the Irish Stock Exchange

List of non-cooperative countries and territories ("NCCTs") as at November 2004

7. Cook Islands
8. Indonesia
9. Myanmar
10. Nauru
11. Nigeria
12. Philippines

APPENDIX 3

EXAMPLES OF SUSPICIOUS TRANSACTIONS/ACTIVITIES

1. Cash and other financial transactions

(xiv) Unusually large cash deposits made to the account of an individual or company whose ostensible business activities would normally be generated by cheques and other payment instruments.

(xv) Substantial increases in cash deposits of any individual or business without apparent cause, especially if such deposits are subsequently transferred within a short period out of the account and/or to a destination not normally associated with the customer.

(xvi) Customers who deposit cash by means of numerous credit slips so that the total of each deposit is unremarkable, but the total of all the credits is significant.

(xvii) Company accounts whose transactions, both deposits and withdrawals, are denominated in cash rather than the forms of debit and credit normally associated with commercial operations (e.g. cheques, Letters of Credit, Wire Transfers, etc.).

(xviii) Customers who constantly pay-in or deposit cash to cover requests for bankers' drafts, money transfers or other negotiable and readily marketable money instruments.

(xix) Customers who seek to exchange large quantities of low denomination notes for those of higher denomination.

(xx) Frequent exchange of cash into other currencies.

(xxi) Branches that have much more cash transactions than usual. (Head Office statistics should detect aberrations in cash transactions.)

(xxii) Customers whose deposits contain counterfeit notes or forged instruments.

(xxiii) Customers transferring large sums of money to or from overseas locations with instructions for payment in cash.

(xxiv) Large cash deposits using night safe facilities, thereby avoiding direct contact with the CCI.

(xxv) Purchasing or selling of foreign currencies in substantial amounts by cash settlement despite the customer having an account with the CCI.

(xxvi) Numerous deposits of small amounts, through multiple branches of the same CCI or by groups of individuals who enter a single branch at the same time. The money is then frequently transferred to another account, often in another country.

2. <u>Transactions through accounts</u>

(xiv) Multiple transactions carried out on the same day at the same branch of a CCI but with an apparent attempt to use different teller.

(xv) Customers who have numerous accounts and pay in amounts of cash to each of them in circumstances in which the total of credits would be a large amount.

(xvi) Any individual or company whose account shows virtually no normal personal or business related activities, but is used to receive or disburse large sums which have no obvious purpose or relationship to the account holder and/or his business (e.g. a substantial increase in turnover on an account).

(xvii) Customers who appear to have accounts with several CCIs within the same locality, especially when the CCI is aware of a regular consolidation process from such accounts prior to a request for onward transmission of the funds.

(xviii) Matching of payments out with credits paid in by cash on the same or previous day.

(xix) Paying in large third party cheques inconsistent with the customer's account activity.

(xx) Accounts that receive relevant periodic deposits and are dormant in other periods.

(xxi) Large cash withdrawals from a previously dormant/inactive account, or from an account which has just received an unexpected large credit from abroad.

(xxii) Greater use of safe deposit facilities by individuals. The use of sealed packets deposited and withdrawn.

(xxiii) Companies' representatives avoiding contact with the branch.

(xxiv) Customers who decline to provide information that in normal circumstances would make the customer eligible for credit or for other services that would be regarded as valuable.

(xxv) Large number of individuals making payments into the same account without an adequate explanation.

(xxvi) An account for which several persons have signature authority, yet these persons appear to have no relation among each other (either family ties or business relationship).

3. Investment related transactions

(vi) Purchasing of securities to be held by the CCI in safe custody, where this does not appear appropriate given the customer's apparent standing.

(vii) Back to back deposit/loan transactions with subsidiaries of, or affiliates of, overseas financial institutions in known non-cooperative jurisdictions.

(viii) Requests by customers for investment management services (either foreign currency or securities) where the source of the funds is unclear or not consistent with the customer's apparent standing.

(ix) Large or unusual settlements of securities transactions in cash form.

(x) Buying and selling of a security with no discernible purpose or in circumstances which appear unusual.

4. Wire transfer/ international activity

(xiv) A credit institution acts as an intermediary for the transfer of funds from a credit institution outside Cyprus to another credit institution also outside Cyprus, without any direct knowledge of the originator and/or the beneficiary of the said funds. The transfer is not in favour of a customer

of the intermediary credit institution or any other credit institution operating in Cyprus.

(xv) Use of Letters of Credit and other methods of trade finance to move money between countries where such trade is not consistent with the customer's usual business.

(xvi) Customers who make regular and large payments, including wire transactions, that cannot be clearly identified as bona fide transactions to, or receive regular and large payments from countries which are commonly associated with the production, processing or marketing of drugs.

(xvii) Building up of large balances, not consistent with the known turnover of the customer's business, and subsequent transfer to account(s) held overseas.

(xviii) Unexplained electronic funds transfers by customers on an in and out basis or without passing through an account.

(xix) Frequent requests for travelers' cheques, foreign currency drafts or other negotiable instruments to be issued.

(xx) Frequent paying in of travellers' cheques, foreign currency drafts particularly if originating from overseas.

(xxi) Numerous wire transfers received in an account when each transfer is below the reporting requirement in the remitting country.

(xxii) Wire transfer activity to/from a non-cooperative jurisdiction without an apparent business reason, or when it is inconsistent with the customer's business or history.

(xxiii) Wire transfers to or for an individual where information on the originator, or the person on whose behalf the transaction is conducted is not provided with the wire transfer.

(xxiv) Many small, incoming wire transfers of funds received, which are almost immediately, all or most are wired to a country in a manner inconsistent with the customer's business or history.

(xxv) Large incoming wire transfers on behalf of a foreign client with little or no explicit reason.

(xxvi) Wire activity that is unexplained, repetitive, or shows unusual patterns. Payments or receipts with no apparent links to legitimate contracts, goods, or services.

5. Correspondent Accounts

(iv) Wire transfers in large amounts, where the correspondent account has not previously been used for similar transfers;

(v) The routing of transactions involving a Respondent Credit Institution through several jurisdictions and/or financial institutions prior to or following entry into the Credit Institution without any apparent purpose other than to disguise the nature, source, ownership or control of the funds;

(vi) Frequent or numerous wire transfers either to or from the correspondent account of a Respondent Credit Institution originating from or going to a non-cooperative jurisdiction.

6. Secured and unsecured lending

(iv) Customers who repay problem loans unexpectedly.

(v) Request to borrow against assets (i.e. a security or a guarantee), held by a third party where the origin of the assets is not known or the assets are inconsistent with the customer's standing (back-to-back loans).

(vi) Requests by a customer for a Credit Institution to provide or arrange finance where the source of the customer's financial contribution to a deal is unclear, particularly where property is involved.

7. Customers who provide insufficient or suspicious information

(vi) A customer is reluctant to provide complete information when opening an account about the nature and purpose of its business, anticipated account activity, prior banking relationships, names of its officers and directors, or information on its business location. He usually provides minimal or misleading information that is difficult or expensive for the CCI to verify.

(vii) A customer provides unusual or suspicious identification documents that cannot be readily verified.

(viii) A customer’s home/business telephone is disconnected.

(ix) The customer's background differs from that which would be expected based on his or her business activities.

(x) A customer makes frequent or large transactions and has no record of past or present employment experience.

8. Activity inconsistent with the customer's business profile

(v) The transaction patterns of a business show a sudden change inconsistent with normal activities.

(vi) A large volume of cashier's cheques, money orders, and/or wire transfers deposited into, or purchased through, an account when the nature of the account holder's business would not appear to justify such activity.

(vii) A retail business has dramatically different patterns of cash deposits from similar businesses in the same general location.

(viii) Ship owning and ship management companies engaged in transactions or activities unconnected to shipping business.

9. Characteristics of the customer or his business activity

(vi) Shared address for individuals involved in cash transactions, particularly when the address is also a business location and/or does not seem to correspond to the stated occupation (for example student, unemployed, self-employed, etc).

(vii) Stated occupation of the customer is not commensurate with the level or type of activity (for example, a student or an unemployed individual who receives or sends large numbers of wire transfers or who makes daily maximum cash withdrawals at multiple locations over a wide geographic area).

(viii) Regarding non-profit or charitable organisations, financial transactions for which there appears to be no logical economic purpose or in which there appears to be no link between the stated activity of the organisation and the other parties in the transaction.

(ix) A safe deposit box is opened on behalf of a commercial entity when the business activity of the customer is unknown or such activity does not appear to justify the use of a safe deposit box.

(x) Unexplained inconsistencies arising from the process of identifying or verifying the customer (for example, regarding previous or current country of residence, country of issue of the passport, countries visited according to the passport, and documents furnished to confirm name, address and date of birth).

APPENDIX 4

Statement of Large Cash Deposits and Funds Transfers

Month: ....., 200...

Reporting CCI: .....

Notes on completion

1. In the event of a query or any difficulty in completion of this return (which cannot be resolved by referring to the explanatory notes for its completion contained in this Directive) please contact the responsible Co-operative Officer of CSSDA.

2. This statement is to be presented to:

Commissioner of the Co-operative Societies Supervision and Development Authority
1423 Nicosia,
Facsimile number: 22-401592
E-mail: commissioner@cssda.gov.cy

within **15 calendar days** from the end of each month.

3. Enter amounts in US dollars and to the nearest thousand omitting 000's

FOR OFFICIAL USE ONLY		
ACTION	**DATE**	**INITIALS**
1. Received	.....	.....
2. Checked	.....	.....
3. Reviewed	.....	.....
4. Entered	.....	.....

PRIVATE AND CONFIDENTIAL

Statement of Large Cash Deposits and Funds Transfers
Month: ..... , 200...
Reporting CCI: .....

1. Cash deposits of foreign currency notes in excess of US$10.000 or equivalent

(a) Total number of transactions _____

(b) Total number of customer accounts affected _____

	US$000
(c) Total amount of US dollar cash deposits in excess of US$10.000	_____
(d) Total amount of cash deposits in other currencies in excess of US$10.000 equivalent	_____
Total	=====

2. Inward funds transfers in favour of customers in excess of US$500.000 or equivalent

(a) Total number of transactions _____

(b) Total number of customer accounts affected _____

	US$000
(c) Total amount of US dollar inward funds transfers in excess of US$500.000	_____
(d) Total amount of inward funds transfers in other currencies in excess of US$500.000 equivalent	_____
Total	=====

3. Outward Funds Transfers in favour of customers in excess of US$500.000 or equivalent

(a)	Total number of transactions	_____
(b)	Total number of customer accounts affected	_____
		US$000
(c)	Total amount of US dollar outward funds transfers in excess of US$500.000	_____
(d)	Total amount of outward fund transfers effected in other currencies in excess of US$500.000 equivalent	_____
Total		=====

4. Reporting of knowledge of suspicions connected with money laundering

(a)	Total number of Internal Money Laundering Suspicion Reports submitted by CCI's employees to the Money Laundering Compliance Officer	_____
(b)	Total number of Money Laundering Compliance Officers' Reports submitted to the Unit for Combating Money Laundering ("MOKAS")	_____

I confirm that the above figures extracted from the CCI's books and records are true and accurate and this statement has been completed in accordance with the explanations and instructions of the Commissioner.

Date:……..

…….

(Money Laundering Compliance Officer)

EXPLANATIONS AND INSTRUCTIONS FOR COMPLETING THE MONTHLY STATEMENT OF LARGE CASH DEPOSITS AND FUNDS TRANSFERS

Introduction

The monthly Statement of Large Cash Deposits and Funds Transfers must provide a brief picture of the total amount of cash deposits of foreign currency notes that CCIs have accepted during the month under review, as well as the total amount of funds transfers - as defined below - in foreign currency.

1. Cash deposits in US Dollars or other foreign currencies

   This item includes cash deposits of foreign currency notes in excess of US$10.000 or equivalent in other foreign currency per transaction.

   Sub-category 1(c) must include the total amount of cash deposits in excess of US$10.000 that the CCI has accepted during the month under review.

   Sub-category (d) must include the total amount of cash deposits in foreign currencies other than the US Dollar in excess of US$10.000 equivalent, which the CCI has accepted during the month under review. This amount must be converted into US Dollars, according to the US Dollar / foreign currency closing exchange rate on the day each transaction was carried out.

   Exemptions:

   Cash deposits of foreign currency notes from the following categories are exempted and should not be included under "Cash deposits" in the monthly statement submitted to the Commissioner :

   (a) Deposits from CCIs licensed by Cyprus Government to carry on financial business in Cyprus.

   (b) Deposits from government and semi-governmental organisations

2. Inward funds transfers in favour of customers in excess of US$500.000 or equivalent

   This item includes inward funds transfers originating from a customer's account kept with a credit institution outside Cyprus in favour of a customer maintaining an account with a CCI which are in excess of US$500.000 or equivalent in other foreign currency per transaction.

   Exemptions:

   The following funds transfers are exempted and should not be included in the monthly statement submitted to the Commissioner:

   a) Transfers from another customer's account maintained with the same CCI; and

   b) Inward funds transfers received by order of customers maintaining accounts with other credit institutions in Cyprus.

3. Outward funds transfers by order of customers in excess of US$500.000 or equivalent

   This item includes outward funds transfers by order of a customer maintaining an account with the CCI in favour of a customer maintaining an account with a credit institution outside Cyprus.

   Exemptions:

   The following funds transfers are exempted and should not be included in the monthly statement submitted to the Commissioner:

   a) Transfers to another customer's account maintained with the same CCI; and

   b) Outward funds transfers made in favour of customers maintaining accounts with other credit institutions in Cyprus.

4. Reporting of knowledge or suspicions connected with money laundering

Sub-category 4(a) must include the number of Internal Money Laundering Suspicion Reports submitted by CCI employees to the Money Laundering Compliance Officer during the month under review.

Sub-category 4(b) must include the number of reports submitted by the Money Laundering Compliance Officer to MOKAS during the month under review.

INTERNAL MONEY LAUNDERING SUSPICION REPORT

REPORTER

Name: ..... Tel.....
Branch/Dept. ..... Fax.....
Position .....

CUSTOMER

Name: ....
Address:..... .....
..... Date of birth .....
Contact/Tel/Fax ..... Occupation/Employer .....
..... Details on employer:.....
Passport No ..... Nationality .....
ID Card No ..... Other ID .....

INFORMATION/SUSPICION

Brief description of activities/transaction ....
....
....

Reason(s) for suspicion ....
....
....

REPORTER'S SIGNATURE ..... **Date** .....

FOR MONEY LAUNDERING COMPLIANCE OFFICER'S USE

Date received..... Time received..... Ref.....
MOKAS Advised Yes/No Date ..... Ref.....

APPENDIX 6

MONEY LAUNDERING COMPLIANCE OFFICER'S INTERNAL EVALUATION REPORT

Reference ..... Customer.... .....

Reporter ..... Branch/Dept. .....

ENQUIRIES UNDERTAKEN (Brief description)

.....

.....

.....

DOCUMENTS RESEARCHED/ATTACHED

.....

.....

.....

DETERMINATION/DECISION

.....

.....

.....

FILE REFERENCE .....

MONEY LAUNDERING
COMPLIANCE OFFICER'S Signature ..... ……Date.....

APPENDIX 7

MONEY LAUNDERING COMPLIANCE OFFICER'S REPORT TO THE UNIT FOR COMBATING MONEY LAUNDERING ("MOKAS")

I. GENERAL INFORMATION

Name of CCI_____
Branch's address where account is kept _____
Date when a business relationship started or "one – off" transaction was carried out _____
Type of account(s) and number(s) _____
_____
_____

II. DETAILS OF NATURAL PERSON(S) AND/OR LEGAL ENTITY(IES) INVOLVED IN THE SUSPICIOUS TRANSACTION(S)

(A) NATURAL PERSONS

	Beneficial owner(s) of the account(s)	Authorised signatory(ies) to the account(s)
Name(s)	_____	_____
	_____	_____
Residential address(es)	_____	_____
	_____	_____
	_____	_____
	_____	_____

Business address(es)	_____	_____
	_____	_____
	_____	_____
	_____	_____
Occupation(s) and Employer(s)	_____	_____
	_____	_____
	_____	_____
	_____	_____
Date and place of birth	_____	_____
	_____	_____
	_____	_____
	_____	_____
Nationality and passport number(s)	_____	_____
	_____	_____
	_____	_____
	_____	_____

(B) LEGAL ENTITIES

Company's name, country
and date of incorporation _____
_____
_____

Business address _____
_____
_____

Main activities_____

	Name	Nationality and passport number	Date of birth	Residential address	Occupation and employer
Registered shareholder(s)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Beneficial shareholder(s) (if different from above)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Directors	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Authorised signatory(ies) to the account(s)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____

III. DETAILS OF SUSPICIOUS ACTIVITY

DEBIT TRANSACTIONS	Type	Amount	Date	Beneficiary	Beneficiary's credit institution

CREDIT TRANSACTIONS	Type	Amount	Date	Originator	Originator's credit institution

(3) OTHER TRANSACTIONS (please explain) _____

(4) KNOWLEDGE/SUSPICION OF MONEY LAUNDERING (please explain, as fully as possible, the knowledge or suspicion connected with money laundering) _____

IV OTHER INFORMATION

– Other accounts and financial services used (deposit and loan accounts, credit cards, off-the-Balance Sheet commitments) _____

– Accounts with other credit institutions in Cyprus or abroad, (if known) _____

– Other customers' accounts kept with the CCI connected with the suspicious transactions _____

MONEY LAUNDERING
COMPLIANCE OFFICER'S Signature ..... Date .....

NB: The above report should be accompanied by photocopies of the following:

4. For natural persons, the relevant pages of customers' passports or ID card evidencing identity.
5. For legal entities, certificates of incorporation, directors and shareholders.
6. All documents relating to the suspicious transaction(s) (i.e. Swift messages, credit institution advice slips, correspondence etc.).

A N N E X 2 C

Guidance Note to brokers, issued by the Securities and Exchange Commission in September 2001 (G-Investment Brokers)

GUIDANCE NOTE

ISSUED BY THE CYPRUS SECURITIES AND EXCHANGE COMMISSION

ON ACCORDANCE WITH SECTION 60(3) OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 1996 ON:

(A) CUSTOMER IDENTIFICATION PROCEDURES

(B) RECORDKEEPING PROCEDURES

(C) RECOGNITION OF SUSPICIOUS TRANSACTIONS

(D) APPOINTMENT AND DUTIES OF MONEY LAUNDERING COMPLIANCE OFFICERS, INTERNAL REPORTING OF SUSPICIOUS TRANSACTIONS AND REPORTING OF SUSPICIOUS TRANSACTIONS TO THE UNIT FOR COMBATING MONEY LAUNDERING

(E) EDUCATION AND TRAINING OF BROKER FIRM EMPLOYEES

SEPTEMBER 2001

INDEX

II. GUIDANCE NOTE ISSUED BY THE CYPRUS SECURITIES AND EXCHANGE COMMISSION UNDER SECTION 60(3) OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 1996

THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW (LAW 61 (I) OF 1996)

1. MAIN PROVISIONS

1.1 Purposes

The main purpose of Law 61(I) of 1996 (hereinafter to be referred to as "the Law") is to define and criminalise the laundering of the proceeds generated from all serious criminal offences and provide for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes. Upon the enactment of the Law, the Confiscation of Proceeds of Trafficking of Narcotic Drugs and Psychotropic Substances Law (Law 39(I) of 1992) which dealt only with drug money laundering, was repealed as all its main provisions have been incorporated in the new legislation. The main provisions of the Law, which are of direct interest to brokerage firms and their employees, are as follows:

1.2 Prescribed offences (Section 3 of the Law)

The Law has effect in respect of offences which are referred to as "prescribed offences" and which comprise of :

(a) money laundering offences, and

(b) predicate offences

1.3 Money Laundering offences (Section 4 of the Law)

Under the Law, every person who knows, or ought to have known that any kind of property is proceeds from a predicate offence is guilty of an offence if he carries out any of the following:

(i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a predicate offence to evade the legal consequences of his actions;

(ii) conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property;

(iii) acquires, possesses or uses such property;

(iv) participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counseling or advice for the commission of any of the offences referred to above;

(v) provides information with respect to investigations that are being performed for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence.

Commitment of the above offences is punishable on conviction by a maximum of fourteen (14) years imprisonment or a fine or both of these penalties, in the case of a person knowing that the property is proceeds from a predicate offence, or by a maximum of five (5) years imprisonment or a fine or both of these penalties, in the case of ought to have known.

It is a defense, under section (26) of the Law, in criminal proceedings against a person in respect of assisting another to commit a money laundering offence that he **intended to disclose** to a police officer or the Unit for Combating Money Laundering (hereinafter to be referred to as "the Unit") his suspicion or belief that the agreement or arrangement related to proceeds from a predicate offence and that his failure to make the disclosure was based on reasonable grounds. Also, under section (26) of the Law, any such disclosure should **not be treated as a breach of any restriction imposed by contract**.

In the case of employees of persons whose activities are supervised by one of the authorities established under Section (60), the Law recognises that the **disclosure may be made to a competent person** (e.g. a Money Laundering Compliance Officer) in accordance with established internal procedures and such disclosure shall have the same effect as a disclosure made to a police officer or the Unit.

1.4 Predicate offences (Section 5 of the Law)

Criminal offences as a result of which proceeds were generated that may become the subject of a money laundering offence, as defined above, are the following:

(a) premeditated and attempted murder;

(b) drug trafficking;

(c) illicit importation, exportation, purchasing, selling, disposition, possession, transfer and trafficking of arms and munitions;

(d) importation, exportation, purchasing, selling, disposition, possession, transfer of stolen objects, pieces of art, of antiquities and tokens of cultural heritage;

(e) the abduction of a minor or a mentally retarded person or of any other person against his will for any unlawful purpose;

(f) the detachment of money or of property of any other kind by use or threat of use of force or other illicit act;

(g) offences relating to corruption of public or private servants;

(h) living on the earnings of prostitution and offences associated with the procurating and induction of women and minors;

(i) offences contrary to the provisions of the Convention for the Natural Protection of Nuclear Material (Ratification and Other Provisions) Law of 1997; and

(j) offences contrary to the provisions of the Convention for the Prohibition of Chemical Weapons (Ratification) Law of 1998.

For the purposes of money laundering offences it does not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not (Section 4(2) of the Law).

1.5 Failure to report (Section 27 of the Law)

It is an offence for any person 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 the Unit. Failure to report in these circumstances is punishable on conviction by a maximum of five (5) years imprisonment or a fine not exceeding Cy£3.000 (three thousand pounds) or both of these penalties.

1.6 Tipping - off (Section 48 of the Law)

Further to the offence (v) under the section on money laundering offences above, it is also an offence for any person to prejudice the search and investigation of money laundering offences by making a disclosure, either to the person who is the subject of a suspicion or any third party, knowing or suspecting that the authorities are carrying out such an investigation and search. "Tipping-off" under these circumstances is punishable with imprisonment up to five (5) years.

1.7 Relevant financial business (Section 61 of the Law)

The Law recognises the important role of the financial sector for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all institutions, including brokers, engaged in "relevant financial business", which is defined to include the activities listed below:

(i) Deposit taking;

(ii) Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transactions including forfaiting);

(iii) Finance leasing, including hire purchase financing;

(iv) Money transmission services;

(v) Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);

(vi) Guarantees and commitments;

(vii) Trading for own account or for account of customers in:-

(f) money market instruments (cheques, bills, certificates of deposits etc.);

(g) foreign exchange;

(h) financial futures and options;

(i) exchange and interest rate instruments;

(j) transferable instruments;

(viii) Underwriting share issues and the participation in such issues;

(ix) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues including the areas of mergers and acquisitions of business;

(x) money broking;

(xi) Investment business, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investment" includes long term insurance contracts, whether linked long-term or not;

(xii) Safe custody services;

(xiii) Custody and trustee services in relation to stocks.

1.8 Procedures to prevent money laundering (Section 58 of the Law)

The Law requires all persons carrying on financial business, as defined above, to establish and maintain specific policies and procedures to guard against their business and the financial system in general being used for the purposes of money laundering. In essence these procedures are designed to achieve two purposes: firstly, to facilitate the recognition and reporting of suspicious transactions and, secondly, to ensure through the strict implementation of the "know-your-customer" principle and the maintenance of adequate record keeping procedures, should a customer come under investigation, that the broker is able to provide its part of the audit trail. The Law requires that all persons engaged in relevant financial business institute a number of procedures. In fact, it is illegal for any person, in the course of relevant financial business, to form a business relationship or carry out an one-off transaction with or for another, unless the following procedures are instituted:

- **Identification procedures of customers**;
- **Record keeping procedures** in relation to customers' identity and their transactions;
- **Internal reporting procedures** to a competent person - (e.g. a Money Laundering Compliance Officer) appointed to receive and consider information that give rise to knowledge or suspicion that a customer is engaged in money laundering activities;
- **Other internal control and communication procedures** for the purpose of forestalling and preventing money laundering;
- **Measures for making employees aware** of the above procedures to prevent money laundering and of the legislation relating to money laundering; and
- **Provision of training to their employees** in the recognition and handling of transactions suspected to be associated with money laundering.

The Directors, Managers, Secretary and other officers of a body corporate as well as the body corporate itself, who fail to comply with the above requirements commit an offence punishable on conviction by a maximum of two (2) years imprisonment or a fine of Cy£2.000 (two thousand pounds) or both of these penalties.

In determining compliance with section (58) of the Law, a Court may take into account any relevant **supervisory or regulatory guidance** issued by the supervisory authority concerned and, where no guidance applies, **any other relevant instructions** issued by the supervisory body that regulates the trade, profession and business carried on by that person.

The purpose of the guidance notes issued by the Cyprus Securities and Exchange Commission, as the supervisory authority of brokers in Cyprus, is to provide a practical interpretation of the requirements of the Law in respect to business carried on by brokers and to indicate good brokerage practice.

Where a supervisory authority is of the opinion that a person falling within its responsibility has failed to comply with the provisions of the Law relating to financial business it has a legal obligation to refer the matter to the Attorney General. Where a supervisory authority obtains information and is of the opinion that any person may have been engaged in money laundering then it has a legal obligation to disclose the relevant information to the Unit.

1.9 Supervisory authorities (Section 60 of the Law)

The Council of Ministers, by its decision of 7 November, 1997, designated, in accordance with Section 60 of the Law, the Cyprus Securities and Exchange Commission as the **supervisory authority** for the Cyprus capital market. In this regard, the Cyprus Securities and Exchange Commission has, therefore, been assigned with the duty of assessing compliance of all brokers with the special provisions of the Law in respect of their business.

The Cyprus Securities and Exchange Commission, in its capacity as supervisory authority, may issue **guidance notes** to all brokers in Cyprus in order to assist them in achieving compliance with the Law.

1.10 Confiscation orders (Section 8 of the Law)

Courts in Cyprus are empowered to make a confiscation order, on application by the Attorney General, on the assets of a person, including funds held on deposit with banks, if they determine that a person has benefited from committing a predicate offence. A confiscation order can be made before a person is sentenced or otherwise dealt with in respect of any predicate offence.

1.11 Restraint and charging orders (Sections 14 and 15 of the Law)

Courts in Cyprus may also, by a **restraint order**, prohibit any person from dealing with any realisable property. In addition, they may also make a **charging order**, under section 15 of the Law, on realisable property (immovable property and securities).

1.12 Orders for the disclosure of information (Section 45 of the Law)

Courts in Cyprus may, on application by the investigator, make an order for the disclosure of information by a person who appears to the Court to be in possession of the information to which the application relates. Such an order applies **irrespective of any legal or other provision which creates an obligation for the maintenance of secrecy or imposes any constraints on the disclosure of information**. As already stated under "tipping off", a person who makes any disclosure which is likely to obstruct or prejudice an investigation into the commitment of a predicate offence, knowing or suspecting that the investigation is taking place, is guilty of an offence.

1.13 Service of orders to a supervisory authority (Section 71 of the Law)

Service of an order made under this Law to a supervisory authority shall be deemed as service to all persons who are subject to the control of the supervisory authority. Provided that the supervisory authority concerned shall be obliged to notify forthwith all the persons subject to its control about the order made under the Law.

1. GUIDANCE NOTE ISSUED BY THE CYPRUS SECURITIES AND EXCHANGE COMMISSION UNDER SECTION 60(3) OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 1996

2. CUSTOMER IDENTIFICATION PROCEDURES

2.1 Introduction

2.1.1 The Law requires institutions such as brokers carrying on financial business to maintain customer identification procedures in accordance with S.62-65 of the Law. The essence of these requirements is that, except where the Law states that customer identification need not be made, a broker must verify the identity of a prospective customer.

2.1.2 The Law does not specify what may or may not represent adequate evidence of identity. The Cyprus Securities and Exchange Commission as the supervisory authority for brokers issues this Guidance Note to brokers under the provisions of S.60 of the Law in order to set out the practice to which brokers should adhere in order to comply with the requirements of the Law on the subject of customer identification.

2.1.3 The Law requires that identification must be carried out as soon as is reasonably practicable after contact is first made between a broker and a prospective customer. What constitutes "reasonably practicable" time span must be determined in the light of all the circumstances including the nature of the business, the geographical location of the parties and whether it is practical to obtain the evidence before commitments are entered into or money changes hands. As a rule, brokers are expected to seek and obtain satisfactory evidence of identity of their customers prior to the execution of any transactions whatsoever.

2.1.4 Records of the supporting evidence and methods used to verify identity must be retained for five years after the relevant transaction or the end of the business relationship.

2.1.5 A broker should establish to its satisfaction that it is dealing with a real person (natural or legal) and verify the identity of those persons who have power to operate on behalf of the customer.

2.1.6 Whenever possible, the prospective customer should be interviewed personally.

2.1.7 The verification procedures necessary to establish the identity of the prospective customer should basically be the same whatever type of service is required. The best identification documents possible should be obtained from the prospective customer i.e. those that are the most difficult to obtain illicitly. However, it must be appreciated that no single form of identification can be fully guaranteed as genuine or representing correct identity and the identification process will generally need to be cumulative. For practical purposes a person's address is an essential part of identity and thus there needs to be separate verification of the current permanent address of the prospective customer.

2.1.8 The evidence of identity required should be obtained from documents issued by reputable sources. Where practical, file copies of the supporting evidence should be retained. Alternatively the reference numbers and other relevant details should be recorded.

2.1.9 In respect of joint ownership of titles where the surname and/or address of the joint holders differ, the name and address of all holders, not only the first named, should normally be verified in accordance with the procedures set out below.

2.2 Cyprus Resident Personal Customers

2.2.1 The following information should be obtained from prospective Cyprus resident customers:

(i) true name and/or names used;

(ii) current permanent Cyprus address, including postal code;

(iii) date of birth;

(iv) profession or occupation.

2.2.2 Ideally the name or names used should be verified by reference to a document obtained from a reputable source which bears a photograph. Wherever possible a

current valid full passport or national identity card should be requested and the number registered.

There are obviously a wide range of other documents that customers might produce as evidence of their identity. It is for each broker firm to decide the appropriateness of such documents in the light of other security procedures operated.

2.2.3 In addition to the name verification, it is important that the current permanent address should also be verified. Some of the best means of verifying address are:

(i) requesting sight of a recent utility bill, local authority tax bill, bank statement (to guard against forged or counterfeit documents care should be taken to check that the documents offered are originals);

(ii) checking a local telephone directory.

2.2.4 In addition to the above, an introduction from a respected customer personally known to the Manager, or from a trusted member of staff, may assist the verification procedure. Details of the introduction should be recorded on the customer's file.

2.3 Non-Cyprus Resident Personal Customers

2.3.1 For prospective customers who are not normally resident in Cyprus, it is important that, as far as possible, verification procedures similar to those for Cyprus resident customers should be carried out and the same information obtained.

2.3.2 For those prospective non-Cyprus resident customers who make face to face contact it is recognised that address verification procedures may be difficult. However passports or national identity cards will always be available and the relevant reference numbers should be recorded. In addition, brokers are advised, if in any doubt, to seek to verify identity with a reputable credit or financial institution in the customer's country of residence.

2.3.3 For prospective non-resident customers who come into contact with a broker from abroad, it will not be practical to seek sight of a passport or national identity card. Verification of identity should therefore be sought from a reputable credit or financial institution in the applicant's country of residence. Verification details should be requested covering true name or names used, current permanent address and verification of signature.

2.4 Accounts for clubs, societies and charities

In the case of transactions in the names of clubs, societies and charities, a broker should satisfy itself as to the legitimate purpose of the organisation by, for example, requesting sight of the constitution. Where there is more than one signatory to the orders given or to be given, the identity of at least two signatories should be verified initially and, when signatories change, care should be taken to ensure that the identity of at least two current signatories has been verified.

2.5 Accounts for unincorporated businesses

2.5.1 In the case of partnerships and other unincorporated businesses whose partners/directors are not known to the broker, the identity of at least two partners should be verified in line with the requirements for personal customers. Furthermore, in the case of partnerships, brokers should also obtain the original or copy of the certificate of registration.

2.5.2 In cases where a formal partnership arrangement exists, a mandate from the partnership authorising the opening of an account and conferring authority on those who will give orders for transactions, should be obtained.

2.6 Accounts for corporate customers

2.6.1 Because of the difficulties of identifying beneficial ownership, corporate accounts are one of the most likely vehicles for money laundering, particularly when fronted by a legitimate trading company.

2.6.2 Before a business relationship is established, measures should be taken by way of a company search and/or other commercial enquiries to ensure that the applicant company has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated. In addition, if changes to the company structure or ownership occur subsequently, or suspicions are aroused by a change in the profile of payments through a company account, further checks should be made.

2.6.3 In the case of accounts to be opened for locally incorporated companies, identification should aim at verifying the identity of:

(i) the company;

(ii) at least one director;

(iii) all those persons duly authorised to operate the account;

(iv) in the case of private companies, the major beneficial shareholders.

The company's business profile in terms of the nature and scale of its activities must also be established.

Where the beneficial owners cannot be established, the broker should treat such cases in the same manner as if it was dealing with a proposal to enter into as business relationship in the names of trustees or nominees and shall apply the procedure prescribed in paragraph 2.8 below.

2.6.4 The following documents must be obtained:

(i) the original or certified copy of the Certificate of Incorporation;

(ii) memorandum and articles of association;

(iii) a resolution of the Board of Directors to enter into transactions on the stock market and conferring authority to those who will act for the customer;

(iv) where deemed appropriate under the circumstances, a search of the file at the Companies' Registry should be made;

(v) in the case of locally incorporated International Business Companies or overseas companies registered in Cyprus, any individuals other than Cypriot residents who need to be identified in connection with such companies must be identified in accordance with the procedure for non-Cyprus resident customers.

2.7 Accounts in the names of companies whose shares are in the form of bearer

2.7.1 Brokers may accept as customers companies whose own shares or those of their holding companies (if any) have been issued or may be issued in the form of bearer shares **provided** that the prospective corporate customer fulfills one of the undermentioned prerequisites:

(i) Its shares are traded on a recognised stock exchange;

(ii) It is authorised as a collective investment scheme, under the laws of properly regulated and supervised jurisdictions;

(iii) Its shares are beneficially owned or controlled by governments or governmental undertakings;

(iv) Its shares are beneficially owned by multinational corporations with a good international reputation and a proven track record of financial stability.

2.7.2 Brokers may also establish business relationships with companies whose own shares or those of their holding companies (if any) have been issued or may be issued to bearer and do **not** meet the prerequisites mentioned in the previous paragraph **provided** that:

1) The identity and background of the beneficial owner(s) / director(s) of the company is ascertained before entering into a business relationship.

2) During the stage of examining the application for entering into a business relationship, the director(s) or lawyer or accountant / auditor who has introduced the prospective customer is asked to provide an estimation of the likely turnover of transactions. The bigger the estimated turnover, the more reluctant the broker should be.

3) The broker concerned takes physical custody of the bearer share certificates while the relationship is maintained or obtains a confirmation from a bank in Cyprus that it has under its own custody the bearer share certificates and, in case of their release, shall inform it accordingly.

4) When the relationship is established, it should be closely monitored. At least twice a year, a review should be carried out and a note prepared summarising the results of the review which must be kept in the customer's file. At frequent intervals, the broker should compare the estimated against the actual turnover of transactions. Any serious deviation, should be investigated, not only for possible action by the broker in relation to the particular connection, but also to gauge the reliability of the lawyer or the accountant / auditor who has introduced the customer.

5) At least once every year, the lawyer or accountant/auditor who has introduced the customer confirms that the capital base and the shareholding structure of the company or that of its holding company (if any) has not been altered by the issue of new bearer shares or the cancellation of existing ones.

6) When the company's beneficial ownership changes, then the broker should consider whether it is advisable to allow the account to continue operating.

2.8 Companies with shares in the names of trustees or nominees

A broker, in addition, to establishing the identity of the beneficial owners/shareholders, must always establish the identity of a trustee or nominee acting on account of a third party in accordance with the identification procedures for personal or corporate customers as the case may be.

3. RECORD KEEPING PROCEDURES

3.1 Introduction

The Law requires, under section (66), brokers to retain records concerning customer identification and details of transactions for use as evidence in any possible investigation into money laundering. This is an essential constituent of the audit trail procedures that the Law seeks to establish.

3.2 Customer identification records

3.2.1 The Law specifies, under section (66), that, where evidence of a person's identity is required, the records retained must include the following:

(i) A record that indicates the **nature of a person's identity** obtained in accordance with the procedures provided in the Law and which comprises either a copy of the evidence or which provides sufficient information to enable details as to a person's identity to be re-obtained.

(ii) A record containing **details relating to all transactions** carried out by that person in the course of relevant financial business.

3.2.2 The prescribed period is **at least five years** commencing with the date on which the relevant business or all activities taking place in the course of transactions were completed.

3.2 3 In accordance with the Law, the date when the relationship with the customer has ended is the date of:

(i) the carrying out of an one-off transaction or the last in the series of one-off transactions; or

(ii) the ending of the business relationship i; or

(iii) if the business relationship has not formally ended, the date on which the last transaction was carried out.

3.2.4 The Unit needs to be able to compile a satisfactory audit trail for suspected laundered money and to be able to establish a financial profile of any suspect account. To satisfy this requirement, the following information may be sought as part of an investigation into money laundering:

(xxxiii) the beneficial owner(s) of the account (it is reminded that where trustees or private companies registered with nominee shareholders are involved, the verification procedures prescribed in the Section of this Guidance Note dealing with "Customer Identification Procedures", should be followed);

(xxxiv) details of all transactions carried out in the name of the customer;

(xxxv) for selected transactions:

- the origin of the funds;
- the form in which the funds were placed or withdrawn i.e. cash, cheques, wire transfers etc.;
- the identity of the person undertaking the transaction;
- the destination of the funds;
- the form of instructions and authority.

3.3 Format of Records

3.3.1 It is recognised that copies of all material cannot be retained indefinitely. Prioritisation is, therefore, a necessity. Although the Law prescribes a period of retention, where the records relate to on-going investigations, they should be retained until it is confirmed by the Unit that the case has been closed.

3.3.2 The retention of hard-copy evidence creates excessive volume of records to be stored. Therefore, retention may be in other formats other than original documents, such as electronic or other form. The overriding objective is for the brokers to be able to retrieve the relevant information without undue delay and in a cost effective manner.

3.3.3 When setting a document retention policy, brokers are, therefore, advised to consider both the statutory requirements and the potential needs of the Unit.

3.3.4 Section (47) of the Law provides that where relevant information is contained in a computer, the information must be presented in a visible and legible form which can be taken away by the Unit.

4. RECOGNITION OF SUSPICIOUS TRANSACTIONS

4.1 Recognition of suspicious transactions

Although it is difficult to define a suspicious transaction, as the types of transactions which may be used by money launderers are almost unlimited, a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account. It is, therefore, imperative that brokers know enough about their customers' business in order to recognise that a transaction or a series of transactions is unusual.

4.2 Examples of suspicious transactions

A potential money launderer will attempt to use any service offered by a broker as a means of changing the nature of money from dirty to clean. This process could possibly range from a simple cash transaction to much more sophisticated and complex transactions. A list containing examples of what might constitute suspicious transactions, is attached as **Appendix 1** to this Guidance Note. This list is not all inclusive but can help brokers recognising the most basic ways through which money can be laundered. The possible identification of any of the types of transactions listed below should prompt further investigation by seeking additional information and/or explanations as to the source and origin of the funds and the nature of the underlying transaction.

4.3 Submission of prudential returns

4.3.1 Brokers are urged not to accept cash for the settlement of transactions on the stock market. In cases where the acceptance of cash cannot be avoided brokers must include on the return attached as Appendix 2, the number of all transactions in cash exceeding £10.000 each, as well as the total number of such transactions. This return must be submitted to the Cyprus Securities and Exchange Commission on a monthly basis.

4.3.2 Brokers are required to proceed with the adjustment of their computerised accounting systems so as to be able to identify instantly all cash transactions in excess of the limit of £10.000 so as to enable the reporting of complete and accurate information in the monthly return and will also enhance the ability of brokers to identify and monitor transactions of a suspicious nature.

5. THE APPOINTMENT AND DUTIES OF MONEY LAUNDERING COMPLIANCE OFFICERS, INTERNAL REPORTING OF SUSPICIOUS TRANSACTIONS AND REPORTING OF SUSPICIOUS TRANSACTIONS TO THE UNIT FOR COMBATING MONEY LAUNDERING

5.1 Introduction

The Law requires (section 27) that any knowledge or suspicion of money laundering should be promptly reported to a Police Officer or to the Unit. The Law also provides, under section (26), that such a disclosure cannot be treated as a breach of the duty of confidentiality owed by brokers to their customers by virtue of the contractual relationship existing between them.

The Law also recognises, under section (26), that suspicions may only be aroused after the transaction has been completed and, therefore, allows subsequent disclosure provided that such disclosure is made on the person's concerned initiative and as soon as it is reasonable for him to make it.

The Law, in accordance with sections (58) and (67), requires that brokers institute internal reporting procedures and that they identify a person (hereinafter to be referred to as "the Money Laundering Compliance Officer") to whom the broker's employees should report their knowledge or suspicion of transactions involving money laundering. In case of broker employees, the Law recognises, under section (26), that internal reporting to the Money Laundering Compliance Officer will satisfy the reporting requirement imposed by virtue of section (27) i.e. once a bank employee has reported his/her suspicion to the Money Laundering Compliance Officer he or she is considered to have fully satisfied his/her statutory requirements, under section (27).

5.2 Appointment of a Money Laundering Compliance Officer

In accordance with the provisions of the Law, all brokers should proceed with the appointment of a Money Laundering Compliance Officer. The person so appointed should be sufficiently senior to command the necessary authority.

Brokers may also wish to appoint Assistant Money Laundering Compliance Officers by division, district or otherwise for the purpose of passing internal suspicion reports to the Chief Money Laundering Compliance Officer.

Brokers should communicate to the Cyprus Securities and Exchange Commission the names and positions of persons whom they appoint, from time to time, to act as Money Laundering Compliance Officers.

5.3 Duties of Money Laundering Compliance Officers

The role and responsibilities of Money Laundering Compliance Officers, including those of Chief and Assistants, should be clearly specified by brokers and documented in appropriate manuals and/or job descriptions.

As a minimum, the duties of a Money Laundering Compliance Officer should include the following:

a) To receive information from the broker's employees which is considered by the latter to be knowledge of money laundering activities or which is cause for suspicion connected with money laundering. A specimen of such an internal report (hereinafter to be referred to as "Internal Money Laundering Suspicion Report") is attached, as **Appendix 3**, to this Guidance Note. All such reports should be kept on-file.

b) To validate and consider the information received as per paragraph (a) above by reference to any other relevant information and discuss the circumstances of the case with the reporting employee concerned and, where appropriate, with the employee's superior(s). The evaluation of the information reported to the Money Laundering Compliance Officer should be recorded and retained on file. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Internal Evaluation Report") is attached, as **Appendix 4**, to this Guidance Note.

c) If following the evaluation described in paragraph (b) above, the Money Laundering Compliance Officer decides to notify the Unit, then he should complete a written report and submit it to the Unit the soonest possible. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Report to the Unit for Combating Money Laundering") is attached, as **Appendix 5**, to this Guidance Note. All such reports should be kept on file.

d) If following the evaluation described in paragraph (b) above, the Money Laundering Compliance Officer decides **not** to notify the Unit then he

should fully explain the reasons for such a decision on the "Money Laundering Compliance Officer's Internal Evaluation Report" which should, as already stated, be retained on file

e) The Money Laundering Compliance Officer acts as a first point of contact with the Unit, upon commencement of and during an investigation as a result of filing a report to the Unit under (c) above

f) The Money Laundering Compliance Officer responds to requests from the Unit and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with the Unit.

g) The Money Laundering Compliance Officer provides advice and guidance to other employees of the broker on money laundering matters.

h) The Money Laundering Compliance Officer acquires the knowledge and skills required which should be used to improve the broker's internal procedures for recognising and reporting money laundering suspicions.

i) The Money Laundering Compliance Officer determines whether the broker's employees need further training and/or knowledge for the purpose of learning to combat money laundering.

j) The Money Laundering Compliance Officer is primarily responsible, in consultation with the broker's senior management and the broker's Internal Audit Department, towards the Cyprus Securities and Exchange Commission, which is specifically recognised by the Law to be the supervisory authority of brokers on money laundering matters, in implementing the various Guidance Notes issued by the Cyprus Securities and Exchange Commission under section 60(3) of the Law as well as all other instructions/ recommendations issued by the Cyprus Securities and Exchange Commission, from time to time, on the prevention of the criminal use of the securities market for the purpose of money laundering. The Money Laundering Compliance Officer also maintains the overall responsibility for the timely and correct submission to the Cyprus Securities and Exchange Commission of the Monthly Statement of Large Cash Transactions, by explaining the relevant Cyprus Securities and Exchange Commission instructions for the completion of the above return to the broker's employees who are responsible for the preparation of the return. The Money Laundering Compliance Officer is also expected to be

able to deal with all enquiries that the Cyprus Securities and Exchange Commission may wish to raise in connection with the information included in the above return.

k) The Money Laundering Compliance Officer is expected to avoid errors and/or omissions in the course of discharging his duties and, most importantly, when validating the reports received on money laundering suspicions, as a result of which a report to the Unit may or may not be filed. He is also expected to act honestly and reasonably and to make his determination in good faith. In this connection, it should be emphasised that the Money Laundering Compliance Officer's decision may be subject to the subsequent review of the Cyprus Securities and Exchange Commission which, in the course of examining and evaluating the anti-money laundering procedures of brokers and their compliance with the provisions of the Law, is legally empowered to report to the Attorney General a broker which, in its opinion, does not comply with the provisions of the Law, or to the Unit where it forms the opinion that actual money laundering has been carried out. Provided that a Money Laundering Compliance Officer acts in good faith in deciding not to report a suspicion to the Unit, no report will be made by the Cyprus Securities and Exchange Commission to the Attorney General, if it is later found that his judgment in connection with the above suspicion was wrong.

5.4 Internal Organisational Procedures

Brokers should make the necessary arrangements in order to introduce measures designed to assist the functions of the Money Laundering Compliance Officer and the reporting of suspicious transactions by employees. Brokers have an obligation to ensure:

- that all their employees know to whom they should be reporting money laundering knowledge or suspicion; and

- that there is a clear reporting chain under which money laundering knowledge or suspicion is passed without delay to the Chief Money Laundering Compliance Officer either directly or through the Assistant Money Laundering Compliance Officer.

5.5 Disclosure procedures

All Money Laundering Compliance Officers' Reports to the Unit for Combating Money Laundering should be sent or delivered at the following address:

Unit for Combating Money Laundering,
Office of the Attorney General of the Republic,
1 Apelli Street,
CY-1403 Nicosia.
Tel.: 02-302123
Fax: 02-445080
Contact person:
Mrs Eva Rossidou – Papakyriakou, Head of the Unit for Combating Money Laundering.

The form attached to this Guidance Note, as Appendix 5, should be used and followed at all times when submitting a report to the Unit. Disclosures can be forwarded to the Unit by post or by facsimile message or by hand.

5.6 Co-operation with the Unit

Having made a disclosure report, a broker **may** subsequently wish to terminate its relationship with the customer concerned for commercial or risk avoidance reasons. In such an event, however, brokers should exercise particular caution, as per section (48) of the Law, not to alert the customer concerned that a disclosure report has been made. Close liaison with the Unit should, therefore, be maintained in an effort to avoid any frustration to the investigations conducted.

After making the disclosure, brokers are expected to adhere to any instructions given by the Unit and, in particular, as to whether or not to continue the relation with the suspected customer or other instructions as may be deemed necessary.

6. EDUCATION AND TRAINING

The Law requires, under section (58), that adequate training be provided to all broker employees in the recognition and handling of transactions suspected to be associated with money laundering. As a means of assistance for the discharge of the said legal obligation, brokers should refer to the section of this Guidance Note which deals with the **"Recognition of Suspicious Transactions"**. In this regard, brokers are expected to establish a program of continuous training for the various levels of their staff and to all their employees in general.

Also, under section (58) of the Law, brokers are required to take appropriate measures to **make their employees aware** of:

1. The policies and procedures put in place to prevent money laundering including those for identification, record keeping and internal reporting;

2. The legislation relating to money laundering.

The effectiveness of the procedures and recommendations contained in this Guidance Note and other relevant instructions issued by the Cyprus Securities and Exchange Commission on the subject of money laundering depends on the extent to which staff of brokers appreciate the serious nature of the background against which the Law has been enacted and are fully aware of their responsibilities. Staff must also be aware of their own personal statutory obligations. They can be personally liable for failure to report information in accordance with internal procedures. All staff must, therefore, be encouraged to co-operate and to provide a prompt report of any knowledge or suspicion of transactions involving money laundering. It is, therefore, important that brokers introduce comprehensive measures to ensure that staff are fully aware of their responsibilities.

APPENDIX 1

EXAMPLES OF SUSPICIOUS TRANSACTIONS

1. New customers

(i) The establishment of the identity of a customer proves to be particularly difficult and he appears to be unwilling to provide information as to his/ her identity.

(ii) There are unusual difficulties or delays in the submission of financial statements or other documents for a corporate customer.

(iii) There is no visible justification for a customer using the services of a particular broker. For example the customer is situated far away from the particular broker and in a place where he could be served by another broker.

(iv) A customer has been introduced by a foreign bank or another customer, where both the introduced customer and the person or bank introducing him come from a jurisdiction where conditions of drug production and trafficking prevail.

(v) Any transaction where the other party is unknown.

2. Unusual transactions

(i) The customer engages in frequent transactions of a large number of titles and in numerous Exchanges worldwide.

(ii) The transactions are not in conformity with the usual practice of the customer or his business activities.

(iii) There are frequent transactions in the same title without obvious reason and in conditions that appear unusual (churning).

(iv) There are frequent small purchases of a particular title by a customer who settles in cash, and then the total number of titles is sold in one transaction with settlement in cash or with the proceeds being transferred,

with the customer's instructions, in an account other than his usual account.

(v) Any transaction the nature, size or frequency appear to be unusual, e.g. cancellation of an order, particularly after the deposit of the consideration.

(vi) Transactions which are not in line with the conditions prevailing in the market, in relation, particularly, with the size of the order and the frequency.

3. Settlement

(i) The settlement of any transaction in cash, but in particular large transactions.

(ii) Settlement by cheque issued by a third party other than the person giving the order.

(iii) Instructions for payment to a third party which has no obvious connection with the person giving the order.

APPENDIX 2

Statement of Large Cash Transactions

Month: ....., 200...

Reporting Broker: .....

4. This statement is to be presented to:

   Cyprus Securities and Exchange Commission,
   32 Stasicratous str,
   P.O. Box 24996,
   CY-1306 Nicosia.

within **15 calendar days** from the end of each month.

5. Enter amounts in CY£ and to the nearest thousand.

FOR OFFICIAL USE ONLY		
ACTION	**DATE**	**INITIALS**
5. Received	.....	.....
6. Checked	.....	.....
7. Reviewed	.....	.....
8. Entered	.....	.....

PRIVATE AND CONFIDENTAL

Statement of Large Cash Transactions
Month: ..... , 200...
Reporting Broker: .....

1. Transactions in cash

(a) Total number of transactions in cash in excess of £10.000 _____

(b) Total number of customer accounts affected _____

£'000

(c) Total value of transactions in cash in excess of £10.000 _____

2. Reporting of knowledge of suspicions connected with money laundering

(a) Total number of Internal Money Laundering Suspicion Reports submitted by broker employees to the Money Laundering Compliance Officer _____

(b) Total number of Money Laundering Compliance Officers' Reports submitted to the Unit for Combating Money Laundering _____

We confirm that the above is a true extract from our books and that this statement has been completed in accordance with the explanations and instructions of the Cyprus Securities and Exchange Commission and to the best of our knowledge.

..... (Date)

..... (Money Laundering Compliance Officer)

EXPLANATIONS AND INSTRUCTIONS FOR COMPLETING THE MONTHLY STATEMENT OF LARGE CASH TRANSACTIONS

1. Transactions in Cash

The monthly Statement of Large Transactions in Cash must give an overall picture of all cash transactions in Cyprus pounds, that are undertaken by Members of the Stock Exchange on behalf of their customers (either resident or non resident) during the month under review.

In this statement should be reflected all transactions in excess of CY£10.000 each.

Sub-category 1(a) must include the total number of transactions in cash which, on an individual basis, were in excess of CY£10.000. Sub-category 1(b) should include the total number of customers that are affected by the transactions reported under 1(a). For example, if a customer gives three different purchase orders each for CY£12.000, then:

(a) Total number of transactions (3)

(b) Total number of customers affected by these transactions (1)

(c) Total value of transactions in excess of £10.000 (£36.000)

2. Reporting of knowledge or suspicions connected with money laundering

Sub-category 2(a) must include the number of Internal Money Laundering Suspicion Reports submitted by Member employees to the Money Laundering Compliance Officer during the month under review.

Sub-category 2(b) must include the number of reports submitted by the Money Laundering Compliance Officer to the Unit for Combating Money Laundering during the month under review.

APPENDIX 3

INTERNAL MONEY LAUNDERING SUSPICION REPORT

REPORTER

Name: ..... Tel.....
Branch/Dept. ..... Fax.....
Position .....

CUSTOMER

Name: ....
Address:..... .....
..... Date of birth .....
Contact/Tel/Fax ..... Occupation/Employer .....
....
Passport No ..... Nationality.....
ID Card No ..... Other ID .....

INFORMATION/SUSPICION

Information/Transaction ....
....
....

Reason(s) for suspicion ....
....
....

REPORTER'S SIGNATURE ..... Date .....

FOR MONEY LAUNDERING COMPLIANCE OFFICER'S USE

Date received.....Time received.....Ref.....
Unit Advised.....Yes/No Date.....Ref.....

APPENDIX 4

MONEY LAUNDERING COMPLIANCE OFFICER'S
INTERNAL EVALUATION REPORT

Reference ..... Customer.... .....

Reporter ..... Branch/Dept. .....

ENQUIRIES UNDERTAKEN

.....

.....

.....

DOCUMENTS RESEARCHED/ATTACHED

.....

.....

.....

DETERMINATION/DECISION

.....

.....

.....

FILE REFERENCE .....

MONEY LAUNDERING
COMPLIANCE OFFICER'S Signature ..... Date .....

APPENDIX 5

MONEY LAUNDERING COMPLIANCE OFFICER'S REPORT TO THE UNIT FOR COMBATING MONEY LAUNDERING

I. GENERAL INFORMATION

Name of broker_____
Member's address where the transaction was initiated _____
_____
Date when a business relationship started or one - off transaction was carried out _____

II. DETAILS OF NATURAL PERSON(S) AND/OR LEGAL ENTITY(IES) INVOLVED IN THE SUSPICIOUS TRANSACTION(S)

(A) NATURAL PERSONS

	Beneficial owner(s) of the account(s)	Authorised signatory(ies) to the account(s)
Name(s)	_____	_____
	_____	_____
Residential address(es)	_____	_____
	_____	_____
	_____	_____
	_____	_____

Business address(es)	_____	_____
	_____	_____
	_____	_____
	_____	_____
Occupation(s) and Employer(s)	_____	_____
	_____	_____
	_____	_____
	_____	_____
Date and place of birth	_____	_____
	_____	_____
	_____	_____
	_____	_____
Nationality and passport number(s)	_____	_____
	_____	_____
	_____	_____
	_____	_____

(B) LEGAL ENTITIES

Company's name, country
and date of incorporation _____
_____
_____

Business address _____
_____
_____

Main activities_____
_____

III. DETAILS OF SUSPICIOUS ACTIVITY

Give details of suspicious transactions.

1. _____

2. _____

3. _____

(4) KNOWLEDGE/SUSPICION OF MONEY LAUNDERING (please explain, as fully as possible, the knowledge or suspicion connected with money laundering) _____ _____ _____ _____

IV OTHER INFORMATION

Other services used by the customer _____ _____ _____

MONEY LAUNDERING
COMPLIANCE OFFICER'S Signature ..... Date .....

NB: The above report should be accompanied by photocopies of the following:

7. For natural persons, the relevant pages of customers' passports evidencing identity.
8. For legal entities, certificates of incorporation, directors and shareholders.
9. All documents relating to the suspicious transaction(s) (i.e. Swift messages, bank advice slips, correspondence etc.).

A N N E X 2 D

**AML Guidance Notes to life and non-life insurers,
Issued by the InsuranceCompanies Control Service in March 2005
(G-Insurers)**

INSURANCE COMPANIES CONTROL SERVICE

Prevention of Money Laundering

Guidance Notes to Insurance Companies in accordance with section 60(3) of the Prevention and Suppression of Money Laundering Activities Law

(SECOND ISSUE)

MARCH 2005

1. THE MAIN PROVISIONS OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW [LAW 61 (I) OF 1996 AS AMENDED]

1.1. Purpose

1.1.1. The main purpose of Law 61 (I) of 1996 as subsequently amended (hereinafter to be referred to as "the Law") is to define and criminalise the laundering of proceeds generated from all serious criminal offences and provide for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes. It also places special responsibilities upon insurance companies, other financial institutions and professionals which are required to take preventive measures against money laundering by adhering to prescribed procedures for customer identification, record keeping, education and training of their employees and reporting of suspicious transactions. The main provisions of the Law, which are of direct interest to insurance companies and their employees, are as follows:

1.2. Prescribed offences (Section 3 of the Law)

1.2.1. The Law has effect in respect of offences which are referred to as "prescribed offences" and which comprise of:

(i) money laundering offences; and

(ii) predicate offences.

1.3. Money Laundering offences (Section 4 of the Law)

1.3.1. Under the Law, every person who knows or ought to have known that any kind of property is proceeds from a predicate offence is guilty of an offence if he carries out any of the following:

(i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a predicate offence to evade the legal consequences of his actions;

(ii) conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property;

(iii) acquires, possesses or uses such property;

(iv) participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above;

(v) provides information with respect to investigations that are being performed for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence.

1.3.2. Commitment of the above offences is punishable on conviction by a maximum of fourteen (14) years imprisonment or a fine or both of these penalties, in the case of a person knowing that the property is proceeds from a predicate offence or by a maximum of five (5) years imprisonment or a fine or both of these penalties, in the case he ought to have known.

1.4. Defences for persons assisting money laundering and duty to report (Section 26 of the Law)

1.4.1. It is a defence, under Section 26 of the Law, in criminal proceedings against a person in respect of assisting another to commit a money laundering offence that he intended to disclose to a police officer or the Unit for Combating Money Laundering (hereinafter to be referred to as "MOKAS") his suspicion or belief that the agreement or arrangement related to proceeds from a predicate offence and that his failure to make the disclosure was based on reasonable grounds. Also, under Section 26 of the Law, any such disclosure should not be treated as a breach of any restriction imposed by contract.

1.4.2. In the case of employees of persons whose activities are supervised by one of the authorities established under Section 60, the Law recognises that the disclosure may be made to a competent person (e.g. a Money Laundering Compliance Officer) in accordance with established internal procedures and such disclosure shall have the same effect as a disclosure made to a police officer or MOKAS.

1.5. Powers of MOKAS to order the non-execution or delay in the execution of a transaction (Section 26(2)(c) of the Law)

1.5.1. Section 26(2)(c) of the Law empowers MOKAS to give instructions to insurance companies and other financial institutions for the non-execution or the delay in the execution of a transaction. Insurance companies are required to promptly comply with such instructions and provide MOKAS with all

necessary co-operation. It is noted that, as per the above Section, in such a case no breach of any contractual or other obligation may arise and insurance companies are, therefore, protected from any possible claims from customers.

1.6. Predicate offences (Section 5 of the Law)

1.6.1. Predicate offences are all criminal offences punishable with imprisonment exceeding one year from which proceeds were generated that may become the subject of a money laundering offence. Proceeds means any kind of property which has been generated by the commission of a predicate offence.

1.6.2. On 22 November 2001, the House of Representatives enacted the Ratification Law of the United Nations Convention for Suppression of the Financing of Terrorism. As a result of the above, terrorist financing is considered to be a criminal offence punishable with 15 years imprisonment or a fine of C£1 mn or both of these penalties. Furthermore, the above Law contains a specific section which provides that terrorist financing and other linked activities are considered to be predicate offences for the purposes of Cyprus's anti-money laundering legislation i.e. the Prevention and Suppression of Money Laundering Activities Law of 1996. Consequently, suspicions of possible terrorist financing activities should be immediately disclosed to MOKAS under Section 26 of the Law.

1.6.3. For the purposes of money laundering offences it does not matter whether the predicate offence is subject to the jurisdiction of Courts in Cyprus or not (Section 4(2) of the Law).

1.7. Failure to report (Section 27 of the Law)

1.7.1. It is an offence for any person 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. Failure to report in these circumstances is punishable on conviction by a maximum of five (5) years imprisonment or a fine not exceeding Cy£3.000 (three thousand pounds) or both of these penalties.

1.8. Tipping - off (Section 48 of the Law)

1.8.1. Further to the offence described in paragraph (v) of part 1.3.1 above, it is also an offence for any person to prejudice the search and investigation of money laundering offences by making a disclosure, either to the person who is the subject of a suspicion or any third party, knowing or suspecting that the authorities are carrying out such an investigation and search. "Tipping-off" under these circumstances is punishable with imprisonment up to five (5) years.

1.9. Relevant financial and other business (Section 61 of the Law)

1.9.1. The Law recognises the important role of the financial sector, accountants and lawyers for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all financial institutions, including insurance companies as well as professionals engaged in "relevant financial and other business", which is defined to include the activities listed below:

(i) Deposit taking;

(ii) Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transactions including forfeiting);

(iii) Finance leasing, including hire purchase financing;

(iv) Money transmission services;

(v) Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);

(vi) Guarantees and commitments;

(vii) Trading for own account or for account of customers in:-

a) money market instruments (cheques, bills, certificates of deposits etc.);

b) foreign exchange;

c) financial futures and options;

d) exchange and interest rate instruments;

e) transferable instruments;

(viii) Underwriting share issues and the participation in such issues;

(ix) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues including the areas of mergers and acquisitions of business;

(x) money broking;

(xi) Investment business, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this

section, the term "investment" includes long term insurance contracts, whether or not linked with investment schemes.

(xii) Safe custody services;

(xiii) Custody and trustee services in relation to stocks.

(xiv) Non-life insurance contracts provided by companies registered in the Republic of Cyprus in accordance with the Companies Law, either as a Cypriot or a foreign company, but which carry on insurance business exclusively outside Cyprus.

(xv) Exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their customers in the context of carrying on relevant financial business.

(xvi) Exercise of professional activities on behalf of independent lawyers, with the exception of privileged information, when they participate, whether –

a) by 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;
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;

b) or by acting on behalf and for the account of their clients in any financial or real estate transaction.

(xvii) Any services prescribed in Part I and II of Annex One of the Investment Firms Laws of 2002 to 2003 currently in force which are provided in connection with the financial instruments numbered in Part II of the same Annex.

(xviii) Transactions on real estate by real estate agents by virtue of the provisions of the Real Estate Agents Laws currently in force.

(xix) Dealings in precious metals and stones whenever payment is made for cash and in an amount of EUR15.000 or more.

1.10. Procedures to prevent money laundering

1.10.1. According to Section 58 of the Law, insurance companies carrying out life assurance as well as non-life insurance companies operating exclusively outside of the Republic of Cyprus (from now on for the purposes of these Guidance Notes called non-life insurance companies) are obliged to establish and maintain the following procedures, in relevance to the services they provide:

- **Client identification procedures.**
- **Record keeping procedures.**
- **Internal reporting procedures.**
- **Other internal control and communication procedures for**
- **the purpose of forestalling and preventing money laundering**.

1.10.2. In accordance with the provisions of the same Section, life and non-life insurance companies should take, from time to time, the appropriate measures for making their employees who are involved in financial activities and the agents who act on their behalf, aware of the above procedures and of the relevant legislation to combat money laundering. Companies should also provide for the appropriate training of their employees including their agents on the subject of recognition and handling of transactions carried out by a person or on behalf of a person who is involved or seems to be involved in money laundering offences.

1.10.3. The purpose of these Guidance Notes issued by the Insurance Companies Control Service is to provide a practical interpretation of the requirements of the Law in respect to business carried on by insurance companies and to indicate good insurance practice.

1.10.4. Where the Superintendent of Insurance forms the opinion than an insurance company (life and non-life) has failed to comply with the provisions of Section 58 of the Law, it may after giving the opportunity to the insurance company to be heard, impose an administrative fine up to £3000 [section 58(2) of the Law].

2. CLIENT IDENTIFICATION PROCEDURES

2.1 Introduction

2.1.1. In accordance with Sections 62-65 of the Law, all persons carrying on financial activities are required to maintain customer identification procedures. All life and non-life insurance companies should establish through the necessary measures, the identity of all their clients who possess a non-life and life insurance policy (linked or conventional). In the cases of a "key person" insurance policy, the verification of the identity should be carried out both for the company which enters into the contract and for the person for whom the insurance is undertaken.

2.2. Timing of identification

2.2.1. The Law requires that identification must be carried out as soon as possible immediately after contact is first made between a life and non-life insurance company and a prospective client. As a rule, life and non-life insurance companies are expected to seek and obtain satisfactory evidence of identity of their prospective clients, prior to the conclusion of a contract.

2.2.2. In relation to life insurance business the identification and verification of the beneficiary under the policy may take place after the business relationship with the policyholder is established, but in all such cases, identification and verification should occur at or before the time of payout or the time when the beneficiary intends to exercise vested rights under the policy.

2.3. Exception from identification

2.3.1. The client identification procedures need not to be performed where the periodic premium amount or amounts to be paid in any given year does or do not exceed EUR 1000 or where a single premium is paid amounting to EUR 2500 or less. Identification requirement is also not required 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.

2.4. Identification procedures – General principles and requirements

2.4.1. A life and a non-life insurance company should establish to their satisfaction that they are dealing with a real person (natural or legal) and verify the identity of those physical persons who have power to operate on behalf of the client.

2.4.2. Life and non-life insurance companies should request from their prospective clients to provide satisfactory evidence of their identity. However, it must be appreciated that no single form of identification can be fully guaranteed as genuine or representing correct identity and the identification process will generally need to be cumulative. For practical purposes, a person's residential/business address is an essential element of identity and thus there needs to be separate verification of the current permanent address of the prospective client.

2.4.3. The evidence of identity required should be obtained from documents issued by reputable sources. Where practical, file copies of the supporting evidence should be retained. Alternatively, the reference numbers and other relevant details should be recorded.

2.4.4. The failure of refusal by a prospective policyholder to provide satisfactory identification evidence within a reasonable timeframe and without adequate explanation may lead to a suspicion that the prospective policyholder is engaged in money laundering. In such circumstances, insurance companies should not commence business relations and should consider making a suspicion report to MOKAS based on the information in their possession.

2.4.5. Specific identification issues

2.4.5.1. Prospective policyholders permanently residing in Cyprus

2.4.5.1.1. In cases where the following information is not included in the quotation or in the insurance contract, then it should be obtained:-

(a) name of the prospective policyholder;

(b) permanent Cyprus address, including postal code;

(c) date of birth;

(d) profession or occupation;

(e) annual income.

2.4.5.1.2. Ideally the name used should be verified by reference to a document obtained from a reputable source which bears a photograph. Wherever possible, a current valid full passport, or a national identity card or a voting book or a driving licence should be requested and the relevant number should be registered.

There is obviously a wide range of other documents that clients might produce as evidence of their identity. It is for each insurance company to decide the appropriateness of such documents.

2.4.5.1.3. In addition to the name verification, it is vital that the current permanent address should also be verified. Some of the best means of verifying the address are:-

- requesting sight of a recent utility bill, local authority tax bill or/and a bank statement (to guard against forged or counterfeit documents care should be taken to check that the documents offered are originals);

- checking the telephone directory.

2.4.5.2. <u>Prospective policyholders not permanently residing in Cyprus</u>

2.4.5.2.1. For prospective policyholders who are not normally residing in Cyprus, it is important that, as far as possible, verification procedures similar to those applied for clients permanently residing in Cyprus should be carried out and the same information obtained.

2.4.5.2.2. In addition, life and non-life insurance companies are advised, if in any doubt, to seek to verify identity with a reputable financial institution in the client's country of residence.

2.4.5.3. Corporate clients

2.4.5.3.1. Because of the difficulties of identifying beneficial ownership, transactions on behalf of corporate clients are one of the most likely vehicles for money laundering, particularly when fronted by a legitimate trading company.

2.4.5.3.2. Before a business relationship is established, when the company is not known, measures should be taken by way of a company search and/or other commercial enquiries to ensure that the applicant company has not been, or is not in the process of being dissolved, struck off, wound-up, terminated. In addition, if changes to the company structure of ownership occur subsequently, or suspicions are aroused by a change in the profile of the business carried out by the company, further checks should be made.

2.4.5.3.3. In the cases where transactions are made for the benefit of locally incorporated companies, the identification procedure followed should aim at verifying the identity of:

(i) the company;
(ii) at least one director;
(iii) in the cases of private companies, the major beneficial shareholders.

The company's business profile in terms of the nature and scale of its activities must also be established.

2.4.5.3.4. Where the beneficial owners cannot be established, a life and non-life insurance company should apply the same procedure prescribed in the paragraph 2.4.5.4 for trustees or nominees.

2.4.5.3.5. When the company is not known, the life and non-life insurance company should ask to obtain the following documents:

(i) the original or certified copy of the Certificate of Incorporation;

(ii) the original or certified copy of the Memorandum and Articles of Association;

(iii) a resolution of the Board of Directors conferring authority to any persons to make transactions;

(iv) the original or certified copy of registered office;

(v) the original or certified copy of the Certificate of directors and secretary.

2.4.5.3.6. Trustees or Nominees

The insurance company must always establish the identity of a trustee or nominee acting in relation to a third party, in accordance with the identification procedures mentioned above for personal or corporate customers as the case may be.

The insurance company must take all measures deemed appropriate under the circumstances for the purpose of establishing the identity of any person on whose behalf a trustee or nominee is acting.

2.4.6. Renewal of customer identification

Insurance companies need to ensure that customer identification records remain up-to date and relevant throughout the business relationship. In this respect, an insurance company must undertake, on a regular basis, or whenever it has doubts about the veracity of the identification data, reviews of existing records, especially for high-risk customers. If, as a result of these reviews, at any time throughout the business relationship, the insurance company becomes aware that it lacks sufficient information about an existing customer, it should take all necessary action to obtain the missing information as quickly as possible.

3. RECORD KEEPING PROCEDURES

3.1. In accordance with Section 66 of the Law, life and non-life insurance companies are required to retain records concerning client identification. The Law specifies, under Section 66, that, the records retained must include a record that indicates the nature of a person's identity obtained in accordance with the procedures provided in the Law and which comprises either a copy of the evidence or which provides sufficient information to enable details as to a person's identity to be re-obtained. The necessary records should be kept in accordance with the Law, for a period of at least five years.

4. INTERNAL REPORTING PROCEDURES

4.1. In accordance with Section 67 of the Law, all life and non-life insurance companies should proceed with the appointment of a Money Laundering Compliance Officer. The Money Laundering Compliance Officer receives the internal reports from the insurance companies employees and agents acting on their behalf, whenever it comes to their knowledge any activity which is considered to be knowledge of money laundering activities or which is cause for suspicion connected with money

laundering offences. A specimen of such an internal report is attached as Appendix A (in the case of agents, the internal report should be amended accordingly).

4.2. The Compliance Officer validates and examines the information received as per the above paragraph by reference to any other relevant information and discusses the circumstances of the case with the reporting employee/agent concerned.

4.3. The evaluation of the information reported to the Money Laundering Compliance Officer should be recorded and retained on file. A specimen of such a report is attached as Appendix B.

4.4. If following the evaluation carried out by the Money Laundering Compliance Officer, the Money Laundering Compliance Officer decides -

(i) to notify MOKAS, then he reports his suspicion or persuasion to MOKAS;

These reports should be sent or delivered at the following address:
Unit for Combating Money Laundering (″MOKAS″)
The Law Office of the Republic
27 Katsoni St, 2nd & 3rd Floors
CY-1082 Nicosia
Tel: 22446018, Fax: 22317063
E-mail: mokas@mokas.law.gov.cy
Contact Person: Mrs Eva Rossidou-Papakyriakou
Head of the Unit for Combating Money Laundering (″MOKAS″)

(ii) not to notify MOKAS, then he should fully explain the reasons for such a decision on his evaluation which should as already stated, be retained on file. If the employee/agent concerned disagrees with the decision of the Compliance Officer, then his disagreement should be reported in the attached Appendix C.

4.5. The Money Laundering Compliance Officer:

(a) Acts as a first point of contact with MOKAS, upon commencement of and during an investigation as a result of filing a report to MOKAS.

(b) Responds to requests from the MOKAS and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with MOKAS.

(c) Provides advice and guidance to other employees/agents of the company on money laundering matters.

(d) Acquires the knowledge and skills required which should be used to improve the company's internal procedures for recognizing and reporting money laundering suspicions.

(e) Determines whether the company's employees/agents need further training and/or knowledge for the purpose of learning to combat money laundering.

(f) Constitutes the liaison between a life and non-life insurance company and the Superintendent of Insurance for the purpose of exchanging information on the subject of money laundering, in relation to the services the life and non-life insurance company provides and he is responsible for the implementation of the Guidance Notes the Superintendent issues on anti-money laundering measures.

4.6. The Money Laundering compliance Officer is expected to avoid errors and/or omissions in the course of discharging his duties and, most importantly, when validating the Reports received on money laundering suspicions and forming an opinion, as a result of which a report MOKAS may or may not be filed.

4.7. Having made a disclosure report, an insurance company may subsequently wish to terminate its relationship with the customer concerned for commercial or risk avoidance reasons. In such an event, however, insurance companies should exercise particular caution, as per Section 48 of the Law, not to alert the customer concerned that a disclosure report has been made. Close liaison with the MOKAS should, therefore, be maintained in an effort to avoid any frustration to the investigations conducted.

4.8. After making the disclosure, insurance companies are expected to adhere to any instructions given by the MOKAS and, in particular, as to whether or not to continue or suspend a transaction. It is noted that Section 26(2)(c) of the Law empowers MOKAS to instruct insurance companies to refrain from executing or delay the execution of a customer's order without such action constituting a violation of any contractual or other obligation of the insurance company and its employees.

5. OTHER INTERNAL CONTROL PROCEDURES

5.1. A life and a non-life insurance company should implement the following measures and controls, within the framework of establishing adequate internal control mechanisms and internal lines of communication, with the purpose of assisting the Money Laundering Compliance Officer in executing his duties and facilitate the disclosure on behalf of its employees/agents of any information relating to money laundering offences:

(i) The person who the company decides to appoint as its Money Laundering Compliance Officer should be sufficiently senior to command the necessary authority.

(ii) Life and non-life insurance companies have an obligation to ensure:-

(a) that all their employees/agents know to whom they should be reporting money laundering knowledge or suspicion; and

(b) that there is a clear reporting chain under which money laundering knowledge or suspicion is passed without delay to the Money Laundering Compliance Officer.

(iii) All the internal procedures a company establishes aiming to combat money laundering including the role and responsibilities of the Money Laundering Compliance Officer should be recorded and included in the appropriated manuals/schemes of services of the employees/descriptions of the duties of the employees and agency agreements a company enters into with its agents.

6. OTHER IMPORTANT INSTRUCTIONS

6.1. Life insurance companies should be particularly cautious in the following cases:-

6.1.1. Clients asking to conclude a single premium life insurance contract with a large sum of premiums paid in cash. It is commonly accepted that in the insurance sector the single premium policies can more easily be used for money laundering purposes. Therefore, life insurance companies are encouraged to be particularly cautious when the single premium is greater that the annual salary of the client and even more cautious in cases of cancellations of those policies before maturity.

6.1.2. Life insurance companies should also be extremely cautious when offering to their clients the possibility, through the inclusion of certain provisions in their contracts (including riders), for the payment of extra amounts, especially when those are in cash. When designing new products, of the life insurance companies should take into consideration whether the particular product can be used for money laundering.

6.2. The following instructions apply both to Life and Non-Life insurance companies:-

6.2.1. Insurance companies, including their agents, should encourage their clients not to pay their premiums in the form of cash.

6.2.2. To avoid any misuse of the claims payment procedure, life and non life insurance companies are advised to make the payments of the relative amounts only through bank transfers and not make any cash or cheque payments. The name of the bank account holder always has to match with the authorized receiver of the money.

6.2.3. In general, serious suspicions are raised when:-

(i) early cancellations of contracts with high premiums occur;
(ii) reinstatement of contracts with high sums assured;
(iii) other transactions other than ordinary occur.

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APPENDIX A

INTERNAL MONEY LAUNDERING SUSPICION REPORT

REPORTING EMPLOYEE/AGENT

Name:…….

Tel…….

Fax…….

Position……...

CUSTOMER

Name:……. …….....

Address:……. …….....

…….....

Date of birth……..…….....

.

Contact/Tel/Fax…….....……

Occupation/Employer……..……...…….

Passport No.....

Nationality…….....…….

ID Card No …… Other ID .....

INFORMATION/SUSPICION

Information/Transaction …….....…….……

Reason(s) for suspicion ……..... …….……

REPORTING EMPLOYEE'S/AGENT'S

SIGNATURE…….....…….. Date…….

FOR MONEY LAUNDERING COMPLIANCE OFICER'S USE

Date received…….. Time received…….. Ref……

MOKAS Advised……..…… Yes/No Date …… Ref……..

APPENDIX B

MONEY LAUNDERING COMPLIANCE OFFICER'S

INTERNAL EVALUATION REPORT

Reference …….. Customer…….

Reporting Employee/Agent ……....

DEPARTMENT/AGENCY …….....

ENQUIRIES UNDERTAKEN

…….....……

…….....…

…….....……

DOCUMENTS RESEARCHED/ATTACHED

…….....……

…….....……

…….....……

DETERMINATION/DECISION

……

……...……

……...……

FILE REFERENCE……..……..

MONEY LAUNDERING COMPLIANCE OFFICER'S

Signature …….....

Date …….....….

APPENDIX C

EXCHANGE OF INFORMATION BETWEEN THE MONEY LAUNDERING COMPLIANCE OFFICER AND THE REPORTING EMPLOYEE/AGENT

I have read the decision of the Money Laundering Compliance Officer and I agree/disagree for the following reasons (Note: Only in cases of disagreements the reasons should be stated).

……

……

……

……

SIGNATURE OF THE REPORTING EMPLOYEE/AGENT …….

.....

DATE:…….

MONEY LAUNDERING COMPLIANCE OFFICERS' COMMENTS IN CASE OF DISAGREEMENT WITH THE REPORTING EMPLOYEE/AGENT

……

……

……

……

SIGNATURE OF THE MONEY LAUNDERING COMPLIANCE OFFICER

…….....….

DATE…….....……

ANNEX 2E

AML Guidance Notes to International Financial Services Companies, Issued by the Central Bank of Cyprus (G-International Financial / Trustee Businesses)

GUIDANCE NOTE TO INTERNATIONAL FINANCIAL SERVICES COMPANIES, INTERNATIONAL TRUSTEE SERVICES COMPANIES, INTERNATIONAL COLLECTIVE INVESTMENT SCHEMES AND THEIR MANAGERS OR TRUSTEES AS APPROPRIATE ISSUED BY THE CENTRAL BANK OF CYPRUS UNDER SECTION 60(3) OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 1996

1. BACKGROUND

Definition of 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. If undertaken successfully, it allows them to maintain control over those proceeds and, ultimately, to provide a legitimate cover for their source of income. Failure to prevent the laundering of the proceeds of crime permits criminals to benefit from their actions, thus making crime a more attractive proposition.

Stages of money laundering

There is no specific method of laundering money. Despite the variety of methods employed, the laundering process is accomplished in three basic stages which may comprise transactions by the launderers that could alert a financial institution to criminal activity:

(a) Placement - the physical disposal of the initial proceeds derived from illegal activity.

(b) Layering - separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity.

(c) Integration - the provision of apparent legitimacy to criminally derived wealth. If the layering process is successful, integration schemes place the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing as normal business funds.

The three basic steps may occur as separate and distinct phases or may occur simultaneously or, more commonly, they may overlap. How the basic steps are used depends on the available laundering mechanisms and requirements of the criminal organisations.

Certain points of vulnerability have been identified in the laundering process which the money launderer finds difficult to avoid and where his activities are, therefore, more susceptible to being recognised, specifically:

- entry of cash into the financial system;
- cross-border flows of cash; and
- transfers within and from the financial system.

Vulnerability of financial sector businesses to money laundering

Historically, efforts to combat money laundering have, to a large extent, concentrated on the deposit-taking procedures of financial sector businesses where the launderer's activities are most susceptible to recognition. However, criminals have responded to the measures taken by the financial sector over recent years by recognising that cash payments made into financial sector businesses can often give rise to additional enquiries. Other means have, therefore, been sought to convert the illegally earned cash or to mix it with legitimate cash earnings before it enters the financial system, thus making it harder to detect at the placement stage. Equally, it is also emphasised that there are many crimes (particularly the more sophisticated ones) where cash is not involved.

Investment businesses are more likely to find themselves being used at the layering and integration stages of money laundering. The liquidity of many investment products particularly attracts sophisticated money launderers since it allows them, quickly and easily, to move their money from one product to another, mixing lawful and illicit proceeds and integrating them into the legitimate economy. Investment businesses are also able to transfer monies across borders quickly and efficiently.

2. MAIN PROVISIONS OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW

Main purpose of the Law

The main purpose of the Prevention and Suppression of Money Laundering Activities Law (hereinafter to be referred to as "the Law") is to define and criminalise the laundering of the proceeds generated from all serious criminal offences and provide for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes. Upon the enactment of the Law, the Confiscation of Proceeds of Trafficking of Narcotic Drugs and Psychotropic Substances Law (Law 39(I) of 1992) which dealt only with drug money laundering, was repealed as all its main provisions have been incorporated in the new legislation. The main provisions of the Law, which are of direct interest to IFCs/ITCs/ICIS their Managers or Trustees as appropriate and their employees, are as follows:

Prescribed offences (Section 3 of the Law)

The Law has effect in respect of offences which are referred to as "prescribed offences" and which comprise of:

(a) laundering offences, and
(b) predicate offences

Laundering offences (Section 4 of the Law)

Under the Law, every person who knows, or ought to have known that any kind of property is proceeds from a predicate offence is guilty of an offence if he carries out any of the following:

(i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a predicate offence to evade the legal consequences of his actions;

(ii) conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property;

(iii) acquires, possesses or uses such property;

(iv) participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counseling or advice for the commission of any of the offences referred to above;

(v) provides information with respect to investigations that are being performed for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence.

Commitment of the above offences is punishable on conviction by a maximum of fourteen (14) years imprisonment or a fine or both of these penalties, in the case of a person who knows that the property is proceeds from a predicate offence, or by a

maximum of five (5) years imprisonment or a fine or both of these penalties, in the case of a person who ought to have known.

It is a defence, under Section 26 of the Law, in criminal proceedings against a person in respect of assisting another to commit a laundering offence that he intended to disclose to a police officer or the Unit for Combating Money Laundering (hereinafter to be referred to as "the Unit") his suspicion or belief that the agreement or arrangement related to proceeds from a predicate offence and that his failure to make the disclosure was based on reasonable grounds. Also, under section (26) of the Law, any such disclosure should not be treated as a breach of any restriction upon the disclosure of information imposed by contract.

In the case of employees of persons whose activities are supervised by one of the authorities established under Section 60, the Law recognises that the disclosure may be made to a competent person (e.g. a Money Laundering Compliance Officer) in accordance with established internal procedures and such disclosure shall have the same effect as a disclosure made to a police officer or the Unit.

Predicate offences (Section 5 of the Law)

Criminal offences as a result of which proceeds were generated that may become the subject of a laundering offence, as defined above, are the following:

(a) premeditated and attempted murder;

(b) drug trafficking;

(c) illicit importation, exportation, purchasing, selling, disposition, possession, transfer and trafficking of arms and munitions;

(d) importation, exportation, purchasing, selling, disposition, possession, transfer of stolen objects, pieces of art, of antiquities, of tokens of cultural heritage;

(e) the abduction of a minor or a mentally retarded person or of any other person against his will for any unlawful purpose;

(f) the detachment of money or of property of any other kind by use or threat of use of force or other illicit act;

(g) offences relating to corruption of public or private servants;

(h) living on the earnings of prostitution and offences associated with the procuration and seduction of women and minors;

(i) offences contrary to the provisions of the Convention for the Natural Protection of Nuclear Material (Ratification and Other Provisions) Law of 1997.

(j) offences contrary to the provisions of the Convention for the Prohibition of Chemical Weapons (Ratification) Law of 1998.

For the purposes of money laundering offences it does not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not (Section 4(2) of the Law).

Failure to report (Section 27 of the Law)

It is an offence for any person 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 the Unit. Failure to report in these circumstances is punishable on conviction by a maximum of five (5) years imprisonment or a fine not exceeding Cy£3.000 (three thousand pounds) or both of these penalties.

Tipping - off (Section 48 of the Law)

Further to the offence (v) under the section on laundering offences above, it is also an offence for any 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 or any third party, knowing or suspecting that the authorities are carrying out such an investigation and search. "Tipping-off" under these circumstances is punishable with imprisonment up to five (5) years.

Relevant financial business (Section 61 of the Law)

The Law recognises the important role of the financial sector for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all institutions, including IFCs/ITCs/ICIS their Managers or Trustees, engaged in "relevant financial business", which is defined to include the activities listed below:

(a) Deposit taking;

(b) Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transactions including forfeiting);

(c) Finance leasing, including hire purchase financing;

(d) Money transmission services;

(e) Issuing and administering means of payment (e.g. credit cards, travelers' cheques and bankers' drafts);

(f) Guarantees and commitments;

(g) Trading for own account or for account of customers in:-
    (i) money market instruments (cheques, bills, certificates of deposits etc.);
    (ii) foreign exchange;
    (iii) financial futures and options;
    (iv) exchange and interest rate instruments;
    (v) transferable instruments;

(h) Underwriting share issues and the participation in such issues;

(i) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues including the areas of mergers and acquisitions of business;

(j) money broking;

(k) Investment business, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term

"investment" includes long term insurance contracts, whether linked long-term or not;

(l) Safe custody services;

(m) Custody and trustee services in relation to stocks.

Procedures to prevent money laundering (Section 58 of the Law)

The Law requires all persons carrying on financial business, as defined above, to establish and maintain specific policies and procedures to guard against their business and the financial system in general being used for the purposes of money laundering. In essence these procedures are designed to achieve two purposes: firstly, to facilitate the recognition and reporting of suspicious transactions and, secondly, to ensure through the strict implementation of the "know-your-customer" principle and the maintenance of adequate record keeping procedures, should a customer come under investigation, that the IFC/ITC/ICIS its Manager or Trustee as appropriate is able to provide its part of the audit trail. The Law requires that all persons engaged in relevant financial business institute a number of procedures. In fact, it is illegal for any person, in the course of relevant financial business, to form a business relationship or carry out an one-off transaction with or for another, unless the following procedures are instituted:

- Customer identification procedures;
- Record keeping procedures in relation to customers' identity and their transactions;
- Procedures of internal reporting to a competent person - (e.g. a Money Laundering Compliance Officer) appointed to receive and consider information that give rise to knowledge or suspicion that a customer is engaged in money laundering activities;
- Other internal control and communication procedures for the purpose of forestalling and preventing money laundering;
- Measures for making employees aware of the above procedures to prevent money laundering and of the legislation relating to money laundering; and
- Provision of training to their employees in the recognition and handling of transactions suspected to be associated with money laundering.

The Directors, Managers, Secretary and other officers of a body corporate as well as the body corporate itself, who fail to comply with the above requirements commit an offence punishable on conviction by a maximum of two (2) years imprisonment or a fine of Cy£2.000 (two thousand pounds) or both of these penalties.

In determining compliance with Section 58 of the Law, a Court may take into account any relevant supervisory or regulatory guidance issued by the supervisory authority concerned and, where no guidance applies, any other relevant instructions issued by the supervisory authority.

Supervisory authorities (Section 60 of the Law)

The Law designates the Central Bank of Cyprus as the supervisory authority for all persons licensed to carry on banking business in or from within Cyprus. In this regard, the Central Bank of Cyprus has been assigned with the duty of assessing compliance of all banks with the special provisions of the Law in respect of their business. In addition, the Council of Ministers, under Section 60–(1)(b) of the Law designated on 22 April, 1998, the Central Bank of Cyprus as the supervisory authority for all persons authorised to carry on international financial services business from within Cyprus.

The Central Bank of Cyprus, in its capacity as supervisory authority, may issue guidance notes to all in Cyprus. The purpose of the guidance notes issued by the Central Bank of Cyprus, as the supervisory authority of the international financial services sector, is to provide a practical interpretation of the requirements of the Law in respect to business carried on by IFCs/ITCs/ICIS their Managers or Trustees as appropriate and to indicate good financial business practice.

Where a supervisory authority is of the opinion that a person falling within its responsibility has failed to comply with the provisions of the Law relating to financial business it has a legal obligation to refer the matter to the Attorney General. Where a supervisory authority obtains information and is of the opinion that any person may have been engaged in money laundering then it has a legal obligation to disclose the relevant information to the Unit.

Orders for the disclosure of information (Section 45 of the Law)

Courts in Cyprus may, on application by the investigator, make an order for the disclosure of information by a person, including an IFC/ITC/ICIS its Manager or Trustee as appropriate, who appears to the Court to be in possession of the information to which the application relates. Such an order applies irrespective of any legal or other provision which creates an obligation for the maintenance of secrecy or imposes any constraints on the disclosure of information. As already stated under "tipping off", a person who makes any disclosure which is likely to obstruct or prejudice an investigation into the commitment of a predicate offence, knowing or suspecting that the investigation is taking place, is guilty of an offence.

3. INTERNAL CONTROLS, POLICIES AND PROCEDURES

Statutory requirements

The Law under Section 58 requires all persons carrying on relevant financial business to establish and maintain appropriate internal control and communication procedures, as may be appropriate, for the purposes of forestalling and preventing money laundering.

Recommended procedures

IFCs/ITCs/ICIS their Managers or Trustees as appropriate are expected to establish clear responsibilities and accountabilities and institute the appropriate internal controls and procedures established through the Money Laundering Compliance Officers on the basis of Section 6 of this Guidance Note which deals with the Recognition and Reporting of Suspicious Transactions.

All IFCs/ITCs/ICIS their Managers or Trustees as appropriate operating from Cyprus should:

(a) have procedures for the prompt validation of suspicions and subsequent reporting to the Unit for Combating Money Laundering (please refer to Section 6 of the Guidance Note);
(b) provide the Money Laundering Compliance Officer with the necessary access to systems and records to fulfill this requirement (please refer to Section 6 of the Guidance Note); and,
(c) maintain close co-operation and liaison with the law enforcement agencies.

It is recognised that the international financial sector encompasses a wide and divergent range of businesses. It is equally recognised that the extent of necessary procedures and controls will also vary in relation to the size and structure of each organisation.

As good practice, financial sector businesses are recommended to make arrangements to verify, on a regular basis, compliance with policies, procedures and controls relating to money laundering activities, in order to satisfy management that the requirement to maintain such procedures has been discharged. Larger financial sector businesses may wish to ask their internal audit or compliance departments to undertake this role, while smaller institutions may wish to introduce a regular review by management.

It is important that the procedures and responsibilities for monitoring compliance with and effectiveness of money laundering policies and procedures are clearly laid down by all IFCs/ITCs/ICIS their Managers or Trustees as appropriate.

4. CLIENT IDENTIFICATION PROCEDURES

Statutory requirements

The Law requires all persons carrying on financial business to maintain client identification procedures in accordance with Sections 58 and 62-65. The essence of these requirements is that, except where the Law states that client identification need not be made, an IFC/ITC/ICIS its Manager or Trustee as appropriate must verify the identity of a prospective client.

The Law does not specify what may or may not represent adequate evidence of identity. The Central Bank of Cyprus as the supervisory authority for IFC/ITC/ICIS their Managers or Trustees as appropriate issues this guidance note under the provisions of Section 60 of the Law in order to set out the practice to which IFCs/ITCs/ICIS their Managers or Trustees as appropriate should adhere in order to comply with the requirements of the Law on the subject of client identification.

Introduction - "Know your client"

The need within financial sector businesses for the "know your client" process is vital for the prevention of money laundering and underpins all other activities. An IFC/ITC/ICIS its Manager or Trustee as appropriate should establish to its satisfaction that it is dealing with a person (natural or legal) that actually exists, and identify those persons duly authorised to undertake investment transactions.

When a business relationship is being established, the nature of the business that the client expects to conduct with the IFC/ITC/ICIS its Manager or Trustee concerned should be ascertained to show what might be expected as normal activity. In order to be able to judge whether a transaction is or is not suspicious, an IFC/ITC/ICIS its Manager or Trustee as appropriate needs to have a clear understanding of the pattern of its client's business, as this develops into an ongoing relationship. Suspicious transactions may arise at any stage and frequently occur within an established business relationship rather than at the outset.

What is Identity and when it must be verified

A person's identity comprises his/her name and all other names used, together with the current permanent address at which the person can be located. Date of birth is also a useful indicator. Ideally, to identify someone face to face an official document bearing a photograph of the person should also be obtained. However, photographic evidence of identity is only of value to identify clients who are seen face to face. It is neither safe nor reasonable to require a prospective client to send a passport through the post.

Whenever a business relationship is to be established, or a one-off transaction or series of linked transactions of **Cy£8.000** or more is undertaken, the identification procedures must be followed. Once identification procedures have been satisfactorily completed, then as long as records are maintained in accordance with Section 5, and some contact is maintained with the client no further evidence is needed when subsequent transactions are undertaken.

Irrespective of the size and nature of the transactions and any exemptions in force, identity should be verified in all unusual and unexplained circumstances and, if

money laundering is known or suspected, identity must be verified and the details reported in line with the procedures set out in section 6.

Exemptions from requirement to verify identity

Verification of identity is **not** required in the following circumstances:

(i) Persons engaged in relevant financial business in or from within the Republic

When there are reasonable grounds for believing that the client is a person engaged in relevant financial business (as defined in Section 61 of the Law) in or from within the Republic.

(ii) One-off Transactions: Single or Linked

Verification of identity is not normally needed in the case of a single one-off transaction when payment by, or to, the client is **less than Cy£8.000**.

However identification procedures should be undertaken for linked transactions that together exceed the exemption limit, i.e. where, in respect of two or more one-off transactions:

- it appears at the outset to a person handling any of the transactions that the transactions are linked and that the aggregated amount of these transactions is Cy£8.000 or more; or
- at any later stage it comes to the attention of such a person that the transactions are linked and that the Cy£8.000 limit has been reached.

Establishing Satisfactory Evidence of Identity

In circumstances other than those covered by the exemptions set out in the paragraphs above, identity must be verified. Other than in general terms, the law does not specify what constitutes effective and adequate verification of identity. This section of the Guidance Note therefore sets out what might reasonably be expected of IFCs/ITCs/ICIS their Managers or Trustees as appropriate in this respect.

The verification procedures necessary to establish the identity of the prospective client should basically be the same whatever type of financial services are required. The best identification documents possible should be obtained from the prospective client i.e. those that are the most difficult to obtain illicitly and those issued by reputable sources. However, it must be appreciated that no single form of identification can be fully guaranteed as genuine or representing correct identity and the identification process will generally need to be cumulative.

Some forms of identification are more reliable than others and, in many cases, it will be prudent for the IFC/ITC/ICIS their Managers or Trustees as appropriate to carry out more than one check, by requesting more than one document. It is recommended that each client's file should show the steps taken to verify his identity. Where practical, file copies of the supporting evidence should be retained. Alternatively, the reference numbers and other relevant details should be recorded.

The member of staff undertaking the account opening procedures or the initial transaction should be recorded in the client's file.

Whenever possible, the prospective client should be interviewed personally.

Timing of Verification Requirements

Where evidence of identity is required, the Law provides this must be obtained "as soon as is reasonably practicable" after contact is first made between the client and the IFC/ITC/ICIS its Manager or Trustee as appropriate. What constitutes an acceptable time span must be determined in the light of all the circumstances including the nature of the business and the geographical location of the parties concerned. As a rule, IFCs/ITCs/ICIS their Managers or Trustees as appropriate should only start processing the business provided that satisfactory evidence of identity has been obtained.

Procedures to verify identity

Personal Clients

The following information should be obtained from prospective personal clients and should be independently verified:

- true name and/or names used;
- current temporary Cyprus address (if any), including postal code;
- current permanent address outside Cyprus;
- date of birth;
- profession or occupation.

Ideally the name or names used should be verified by reference to a document obtained from a reputable source which bears a photograph. Wherever possible a current valid full passport or national identity card should be requested and the number registered. In addition, IFCs/ITCs/ICIS their Managers or Trustees as appropriate are advised, if in any doubt, to seek to verify identity with a reputable credit or financial institution in the client's country of residence.

There are obviously a wide range of other documents that clients might produce as evidence of their identity and it is for each IFC/ITC/ICIS its Manager or Trustee as appropriate to decide the appropriateness of such documents.

In addition to the name verification, it is important that the current temporary and/or permanent address should also be verified. Some of the best means of verifying address are:

- requesting sight of a recent utility bill, local authority tax bill, bank statement (to guard against forged or counterfeit documents care should be taken to check that the documents offered are originals);

- a face-to-face visit to the applicant for business at his temporary or permanent home address or at his work;

- checking a local telephone directory where a temporary or permanent address is maintained.

In addition to the above, an introduction from a respected client personally known to the IFC/ITC/ICIS its Manager or Trustee as appropriate, or from a trusted member of staff, may assist the verification procedure but such personal introductions without full verification should not become the norm. Details of the introduction should be recorded in the client's file.

For prospective clients who request the IFC's/ITC's/ICIS's its Manager's or Trustee's services via post, it will not be practical to seek sight of a passport or national identity card. Verification of identity should therefore be sought from a reputable credit or financial institution in the applicant's country of permanent or temporary residence. Verification details should be requested covering true name or names used, current temporary and/or permanent address and verification of signature.

Partnerships and Unincorporated Business Clients

In the case of partnerships and other unincorporated businesses whose partners/directors are not known to the IFC/ITC/ICIS its Manager or Trustee as appropriate, the identity of at least two partners should be verified in line with the requirements for personal clients. Furthermore, in the case of partnerships, IFCs/ITCs/ICIS their Managers or Trustees as appropriate should also obtain the original or certified copy of the certificate of registration.

In cases where a formal partnership arrangement exists, a mandate from the partnership authorising those persons duly authorised to undertake investment transactions on behalf of the partnership should be obtained.

Corporate Clients

Because of possible difficulties of identifying beneficial ownership and the complexity of their organisations and structures, corporate clients are one of the most likely vehicles for money laundering, particularly when fronted by a legitimate trading company. Particular care should be taken to verify the legal existence of the client and to ensure that any person purporting to act on behalf of the client is so authorised. The principal requirement is to **look behind the corporate entity to identify those who have ultimate control over the business and the company's assets**, with particular attention paid to any shareholders or others who inject a significant proportion of the capital or financial support. Enquiries should be made to confirm that the company exists for a legitimate trading or economic purpose.

Before a business relationship is established, measures should be taken by way of company search and/or other commercial enquiries to ensure that the prospective corporate client has not been, or is not in the process of being, dissolved, struck off, wound up or terminated.

Identification should aim at verifying the identity of:

- the company;
- at least one director;
- all those persons duly authorised to undertake investment transactions;
- in the case of private companies, the major beneficial shareholders.

The company's business profile in terms of the nature and scale of its activities must also be established. Where deemed appropriate under the circumstances, a search of the file at the Companies' Registry should be made.

The following documents must be obtained:

- the original or certified copy of the Certificate of Incorporation;
- the original or certified copy of its Memorandum and Articles of association;
- in the case of Cyprus incorporated international business companies or overseas companies registered in Cyprus, a copy of the Exchange Control Law permit granted by the Central Bank of Cyprus. Any individuals who need to be identified in connection with such companies must be identified in accordance with the procedure outlined in this Guidance Note.

IFCs/ITCs/ICIS their Managers or Trustees as appropriate may accept as clients companies whose own shares or those of their holding companies (if any) have been issued or may be issued in the form of **bearer shares provided** that the prospective corporate client fulfills one of the undermentioned prerequisites:

(a) Its shares are traded on a recognised stock exchange;
(b) It is authorised as a collective investment scheme, under the laws of properly regulated and supervised jurisdictions;
(c) Its shares are beneficially owned or controlled by governments or governmental undertakings;
(d) Its shares are beneficially owned by multinational corporations with a good international reputation and a proven track record of financial stability.

IFCs/ITCs/ICIS their Managers or Trustees as appropriate may also establish business relationships with companies whose own shares or those of their holding companies (if any) have been issued or may be issued to bearer and do not meet the above prerequisites **provided** that:

(a) The identity and background of the beneficial owners/director(s) of the company is ascertained before establishing the business relationship.

(b) Before establishing the business relationship, the director(s) is/are asked to provide an estimation of the amount of funds likely to be invested. The bigger the estimated amount, the more reluctant the IFC/ITC/ICIS its Manager or Trustee should be. At least twice a year, a review should be carried out and a note prepared summarising the results of the review which must be kept in the client's file. Any serious deviation from the estimates, should be investigated.

(c) The IFC/ITC/ICIS its Manager or Trustee obtains a confirmation from a bank that it has under its custody the bearer share certificates and, in case of their release, shall inform it accordingly.

(d) At least once every year, the directors confirm that the capital base and the shareholding structure of the company or that of its holding company (if any) has not been altered by the issue of new bearer shares or the cancellation of existing ones.

(e) When the company's beneficial ownership changes, then the IFC/ITC/ICIS its Manager or Trustee as appropriate should consider whether it is advisable to continue the business relationship.

Trustee or Nominee clients

An IFC/ITC/ICIS its Manager or Trustee as appropriate must always establish the identity of a trustee or nominee acting in relation to a third party in accordance with the identification procedures for personal or corporate clients as the case may be.

An IFC/ITC/ICIS its Manager or Trustee as appropriate must also take all measures deemed appropriate under the circumstances for the purpose of establishing the identity of any person or persons on whose behalf a trustee or nominee is acting.

5. RECORD KEEPING PROCEDURES

Statutory requirements

The Law requires, under Sections 58 and 66, persons carrying on relevant financial business to retain records concerning client identification and details of transactions for use as evidence in any possible investigation into money laundering. This is an essential constituent of the audit trail procedures that the Law seeks to establish.

The records prepared and maintained by any IFC/ITC/ICIS its Manager or Trustee as appropriate on its client relationships and transactions should be such that:

- requirements of legislation are fully met;
- competent third parties will be able to assess the IFC's/ITC's/ICIS's its Manager's or Trustee's observance of money laundering prevention policies and procedures;
- any transactions effected via the institution can be reconstructed; and
- the institution can satisfy within a reasonable time any enquiries or court orders from the appropriate authorities as to disclosure of information.

The Law requires relevant records to be retained for at least **five years** from the date of completion of the business. However, where the records relate to on-going investigations, they should be retained until it is confirmed by the Unit that the case has been closed.

Client identification records

The Law specifies, under Section 66, that, where evidence of a person's identity is required, the records retained must include the following:

(a) A record that indicates the nature of a person's identity obtained in accordance with the procedures provided in the Law and which comprises either a copy of the evidence or which provides sufficient information to enable details as to a person's identity to be re-obtained.

(b) A record containing details relating to all transactions carried out by that person in the course of relevant financial business.

The prescribed record retention period is at least five years commencing with the date on which the relevant business or all activities taking place in the course of transactions were completed.

In accordance with the Law, the date when the relationship with the client has ended is the date of:

(i) the carrying out of an one-off transaction or the last in the series of one-off transactions;
(ii) the termination of the business relationship i.e. the closing of the account(s);
(iii) if the business relationship has not formally ended, the date of which the last transaction was carried out.

Transaction records

The precise nature of the records required is not specified but the objective is to ensure that in any subsequent investigation the IFC/ITC/ICIS its Manager or Trustee as appropriate can provide the Unit with its part of the audit trail.

For each transaction, consideration should be given to retaining a record of:

- the name and address of its client;
- the name and address (or identification code) of its counterparty;
- the investment dealt in, including price and size;
- whether the transaction was a purchase or a sale;
- the form of instruction or authority;
- the account details from which the funds were paid (including, in the case of cheques, sort code, account number and name);
- the form and destination of payment made by the business to the client;
- whether the investments were held in safe custody by the business or sent to the client or to his/her order and, if so, to what name and address.

Format and retrieval of Records

It is recognised that the retention of hard-copy evidence creates excessive volume of records to be stored. Therefore, retention may be in other formats other than original documents, such as electronic or other form. The overriding objective is for the IFCs/ITCs/ICIS their Managers or Trustees as appropriate to be able to retrieve the relevant information without undue delay and in a cost effective manner.

When setting a document retention policy, IFCs/ITCs/ICIS their Managers or Trustees as appropriate are therefore, advised to consider both the statutory requirements and the potential needs of the Unit.

Section 47 of the Law provides that where relevant information is contained in a computer, the information must be presented in a visible and legible form which can be taken away by the Unit.

6. RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS

(A) Recognition of suspicious transactions

As the types of transactions which may be used by a money launderer are almost unlimited, it is difficult to define a suspicious transaction. However, a suspicious transaction will often be one which is inconsistent with a client's known, legitimate business or personal activities or with the normal business for that type of client. Therefore, the first key to recognition is knowing enough about the client's business to recognise that a transaction, or series of transactions, is unusual.

Questions that an IFC/ITC/ICIS its Manager or Trustee as appropriate might consider when determining whether an established client's transaction might be suspicious are:

- Is the size of the transaction consistent with the normal activities of the client?
- Is the transaction rational in the context of the client's business or personal activities?
- Has the pattern of transactions conducted by the client changed?

Examples of what might constitute suspicious transactions are given in **Appendix A** to this Guidance Note. These are not intended to be exhaustive and only provide examples of the most basic way by which money may be laundered. However, identification of any of the types of transactions listed in Appendix A should prompt further investigation and be a catalyst towards making at least initial enquiries about the source of funds.

Sufficient guidance must be given to staff to enable them to recognise suspicious transactions. The type of situations giving rise to suspicions will depend on an IFC's/ITC's/ICIS's client base and range of services and products. IFCs/ITCs/ICIS their Managers or Trustees as appropriate might also consider monitoring the types of transactions and circumstances that have given rise to suspicious transaction reports by staff, with a view to updating internal instructions and guidelines from time to time.

(B) Reporting of suspicious transactions

Statutory requirements

The Law requires under Section 27 that any knowledge or suspicion of money laundering should be promptly reported to a Police Officer or to the Unit for Combating Money Laundering. The Law also provides, under Section 26, that such a disclosure cannot be treated as a breach of the duty of confidentiality owed by IFCs/ITCs/ICIS their Managers or Trustees as appropriate to their clients by virtue of the contractual relationship existing between them.

The Law also recognises, under section (26), that, in certain instances, the suspicions may be aroused after the transaction has been completed and, therefore, allows subsequent disclosure 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 Law, in accordance with sections (58) and (67), requires that financial institutions establish internal reporting procedures and that they identify a person (hereinafter to be referred to as "the Money Laundering Compliance Officer" ("MLCO") to whom employees should report their knowledge or suspicion of transactions involving money laundering. In case of employees, the Law recognises, under section (26), that internal reporting to the MLCO will satisfy the reporting requirement imposed by virtue of section (27) i.e. once the employee has reported his/her suspicion to the MLCO he/she is considered to have fully satisfied his/her statutory requirements, under section (27).

Appointment of a Money Laundering Compliance Officer

In accordance with the provisions of the Law, all IFCs/ITCs/ICIS their Managers or Trustees as appropriate should proceed with the appointment of a Money Laundering Compliance Officer. The person appointed as MLCO should be sufficiently senior to command the necessary authority.

IFCs/ITCs/ICIS their Managers or Trustees as appropriate should communicate to the Central Bank of Cyprus the names and positions of persons whom they appoint, from time to time, to act as Money Laundering Compliance Officers.

Duties of Money Laundering Compliance Officers

The role and responsibilities of Money Laundering Compliance Officers including those of Chief and Assistants, should be clearly specified by IFCs/ITCs/ICIS their Managers or Trustees as appropriate and documented in appropriate manuals and/or job descriptions.

As a minimum, the duties of an MLCO should include the following:

(a) To receive from the IFC's/ITC's/ICIS's its Manager's or Trustee's employees information which is considered by the latter to be knowledge of money laundering activities or which is cause for suspicion connected with money laundering.

(b) To validate and consider the information received as per paragraph (a) above by reference to any other relevant information and discuss the circumstances of the case with the reporting employee concerned and, where appropriate, with the employee's superior(s). The evaluation of the information reported to the MLCO should be recorded and retained on file.

(c) If following the evaluation described in paragraph (b) above, the MLCO decides to notify the Unit, then he/she should complete a written report and submit it to the Unit the soonest possible. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Report to the Unit for Combating Money Laundering") is attached, as **Appendix B**. All such reports should be kept on file.

(d) If following the evaluation described in paragraph (b) above, the MLCO decides not to notify the Unit then he/she should fully document the reasons for such a decision.

(e) The MLCO acts as a first point of contact with the Unit, upon commencement of and during investigation as a result of filing a report to the Unit under (c) above.

(f) The MLCO responds to requests from the Unit and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with the Unit.

(g) The MLCO provides advice and guidance to other employees of the IFCs/ITCs/ICIS their Managers or Trustees as appropriate on money laundering matters.

(h) The MLCO acquires the knowledge and skills required which should be used to improve the IFC's/ITC's/ICIS's its Manager's or Trustee's internal procedures for recognising and reporting money laundering suspicions.

(i) The MLCO determines whether the IFC's/ITC's/ICIS's its Manager's or Trustee's employees need further training and/or knowledge for the purpose of learning to combat money laundering.

(j) The MLCO is primarily responsible, in consultation with the IFC's/ITC's/ICIS's its Manager's or Trustee's senior management and Internal Audit Department (if any), towards the Central Bank of Cyprus in implementing the various Guidance Notes issued by the Central Bank of Cyprus under section 60(3) of the Law as well as all other instructions/recommendations issued by the Central Bank of Cyprus, from time to time, on the prevention of the criminal use of the financial system for the purpose of money laundering.

The MLCO is expected to avoid errors and/or omissions in the course of discharging his/her duties and, most importantly, when validating the reports received on money laundering suspicions, as a result of which a report to the Unit may or may not be filed. He/she is also expected to act honestly and reasonably and to make his/her determination in good faith. In this connection, it should be emphasised that the MLCO's decision may be subject to the subsequent review of the Central Bank of Cyprus which, in the course of examining and evaluating the anti-money laundering procedures of IFCs/ITCs/ICIS their Managers or Trustees as appropriate and their compliance with the provisions of the Law, is legally empowered to report an IFC/ITC/ICIS its Manager or Trustee as appropriate which, in its opinion, does not comply with the provisions of the Law to the Attorney General or to the Unit where it forms the opinion that actual money laundering has been carried out. Provided that an MLCO acts in good faith in deciding not to report a suspicion to the Unit, no report will

be made by the Central Bank of Cyprus to the Attorney General, if it is later found that his/her judgement in connection with the above suspicion was wrong.

Internal Organisational Procedures

IFCs/ITCs/ICIS should make the necessary arrangements in order to introduce measures designed to assist the functions of the Money Laundering Compliance Officer and the reporting of suspicious transactions by employees. IFCs/ITCs/ICIS their Managers or Trustees as appropriate have an obligation to ensure:

- That all their employees know to whom they should be reporting money laundering knowledge or suspicion; and
- That there is a clear reporting chain under which money laundering knowledge or suspicion is passed without delay to the Money Laundering Compliance Officer.

Disclosure procedures

All Money Laundering Compliance Officers' Reports to the Unit for Combating Money Laundering should be sent or delivered at the following address:

Unit for Combating Money Laundering,
Office of the Attorney General of the Republic,
1 Apelli Street,
CY-1403 Nicosia. Tel.: 02-302123 Fax: 02-445080

Contact person: Mrs Eva Rossidou – Papakyriakou
Head of Unit for Combating Money Laundering

The form attached to this Guidance Note, as **Appendix B** should be used and followed at all times when submitting a report to the Unit.

Co-operation with the Unit

Having made a disclosure report, an IFC/ITC/ICIS its Manager or Trustee as appropriate may subsequently wish to terminate its relationship with the client concerned for commercial or risk avoidance reasons. In such an event, however, IFCs/ITCs/ICIS their Managers or Trustees as appropriate should exercise particular caution, as per Section 48 of the Law, not to alert the client concerned that a disclosure report has been made. Close liaison with the Unit should, therefore, be maintained in an effort to avoid any frustration to the investigations conducted.

After making the disclosure, IFCs/ITCs/ICIS their Managers or Trustees as appropriate are expected to adhere to any instructions given by the Unit and, in particular, as to whether or not to continue a transaction or operate the suspected client's account or other instructions as may be deemed necessary.

7. EDUCATION AND TRAINING

Statutory requirements

The Law under Section 58 requires all persons carrying on relevant financial business to take appropriate measures to make employees whose duties include the handling of relevant financial business aware of:

- Policies and procedures maintained to prevent money laundering including those of identification, record keeping and internal reporting;
- The requirements imposed by the Law,

and, also, to provide such employees with training in the recognition and handing of suspicious transactions.

The need for staff awareness

The effectiveness of the procedures and recommendations contained in the various Guidance Notes and other relevant instructions issued by the Central Bank of Cyprus on the subject of money laundering depends on the extent to which staff of IFCs/ITCs/ICIS their Managers or Trustees as appropriate appreciate the serious nature of the background against which the Law has been enacted and are fully aware of their responsibilities. Staff must also be aware of their own personal statutory obligations. They can be personally liable for failure to report information in accordance with internal procedures. All staff must, therefore, be encouraged to co-operate and to provide a prompt report of any knowledge or suspicion of transactions involving money laundering. It is, therefore, important that IFCs/ITCs/ICIS their Managers or Trustees as appropriate introduce comprehensive measures to ensure that staff are fully aware of their responsibilities.

All relevant staff should be educated in the importance of “know your customer” requirements for money laundering prevention purposes. The training in this respect should cover not only the need to know the true identity of the client but also, where a business relationship is being established, the need to know enough about the type of business activities expected in relation to that client at the outset to know what might constitute suspicious activity at a future date. Relevant staff should be alert to any change in the pattern of a client’s transactions or circumstances that might constitute criminal activity.

Employees to be trained, content, timing and methods of training

As a means of assistance in the discharge of their legal obligations, IFCs/ITCs/ICIS their Managers or Trustees as appropriate should refer to Section 6 of this Guidance Note which deals with the Recognition and reporting of suspicious transactions.

In addition to the above, IFCs/ITCs/ICIS their Managers or Trustees as appropriate are expected to establish a programme of continuous training for all levels of their staff.

The timing, content and methods of training for the various levels/types of staff should be tailored to meet the needs of the particular IFC/ITC/ICIS its Manager or

Trustee, depending on the size and nature of the organisation and the available time and resources.

It will also be necessary to make arrangements for refresher training at regular intervals to ensure that staff do not forget their responsibilities.

13/1/2000

ANNEX 2F

**AML Guidance Notes for accountants and auditors,
Issued by the Institute of Certified Public Accountants of Cyprus
in November 2004
(G-Accountants)**

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF CYPRUS

MONEY LAUNDERING: GUIDANCE NOTES FOR ACCOUNTANTS AND AUDITORS

These Guidance Notes are issued by the Council of The Institute of Certified Public Accountants of Cyprus (ICPAC), appointed by the Council of Ministers on 7 March 2000 as the Supervisory Authority for accountants and auditors, in accordance with Section 59 of The Prevention and Suppression of Money Laundering Activities Laws of 1996 to 2004 (Laws). The guidance notes deal with the Laws and professional requirements in relation to the avoidance, recognition and reporting of money laundering. The notes are based on the above-mentioned Laws, which, in line with the EU Money Laundering Directive, includes the obligation and responsibilities for implementation of anti-money laundering measures to professionals, including accountants and auditors.*

November 2004

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* N.61(I) of 1996
N.25(I) of 1997
N.41(I) of 1998
N.120(I) of 1999
N.152(I) of 2000
N.118(I) of 2003
N.185(I) of 2004

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1. BACKGROUND

All accountants, auditors and their staff, whether they work in practice or elsewhere, must be aware of the Laws about money laundering. Individuals who are not aware, and the senior management of firms which do not have the necessary procedures, put themselves at risk of criminal prosecution. Failure to comply can result in up to 14 years' imprisonment and/or a heavy fine.

Terminology

1.01 As an aid to the use of these Guidance Notes, a number of basic words and phrases appear throughout. They are defined or explained as follows:

criminal conduct	See paragraphs 2.11 to 2.13.
know; knowledge	See paragraph 2.14.
the Institute; ICPAC	The Council of Institute of Certified Public Accountants of Cyprus
MLCO	A firm's Money Laundering Compliance Officer (see paragraph 3.02).
MOKAS	The Unit for Combating Money Laundering (see paragraph 6.20).
the Laws	The Prevention and Suppression of Money Laundering Activities Laws of 1996 to 2004
prescribed activities and services	The business of engaging in one or more of the activities and services listed in Section 60 of the Laws.
person	The term person includes any individual and any company, partnership association, society, institution or body of persons, corporate or unincorporated.
suspect; suspicion	See paragraphs 2.16 to 2.19.

1.02 The word “firm” is used throughout to include sole practitioner, partnership and company. References to “partner" likewise include sole practitioners and directors of such companies, except where indicated otherwise.

Introduction

1.03 The fight against crime demands that criminals are prevented from legitimising the proceeds of their crime by the process of “money laundering”. It is a process which can involve many outside the more obvious targets of banks and other financial institutions. Professionals such as accountants and lawyers are at risk because their services could be of value to the successful money launderer. But the launderer often seeks to involve many other often unwitting accomplices such as:

- stockbrokers and securities houses
- insurance companies and insurance brokers
- financial intermediaries
- surveyors and estate agents
- gaming activities
- company formation agents
- dealers in precious metals and bullion
- antique dealers, car dealers and others selling high value commodities and luxury goods.

1.04 The primary legislation in Cyprus is The Prevention and Suppression of Money Laundering Activities Laws of 1996 to 2004. The criminal offences which it creates can be summarised as:

- Acquiring, possessing or using the proceeds of criminal conduct
- Concealing or transferring the proceeds of criminal conduct
- Assisting another to retain the benefit of criminal conduct
- Tipping off suspects or others about a money laundering investigation
- Failing to report knowledge or suspicion of money laundering relating to all criminal offences punishable with imprisonment in excess of one year.

1.05 All accountants, auditors and their staff, whatever the nature of their work, must be particularly aware of the scope of these potential offences. Section 2 discusses the last three in more detail.

1.06 Failure to comply with any of the requirements of the Laws (by a firm to which they apply) is subject to an administrative fine of up to C£3.000 which is imposed by the competent supervisory authority. Furthermore, an auditor who fails to comply with the requirements of the Laws is referred to the competent Disciplinary Body which decides accordingly. This is irrespective of whether money laundering has taken place.

1.07 In October 2001 the EU Commission adopted the amended Money Laundering Directive. This requires more professional activities to be brought within the scope of the preventive measures against money laundering stipulated in the law of member countries. Cyprus has harmonised its legislation with the EU Directive.

Scope of these Guidance Notes

1.08 Everyone must avoid committing the statutory criminal offences summarised in Section 2; that Section therefore applies to all accountants, auditors and their staff. Those who carry on the activities and services prescribed in Section 60 of the Laws also have a legal obligation to implement the measures to prevent money laundering set out in part VIII of the Laws. Activities and services prescribed under section 60 of the Laws are defined to include a wide range of financial and other activities, but those most likely to be relevant to firms are:

- providing services relating to the issue of securities;
- providing advice or services on capital structure, industrial strategy, mergers or the purchase of undertakings;
- undertaking portfolio management and advice;
- providing safe custody services;
- conducting any other investment business; and
- providing any services to clients including carrying out audit activities, accounting/bookkeeping services and providing tax advice.

Furthermore, the same sections para. (15) provides the following: "Exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their customers in the carrying on relevant financial business".

1.09 In determining whether a firm has complied with any of the requirements of the Laws, a relevant guidance issued or approved by a supervisory or regulatory body, or in its absence, guidance provided by a trade association or other representative body may be taken into account. These Guidance Notes have been drawn up to take account of this fact and to give a practical interpretation of the Laws.

1.10 Most services provided by firms are likely to be of use in one way or another to money launderers. Firms risk damage to their reputations and business if they become involved in any way with money launderers, even unintentionally.

1.11 Firms will appreciate that there are practical benefits in applying standard practice to all of their partners and staff and across their entire range of services. Consistency of approach ensures complete coverage of the areas where the Laws are mandatory and avoids difficulties with clients and people who receive or provide services.

1.12 For example standard procedures to require partners and staff to report any suspicion of money laundering in the course of their work not only ensure that the requirements of the Laws are met whenever they apply, but also give protection to individuals against breaching the disclosure provisions of the primary legislation.

1.13 The "Charter for the European Professional Associations in support of the fight against organised crime" was signed on 27 July 1999 by the Fédération des Experts Comptables Européens (FEE) on behalf of the European profession including the CCAB bodies. The Charter requires firms to verify the identity of clients when handling clients' money. All other requirements of the Charter are already incorporated in this Guidance.

Members employed outside practice

1.14 While these Guidance Notes have been prepared primarily with firms and members employed in practice in mind, much of the material will also apply to members employed elsewhere, particularly that given in Section 2. Members employed in banking and financial services should refer, where necessary, to the guidance produced by the Central Bank of Cyprus, the Securities Commission, the Superintendent of Insurance and the Commissioner of Co-operative Societies and Development. Members employed in other sectors which might be of use to a money launderer may also find that guidance is available from their regulator. In the absence of suitable guidance, members should consider the procedures recommended for firms in these Guidance Notes, and adapt them as appropriate.

What is money laundering?

1.15 Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. If undertaken successfully, it also allows them to maintain control over those proceeds and, ultimately, to provide a legitimate cover for their source of funds. Their "dirty" funds come to appear "clean".

1.16 Money laundering is a global phenomenon that affects all countries in varying degrees. By its very nature it is a hidden activity and therefore the scale of the problem and the amount of criminal money being generated either locally or globally each year is impossible to measure accurately. However, failure to prevent the laundering of the proceeds of crime permits criminals to benefit from their actions, thus making crime a more attractive proposition.

Stages of money laundering

1.17 There is no one method of laundering money. Methods can range from the purchase and resale of a luxury item (e.g. a car or jewellery) to passing money through a complex international web of legitimate businesses and 'shell' companies (i.e. those companies that primarily exist only as named legal entities without any trading or business activities). Initially, however, in the case of drug trafficking and some other serious crimes such as robbery, the proceeds usually take the form of cash which needs to enter the financial system by some means. Street level purchases of drugs are almost always made with cash.

1.18 Despite the variety of methods employed, the laundering process is typically accomplished in three stages which may comprise numerous transactions by the launderers that could raise suspicions of underlying criminal activity:

- 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 channelled via shell companies or companies with nominee shareholders and/or nominee directors.
- Integration - the provision of apparent legitimacy to criminally derived wealth. If the layering process has succeeded, integration schemes place the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing as normal business funds.

The three basic steps may occur as separate and distinct phases. They may occur simultaneously or, more commonly, they may overlap. How the basic steps are used depends on the available laundering mechanisms and the requirements of the criminal organisations.

1.19 Certain points of vulnerability have been identified in the laundering process which the money launderer finds difficult to avoid and where his activities are therefore more susceptible to be recognised, specifically:

- entry of cash into the financial system;
- cross-border flows of funds; and
- transfers within and from the financial system.

Vulnerability of accountants to money laundering

1.20 Money launderers are plausible people and their business activities will often be difficult to distinguish from those of the legitimate client. Like the legitimate client, the launderer will need audit services and a whole range of financial, tax and business advice. Some areas of an accountant's work may be more vulnerable than others to the involvement of money launderers, but it would be dangerous to regard any area as immune.

Responsibilities of the Institute

1.21 Supervisory authorities (such as the Institute as the designated supervisory body under the Laws) have specific obligations under the Laws to report to MOKAS any information they obtain which in their opinion is, or may be, indicative of money laundering and report to the Attorney General firms which fail to comply with the provisions of the Laws.

1.22 Further, the Institute has an interest in measures employed to counter money laundering because of the damage which firms and their clients can suffer from it, as well as the reputation of the profession as a whole. There may therefore be occasions when it will be appropriate for action taken in relation to money laundering by both firms and individuals to be taken into account by the Institute in undertaking both its regulatory and disciplinary functions.

1.23 Failure to report money laundering, or failure to have adequate policies and procedures to guard against being used for money laundering, may call into question the integrity of and the due care and diligence used by the firm or individual member involved. Compliance with these Guidance Notes is likely to be an important point of reference in any assessment of the conduct of individual members and of the adequacy of systems of control to guard against money laundering.

2. CYPRUS LEGISLATION

Introduction

2.01 The main purpose of the Laws is to define and criminalise the laundering of the proceeds generated from all serious criminal offences and provide for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes.

Prescribed offences (Section 3 of the Laws)

2.02 The Laws have effect in respect of offences which are referred to as "prescribed offences" and which comprise of:

(c) laundering offences; and
(d) predicate offences

Laundering offences (Section 4 of the Laws)

2.03 Under the Laws, every person who **knows, or ought to have known** that any kind of property is proceeds from a predicate offence is guilty of an offence if he carries out any of the following:

(vi) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a predicate offence to evade the legal consequences of his actions;

(vii) conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property;

(viii) acquires, possesses or uses such property;

(ix) participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counseling or advice for the commission of any of the offences referred to above;

(x) provides information with respect to investigations that are being performed for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence.

Commitment of the above offences is punishable on conviction by a maximum of fourteen (14) years imprisonment or a fine or both of these penalties, in the case of a person who knows that the property is proceeds from a predicate offence, or by a maximum of five (5) years imprisonment or a fine or both of these penalties, in the case of a person who ought to have known.

It is a defence, under Section 26 of the Laws, in criminal proceedings against a person in respect of assisting another to commit a laundering offence that he intended to disclose to a police officer or MOKAS his suspicion or belief that the agreement or arrangement related to proceeds from a predicate offence and that his failure to make the disclosure was based on reasonable grounds. Also, under section (26) of the Laws, any such disclosure should not be treated as a breach of any restriction upon the disclosure of information imposed by contract.

In the case of employees of persons whose activities are supervised by one of the authorities established under Section 59, the Laws recognise that the disclosure may be made to a competent person (e.g. a Money Laundering Compliance Officer) in accordance with established internal procedures and such disclosure shall have the same effect as a disclosure made to a police officer or MOKAS.

Predicate offences (Section 5 of the Laws)

2.04 Criminal offences as a result of which proceeds were generated that may become the subject of a laundering offence, are all criminal offences punishable with imprisonment not exceeding one year from which proceeds or assets were derived.

For the purposes of money laundering offences it does not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not (Section 4(2) of the Laws).

Failure to report (Section 27 of the Laws)

2.05 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. Failure to report in these circumstances is punishable on conviction by a maximum of five (5) years imprisonment or a fine not exceeding C£3.000 (three thousand pounds) or both of these penalties.

Tipping - off (Section 48 of the Laws)

2.06 Further to the offence (2.03) under the section on laundering offences above, it is also an offence for any 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 or any third party, knowing or suspecting that the authorities are carrying out such an investigation and search. "Tipping-off" under these circumstances is punishable by imprisonment not exceeding five (5) years.

Prescribed activities and services (Section 60 of the Laws)

2.07 The Laws recognise the important role of the financial institutions, accountants and lawyers for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all institutions, including firms engaged in the activities and services listed below:

(1) Acceptance of deposits by the public.

(2) Lending money to public.

(3) Finance leasing, including hire purchase financing.

(4) Money transmission services.

(5) Issue and administration of means of payment (e.g. credit cards, travelers' cheques and bankers' drafts).

(6) Guarantees and commitments.

(7) Trading on one's for own account or on account of customers in:
   (a) Stocks or securities including cheques, bills of exchange, bonds, certificates of deposits;
   (b) foreign exchange;
   (c) financial futures and options;
   (d) exchange and interest rate instruments; and
   (e) transferable instruments.

(8) Participation in share issues and the provision of related services;

(9) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues and consultancy services as well as services in the areas of mergers and acquisitions of businesses.

(10) money broking.

(11) Investment services, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investment" includes longterm insurance contracts, whether or not associated with investment schemes.

(12) Safe custody services.

(13) Custody trustee services in relation to stocks

(14) Insurance contracts of the General Business nature contracted by a company established in Cyprus under the Companies Law, either as Cypriot or foreign, but carries on insurance business exclusively outside Cyprus.

(15) Exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their clients in the context of carrying on financial business.

(16) Exercise of professional activities on behalf of independent lawyers, with the exception of privileged information, when they participate, either

(a) by 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;

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

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

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

(b) or by acting on behalf and for the account of their clients in any financial or real estate transaction.

(17) Any of the services determined in Parts I and III of the First Schedule to the Investment firms (ΕΠΕΥ) Laws of 2002 to 2003 and provided in connection with financial instruments, which are listed in Part II of the same Schedule.

(18) Dealings in real estate transactions, conducted by real estate agents.

(19) Dealings in precious stones or metals when the payment is made in cash and in an amount of EUR 15.000 or more.

Procedures to prevent Money Laundering (Section 58 of the Laws)

2.08 The Laws require all persons carrying on the prescribed activities and services, as defined above, to establish and maintain specific policies and procedures to guard against their business and the financial system in general being used for the purposes of money laundering. In essence these procedures are designed to achieve two purposes: firstly, to facilitate the recognition and reporting of suspicious transactions and, secondly, to ensure through the strict implementation of the "know-your-client" principle and the maintenance of adequate record keeping procedures, should a client come under investigation, that the firm is able to provide its part of the audit trail. The Laws require that all persons institute a number of procedures. In fact, it is illegal for any person, in the course of relevant financial business, to form a business relationship or carry out an one-off transaction in excess of C£8.000 with or on behalf of another, unless the following procedures are instituted:

- Client identification procedures;
- Record-keeping procedures in relation to clients' identity and their transactions;
- Procedures of internal reporting to a competent person - (e.g. a Money Laundering Compliance Officer) appointed to receive and consider information that give rise to knowledge or suspicion that a client is engaged in money laundering activities;
- Other internal control and communication procedures for the purpose of forestalling and preventing money laundering;
- Measures for making employees aware of the above procedures to prevent money laundering and of the legislation relating to money laundering; and
- Provision of training to their employees in the recognition and handling of transactions suspected to be associated with money laundering.

Any person who allegedly fails to comply with the above requirements, after giving him the opportunity to be heard, is subject to an administrative fine of up to C£3.000 which is imposed by the competent Supervisory Authority.

Lawyer or auditor who allegedly fails to comply with the above requirements, is referred to the competent Disciplinary Body which decides accordingly.

Any other person who is not included in two preceding paragraphs and is not subject to supervision by any Supervisory Authority and violated the provisions of this Section is guilty of an offence punishable, in case of conviction by imprisonment of two years or by a fine of up to C£3.000 or both.

In determining whether a person has complied with the above requirements a court may take into account –

(a) any relevant supervisory or regulatory guidance which applies to that person;
(b) where no guidance falling within the above applies, any other relevant instructions issued by the professional body that regulates, or represents the business or work carried on by that person.

Supervisory authorities (Section 59 of the Laws)

2.09 On 7 March 2001, the Council of Ministers designated the Institute as the supervisory authority for the accountancy profession in Cyprus.

The Institute, in its capacity as supervisory authority, is empowered under the Laws to issue guidance notes to all accountants and auditors in Cyprus. The purpose of the guidance notes issued by the Institute, as the supervisory authority of the accountancy profession, is to provide a practical interpretation of the requirements of the Laws in respect to business carried on by firms and to indicate good business practice.

Where a supervisory authority is of the opinion that a person falling within its responsibility has failed to comply with the provisions of the Laws it has a legal obligation to refer the matter to the Attorney General. Where a supervisory authority obtains information and is of the opinion that any person may have been engaged in money laundering then it has a legal obligation to disclose the relevant information to MOKAS.

Orders for disclosure of information (Section 45 of the Laws)

2.10 Courts in Cyprus may, on application by the investigator, make an order for the disclosure of information by a person, including a firm, who appears to the Court to be in possession of the information to which the application relates. Such an order applies irrespective of any legal or other

provision which creates an obligation for the maintenance of secrecy or imposes any constraints on the disclosure of information. As already stated under "tipping off", a person who makes any disclosure which is likely to obstruct or prejudice an investigation into the commitment of a predicate offence, knowing or suspecting that the investigation is taking place, is guilty of an offence.

Terminology

Criminal conduct

2.11 The term criminal conduct (predicate offence) in the Laws is referring to the original offence, e.g. drug trafficking, the proceeds of which are involved in actual or suspected money laundering. It includes any conduct, wherever it takes place, which would constitute an indictable offence if committed in Cyprus. In general such offences are those which are serious enough to be tried in Court. There will be criminal conduct, which can give rise to money laundering offences in Cyprus, even if the conduct was not criminal in the country where it actually occurred. See paragraph 6.05 as to the reporting requirement under the Laws.

2.12 Offences indictable in Cyprus are all criminal offences punishable with imprisonment not exceeding one year from which proceeds or assets were derived.

2.13 The Laws do not impose a duty on firms to look into the criminal law of any other country in which the criminal conduct may have occurred. The basis for determining whether assets derive from criminal conduct is that the activity from which the assets are generated would be an indictable criminal offence if it occurred in Cyprus. Firms would not be expected to know the exact nature of the criminal activity concerned, or that particular assets are definitely those arising from the crime.

Knowledge

2.14 The term “knowledge” is not strictly defined in the Laws but it may include situations such as:

- actual knowledge
- shutting one’s mind to the obvious
- deliberately refraining from making enquiries, the results of which one might not care to have
- knowledge of circumstances which would indicate the facts to an honest and reasonable person
- knowledge of circumstances which would put an honest and reasonable person on enquiry, but not mere neglect to ascertain what could have been found out by making reasonable enquiries.

Reasonable excuse

2.15 The legal interpretation of the defence of reasonable excuse is covered by section 26 of the Laws. If circumstances permit, legal advice should be obtained. If you find yourself in breach of the Laws inadvertently, or under duress, the situation should be corrected by reporting the matter as soon as is reasonably possible.

Suspicion

2.16 The words suspect and suspicion appear many times in the legislation. As examples, they raise the questions:

- Even if he/she does not know the exact nature of the criminal offence, should an accountant suspect that a person has engaged in or benefited from criminal conduct?
- Should an accountant suspect that assets are or represent the proceeds of criminal conduct?

2.17 Suspicion falls far short of proof based on firm evidence, but must be built on some factual foundation. There must be a degree of satisfaction, even if it does not amount to belief. This means that speculation as to whether a possible situation does in fact exist does not by itself amount to suspicion.

2.18 A particular sector or business may be subject to a greater degree of inherent risk of money laundering than another sector. The nature of the business practices in a particular entity may raise the overall risk of fraudulent, illegal or unauthorised transactions. However, an assessment that there is a higher than normal risk of money laundering is <u>not</u> the same as suspecting money laundering.

2.19 Paragraphs 6.01 to 6.04 contain some guidance on how to recognise whether a transaction is suspicious.

Obligations to clients and third parties

Client confidentiality

2.20 The legislation protects those reporting suspicions of money laundering from claims in respect of any alleged breach of client confidentiality. This ensures that no action can be taken against the reporter even where the suspicions are later proved to be ill founded. However, the protection

extends only to disclosure of the suspicion or belief that funds derive from money laundering, and to matters on which that suspicion or belief is based. If in doubt, firms should insist on the law enforcement agencies obtaining a court order before disclosing information beyond that contained in their initial report.

Constructive trust

2.21 A number of concerns have been raised about possible conflicts between the civil and criminal law in the area of constructive trusteeship, as a result of the duty to report suspicious transactions. Where a firm comes to know that property belongs to a person other than its client, it can become a constructive trustee of that property and therefore accountable for it to its true owner. This is most likely to arise in two cases when the firm comes to know that property belongs not to its client but to a third party:

- the firm receives property and deals with it in a way which it knows to be inconsistent with the rights of the true owner. The fact that the firm was acting with the consent of the law enforcement agencies would be no defence to a claim by the true owner.
- even though the firm does not itself receive the property, it acts in a way which it knows will assist others to defraud the true owner of his property.

2.22 Paragraph 2.14 shows that "knows" has a wide meaning in this context. Even if it had no actual knowledge, a firm could still be liable to the true owner if it **should have known** that his rights were being or might be infringed. Further guidance on reporting procedures in cases which could involve constructive trusteeship is given in paragraphs 6.27 to 6.32.

Disclosure of information to third parties

2.23 A third party claiming to be entitled to assets which are or have been in the hands of a firm and which are the subject of a report to MOKAS, might seek a court order which would direct the firm to disclose information. If the firm believes that disclosure of information to the third party could prejudice a money laundering investigation by the law enforcement agencies, the tipping off offence could arise. Legal advice should be taken before the information is disclosed.

3. INTERNAL CONTROLS, POLICIES AND PROCEDURES

Responsibilities and accountabilities

3.01 Firms are required to establish and maintain policies, procedures and controls to prevent money laundering, and to ensure the reporting of any that may be known or suspected.

3.02 The Laws require firms to establish a central point of contact in order to handle the reported suspicions of their partners and staff regarding money laundering. Firms must appoint an "appropriate person" (referred to in these Guidance Notes as the Money Laundering Compliance Officer or MLCO) to undertake this role.

Recommended procedures to comply with the Laws

3.03 All firms to which the Laws apply should have appropriate procedures for:

- identifying clients (see Section 4);
- record-keeping (see Section 5);
- recognising and reporting suspicions of money laundering (see Section 6);
- education and training of partners and staff (see Section 7).

3.04 As good practice, firms are recommended to make arrangements to verify, on a regular basis, compliance with policies, procedures and controls relating to money laundering activities. Partners need to satisfy themselves that the requirement in the Laws to maintain such procedures has been discharged.

3.05 It is important that the procedures and responsibilities for monitoring compliance with and effectiveness of money laundering policies and procedures are clearly laid down by all firms.

Overseas offices and associated firms

4. IDENTIFICATION PROCEDURES

Statutory requirements

4.01 The Laws require all persons carrying on financial business to maintain client identification procedures in accordance with Sections 58 and 61-64.

The essence of these requirements is that, except where the Laws state that client identification need not be made, a firm must verify the identity of a prospective client.

Introduction - "Know your client"

4.02 In the great majority of business relationships, the accountant will need to obtain a good working knowledge of a client's business and financial background in order to provide an effective service. This will normally provide evidence of identity at an early stage in the relationship.

4.03 The "know your client" process is vital for the prevention of money laundering and underpins all other activities. If a client has established a business relationship under a false identity, he/she may be doing so for the purpose of defrauding the firm itself, or merely to ensure that he/she cannot be traced or linked to the proceeds of the crime that the firm is being used to launder. A false name, address or date of birth will usually mean that the law enforcement agencies cannot trace the client if he/she is needed for interview in connection with an investigation.

4.04 An accountant or auditor, who is taking over a professional appointment, replacing an existing accountant, auditor or other adviser, may be in communication with the existing accountant, auditor or other adviser. This may provide evidence of both identity and integrity of the client, and is a valuable procedure in this context.

4.05 Where a partner, a trusted member of staff, a respected client of long standing or another reliable source introduces a new client, a firm may take the view that no further verification of identity should be required so long as the introducer confirms in writing the identity of the prospective client. But firms should not overlook the need for normal client acceptance procedures.

4.06 Where these procedures do not provide evidence of sufficient quality to satisfy the engagement partner that the identity of the prospective client has been adequately verified, further enquiries may be appropriate. If the engagement partner remains in doubt as to identity, he/she may well decline to act.

4.07 It is for each firm to decide what document(s) a prospective client should be required to produce as evidence of identity. Where possible a copy of such document(s) should be taken and retained. Where this is not possible, the relevant details should be recorded on the prospective client's file.

The basic identification requirement

4.08 All firms should seek satisfactory evidence of identity of those for whom they provide services (a process referred to in these Guidance Notes as verification of identity). If satisfactory evidence of identity has not been obtained in a reasonable time, then "the business relationship or one-off transaction in question shall not proceed any further". This means that a firm may have to refrain from providing the requested service or perform a transaction until satisfactory evidence is obtained. In some circumstances, the failure by a client to provide satisfactory evidence of identity may, in itself, lead to a suspicion that he/she is engaging in money laundering.

4.09 It is for firms themselves to discharge their obligation under the Laws to verify identity. The few occasions when it is reasonable to rely on others to undertake the procedures or to confirm identity include:

- where the client is introduced by one of the firm's overseas branch offices or associated firms. But the firm should obtain the introducer's written confirmation that it has verified the client's identity and relevant identification data is retained by the overseas office branch or firm.
- where a firm merges with another, or acquires the practice of another firm in whole or in part, it is not necessary for the identity of clients to be re-verified, provided that satisfactory identification records are available.

4.10 The verification requirements are the same, whatever the means by which the firm intends to provide its services to the client. Thus, the requirements are no less where all advice is to be given by post, by telephone or even through the Internet.

4.11 If a firm suspects that a prospective client is engaged in money laundering, it may well decline to act but has a legal obligation to file a suspicious activity report to MOKAS. In that event it will be unnecessary to complete identification procedures. Moreover, nothing must be communicated to the prospective client (or to any other person) which might prejudice an investigation or proposed investigation by the law enforcement agencies.

When must identity be verified?

4.12 Information and instructions given by a prospective client may present unusual and unexplained features which could suggest underlying money laundering activity. Unless the firm withdraws at once in such a case, identity should be verified before it agrees to act; this is so irrespective of the size and nature of the transaction and service to be provided and even if an exemption appears to apply (see paragraphs 4.19 to 4.28).

4.13 The identification procedures must be followed whenever a business relationship is to be established, or a one-off transaction or series of linked transactions of C£8.000 or more is undertaken. Once identification procedures have been satisfactorily completed, then as long as records are maintained in accordance with Section 5 and some contact is maintained with the client, no further evidence is needed when subsequent transactions are undertaken.

4.14 Firms should verify the identity of any client before agreeing to handle client's money on his, her or its behalf. This applies whatever type of business may be involved. It is an obligation which arises under the "Charter of the European Professional Associations in support of the fight against organised crime". The Charter was signed on 27 July 1999 by (among others) the Fédération des Experts Comptables Européens (FEE) on behalf of its members which include the ICPAC.

Terminology

The definitions of "applicant for business", "business relationship" and "one-off transaction" are essential to an understanding of this Section. These are set out in Section 57 of the Laws.

Applicant for business

4.15 A person seeking to form a business relationship or carry out a one-off transaction with a person who is carrying out the prescribed activities and services in or from within the Republic. Thus, for example:

- clients seeking advice in their own name and on their own behalf are clearly the applicants for business;
- when a person applies for an investment to be registered in the name of another (e.g. grandchildren), it is the person who provides the funds who should be regarded as the applicant for business rather than the registered holder;

- when an intermediary introduces a third party to the firm so that the third party may be given advice, and/or make an investment in his/her own name, then it is that party (not the introducer) who is the firm's applicant for business and therefore whose identity must be verified;
- if an individual claiming to represent a company, partnership, or other legal entity applies for business, then the applicant for business will be the legal entity as such. It is the identity or existence of that entity which should be verified, rather than that of any individual claiming to represent it;
- if an applicant for business is or appears to be acting otherwise than as principal, the identity should be verified of any person on whose behalf the applicant is acting.

Business relationship and one-off transaction

4.16 A "business relationship" is defined as any arrangement between two or more persons where:

- the purpose of the arrangement is to facilitate the carrying out of transactions between the parties on a "frequent, habitual or regular" basis; and
- the total amount of any payment or payments to be made by any person to any other person in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

4.17 A "one-off transaction" means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of the prescribed activities and services.

4.18 "Prescribed activities and services" means the business of being engaged in the carrying out of :

- any activity listed in section 60 of the Laws;
- any other activity defined by the Council of Ministers as such by an order amending section 60 of the Laws published in the Official Gazette of the Republic.

Identification procedures: Exemptions

4.19 The obligation to maintain procedures for obtaining evidence of identity is general, but there are a number of exemptions when some of the requirements can be waived. However, firms should realise that exemptions can be difficult to apply and may cause additional administrative problems. They may think it more prudent to carry out

their own identification procedures for all new clients. It is also important to remember that no exemption applies in the case of any one-off transaction which is known or suspected to involve money laundering.

4.20 Steps to verify identity are not required in the following circumstances:

i. Cyprus credit or financial institutions

4.21 Verification of identity is not required when there are reasonable grounds for believing that the applicant for business is itself subject to the Laws. This exemption does not apply where the applicant is a credit or financial institution in an overseas country including the EU.

ii. One-off transactions: single or linked

4.22 Verification of identity is not normally needed in the case of a single one-off transaction when payment by, or to, the applicant is less than C£8.000 (see paragraph 4.13). However, identification procedures should be undertaken for linked transactions that together exceed this limit.

Higher risk countries

Non Co-operative Countries and Territories (NCCTs)

4.23 Although many countries have enacted, or are enacting, anti-money laundering legislation, there are some countries where the legislation is considered to be ineffective or deficient. In February 2000, FATF published a Report setting out the criteria for identifying those countries and territories that are not co-operative in the international fight against money laundering.

The Financial Action Task Force from time to time issues guidance on countries considered to be at risk from criminal money. Special attention should be given to business relationships and transactions with any person or body from such countries. From time to time Accountancy Cyprus will refer members to current guidance as to which countries are regarded as "higher risk".

The current list of NCCTs together with their status as at November 2004 is set out as Appendix B

4.24 When constructing their internal procedures, firms should have regard to the need for additional monitoring procedures for transactions from countries on the list. When considering what additional procedures are required, firms may take into account the FATF assessment of the progress that has been made.

Identification of individuals

Evidence of identity

4.25 When verifying the identity of an individual, the vital question is "Is the person who he/she claims to be? not "What is his/her position and standing?". The identity of an individual comprises his/her name and all other names used, the date of birth, the address at which the person can be located and his/her profession or occupation. Ideally, an official document bearing a photograph of the person should also be obtained. However, photographic evidence of identity is only of value to identify clients who are seen face to face. It is neither safe nor reasonable to require a prospective client to send a passport through the post. Any subsequent changes to the client's name or address that are notified to the firm should be recorded.

4.26 In addition to the name(s) used and date of birth, it is important that the current permanent address should be verified as it is an integral part of identity. Some of the best means of verifying addresses are:

- a face to face home visit to the applicant for business;
- making a credit reference agency search;
- requesting sight of a recent utility bill, local authority tax bill, bank or co-operative society statement (to guard against forged or counterfeit documents, care should be taken to check that the documents offered are originals);
- checking the telephone directory.

Non-Cypriot residents

4.27 For those prospective clients who are not normally resident in Cyprus but who make face-to-face contact, a passport or national identity card will normally be available. In addition to recording the passport or identity card number and place of issue, firms should confirm identity and permanent address with a reputable financial institution or professional adviser in the prospective client's home country or normal country of residence.

4.28 Firms should be extra vigilant in the case of non-Cyprus resident prospective clients who are not seen face to face and who are not covered by one of the exemptions set out in paragraphs 4.21 to 4.22. Possible procedures include:

- a branch office, associated firm or reliable professional adviser in the prospective client's home country could be used to confirm identity or as an agent to check personal verification details;

- where the firm has no such relationship in the prospective client's country of residence, a copy of the passport authenticated by an attorney or consulate could be obtained;
- verification details covering true name or names used, 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 organisations

4.29 Because of possible difficulties of identifying beneficial ownership and the complexity of their organisations and structures, legal entities and trusts are among the most likely vehicles for money laundering, particularly when fronted by a legitimate trading company. Particular care should be taken to verify the legal existence of the prospective client and to ensure that any person purporting to act on its behalf is authorised to do so.

Companies and partnerships

4.30 In the case of any corporate or other entity, the principal requirement is to identify those who have ultimate control or significant influence over the business and its assets, with particular attention paid to principal shareholders or others who inject a significant proportion of the capital or financial support 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.

4.31 Before a business relationship is established, a company search and/or other commercial enquiries should be made to ensure that if the applicant is a company, it has not been, or is not in the process of being, dissolved, struck off, wound up or terminated.

4.32 "Know your client" is an on-going process. If a firm becomes aware of changes to the client's structure or ownership, or if suspicions are aroused by a change in the nature of the business transacted, further checks should be made to ascertain the reason for the changes.

4.33 No further steps to verify identity over and above normal commercial practice and due diligence procedures will usually be required where the prospective client is:

- a company quoted on a recognised stock exchange; or
- known to be a subsidiary of such a company; or

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

4.34 Where the applicant for business is an unquoted company, an unincorporated business or a partnership, the firm should identify the principal directors/partners and/beneficial shareholders in line with the requirements for individual clients. In addition, the following documents should normally be obtained:

- for established businesses, a copy of the latest report and accounts (audited where applicable);
- a copy of the certificate of incorporation/certificate of trade or equivalent.
- A copy of the company's Memorandum and Articles of Association and other certificates issued by the Official Receiver and Registrar

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

Trusts (including occupational pension schemes) and nominees

4.35 Where a firm is asked to act for trustees or nominees, the identity of all major parties should be verified. These include the trustees, the settlor and the principal beneficiaries.

4.36 Trust and nominee accounts are a popular vehicle for criminals wishing to avoid the identification procedures and mask the origin of the criminal money they wish to launder. Particular care needs to be exercised when the accounts are set up in countries with strict bank secrecy or confidentiality rules. Trusts created in jurisdictions without equivalent money laundering procedures in place will warrant additional enquiries.

4.37 Where 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 authorised in writing by the trustee.

4.38 In the case of occupational pension schemes, the identity of the principal employer should be verified, and also (by inspecting the scheme's trust documents) that of the trustees. There is no need to verify the identity of those who are to receive scheme benefits, unless the firm is to give them advice individually.

Registered charities in Cyprus

4.39 Where the applicant for business is a registered charity, the relevant Government authority should be asked to confirm the registered number of the charity and the name and address of the charity concerned.

Local authorities and other public bodies

4.40 Where the applicant for business is a local authority or other public body, the firm should obtain a copy of the resolution authorising the undertaking of the relevant transaction. Evidence that the individual dealing with the firm has the relevant authority to act should also be sought and retained.

5. RECORD-KEEPING

Statutory requirements

5.01 The Laws require, under Sections 58 and 65, firms to retain records concerning client identification and details of transactions for use as evidence in any possible investigation into money laundering. This is an essential constituent of the audit trail procedures that the Laws seek to establish.

5.02 The records prepared and maintained by any firm on its client relationships and transactions should be 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 transaction effected via the firm can be reconstructed.

Firms should be aware that they might be called upon to satisfy within a reasonable time any enquiries from MOKAS or court orders requiring disclosure of information.

5.03 The most important single feature of the Laws in this area is that they require relevant records to be retained for at least five years from the date when the firm's relationship with the client was terminated or a transaction was completed.

Documents verifying evidence of identity

5.04 The Laws specify, under Section 65, that, where evidence of a person's identity is required, the records retained must include the following:

(c) A record that indicates the nature of a client's identity obtained in accordance with the procedures provided in the Laws and which comprises either a copy of the evidence or which provides sufficient information to enable details as to a person's identity to be re-obtained.

(d) A record containing details relating to all transactions carried out for the account and on behalf of that person.

The prescribed record retention period is at least five years commencing with the date on which the relevant business or all activities taking place in the course of transactions were completed.

5.05 In accordance with the Laws, the date when the relationship with the client has ended is the date of:

(iv) the carrying out of an one-off transaction or the last in the series of one-off transactions;

(v) the termination of the business relationship i.e. the closing of the account(s);

(vi) if the business relationship has not formally ended, the date of which the last transaction was carried out.

5.06 Where formalities to end a business relationship have not been undertaken, but a period of five years has elapsed since the date when the last transaction was carried out, then the five year retention period commences on the date of the completion of all activities taking place in the course of the last transaction.

Transaction records

5.07 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.

5.08 For each transaction, consideration should be given to retaining a record of:

- the name and address of its client;
- the name and address (or identification code) of its counter party;
- the form of instruction or authority;
- the account details from which any funds were paid;
- the form and destination of payment made by the business to the client.

Format and retrieval of records

5.09 It is recognised that the retention of hard-copy evidence creates excessive volume of records to be stored. Therefore, retention may be in other formats other than original documents, such as electronic or other form. The overriding objective is for the firms to be able to retrieve the relevant information without undue delay and in a cost effective manner.

5.10 When setting a document retention policy, firms are therefore advised to consider both the statutory requirements and the potential needs of MOKAS.

5.11 Section 47 of the Laws provide that where relevant information is contained in a computer, the information must be presented in a visible and legible form which can be taken away by MOKAS.

6. RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS

Recognition of suspicious transactions

6.01 As the types of transactions which may be used by a money launderer are almost unlimited, it is difficult to define a suspicious transaction. However, a suspicious transaction will often be one which is inconsistent with a client's known, legitimate business or personal activities or with the normal business for that type of client. Therefore, the first key to recognition is knowing enough about the client's business to recognise that a transaction, or series of transactions, is unusual.

6.02 Questions that a firm might consider when determining whether an established client's transaction might be suspicious are:

- Is the size of the transaction consistent with the normal activities of the client?
- Is the transaction rational in the context of the client's business or personal activities?
- Has the pattern of transactions conducted by the client changed?

6.03 Warning signs which can indicate that an established client's transactions might be suspicious include:

- The size of the transaction (or transactions when aggregated) is inconsistent with the normal activities of the client

- The transaction is not rational in the context of the client's business or personal activities
- The pattern of transactions conducted by the client has changed
- The transaction is international in nature and the client has no obvious reason for conducting business with the other country involved.

6.04 Sufficient guidance must be given to staff to enable them to recognise suspicious transactions. The type of situations giving rise to suspicions will depend on a firm's client base and range of services and products. A firm might also consider monitoring the types of transactions and circumstances that have given rise to suspicious transaction reports by staff, with a view to updating internal instructions and guidelines from time to time.

Reporting of suspicious transactions

6.05 The Laws require under Section 27 that any knowledge or suspicion of money laundering should be promptly reported to a Police Officer or to MOKAS. The Laws also provide, under Section 26, that such a disclosure cannot be treated as a breach of the duty of confidentiality owed by firms to their clients by virtue of the contractual relationship existing between them.

The Laws also recognise, under section 26, that, in certain instances, the suspicions may be aroused after the transaction or service has been completed and, therefore, allows subsequent disclosure 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.

6.06 The Laws, in accordance with sections 58 and 66, require that firms establish internal reporting procedures and that they identify a person (hereinafter to be referred to as "the Money Laundering Compliance Officer" ("MLCO") to whom employees should report their knowledge or suspicion of transactions or activities involving money laundering. In case of a firm's employees, the Laws recognise, under section 26, that internal reporting to the MLCO will satisfy the reporting requirement imposed by virtue of section 27 i.e. once the employee has reported his/her suspicion to the MLCO he/she is considered to have fully satisfied his/her statutory requirements, under section 27.

6.07 Firms may wish to include in their client agreements or terms of business letters a passage which places clients on notice of the firms' potential reporting obligations. While this could refer specifically to suspicions of money laundering, firms may prefer a generalised form of wording which

would extend to other matters where reporting to regulators etc. is required or appropriate. It is also a useful precaution to include a statement that Cyprus law will govern the provision of the firm's services and that the Cypriot courts will have exclusive jurisdiction over any dispute.

Appointment and role of the Money Laundering Compliance Officer

6.08 In accordance with the provisions of the Laws, all firms should proceed with the appointment of a Money Laundering Compliance Officer. The person appointed as MLCO should be sufficiently senior to command the necessary authority.

Firms should communicate to MOKAS the names and positions of persons whom they appoint, from time to time, to act as Money Laundering Compliance Officers.

6.09 The role and responsibilities of Money Laundering Compliance Officers including those of Chief and Assistants, should be clearly specified by the firm and documented in appropriate manuals and/or job descriptions.

6.10 As a minimum, the duties of an MLCO should include the following:

(k) To receive from the firm employees information which is considered by the latter to be knowledge of money laundering activities or which is cause for suspicion connected with money laundering.

(l) To validate and consider the information received as per paragraph (a) above by reference to any other relevant information and discuss the circumstances of the case with the reporting employee concerned and, where appropriate, with the employee's superior(s). The evaluation of the information reported to the MLCO should be recorded and retained on file.

(m) If following the evaluation described in paragraph (b) above, the MLCO decides to notify MOKAS, then he/she should complete a written report and submit it to MOKAS the soonest possible. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Report to the Unit for Combating Money Laundering") is attached, as **Appendix A**. All such reports should be kept on file.

(n) If following the evaluation described in paragraph (b) above, the MLCO decides not to notify MOKAS then he/she should fully document the reasons for such a decision.

(o) The MLCO acts as a first point of contact with MOKAS, upon commencement of and during investigation as a result of filing a report to MOKAS under (c) above.

(p) The MLCO responds to requests from MOKAS and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with MOKAS.

(q) The MLCO provides advice and guidance to other employees of the firm on money laundering matters.

(r) The MLCO acquires the knowledge and skills required which should be used to improve the firm's internal procedures for recognising and reporting money-laundering suspicions.

(s) The MLCO determines whether the firm's employees need further training and/or knowledge for the purpose of learning to combat money laundering.

(t) The MLCO is primarily responsible, in consultation with the firm's senior management and Internal Audit Department (if any), towards the Institute in implementing the various Guidance Notes issued by it under the Laws as well as all other instructions/recommendations issued by the Institute, from time to time, on the prevention of the criminal use of services offered by accountants and auditors for the purpose of money laundering.

6.11 The MLCO is expected to avoid errors and/or omissions in the course of discharging his/her duties and, most importantly, when validating the reports received on money laundering suspicions, as a result of which a report to MOKAS may or may not be filed.

He/she is also expected to act honestly and reasonably and to make his/her determination in good faith. In this connection, it should be emphasised that the MLCO's decision may be subject to the subsequent review of the Institute which, in the course of examining and evaluating the anti-money laundering procedures of a firm as appropriate and their compliance with the provisions of the Laws, is legally empowered to report a firm as appropriate which, in its opinion, does not comply with the provisions of the Laws to the Attorney General or to MOKAS where it forms the opinion that actual money laundering has been carried out. Provided that MLCO acts in good faith in deciding not to report a suspicion to MOKAS, the Institute will make no report to the Attorney General, if it is later found that his/her judgment in connection with the above suspicion was wrong.

Internal reporting procedures and records

6.12 A firm should make the necessary arrangements in order to introduce measures designed to assist the functions of the Money Laundering Compliance Officer and the reporting of suspicious transactions by employees. Firms have an obligation to ensure:

- That all their employees know to whom they should be reporting money laundering knowledge or suspicion; and
- That there is a clear reporting chain under which money laundering knowledge or suspicion is passed without delay to the Money Laundering Compliance Officer.

6.13 Reporting lines should be as short as possible, with the minimum number of people between the person with the suspicion and the MLCO. This ensures speed, confidentiality and accessibility to the MLCO. However, some firms may choose to require that unusual or suspicious activities or transactions be drawn initially to the attention of an appropriate partner to ensure that there are no known facts that will negate the suspicion before further reporting to the MLCO.

6.14 Such partners should also be aware of their own legal obligations. An additional fact which the partner supplies may negate the suspicion in the mind of the person making the initial report, but not in the mind of the partner. The firm's procedures should then require the partner to report to the MLCO. On the other hand, the partner should never attempt to prevent a member of staff who remains suspicious from reporting direct to the MLCO. Staff should be made aware that they have a direct route to the MLCO.

6.15 Larger firms may choose to appoint assistant MLCOs within departments or branch offices, to enable the validity of the suspicion to be examined before being passed to a central MLCO. In such cases, the role of the assistant MLCOs must be clearly specified and documented. All procedures should be documented in appropriate manuals and job descriptions.

6.16 All suspicions reported to the MLCO should be documented (in urgent cases this may follow an initial discussion by telephone). In some firms it may be possible for the person with the suspicion to discuss it with the MLCO and for the report to be prepared jointly. In other firms the initial report should be prepared and sent to the MLCO. The report should include full details of the client and as full a statement as possible of the information giving rise to the suspicion.

6.17 The MLCO should acknowledge receipt of the report and at the same time provide a reminder of the obligation to do nothing that might prejudice enquiries, i.e. to avoid "tipping off". All internal enquiries made in relation to the report, and the reason behind whether or not to submit the report to MOKAS, should be documented. This information may be required to supplement the initial report or as evidence of good practice and due diligence if, at some future date, there is an investigation and the suspicions are confirmed.

6.18 On-going communication between the MLCO and the reporting person, department or branch office is important. The firm may wish to consider advising the reporting person, department or branch office of the MLCO's decision, particularly if the reported suspicions are believed to be groundless. Likewise, at the end of an investigation, consideration should be given to advising all members of staff concerned of the outcome. It is particularly important that the MLCO is informed of all communications between the investigating officer and the firm at all stages of the investigation.

6.19 It would be prudent for records of suspicions which were raised internally with the MLCO but not disclosed to the law enforcement agencies to be retained for five years from the date of the transaction.

External reporting procedures

National reporting point for disclosures

6.20 All Money Laundering Compliance Officers' Reports to MOKAS should be sent to or delivered at the following address:

Unit for Combating Money Laundering (MOKAS)
Law Office of the Republic
27 Katsoni Street,
CY-1082 Nicosia.

Tel.: 22 446 004 Fax: 22 317 063
e-mail: mokas@mokas.law.gov.cy

Contact person: Mrs Eva Rossidou – Papakyriakou
Senior Council of the Republic
Head of MOKAS

Method of reporting

6.21 The Institute recommends the use of the standard form attached as Appendix A to these Guidance Notes, for the reporting of disclosures, but this is not mandatory. Disclosures can be forwarded by post or by facsimile message. In urgent cases an initial telephone report can be made and subsequently confirmed in writing.

6.22 After filing of the report firms should adhere to any instructions given to them by MOKAS and in particular as to whether or not to continue a transaction or continue providing the requested service or terminate the business relationship.

Nature of the information to be disclosed

6.23 Sufficient information should be disclosed which indicates the nature of and reason for the suspicion. If a particular offence is suspected, this should be stated to enable the report to be passed to the correct agency for investigation with the minimum of delay. Where the firm has additional relevant evidence that could be made available, the nature of this evidence might be indicated to enable the law enforcement agencies to obtain a production order if necessary.

Constructive trust

6.24 The duty to report suspicious transactions and to avoid "tipping off" can lead to a conflict between the reporting firm's responsibilities under the criminal law and its obligations, under the civil law as a constructive trustee, to a victim of fraud and other crimes.

6.25 A firm's liability as a constructive trustee arises when it comes to know that assets rightfully belong to a person other than its client. The firm then takes on the obligation of constructive trustee for the true owner. If the assets are dealt with in a way which is inconsistent with the rights of the true owner, the civil law treats the firm as though it were a trustee for the assets, and holds the firm liable to make good the loss suffered. Having a suspicion which it considers necessary to report under the money laundering legislation could be taken as indicating that it knows or should know that the assets belong to a third party.

6.26 In the normal course of events, a firm would not dispose of assets to a third party knowing itself to be in breach of trust. The concern in relation to money laundering is that the firm will have reported its suspicion to MOKAS. It will therefore have no option but to act on the client's instruction, because by refusing to hand over the assets it might alert the perpetrator of, for example a fraud, and in doing so commit a tipping off offence under the money laundering legislation.

6.27 The tipping off offence prohibits a firm from informing a suspected victim of crime that his assets are at risk, where to do so is likely to prejudice a money laundering investigation. Given the absolute nature of the prohibition in the criminal law, if a firm makes a disclosure under the money laundering legislation, and is acting in accordance with MOKAS or the investigating officer's instructions in disposing of the assets, some would regard the risk of the firm being held liable by a civil court as constructive trustee to be slight. However, to minimise the liability, the following procedures should be followed:

- When evaluating a suspicious transaction, the MLCO should consider whether there is a constructive trust issue involved. If the MLCO concludes that there is reason to believe that the firm may incur a liability as a constructive trustee, the precise reasons for this belief should be reported to MOKAS immediately by fax, electronic link or modem, along with the other matters giving rise to suspicion that the assets relate to the proceeds of crime. The constructive trust aspects should be set out clearly in the "reason for suspicion" section of the standard reporting form, with "Potential Constructive Trust Issue" marked clearly at the top of this section. Neither the client nor any third party should be tipped off.

- On receipt of the report, MOKAS will evaluate the information and "fast track" the report to the appropriate investigator who will determine whether the "consent" to undertake the transaction can be issued.

- Where a suspicious transaction report has previously been made to MOKAS, and a potential constructive trust issue comes to light subsequently, MOKAS (or the designated investigator) should be provided with an immediate further report indicating the reasons why a constructive trust situation is believed to have arisen.

- Unless entirely confident that liability as constructive trustee cannot arise, a firm should take legal advice. In certain cases firms may be advised to apply to the court for directions before reporting their money laundering suspicions or disposing of any assets. However, it is essential to note that in all cases where:
  1. a person knows or suspects that another person is engaged in drug or terrorist money laundering; and
  2. the information or other matter on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment,

there is an obligation to disclose the information or other matter to MOKAS as soon as is reasonably practicable after it comes to his attention. Failure to make such a disclosure is a serious criminal offence. In such cases it will never be appropriate to delay making a disclosure to MOKAS pending an application to the court for directions, and an accountant must report the matter to MOKAS as soon as is reasonably practicable. An accountant in such a position should inform MOKAS of the sensitive nature of his obligations as constructive trustee and he should take legal advice as soon as possible.

Investigation of disclosures

6.28 Following receipt of a disclosure and initial research by MOKAS, the information disclosed is allocated to trained financial investigation officers in the office of the Attorney General for further investigation. Members should be aware that if they were to disclose money-laundering suspicions to any other person, this could amount to a breach of client confidentiality.

Confidentiality of disclosures

6.29 It is understood that in the event of a prosecution, the source of information supplied to MOKAS is protected as far as the disclosure of evidence rules allow. Maintaining the integrity of the confidential relationship between law enforcement agencies and firms is considered by MOKAS to be of paramount importance. The origins of financial disclosures are not revealed because of the need to protect the disclosing firm and to maintain confidence in the disclosure system.

Feedback from the investigating authorities

6.30 MOKAS has stated that, where a disclosure has been made, it will endeavour to provide feedback on the outcome. However, this does not stop the disclosing firm contacting the investigator direct.

7. EDUCATION AND TRAINING

Statutory requirements

7.01 The Law under Section 58 require all firms to take appropriate measure to make employees aware of:

- Policies and procedures maintained to prevent money laundering including those of identification, record keeping and internal reporting;

- The requirements imposed by the Laws,

and, also, to provide such employees with training in the recognition and handing of suspicious transactions.

The need for awareness by partners and staff

7.02 The effectiveness of the procedures and recommendations contained in the various Guidance Notes on the subject of money laundering depends on the extent to which staffs of firms appreciate the serious nature of the background against which the Laws have been enacted and are fully aware of their responsibilities. Staff must also be aware of their own personal statutory obligations. They can be personally liable for failure to report information in accordance with internal procedures. All staff must, therefore, be encouraged to co-operate and to provide a prompt report of any knowledge or suspicion of transactions or activities involving money laundering. It is, therefore, important that firms introduce comprehensive measures to ensure that their staff is fully aware of their responsibilities.

7.03 All relevant staff should be educated in the importance of "know your client" requirements for money laundering prevention purposes. The training in this respect should cover not only the need to know the true identity of the client but also, where a business relationship is being established, the need to know enough about the type of business activities expected in relation to that client at the outset to know what might constitute suspicious activity at a future date. Relevant staff should be alert to any change in the pattern of a client's transactions or circumstances that might constitute criminal activity.

Timing and content of training programmes

1..1.1.1.1.1.1 New professional staff

7.05 A general appreciation of the background to money laundering, and of the procedures for reporting any suspicious transactions to the MLCO, should be provided to all new professional staff that will be dealing with clients or their affairs, irrespective of the level of seniority. They should be made aware of the importance placed by the firm on the reporting of suspicions and that reporting is an obligation on them as individuals.

Advisory staff

7.06 Members of staff who deal directly with clients are likely to be the first point of contact with potential money launderers, and their efforts are therefore vital to the firm's reporting system. Training should be provided on factors that may give rise to suspicions and on the procedures to be adopted when a transaction or activity is deemed to be suspicious.

Staff who can accept new clients

7.07 Those members of staff who are in a position to accept new clients must receive the training recommended for advisory staff. In addition, the need to verify the identity of the client must be understood, and training should be given in the firm's client verification procedures. Such staff should be aware that the offer of suspicious funds or the request to undertake a suspicious transaction or provide a service in connection with a suspicious activity may need to be reported to the MLCO, whether or not the funds are accepted or the transaction proceeded with. They must know what procedures to follow in these circumstances.

Partners and managers

7.08 A higher level of instruction covering all aspects of money laundering procedures should be provided to those with the responsibility for supervising or managing staff. This will include: the offences and penalties arising from the legislation for non-reporting and for assisting money launderers; the recognition of a valid court order requiring information, and the circumstances when information should be declined without such an order; internal reporting procedures; and the requirements for verification of identity and the retention of records.

Money Laundering Compliance Officers

7.09 For larger firms, or those with complex procedures, in-depth training concerning all aspects of the legislation, the guidance notes and internal policies will be required for the MLCO. In addition, the MLCO will require extensive initial and on-going instruction on the validation and reporting of suspicious transactions, on the feedback arrangements, and on new trends and patterns of criminal activity. For small firms, the MLCO or sole practitioner should have at least the level of knowledge identified above for partners and managers. When money laundering becomes an issue, further advice or assistance is available from the Institute.

Refresher training

7.10 It will also be necessary to make arrangements for refresher training at regular intervals to ensure that staff do not forget their responsibilities. Some firms may wish to provide such training on an annual basis; others may choose a shorter or longer period or wish to take a more flexible approach to reflect individual circumstances, possibly in conjunction with compliance monitoring.

Methods of providing training

7.11 There is no standard preferred way to conduct training for money laundering purposes. The training should be tailored to meet the needs of the particular firm, depending on its size and nature and the available time and resources

7.12 The laws do not require firms to purchase specific training materials for the purpose of educating relevant staff in money laundering prevention and the recognition and reporting of suspicious transactions.

APPENDIX A

MONEY LAUNDERING COMPLIANCE OFFICER'S REPORT TO THE UNIT FOR COMBATING MONEY LAUNDERING (MOKAS)

I. GENERAL INFORMATION

Name of reporting firm: _____
Address, telephone _____
and facsimile numbers: _____
_____

Date when a business relationship started
or one - off transaction was carried out: _____

Type of services
offered to client: _____
_____

II. DETAILS OF NATURAL PERSON(S) AND/OR LEGAL ENTITY(IES) INVOLVED IN THE SUSPICIOUS TRANSACTION(S)/ACTIVITY

(A) NATURAL PERSONS

Name _____
_____

Residential address _____
_____
_

Business address _____
_____

Occupation _____
_____

Date and place of birth _____
_____

Nationality and passport
number _____
_____

(B) **LEGAL ENTITIES**

Company's name, country
and date of incorporation_____
_____
_____

Business address _____
_____
_____

Main activities _____
_____

	Name	Nationality and passport number	Date of birth	Residential address (if known)	Occupation and employer
Registered Shareholder(s)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Beneficial Shareholder(s) (if different from above)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Directors	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____

III FULL DESCRIPTION AND DETAILS OF TRANSACTIONS / ACTIVITY AROUSING SUSPICION

_____
_____
_____
_____

IV REASONS FOR SUSPICION

_____
_____
_____

V OTHER INFORMATION

– Client's accounts with domestic, international or foreign banks (if known)

_____
_____
_____

- Other information the firm wishes to bring to the attention of MOKAS (if any)

_____
_____
_____

MONEY LAUNDERING
COMPLIANCE OFFICER'S signature .....

Date .....

NB: The above report should be accompanied by photocopies of the following:

1. For natural persons, the relevant pages of customers' passports evidencing identity.
2. For legal entities, certificates of incorporation, directors and shareholders.
3. All documents relating to the suspicious transaction(s)/activity.

APPENDIX B

NON-COOPERATIVE COUNTRIES AND TERRITORIES WITH THEIR STATUS AS AT NOVEMBER 2004

COOK ISLANDS

INDONESIA

MYANMAR

NAURU

NIGERIA

PHILIPPINES

The Institute of Certified Public Accountants of Cyprus
Hawaii Tower, Office 503
41 Them. Dervis Street
CY-1066 Nicosia
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First edition: November 2004.

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Draft AML Guidance Notes for lawyers issued by the Cyprus Bar Association in March 2005 (G-Lawyers)

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THE CYPRUS BAR ASSOCIATION

MONEY LAUNDERING: GUIDANCE NOTES FOR LAWYERS

These Guidance Notes are issued by the Council of the Bar Association of Cyprus appointed by the Council of Ministers on 7 March 2000 as the Supervisory Authority for lawyers, in accordance with Section 59 of The Prevention and Suppression of Money Laundering Activities Laws of 1996 to 2004 (Laws). The guidance notes deal with the Laws and professional requirements in relation to the avoidance, recognition and reporting of money laundering. The notes are based on the above-mentioned Laws, which, in line with the EU Money Laundering Directive, include the obligation and responsibilities for implementation of anti-money laundering measures to professionals, including accountants, auditors and members of the legal profession.*

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* N.61 (I) of 1996
N.25 (I) of 1997
N.41 (I) of 1998
N.120 (I) of 1999
N.152 (I) of 2000
N.118 (I) of 2003
N.185 (I) of 2004

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APPENDICES

Terminology

1. As an aid to the use of these Guidance Notes, a number of basic words and phrases appear throughout. They are defined or explained as follows:

criminal conduct	See paragraphs 2.11 to 2.13.
know; knowledge	See paragraph 2.14.
the Council	The Council of the Cyprus Bar Association
MLCO	A Law firm's Money Laundering Compliance Officer (see paragraph 3.02).
MOKAS	The Unit for Combating Money Laundering, at the Attorney General's Office (see paragraph 2.06)
the Laws	The Prevention and Suppression of Money Laundering Activities Laws of 1996 to 2004
prescribed activities and services	The business of engaging in one or more of the activities and services listed in Section 61 of the Laws.
person	The term person includes any individual and any company, partnership association, society, institution or body of persons, corporate or unincorporated.
privileged information	See paragraph 2.10
suspect; suspicion	See paragraphs 2.16 to 2.19.

Introduction

1.01 The fight against crime demands that criminals are prevented from legitimising the proceeds of their crime by the process of "money

laundering". It is a process which can involve many outside the more obvious targets of banks and other financial institutions. Professionals such as accountants and lawyers are at risk because their services could be of value to the successful money launderer. But the launderer often seeks to involve many other often unwilling accomplices such as:

- stockbrokers and securities houses
- insurance companies and insurance brokers
- financial intermediaries
- surveyors and estate agents
- gaming activities
- company formation agents
- dealers in precious metals and bullion
- antique dealers, car dealers and others selling high value commodities and luxury goods
- lawyers.

What is money laundering?

1.02 Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. If undertaken successfully, it also allows them to maintain control over those proceeds and, ultimately, to provide a legitimate cover for their source of funds. Their "dirty" funds come to appear "clean".

Money laundering is a global phenomenon that affects all countries in varying degrees. By its very nature it is a hidden activity and therefore the scale of the problem and the amount of criminal money being generated either locally or globally each year is impossible to measure accurately. However, failure to prevent the laundering of the proceeds of crime permits criminals to benefit from their actions, thus making crime a more attractive proposition.

Stages of money laundering

1.03 There is no one method of laundering money. Methods can range from the purchase and resale of a luxury item (e.g. a car or jewellery) to passing money through a complex international web of legitimate businesses and 'shell' companies (i.e. those companies that primarily exist only as named legal entities without any trading or business activities). Initially, however, in the case of drug trafficking and some other serious crimes such as robbery, the proceeds usually take the form of cash which needs to enter the financial system by some means. Street level purchases of drugs are almost always made with cash.

Despite the variety of methods employed, the laundering process is typically accomplished in three stages which may comprise numerous transactions by the launderers that could raise suspicions of underlying criminal activity:

- 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 channelled via shell companies or companies with nominee shareholders and/or nominee directors.
- Integration - the provision of apparent legitimacy to criminally derived wealth. If the layering process has succeeded, integration schemes place the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing as normal business funds.

The three basic steps may occur as separate and distinct phases. They may occur simultaneously or, more commonly, they may overlap. How the basic steps are used depends on the available laundering mechanisms and the requirements of the criminal organisations.

Scope of these Guidance Notes

1.04 Those who carry on the activities and services prescribed in Section 61 of the Laws also have a legal obligation to implement the measures to prevent money laundering set out in part VIII of the Laws. **It is clarified that not all professional activities of lawyers are covered by the Law and these Guidance Notes, but only those specified in abovementioned section.**

1.05 **Responsibilities of the Council**

Supervisory authorities (such as the Council as the designated supervisory body under the Laws) have specific obligations under the Laws to report to MOKAS any information they obtain which in their opinion is, or may be, indicative of money laundering and report to the Attorney General firms which fail to comply with the provisions of the Laws.

Further, the Council has an interest in measures employed to counter money laundering because of the damage which lawyers and their clients can suffer from it, as well as the reputation of the profession as a whole. There may therefore be occasions when it will be appropriate for action

taken in relation to money laundering by both firms and individuals to be taken into account by the Council in undertaking both its regulatory and disciplinary functions.

Failure to report money laundering, or failure to have adequate policies and procedures to guard against being used for money laundering, may call into question the integrity of and the due care and diligence used by the lawyers or individual member involved. Compliance with these Guidance Notes is likely to be an important point of reference in any assessment of the conduct of individual members and of the adequacy of systems of control to guard against money laundering.

In determining whether a lawyer has complied with any of the requirements of the Laws, a relevant guidance issued or approved by a supervisory or regulatory body, or in its absence, guidance provided by a trade association or other representative body may be taken into account. These Guidance Notes have been drawn up to take account of this fact and to give a practical interpretation of the Laws.

2. CYPRUS LEGISLATION

2.01 Introduction

In October 2001 the EU Commission adopted the amended Money Laundering Directive. This requires more professional activities (including some conducted by lawyers) to be brought within the scope of the preventive measures against money laundering stipulated in the law of member countries. Cyprus has harmonised its legislation with the EU Directive.

The main purpose of the Laws is to define and criminalise the laundering of the proceeds generated from all serious criminal offences and provide for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes. The main provisions of the Law are the following:

Prescribed offences (Section 3 of the Laws)

2.02 The Laws have effect in respect of offences which are referred to as "prescribed offences" and which comprise of:

(e) laundering offences; and
(f) predicate offences

Laundering offences (Section 4 of the Laws)

2.03 Under the Laws, every person who **knows, or ought to have known** that any kind of property is proceeds from a predicate offence is guilty of an offence if he carries out any of the following:

(xi) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a predicate offence to evade the legal consequences of his actions;

(xii) conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property;

(xiii) acquires, possesses or uses such property;

(xiv) participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counseling or advice for the commission of any of the offences referred to above;

(xv) provides information with respect to investigations that are being performed for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence.

Commitment of the above offences is punishable on conviction by a maximum of fourteen (14) years imprisonment or a fine or both of these penalties, in the case of a person who knows that the property is proceeds from a predicate offence, or by a maximum of five (5) years imprisonment or a fine or both of these penalties, in the case of a person who ought to have known.

It is a defence, under Section 26 of the Laws, in criminal proceedings against a person in respect of assisting another to commit a laundering offence that he intended to disclose to a police officer or MOKAS his suspicion or belief that the agreement or arrangement related to proceeds from a predicate offence and that his failure to make the disclosure was based on reasonable grounds. Also, under section (26) of the Laws, any such disclosure should not be treated as a breach of any restriction upon the disclosure of information imposed by contract.

In the case of employees of persons whose activities are supervised by one of the authorities established under Section 59, the Laws recognise that the disclosure may be made to a competent person (e.g. a Money Laundering Compliance Officer) in accordance with established internal procedures and such disclosure shall have the same effect as a disclosure made to a police officer or MOKAS.

2.04 **Predicate offences** (Section 5 of the Laws)

Criminal offences as a result of which proceeds were generated that may become the subject of a laundering offence, are all criminal offences punishable with imprisonment not exceeding one year from which proceeds or assets were derived.

For the purposes of money laundering offences it does not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not (Section 4(2) of the Laws).

2.05 **Failure to report** (Section 27 of the Laws)

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. Failure to report in these circumstances is punishable on conviction by a maximum of five (5) years imprisonment or a fine not exceeding C£3.000 (three thousand pounds) or both of these penalties.

2.06 Unit for Combating Money Laundering (MOKAS)

According to the Law a reporting system has been set up since 1996. More specifically, the law provides for the establishment of a "Unit for Combating Money Laundering" (MOKAS) with investigative powers, which became operational in January 1997 and is composed of Counsels of the Republic from the Attorney General's Office, Police Officers and Customs Officers.[1] The Unit is headed by a member of the Attorney General's Office.

The Unit may apply to the Court and obtain freezing, confiscation and disclosure orders.[2]

Tipping - off (Section 48 of the Laws)

2.07 Further to the offence (2.03) under the section on laundering offences above, it is also an offence for any 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 or any third party, knowing or suspecting that the authorities are carrying out such an investigation and search. "Tipping-off" under these circumstances is

[1] See Section 53 of "The Prevention and Suppression of Money Laundering Activities Law"
[2] See Section 54 of "The Prevention and Suppression of Money Laundering Activities Law" for a complete analysis on the functions of the Unit.

punishable by imprisonment not exceeding five (5) years.

Prescribed activities and services (Section 61 of the Laws)

2.08 The Laws recognise the important role of the financial institutions, accountants and lawyers for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all institutions, including firms engaged in the activities and services listed below:

(1) Acceptance of deposits by the public.

(2) Lending money to public.

(3) Finance leasing, including hire purchase financing.

(4) Money transmission services.

(5) Issue and administration of means of payment (e.g. credit cards, travelers' cheques and bankers' drafts).

(6) Guarantees and commitments.

(7) Trading on one's own account or on account of customers in:

(a) Stocks or securities including cheques, bills of exchange, bonds, certificates of deposits;
(b) foreign exchange;
(c) financial futures and options;
(d) exchange and interest rate instruments; and
(e) transferable instruments.

(8) Participation in share issues and the provision of related services;

(9) **Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues and consultancy services as well as services in the areas of mergers and acquisitions of businesses.**

(10) money broking.

(11) Investment services, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investment" includes long-term insurance contracts, whether or not associated with investment schemes.

(12) Safe custody services.

(13) Custody trustee services in relation to stocks

(14) Insurance contracts of the General Business nature contracted by a company established in Cyprus under the Companies Law, either as Cypriot or foreign, but carries on insurance business exclusively outside Cyprus.

(15) Exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their clients in the context of carrying on financial business.

(16) **Exercise of professional activities on behalf of independent lawyers, with the exception of privileged information, when they participate, either**

(a) by 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;

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

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

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

(b) or by acting on behalf and for the account of their clients in any financial or real estate transaction.

(17) Any of the services determined in Parts I and III of the First Schedule to the Investment firms (ΕΠΕΥ) Laws of 2002 to 2003 and provided in connection with financial instruments, which are listed in Part II of the same Schedule.

(18) Dealings in real estate transactions, conducted by real estate agents.

(19) Dealings in precious stones or metals when the payment is made in cash and in an amount of EUR 15.000 or more.

2.09 **Procedures to prevent Money Laundering** (Section 58 of the Laws)

The Laws require all persons carrying on the prescribed activities and services, as defined above, to establish and maintain specific policies and procedures to guard against their business and the financial system in general being used for the purposes of money laundering. In essence these procedures are designed to achieve two purposes: firstly, to facilitate the

recognition and reporting of suspicious transactions and, secondly, to ensure through the strict implementation of the "know-your-client" principle and the maintenance of adequate record keeping procedures, should a client come under investigation, that the firm is able to provide its part of the audit trail. The Laws require that all persons institute a number of procedures. In fact, it is illegal for any person, in the course of relevant financial business, to form a business relationship or carry out an one-off transaction in excess of C£8.000 with or on behalf of another, unless the following procedures are instituted:

- Client identification procedures;
- Record-keeping procedures in relation to clients' identity and their transactions;
- Procedures of internal reporting to a competent person - (e.g. a Money Laundering Compliance Officer) appointed to receive and consider information that give rise to knowledge or suspicion that a client is engaged in money laundering activities;
- Other internal control and communication procedures for the purpose of forestalling and preventing money laundering;
- Measures for making employees aware of the above procedures to prevent money laundering and of the legislation relating to money laundering; and
- Provision of training to their employees in the recognition and handling of transactions suspected to be associated with money laundering.

Any person who allegedly fails to comply with the above requirements, after giving him the opportunity to be heard, is subject to an administrative fine of up to C£3.000 which is imposed by the competent Supervisory Authority.
Lawyer or auditor, who allegedly fails to comply with the above requirements, is referred to the competent Disciplinary Body which decides accordingly.

Any other person who is not included in two preceding paragraphs and is not subject to supervision by any Supervisory Authority and violated the provisions of this Section is guilty of an offence punishable, in case of conviction by imprisonment of two years or by a fine of up to C£3.000 or both.

In determining whether a person has complied with the above requirements a court may take into account –

(a) any relevant supervisory or regulatory guidance which applies to that person;
(b) where no guidance falling within the above applies, any other relevant instructions issued by the professional body that regulates, or represents the business or work carried on by that person.

Supervisory authorities (Section 59 of the Laws)

2.10 On 7 March 2001, the Council of Ministers designated the Council of the Bar Association as the supervisory authority for the legal profession in Cyprus.

The Council, in its capacity as supervisory authority, is empowered under the Laws to issue guidance notes to all accountants and auditors in Cyprus. The purpose of the guidance notes issued by the Council, as the supervisory authority of the legal profession, is to provide a practical interpretation of the requirements of the Laws in respect to business carried on by firms and to indicate good business practice.

Where a supervisory authority is of the opinion that a person falling within its responsibility has failed to comply with the provisions of the Laws it has a legal obligation to refer the matter to the Attorney General. Where a supervisory authority obtains information and is of the opinion that any person may have been engaged in money laundering then it has a legal obligation to disclose the relevant information to MOKAS.

Orders for disclosure of information (Section 45 of the Laws)

2.11 Courts in Cyprus may, on application by the investigator, make an order for the disclosure of information by a person, including a firm, who appears to the Court to be in possession of the information to which the application relates. Such an order applies irrespective of any legal or other provision which creates an obligation for the maintenance of secrecy or imposes any constraints on the disclosure of information. As already stated under "tipping off", a person who makes any disclosure which is likely to obstruct or prejudice an investigation into the commitment of a predicate offence, knowing or suspecting that the investigation is taking place, is guilty of an offence. Lawyers are not obliged to reveal any privileged information.

“Privileged information” held by a lawyer is exempted from the information that can be obtained with a Court Order.

According to section 44 of the law “privileged information” means-

(a) communication between an advocate and a client for the purposes of obtaining professional legal advice or professional legal services in relation to legal proceedings whether these have started or not, which would in any legal proceedings be protected from disclosure by virtue of the privilege of confidentiality under the law in force at the relevant time;

Provided that communication between an advocate and a client for the purposes of committing a prescribed offence shall not constitute privileged information;

(b) any other information which is not admissible in court for the protection of public interest under the law in force at the relevant time."

Terminology

Criminal conduct

2.12 The term criminal conduct (predicate offence) in the Laws is referring to the original offence, e.g. drug trafficking, the proceeds of which are involved in actual or suspected money laundering. It includes any conduct, wherever it takes place, which would constitute an indictable offence if committed in Cyprus. In general such offences are those which are serious enough to be tried in Court. There will be criminal conduct, which can give rise to money laundering offences in Cyprus, even if the conduct was not criminal in the country where it actually occurred. See paragraph 6.05 as to the reporting requirement under the Laws.

2.13 Offences indictable in Cyprus are all criminal offences punishable with imprisonment not exceeding one year from which proceeds or assets were derived.

The Laws do not impose a duty on lawyers to look into the criminal law of any other country in which the criminal conduct may have occurred. The basis for determining whether assets derive from criminal conduct is that the activity from which the assets are generated would be an indictable criminal offence if it occurred in Cyprus. Lawyers would not be expected to know the exact nature of the criminal activity concerned, or that particular assets are definitely those arising from the crime.

Knowledge

2.14 The term "knowledge" is not strictly defined in the Laws but it may include situations such as:

- actual knowledge
- shutting one's mind to the obvious
- deliberately refraining from making enquiries, the results of which one might not care to have
- knowledge of circumstances which would indicate the facts to an honest and reasonable person
- knowledge of circumstances which would put an honest and reasonable person on enquiry, but not mere neglect to ascertain what could have been found out by making reasonable enquiries.

Reasonable excuse

2.15 The legal interpretation of the defence of reasonable excuse is covered by section 26 of the Laws. If circumstances permit, legal advice should be obtained. If you find yourself in breach of the Laws inadvertently, or under duress, the situation should be corrected by reporting the matter as soon as is reasonably possible.

Suspicion

2.16 The words suspect and suspicion appear many times in the legislation. As examples, they raise the questions:

- Even if he/she does not know the exact nature of the criminal offence, should a lawyer suspect that a person has engaged in or benefited from criminal conduct?
- Should a lawyer suspect that assets are or represent the proceeds of criminal conduct?

2.17 Suspicion falls far short of proof based on firm evidence, but must be built on some factual foundation. There must be a degree of satisfaction, even if it does not amount to belief. This means that speculation as to whether a possible situation does in fact exist does not by itself amount to suspicion.

2.18 A particular sector or business may be subject to a greater degree of inherent risk of money laundering than another sector. The nature of the business practices in a particular entity may raise the overall risk of

fraudulent, illegal or unauthorised transactions. However, an assessment that there is a higher than normal risk of money laundering is not the same as suspecting money laundering.

2.19 Paragraphs 6.01 and 6.02 contain some guidance on how to recognise whether a transaction is suspicious.

Obligations to clients and third parties

Client confidentiality

2.20 The legislation protects those reporting suspicions of money laundering from claims in respect of any alleged breach of client confidentiality. This ensures that no action can be taken against the reporter even where the suspicions are later proved to be ill founded. However, the protection extends only to disclosure of the suspicion or belief that funds derive from money laundering, and to matters on which that suspicion or belief is based. If in doubt, lawyers should insist on the law enforcement agencies obtaining a court order before disclosing information beyond that contained in their initial report.

"Privileged information" as prescribed in the Law is protected.

Disclosure of information to third parties

2.21 A third party claiming to be entitled to assets which are or have been in the hands of a lawyer and which are the subject of a report to MOKAS, might seek a court order which would direct the firm to disclose information. If the lawyer believes that disclosure of information to the third party could prejudice a money laundering investigation by the law enforcement agencies, the tipping off offence could arise.

3. INTERNAL CONTROLS, POLICIES AND PROCEDURES TO PREVENT MONEY LAUNDERING

Responsibilities and accountabilities

3.01 Lawyers are required to establish and maintain policies, procedures and controls to prevent money laundering, and to ensure the reporting of any that may be known or suspected.

3.02 The Laws require lawyers to establish a central point of contact in order to handle the reported suspicions of their partners and staff regarding money laundering. Firms must appoint an "appropriate person" (referred to in these Guidance Notes as the Money Laundering Compliance Officer or MLCO) to undertake this role and in the case of one-man firms this role may be undertaken by that individual lawyer or another member of his staff.

Recommended procedures to comply with the Laws

3.03 All lawyers to which the Laws apply should have appropriate procedures for:

- **identifying clients** (see Section 4);
- **record-keeping** (see Section 5);
- **recognising and reporting suspicions of money laundering** (see Section 6);
- **education and training of partners and staff** (see Section 7).

4. IDENTIFICATION PROCEDURES

Statutory requirements

4.01 The Laws require all persons carrying on financial business to maintain client identification procedures in accordance with Sections 58 and 61-64. The essence of these requirements is that, except where the Laws state that client identification need not be made, a firm must verify the identity of a prospective client.

Introduction - "Know your client"

4.02 When lawyers offer the financial services prescribed in the Law, will need to obtain a good working knowledge of a client's business and financial background in order to provide an effective service. This will normally provide evidence of identity at an early stage in the relationship.

4.03 The "know your client" process is vital for the prevention of money laundering and underpins all other activities. If a client has established a business relationship under a false identity, he/she may be doing so for the purpose of defrauding the firm itself, or merely to ensure that he/she cannot be traced or linked to the proceeds of the crime that the firm is being used to launder. A false name, address or date of birth will usually mean that the law enforcement agencies cannot trace the client if he/she is needed for interview in connection with an investigation.

4.04 A lawyer, who is taking over a professional appointment, replacing an existing lawyer, may be in communication with the existing lawyer. This may provide evidence of both identity and integrity of the client, and is a valuable procedure in this context.

4.05 Where another lawyer or another reliable source introduces a new client, a lawyer may take the view that no further verification of identity should be required so long as the introducer confirms in writing the identity of the prospective client. But lawyers should not overlook the need for normal client acceptance procedures. Further enquiries may be appropriate in certain cases.

4.07 It is for each lawyer to decide what document(s) a prospective client should be required to produce as evidence of identity. Where possible a copy of such document(s) should be taken and retained. Where this is not possible, the relevant details should be recorded on the prospective client's file.

The basic identification requirement

4.08 All lawyers should seek satisfactory evidence of identity of those for whom they provide services (a process referred to in these Guidance Notes as verification of identity). If satisfactory evidence of identity has not been obtained in a reasonable time, then "the business relationship or one-off transaction in question shall not proceed any further". This means that a lawyer may have to refrain from providing the requested service or perform a transaction until satisfactory evidence is obtained. In some circumstances, the failure by a client to provide satisfactory evidence of identity may, in itself, lead to a suspicion that he/she is engaging in money laundering.

4.10 The verification requirements are the same, whatever the means by which the lawyer intends to provide its services to the client. Thus, the requirements are no less where all advice is to be given by post, by telephone or even through the Internet.

4.11 If a lawyer suspects that a prospective client is engaged in money laundering, it may well decline to act but has a legal obligation to file a suspicious activity report to MOKAS. In that event it will be unnecessary to complete identification procedures. Moreover, nothing must be communicated to the prospective client (or to any other person) which might prejudice an investigation or proposed investigation by the law enforcement agencies.

When must identity be verified?

4.12 The identification procedures must be followed whenever a business relationship is to be established, or a one-off transaction or series of linked transactions of C£8.000 or more is undertaken. Once identification procedures have been satisfactorily completed, then as long as records are maintained in accordance with Section 5 and some contact is maintained with the client, no further evidence is needed when subsequent transactions are undertaken.

Terminology

The definitions of "applicant for business", "business relationship" and "one-off transaction" are essential to an understanding of this Section. These are set out in Section 57 of the Laws.

Applicant for business

4.13 A person seeking to form a business relationship or carry out a one-off transaction with a person who is carrying out the prescribed activities and services in or from within the Republic. Thus, for example:

- clients seeking advice in their own name and on their own behalf are clearly the applicants for business;
- when a person applies for an investment to be registered in the name of another (e.g. grandchildren), it is the person who provides the funds who should be regarded as the applicant for business rather than the registered holder;
- when an intermediary introduces a third party to the firm so that the third party may be given advice, and/or make an investment in his/her own name, then it is that party (not the introducer) who is the firm's applicant for business and therefore whose identity must be verified;
- if an individual claiming to represent a company, partnership, or other legal entity applies for business, then the applicant for business will be the legal entity as such. It is the identity or

existence of that entity which should be verified, rather than that of any individual claiming to represent it;

- if an applicant for business is or appears to be acting otherwise than as principal, the identity should be verified of any person on whose behalf the applicant is acting.

Business relationship and one-off transaction

4.14 A "business relationship" is defined as any arrangement between two or more persons where:

- the purpose of the arrangement is to facilitate the carrying out of transactions between the parties on a "frequent, habitual or regular" basis; and
- the total amount of any payment or payments to be made by any person to any other person in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

4.15 A "one-off transaction" means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of the prescribed activities and services.

4.16 "Prescribed activities and services" means the business of being engaged in the carrying out of :

- any activity listed in section 61 of the Laws;
- any other activity defined by the Council of Ministers as such by an order amending section 61 of the Laws published in the Official Gazette of the Republic.

Identification procedures: Exemptions

4.17 The obligation to maintain procedures for obtaining evidence of identity is general, but there are a number of exemptions when some of the requirements can be waived. However, lawyers should realise that exemptions can be difficult to apply and may cause additional administrative problems. They may think it more prudent to carry out their own identification procedures for all new clients. It is also important to remember that no exemption applies in the case of any one-off transaction which is known or suspected to involve money laundering.

4.18 Steps to verify identity **are not required** in the following circumstances:

i. Cyprus credit or financial institutions

4.19 Verification of identity is not required when there are reasonable grounds for believing that the applicant for business is itself subject to the Laws. This exemption does not apply where the applicant is a credit or financial institution in an overseas country including the EU.

ii. One-off transactions: single or linked

4.20 Verification of identity is not normally needed in the case of a single one-off transaction when payment by, or to, the applicant is less than C£8.000 (see paragraph 4.13). However, identification procedures should be undertaken for linked transactions that together exceed this limit.

Higher risk countries

Non Co-operative Countries and Territories (NCCTs)

4.21 Although many countries have enacted, or are enacting, anti-money laundering legislation, there are some countries where the legislation is considered to be ineffective or deficient. In February 2000, FATF published a Report setting out the criteria for identifying those countries and territories that are not co-operative in the international fight against money laundering.

The Financial Action Task Force from time to time issues guidance on countries considered to be at risk from criminal money. Special attention should be given to business relationships and transactions with any person or body from such countries. From time to time the Supervisory Authority will refer members to current guidance as to which countries are regarded as "higher risk".

The current list of NCCTs together with their status as at November 2004 is set out as Appendix B

4.22 When constructing their internal procedures, lawyers should have regard to the need for additional monitoring procedures for transactions from countries on the list. When considering what additional procedures are required, firms may take into account the FATF assessment of the progress that has been made.

Identification of individuals

Evidence of identity

4.23 When verifying the identity of an individual, the vital question is "Is the person who he/she claims to be? not "What is his/her position and standing?". The identity of an individual comprises his/her name and all other names used, the date of birth, the address at which the person can be located and his/her profession or occupation. Ideally, an official document bearing a photograph of the person should also be obtained. However, photographic evidence of identity is only of value to identify clients who are seen face to face. It is neither safe nor reasonable to require a prospective client to send a passport through the post. Any subsequent changes to the client's name or address that are notified to the firm should be recorded.

4.24 In addition to the name(s) used and date of birth, it is important that the current permanent address should be verified as it is an integral part of identity. Some of the best means of verifying addresses are:

- a face to face home visit to the applicant for business;
- making a credit reference agency search;
- requesting sight of a recent utility bill, local authority tax bill, bank or co-operative society statement (to guard against forged or counterfeit documents, care should be taken to check that the documents offered are originals);
- checking the telephone directory.

Non-Cypriot residents

4.25 For those prospective clients who are not normally resident in Cyprus but who make face-to-face contact, a passport or national identity card will normally be available. In addition to recording the passport or identity card number and place of issue, firms should confirm identity and permanent address with a reputable financial institution or professional adviser in the prospective client's home country or normal country of residence.

4.26 Lawyers should be extra vigilant in the case of non-Cyprus resident prospective clients who are not seen face to face and who are not covered by one of the exemptions set out in paragraphs 4.21 to 4.22. Possible procedures include:

- a branch office, associated firm or reliable professional adviser in the prospective client's home country could be used to confirm identity or as an agent to check personal verification details;

- where the lawyers has no such relationship in the prospective client's country of residence, a copy of the passport authenticated by an attorney or consulate could be obtained;
- verification details covering true name or names used, 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 organisations

4.27 Because of possible difficulties of identifying beneficial ownership and the complexity of their organisations and structures, legal entities and trusts are among the most likely vehicles for money laundering, particularly when fronted by a legitimate trading company. Particular care should be taken to verify the legal existence of the prospective client and to ensure that any person purporting to act on its behalf is authorised to do so.

Companies and partnerships

4.28 In the case of any corporate or other entity, the principal requirement is to identify those who have ultimate control or significant influence over the business and its assets, with particular attention paid to principal shareholders or others who inject a significant proportion of the capital or financial support 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.

4.29 Before a business relationship is established, a company search and/or other commercial enquiries should be made to ensure that if the applicant is a company, it has not been, or is not in the process of being, dissolved, struck off, wound up or terminated.

4.30 "Know your client" is an on-going process. If a lawyer becomes aware of changes to the client's structure or ownership, or if suspicions are aroused by a change in the nature of the business transacted, further checks should be made to ascertain the reason for the changes.

4.31 **No further steps to verify identity** over and above normal commercial practice and due diligence procedures will usually be required where the prospective client is:

- a company quoted on a recognised stock exchange; or
- known to be a subsidiary of such a company;

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

4.32 Where the applicant for business is an unquoted company, an unincorporated business or a partnership, the lawyer should identify the principal directors/partners and/beneficial shareholders in line with the requirements for individual clients. In addition, the following documents should normally be obtained:

- for established businesses, a copy of the latest report and accounts (audited where applicable);
- a copy of the certificate of incorporation/certificate of trade or equivalent.
- A copy of the company's Memorandum and Articles of Association and other certificates issued by the Official Receiver and Registrar

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

Trusts (including occupational pension schemes) and nominees

4.33 Where a lawyer is asked to act for trustees or nominees, the identity of all major parties should be verified. These include the trustees, the settlor and the principal beneficiaries.

4.34 Trust and nominee accounts are a popular vehicle for criminals wishing to avoid the identification procedures and mask the origin of the criminal money they wish to launder. Particular care needs to be exercised when the accounts are set up in countries with strict bank secrecy or confidentiality rules. Trusts created in jurisdictions without equivalent money laundering procedures in place will warrant additional enquiries.

4.35 Where a lawyer 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 authorised in writing by the trustee.

4.36 In the case of occupational pension schemes, the identity of the principal employer should be verified, and also (by inspecting the scheme's trust documents) that of the trustees. There is no need to verify the identity of those who are to receive scheme benefits, unless the firm is to give them advice individually.

Registered charities in Cyprus

4.37 Where the applicant for business is a registered charity, the relevant Government authority should be asked to confirm the registered number of the charity and the name and address of the charity concerned.

Local authorities and other public bodies

4.38 Where the applicant for business is a local authority or other public body, the lawyer should obtain a copy of the resolution authorising the undertaking of the relevant transaction. Evidence that the individual dealing with the lawyer has the relevant authority to act should also be sought and retained.

5. RECORD-KEEPING

Statutory requirements

5.01 The Laws require, under Sections 58 and 65, lawyers to retain records concerning client identification and details of transactions for use as evidence in any possible investigation into money laundering. This is an essential constituent of the audit trail procedures that the Laws seek to establish.

5.02 The records prepared and maintained by any lawyer on its client relationships and transactions should be 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 transaction effected via the firm can be reconstructed.

Firms should be aware that they might be called upon to satisfy within a reasonable time any enquiries from MOKAS or court orders requiring disclosure of information.

5.03 The most important single feature of the Laws in this area is that they require relevant **records to be retained for at least five years** from the date when the lawyer's relationship with the client was terminated or a transaction was completed.

Documents verifying evidence of identity

5.04 The Laws specify, under Section 65, that, where evidence of a person's identity is required, the records retained must include the following:

(a) A record that indicates the nature of a client's identity obtained in accordance with the procedures provided in the Laws and which comprises either a copy of the evidence or which provides sufficient information to enable details as to a person's identity to be re-obtained.

(b) A record containing details relating to all transactions carried out for the account and on behalf of that person.

The prescribed record retention period is at least five years commencing with the date on which the relevant business or all activities taking place in the course of transactions were completed.

5.05 In accordance with the Laws, the date when the relationship with the client has ended is the date of:

(i) the carrying out of an one-off transaction or the last in the series of one-off transactions;
(ii) the termination of the business relationship i.e. the closing of the account(s);
(iii) if the business relationship has not formally ended, the date of which the last transaction was carried out.

5.06 Where formalities to end a business relationship have not been undertaken, but a period of five years has elapsed since the date when the last transaction was carried out, then the five year retention period commences on the date of the completion of all activities taking place in the course of the last transaction.

Transaction records

5.07 The precise nature of the records required is not specified but the objective is to ensure that in any subsequent investigation the lawyer can provide MOKAS with its part of the audit trail.

5.08 For each transaction, consideration should be given to retaining a record of:

- the name and address of its client;
- the name and address (or identification code) of its counter party;
- the form of instruction or authority;
- the account details from which any funds were paid;

- the form and destination of payment made by the business to the client.

Format and retrieval of records

5.09 It is recognized that the retention of hard-copy evidence creates excessive volume of records to be stored. Therefore, retention may be in other formats other than original documents, such as electronic or other form. The overriding objective is for the lawyers to be able to retrieve the relevant information without undue delay and in a cost effective manner.

5.10 When setting a document retention policy, lawyers are therefore advised to consider both the statutory requirements and the potential needs of MOKAS.

5.11 Section 47 of the Laws provide that where relevant information is contained in a computer, the information must be presented in a visible and legible form which can be taken away by MOKAS.

6. RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS

Recognition of suspicious transactions

6.01 As the types of transactions which may be used by a money launderer are almost unlimited, it is difficult to define a suspicious transaction. However, a suspicious transaction will often be one which is inconsistent with a client's known, legitimate business or personal activities or with the normal business for that type of client. Therefore, the first key to recognition is knowing enough about the client's business to recognise that a transaction, or series of transactions, is unusual.

6.02 Warning signs which can indicate that an established client's transactions might be suspicious include:

- The size of the transaction (or transactions when aggregated) is inconsistent with the normal activities of the client
- The transaction is not rational in the context of the client's business or personal activities
- The pattern of transactions conducted by the client has changed
- The transaction is international in nature and the client has no obvious reason for conducting business with the other country involved.

Reporting of suspicious transactions

6.03 The Laws require under Section 27 that any knowledge or suspicion of money laundering should be promptly reported to a Police Officer or to MOKAS. The Laws also provide, under Section 26, that such a disclosure cannot be treated as a breach of the duty of confidentiality owed by lawyers to their clients by virtue of the contractual relationship existing between them.

The Laws also recognize, under section 26, that, in certain instances, the suspicions may be aroused after the transaction or service has been completed and, therefore, allows subsequent disclosure 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.

6.04 The Laws, in accordance with sections 58 and 66, require that lawyers establish internal reporting procedures and that they identify a person (hereinafter to be referred to as "the Money Laundering Compliance Officer" ("MLCO") to whom employees should report their knowledge or suspicion of transactions or activities involving money laundering. In case of a law firm's employees, the Laws recognise, under section 26, that internal reporting to the MLCO will satisfy the reporting requirement imposed by virtue of section 27 i.e. once the employee has reported his/her suspicion to the MLCO he/she is considered to have fully satisfied his/her statutory requirements, under section 27.

Appointment and role of the Money Laundering Compliance Officer

6.05 In accordance with the provisions of the Laws, all lawyers and law firms offering the services prescribed in the Law, should proceed with the appointment of a Money Laundering Compliance Officer. The person appointed as MLCO should be authorised to command the necessary authority. In the case of one-man firms this person may be the individual lawyer or an authorized member of his staff.

Lawyers should communicate to MOKAS the names and positions of persons whom they appoint, from time to time, to act as Money Laundering Compliance Officers.

6.06 The role and responsibilities of Money Laundering Compliance Officers including those of Chief and Assistants, should be clearly specified by the firm and documented in appropriate manuals and/or job descriptions.

6.07 As a minimum, the duties of an MLCO should include the following:

(a) To receive from the law firm employees information which is considered by the latter to be knowledge of money laundering activities or which is cause for suspicion connected with money laundering.

(b) To validate and consider the information received as per paragraph (a) above by reference to any other relevant information and discuss the circumstances of the case with the reporting employee concerned and, where appropriate, with the employee's superior(s). The evaluation of the information reported to the MLCO should be recorded and retained on file.

(c) If following the evaluation described in paragraph (b) above, the MLCO decides to notify MOKAS, then he/she should complete a written report and submit it to MOKAS the soonest possible. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Report to the Unit for Combating Money Laundering") is attached, as **Appendix A**. All such reports should be kept on file.

(d) If following the evaluation described in paragraph (b) above, the MLCO decides not to notify MOKAS then he/she should fully document the reasons for such a decision.

(e) The MLCO acts as a first point of contact with MOKAS, upon commencement of and during investigation as a result of filing a report to MOKAS under (c) above.

(f) The MLCO responds to requests from MOKAS and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with MOKAS.

(g) The MLCO provides advice and guidance to other employees of the law firm on money laundering matters.

(h) The MLCO acquires the knowledge and skills required which should be used to improve the law firm's internal procedures for recognizing and reporting money-laundering suspicions.

(i) The MLCO determines whether the law firm's employees need further training and/or knowledge for the purpose of learning to combat money laundering.

6.08 The MLCO is expected to avoid errors and/or omissions in the course of discharging his/her duties and, most importantly, when validating the reports received on money laundering suspicions, as a result of which a report to MOKAS may or may not be filed.

He/she is also expected to act honestly and reasonably and to make his/her determination in good faith. In this connection, it should be emphasised that the MLCO's decision may be subject to the subsequent review of the Council which, in the course of examining and evaluating the anti-money laundering procedures of a lawyer as appropriate and their compliance with the provisions of the Laws, is legally empowered to report a lawyer as appropriate which, in its opinion, does not comply with the provisions of the Laws to the Attorney General or to MOKAS where it forms the opinion that actual money laundering has been carried out. Provided that MLCO acts in good faith in deciding not to report a suspicion to MOKAS, the Council will make no report to the Attorney General, if it is later found that his/her judgment in connection with the above suspicion was wrong.

External reporting procedures

National reporting point for disclosures

6.09 All Money Laundering Compliance Officers' Reports to MOKAS should be sent to or delivered at the following address:

Unit for Combating Money Laundering (MOKAS)
Law Office of the Republic
27 Katsoni Street,
CY-1082 Nicosia.

Tel.: 22 446 004 Fax: 22 317 063
e-mail: mokas@mokas.law.gov.cy

Contact person: Mrs. Eva Rossidou – Papakyriacou
Senior Council of the Republic
Head of MOKAS

Method of reporting

6.10 The Council recommends the use of the standard form attached as Appendix A to these Guidance Notes, for the reporting of disclosures, but this is not mandatory. Disclosures can be forwarded by post or by facsimile message. In urgent cases an initial telephone report can be made and subsequently confirmed in writing.

6.11 After filing of the report lawyers should adhere to any instructions given to them by MOKAS and in particular as to whether or not to continue a transaction or continue providing the requested service or terminate the business relationship.

Nature of the information to be disclosed

6.12 Sufficient information should be disclosed which indicates the nature of and reason for the suspicion. If a particular offence is suspected, this should be stated to enable the report to be passed to the correct agency for investigation with the minimum of delay. Where the lawyers have additional relevant evidence that could be made available, the nature of this evidence might be indicated to enable the law enforcement agencies to obtain a production order if necessary.

Constructive trust

6.13 The duty to report suspicious transactions and to avoid "tipping off" can lead to a conflict between the reporting lawyer's responsibilities under the criminal law and its obligations, under the civil law as a constructive trustee, to a victim of fraud and other crimes.

6.14 A lawyer's liability as a constructive trustee arises when it comes to know that assets rightfully belong to a person other than its client. The firm then takes on the obligation of constructive trustee for the true owner. If the assets are dealt with in a way which is inconsistent with the rights of the true owner, the civil law treats the firm as though it were a trustee for the assets, and holds the firm liable to make good the loss suffered. Having a suspicion which it considers necessary to report under the money laundering legislation could be taken as indicating that it knows or should know that the assets belong to a third party.

6.15 In the normal course of events, a lawyer would not dispose of assets to a third party knowing itself to be in breach of trust. The concern in relation to money laundering is that the lawyer will have reported its suspicion to MOKAS. It will therefore have no option but to act on the client's instruction, because by refusing to hand over the assets it might alert the perpetrator of, for example a fraud, and in doing so commit a tipping off offence under the money laundering legislation.

6.16 The tipping off offence prohibits a lawyer from informing a suspected victim of crime that his assets are at risk, where to do so is likely to prejudice a money laundering investigation. Given the absolute nature of the prohibition in the criminal law, if a lawyer makes a disclosure under the money laundering legislation, and is acting in accordance with

MOKAS or the investigating officer's instructions in disposing of the assets, some would regard the risk of the firm being held liable by a civil court as constructive trustee to be slight. However, to minimise the liability, the following procedures should be followed:

- When evaluating a suspicious transaction, the MLCO should consider whether there is a constructive trust issue involved. If the MLCO concludes that there is reason to believe that the lawyer may incur a liability as a constructive trustee, the precise reasons for this belief should be reported to MOKAS immediately by fax, electronic link or modem, along with the other matters giving rise to suspicion that the assets relate to the proceeds of crime. The constructive trust aspects should be set out clearly in the "reason for suspicion" section of the standard reporting form, with "Potential Constructive Trust Issue" marked clearly at the top of this section. Neither the client nor any third party should be tipped off.

- On receipt of the report, MOKAS will evaluate the information and "fast track" the report to the appropriate investigator who will determine whether the "consent" to undertake the transaction can be issued.

- Where a suspicious transaction report has previously been made to MOKAS, and a potential constructive trust issue comes to light subsequently, MOKAS (or the designated investigator) should be provided with an immediate further report indicating the reasons why a constructive trust situation is believed to have arisen.

- It is essential to note that in all cases where:
  3. a person knows or suspects that another person is engaged money laundering; and
  4. the information or other matter on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment,

  there is an obligation to disclose the information or other matter to MOKAS as soon as is reasonably practicable after it comes to his attention. Failure to make such a disclosure is a serious criminal offence.

Investigation of disclosures

6.17 Following receipt of a disclosure and initial research by MOKAS, the information disclosed is allocated to trained financial investigation officers of MOKAS for further investigation. Members should be aware that if they were to disclose money-laundering suspicions to any other person, this could amount to a breach of client confidentiality.

Confidentiality of disclosures

6.18 It is understood that in the event of a prosecution, the source of information supplied to MOKAS is protected as far as the disclosure of evidence rules allow. Maintaining the integrity of the confidential relationship between law enforcement agencies and lawyers is considered by MOKAS to be of paramount importance. The origins of financial disclosures are not revealed because of the need to protect the disclosing lawyer and to maintain confidence in the disclosure system.

Feedback from the investigating authorities

6.19 MOKAS has stated that, where a disclosure has been made, it will endeavour to provide feedback on the outcome. However, this does not stop the disclosing firm contacting the investigator direct.

7. EDUCATION AND TRAINING

7.01 The Law under Section 58 require all lawyers and law firms to take appropriate measure to make employees aware of:

- Policies and procedures maintained to prevent money laundering including those of identification, record keeping and internal reporting;
- The requirements imposed by the Laws,

and, also, to provide such employees with training in the recognition and handling of suspicious transactions.

APPENDIX A

MONEY LAUNDERING COMPLIANCE OFFICER'S REPORT TO THE UNIT FOR COMBATING MONEY LAUNDERING (MOKAS)

I. GENERAL INFORMATION

Name of reporting firm: _____
Address, telephone _____
and facsimile numbers: _____
_____

Date when a business relationship started
or one - off transaction was carried out: _____

Type of services
offered to client: _____
_____

II. DETAILS OF NATURAL PERSON(S) AND/OR LEGAL ENTITY(IES) INVOLVED IN THE SUSPICIOUS TRANSACTION(S)/ACTIVITY

(A) NATURAL PERSONS

Name _____
_____

Residential address _____
_____

Business address _____
_____

Occupation _____
_____

Date and place of birth _____
_____

Nationality and passport number _____

_____

(B) **LEGAL ENTITIES**

Company's name, country and date of incorporation _____

_____

_____

Business address _____

_____

_____

Main activities _____

_____

	Name	Nationality and passport number	Date of birth	Residential address (if known)	Occupation and employer
Registered Shareholder(s)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Beneficial Shareholder(s) (if different from above)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Directors	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____

III FULL DESCRIPTION AND DETAILS OF TRANSACTIONS / ACTIVITY AROUSING SUSPICION

_____
_____
_____
_____

IV REASONS FOR SUSPICION

_____
_____
_____

V OTHER INFORMATION

– Client's accounts with domestic, international or foreign banks (if known)

_____
_____
_____

- Other information the firm wishes to bring to the attention of MOKAS (if any)

_____
_____
_____

MONEY LAUNDERING
COMPLIANCE OFFICER'S signature .....……

Date .....

NB: The above report should be accompanied by photocopies of the following:

4. For natural persons, the relevant pages of customers' passports evidencing identity.
5. For legal entities, certificates of incorporation, directors and shareholders.
6. All documents relating to the suspicious transaction(s)/activity.

APPENDIX B

NON-COOPERATIVE COUNTRIES AND TERRITORIES WITH THEIR STATUS AS AT NOVEMBER 2004

COOK ISLANDS

INDONESIA

MYANMAR

NAURU

NIGERIA

PHILIPPINES

A N N E X 2 H

Ratification Law N° 29 (III) of 2001

A LAW TO RATIFY THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM, INCLUDING SUPPLEMENTARY PROVISIONS FOR THE IMMEDIATE IMPLEMENTATION OF THE CONVENTION

The House of Representatives enacts as follows:

1. This Law may be cited as the International Convention for the Suppression of the Financing of Terrorism (Ratification and Other Provisions) Law of 2001.	Short title.
2. In this Law, unless the context otherwise requires - "Convention" means the International Convention for the Suppression of the Financing of Terrorism agreed on 10 January, 2000 of which the original text in English is cited in Part I of the Table and its Greek translation in Part II: Provided that in case of conflict between the two texts the English original one shall prevail; "Republic" means the Republic of Cyprus.	Interpretation. Table. Part I. Table. Part II
3. The Convention, signed by the Republic of Cyprus following the Council of Ministers' Decision No. 52.963 dated 4 January 2001, is ratified by this Law and implemented according to the following provisions.	Ratification of Convention.
4.-(1) The offences referred to in article 2 of the Convention are punishable by imprisonment up to fifteen years or with a fine of one million Cyprus pounds or both such imprisonment and fine: Provided that in any criminal procedure in relation to any of the fore-mentioned offences, the Court may, following a request on behalf of the prosecution, issue an order, temporary, restrictive or imperative, that could be issued by virtue of the provisions of any Law. (2) A temporary Court order is issued following a submission of an	Offences and penalties.

ex parte application supported by an affidavit, which must cite all substantive facts, in the prosecution's disposal at the time of the application. The Court, should it accept the application, sets the date to bring the application and the order before it. The further procedure is regulated, mutatis mutandis, by the Civil Procedure Rules in force at the time.	
5.-(1) A legal person of any nature is subjected to the same criminal and civil liability in case where any person, in charge of the administration or control of the said legal person, commits under the said capacity an offence in violation of the Convention. (2) By virtue of any Law, a competent Authority to register, operate or control a legal person, as cited in subsection (1), may, in addition to any other power to impose sanctions against the said legal person, order its crossing out of the relevant registry or the postponement of its operation for any time period it would consider necessary under the circumstances. The consequences of such crossing out are governed, mutatis mutandis, by the provisions of the Law, by virtue of which the registration had been made.	Liability of Legal person.
6. During the trial of the offence, under article 2 of the Convention and under section 4 of this Law, it does not constitute a defence or a mitigating factor that the offence was motivated by political, idealistic, racial, national, religious or other relevant reasons.	Excluding certain defenses.
7.-(1) Notwithstanding the provisions of section 5 of the Criminal Code, the Courts of the Republic have the jurisdiction to hear and try any offence committed in violation of article 2 of the Convention and section 4 of this Law, under the conditions, referred to in paragraphs 1 and 2 of article 7 of the Convention.	Jurisdiction of Courts of the Republic, Cap. 154 3 of 1962 43 of 1963 41 of 1964 69 of 1964 70 of 1965 5 of 1967 58 of 1967 44 of 1972 92 of 1972

(2) The implementation of subsection (1) is subjected to the provisions and interpretations of subsections (2) and (3) of section 5 of the Criminal Code.	29 of 1973 59 of 1974 3 of 1975 13 of 1979 10 of 1981 46 of 1982 186 of 1986 111 of 1989 236 of 1991 6(I) of 1994 3 (I) of 1996 36 (I) of 1997 40 (I) of 1998 45 (I) of 1998 15 (I) of 1999 37 (I) of 1999 38 (I) of 1999 129 (I) of 1999 30 (I) of 2000 43 (I) of 2000 77 (I) of 2000 162 (I) of 2000 169 (I) of 2000 181 (I) of 2000 27 (I) of 2001.
8. Acts that constitute offences by virtue of article 2 of the Convention and section 4 of this Law or acts that constitute a violation of article 2 of the Convention, are considered, even if the courts of the Republic do not have jurisdiction to try them, as predicate offences as if included in section 5 of the Prevention and Suppression of Money Laundering Activities Law, and for the purposes of freezing or confiscating property or proceeds, the relevant provisions of this Law shall be implemented.	Confiscation Freezing and other court orders. 61 (I) of 1996 25 (I) of 1997 41 (I) of 1998 120 (I) of 1999 152 (I) of 2000.
9. Without prejudice to the provisions of any other Law, the main competency for combating the financing of terrorism, according to the provisions of the Convention of this Law, is appointed to the Unit for Combating Money laundering Offences which sets up a Special	Competency for the combating of financing terrorism.

Department for this purpose.	
10. No provisions of this Law shall be interpreted as imposing upon the Republic of Cyprus the obligation to issue or provide mutual legal assistance, if the Republic of Cyprus has substantive reasons to believe that the request for extradition for offences referred to in article 2 of the Convention or for mutual legal assistance in relation to these offences was done with the aim to criminally prosecute or punish a person due to race, religion, nationality, origin, political beliefs or legal, according to international law, claims of collective rights or that compliance to the request would crate damage to the position held by such person for any of the reasons fore-mentioned.	No obligation to issue or provide legal assistance for certain reasons.
11.-(1) A Special Fund is set to which pecuniary amounts will be deposited that will be confiscated by virtue of the provisions of the Laws referred to in section 8 of this law. The pecuniary amounts will be provided for compensation to the victims, or if they have died, to the families of the victims of the offences referred to in article 2, paragraph 1, subparagraphs (a) and (b) of the Convention. (2) Compensation from the Fund will be provided according to regulations to persons, to which it is not possible to provide compensation from the offender either because they are unknown or because they are not alive or within the domain of the Republic or for any other reasons. (3) To this Fund it is possible to deposit donations by the Republic or by any other persons or Organisation. (4) Notwithstanding the provisions of subsections (1) and (2), the Republic of Cyprus can enter into agreements with other state members to the Convention in relation to the distribution between them of property and proceeds that have been confiscated. In such a case the	Creation of Special Fund.

Republic of Cyprus will deposit its own share to the Fund.	
12. For purposes of implementation of article 18 (1) of the Convention the relevant sections of the Prevention and Suppression of Money Laundering Activities Law, shall be implemented and Specifically Part VIII, sections 57 to 67.	Precautionary measures at financial and economic sector.
13.-(1) The Council of Ministers may make Regulations for the better implementation of the Convention and this Law. (2) Despite the generality of subsection (1) it is possible to regulate by Regulations all or any of the issues referred to in paragraph 4 of article 8 of the Convention.	Issue of Regulations.

Note: This Law was enacted on 30.11.2001 with Law No. 29(III) of 2001 and amended on 22.7.2005 with Law No. 18(III) of 2003.

/nomosxedia/29 (III) of 2001

A N N E X 2 I

Council of Ministers Decision

Number: 54.374 Date: 4.10.2001

The Council of Ministers, in exercise of its powers, according to Article 54 of the Constitution and taking into due account the Resolutions of the Security Council of the United Nations, No. 1267, 1333, 1368 and 1373, which were adopted according to Section VII of the Charter of the United Nations and are legally binding for the Republic of Cyprus, according to International Law, as well as the domestic Law, ratifying the Charter of the United Nations (Law No. 50/1965), decided to adopt and enforce all abovementioned Resolutions.

With this decision, the Council of Ministers instructs or orders all competent Authorities and persons in the Republic to proceed with the necessary enquiries in order to identify whether persons and/or entities included in the lists issued based on abovementioned Resolutions have in the Republic any assets, and if such assets are identified, to be frozen immediately, until further decision on the issue.

(Informal translation from the Greek Language)

ERP/GD
/eva/evaluations/Moneyval-3rd evaluation visit
/council of ministers decision

A N N E X 2 J

- EXTRACT-

Section 6 (1) of the Criminal Procedure Law

Order to produce documents

6.

(1) The investigating officer during the investigation of an offence may, if he considers the production of a document to be necessary or desirable for the purposes of such investigation, issue a written order to the person in whose possession or under whose control such document is, or is believed to be, requiring him to produce it at such reasonable time and place as may be specified in the order.

(2) Any person required by written order under this section to produce a document shall be deemed to have complied with the order, if he causes the document to be produced instead of attending personally to produce the same.

(3) Any person who, without reasonable cause, refuses to produce any document when ordered to do so under this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred pounds or to both.

(4) Nothing in this section shall apply to any document for the production of which a warrant of the Governor or an order of the Court is required by this Law or any other Law.

* * * *

A N N E X 2 K

AML Guidance Note to Money Transfer Businesses,
Issued by the Central Bank of Cyprus
In January 2005
(G-MTB)

CENTRAL BANK OF CYPRUS

BANKING SUPERVISION AND REGULATION DIVISION

SUPERVISION OF INTERNATIONAL BANKS, REGULATION AND FINANCIAL STABILITY DEPARTMENT

PREVENTION OF MONEY LAUNDERING

GUIDANCE NOTE TO MONEY TRANSFER BUSINESSES IN ACCORDANCE WITH SECTION 60(3) OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 1996

(SECOND ISSUE)

JANUARY 2005

INDEX

1. DEFINITION AND STAGES OF MONEY LAUNDERING

1.1 Introduction

The Central Bank of Cyprus issues this revised Guidance Note, in accordance with Section 60(3) of the Prevention and Suppression of Money Laundering Activities Law of 1996 (Law 61(I) of 1996) to all Money Transfer Businesses ("MTBs") that have been granted a licence under the Central Bank of Cyprus Laws of 2002, for the purpose of prescribing the appropriate procedures for the prevention of money laundering.

1.2 Definition of 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. If undertaken successfully, it allows criminals to maintain control over those proceeds, and ultimately, to provide a legitimate cover for their source of income. During the process of money laundering, it is possible that many other persons may be involved except of the obvious targets of banks and financial institutions. MTBs are at risk of their services being used by criminals for laundering their illegal proceeds. Failure to prevent the laundering of criminal proceeds, permits criminals to benefit from their actions, a factor that helps the spreading of crime and the corrosion of society.

1.3 Stages of money laundering

There is no specific method of money laundering. Despite the variety of methods employed, the laundering process is accomplished in three basic stages which comprise transactions that could alert the financial institutions for possible criminal activities.

(a) **Placement** – the physical disposal of the initial proceeds derived from illegal activity into the financial system;

(b)**Layering** – separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity;

(c)**Integration** – the provision of apparent legitimacy to criminally derived wealth. If the layering process is successful, integration schemes place the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing as normal business funds.

The three basic stages may occur as separate and distinct phases or may occur simultaneously or, more commonly, they may overlap. How the basic steps are used depends on the available laundering mechanisms and the aims of the criminal organisations.

Certain points of vulnerability have been identified in the laundering process which the money launderer finds difficult to avoid and where his activities are, therefore, more susceptible to being recognised. Specifically, these are the following:

- entry of cash into the financial system;
- cross-border transfers of funds; and
- transfers to and from the financial system.

Money laundering is often thought to be associated solely with banks and other credit institutions. Whilst the traditional banking process of deposit taking does offer a vital money laundering mechanism, particularly in the initial conversion from cash, it should be recognised that money transfer services offered by MTBs are also attractive to the launderer. Except for banks, the sophisticated launderer often involves other unwilling accomplices such as:

- stockbrokers and securities houses;
- insurance companies and insurance brokers;
- financial intermediaries;
- accountants and solicitors;
- surveyors and estate agents;
- money transfer businesses;
- casinos;
- company formation agents;
- dealers in precious metals and bullion;
- antique dealers, car dealers and others selling high value commodities and luxury goods.

2. THE MAIN PROVISIONS OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW (LAW 61 (I) OF 1996)

2.1 Purpose

The main purpose of Law 61(I) of 1996 as subsequently amended (hereinafter to be referred to as "the Law") is to define and criminalise the laundering of proceeds generated from all serious criminal offences and provide for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes. It also places special responsibilities upon financial institutions and professionals which are required to take preventive measures against money laundering by adhering to prescribed procedures for customer identification, record keeping, education and training of their employees and reporting of suspicious transactions. The main provisions of the Law, which are of direct interest to MTBs, their employees and authorised agents, are the following:

2.2 Prescribed offences (Section 3 of the Law)

The Law has effect in respect of offences which are referred to as "prescribed offences" and which comprise of:

(i) money laundering offences; and

(ii) predicate offences.

2.3 Money Laundering offences (Section 4 of the Law)

Under the Law, every person who knows or ought to have known that any kind of property is proceeds from a predicate offence is guilty of an offence if he carries out any of the following:

converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a predicate offence to evade the legal consequences of his actions;
conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property;
acquires, possesses or uses such property;
participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above;
provides information with respect to investigations that are being performed for laundering offences for the purpose of enabling the person who acquired a benefit from the commission

of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence.

Commitment of the above offences is punishable on conviction by a maximum of fourteen (14) years imprisonment or a fine or both of these penalties, in the case of a person knowing that the property is proceeds from a predicate offence or by a maximum of five (5) years imprisonment or a fine or both of these penalties, in the case he ought to have known.

2.4 Defences for persons assisting money laundering and duty to report (Section 26 of the Law)

It is a defence, under Section 26 of the Law, in criminal proceedings against a person in respect of assisting another to commit a money laundering offence that he intended to disclose to a police officer or the Unit for Combating Money Laundering (hereinafter to be referred to as "MOKAS") his suspicion or belief that the agreement or arrangement related to proceeds from a predicate offence and that his failure to make the disclosure was based on reasonable grounds. Also, under Section 26 of the Law, any such disclosure should not be treated as a breach of any contractual obligation owed by MTBs to their customers with regard to disclosure of information.

In the case of employees of persons whose activities are supervised by one of the authorities established under Section 60, the Law recognises that the disclosure may be made to a competent person (namely the Money Laundering Compliance Officer) in accordance with established internal procedures and such disclosure shall have the same effect as a disclosure made to a police officer or MOKAS.

2.5 Powers of MOKAS to order the non-execution or delay the execution of a transaction (Section 26(2)(c) of the Law)

Section 26(2)(c) of the Law empowers MOKAS to give instructions to financial institutions, including MTBs, for the non-execution or the delay in the execution of a transaction. MTBs are required to promptly comply with such instructions and provide MOKAS with all necessary cooperation. It is noted that, as per the above Section, in such a case no breach of any contractual or other obligation may arise

and MTBs are, therefore, protected from any possible claims from their customers.

2.6 Predicate offences (Section 5 of the Law)

Predicate offences are all criminal offences punishable with imprisonment exceeding one year from which proceeds were generated that may become the subject of a money laundering offence. Proceeds mean any kind of property which has been generated by the commission of a predicate offence.

On 22 November 2001, the House of Representatives enacted the Ratification Law of the United Nations Convention for Suppression of the Financing of Terrorism dated 10 January, 2000 which was signed by the Republic of Cyprus on 4 January, 2001. As a result of the above, terrorist financing is considered to be a criminal offence which is punishable with 15 years imprisonment or a fine of CYP1 mln or both of these penalties. Furthermore, the above Law contains a specific section which provides that terrorist financing and other linked activities are considered to be predicate offences for the purposes of Cyprus's anti-money laundering legislation i.e. the Prevention and Suppression of Money Laundering Activities Law of 1996. Consequently, suspicions of possible terrorist financing activities should be immediately disclosed to MOKAS under Section 26 of the Law.

For the purposes of money laundering offences it does not matter whether the predicate offence is subject to the jurisdiction of Courts in Cyprus or not (Section 4(2) of the Law).

2.7 Failure to report (Section 27 of the Law)

It is an offence for any person 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 practicable, after the information came to his attention, to a police officer or MOKAS. Failure to report in these circumstances is

punishable on conviction by a maximum of five (5) years imprisonment or a fine not exceeding CYP3.000 (three thousand pounds) or both of these penalties.

2.8 Tipping - off (Section 48 of the Law)

Further to the offence described in paragraph 2.3(v) above, it is also an offence for any person to prejudice the search and investigation of money laundering offences by making a disclosure, either to the person who is the subject of a suspicion or any third party, knowing or suspecting that the authorities are carrying out such an investigation and search. "Tipping-off" under these circumstances is punishable with imprisonment up to five (5) years.

2.9 Relevant financial and other business (Section 61 of the Law)

The Law recognises the important role of the financial sector, accountants and lawyers for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all financial institutions, including MTBs as well as professionals engaged in "relevant financial and other business", which, as defined by Law, includes the activities listed below:

1. Deposit taking;
2. Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transactions including forfeiting);
3. Finance leasing, including hire purchase financing;
4. **Money transmission services;**
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);
6. Guarantees and commitments;
7. Trading for own account or for account of customers in:-
    - (k) money market instruments (cheques, bills, certificates of deposits etc.);
    - (l) foreign exchange;
    - (m) financial futures and options;
    - (n) exchange and interest rate instruments;
    - (o) transferable instruments;

8. Underwriting share issues and the participation in such issues;

9. Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues including the areas of mergers and acquisitions of business;

10. Money broking;

11. Investment business, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investment" includes long term insurance contracts, whether linked long-term or not;

12. Safe custody services;

13. Custody and trustee services in relation to stocks.

14. Insurance policies taken in the General Insurance Sector by a company registered in Cyprus according to the Companies Law, either as a resident or an overseas company, but which carries on insurance business exclusively outside Cyprus.

15. Exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their customers in the context of carrying on relevant financial business.

16. Exercise of professional activities on behalf of independent lawyers, with the exception of privileged information, when they participate, whether –

(c) by assisting in the planning or execution of transactions for their clients concerning the -

6. buying and selling of real property or business entities;

7. managing of client money, securities or other assets;

opening or management of bank, savings or securities accounts;

8. organisation of contributions necessary for the creation, operation or management of companies;

9. creation, operation or management of trusts, companies or similar structures;

(c) or by acting on behalf and for the account of their clients in any financial or real estate transaction.

17. Any services prescribed in Part I and III of Annex One of the Investment Firms Laws of 2002 to 2003 currently in force which are provided in connection with the financial instruments numbered in Part II of the same Annex.

18. Transactions on real estate by real estate agents by virtue of the provisions of the Real Estate Agents Laws currently in force.

19. Dealings in precious metals and stones whenever payment is made for cash and in an amount of EUR15.000 or more.

2.10 Procedures to prevent money laundering (Section 58 of the Law)

The Law requires all persons carrying on relevant financial and other business, as defined above, to establish and maintain specific policies and procedures to guard against their business and the financial system in general being used for the purposes of money laundering. In essence these procedures are designed to achieve two purposes: firstly, to facilitate the recognition and reporting of suspicious transactions and, secondly, to ensure through the strict implementation of the "know-your-customer" principle and the maintenance of adequate record keeping procedures, should a customer come under investigation, that the institution is able to provide its part of the audit trail. The Law requires that all persons engaged in relevant financial and other business institute a number of procedures. In fact, it is illegal for any person, in the course of relevant financial and other business, to form a business relationship or carry out a one-off transaction with or for another, unless the following procedures are instituted:

(vii) Identification procedures of customers;

(viii) Record keeping procedures in relation to customers' identity and their transactions;

(ix) Internal reporting procedures to a competent person - (a Money Laundering Compliance Officer) appointed to receive and consider information that give rise to knowledge or suspicion that a customer is engaged in money laundering activities;

(x) Such other appropriate procedures of internal control, communication and detailed examination of any transaction which by its nature may

be considered to be associated with money laundering for the purpose of preventing and forestalling money laundering;

(xi) Measures for making employees aware of the above procedures to prevent money laundering and of the legislation relating to money laundering; and

(xii) Provision of training to their employees in the recognition and handling of transactions suspected to be associated with money laundering.

The purpose of the Guidance Notes issued by the Central Bank of Cyprus, as the supervisory authority of MTBs in Cyprus, is to provide a practical interpretation of the requirements of the Law in respect of business carried on by MTBs so as to achieve compliance with the requirements of the Law for the implementation of procedures to prevent money laundering.

Where the Central Bank of Cyprus forms the opinion that a MTB has failed to comply with the provisions of Section 58 of the Law it may, after giving the opportunity to the MTB to be heard, impose an administrative fine of up to CYP3.000.

2.11 Supervisory authorities (Section 60 of the Law)

The Law designates the Central Bank of Cyprus as the supervisory authority for all persons licensed to carry on banking business in Cyprus. Furthermore, in accordance with section 60(1) of the Law, on 6 December, 2001, the Council of Ministers appointed the Central Bank of Cyprus as the supervisory authority for all persons licensed to offer money transfer services. In this regard, the Central Bank of Cyprus has been assigned with the duty of supervising and assessing compliance of all banks and MTBs with the special provisions of the Law in respect of relevant financial and other business.

Under Section 60(3) of the Law, the Central Bank of Cyprus, in its capacity as a supervisory authority, is empowered to issue Guidance Notes to all banks and MTBs in Cyprus in order to assist them in achieving compliance with the requirements of the Law.

Furthermore, as it is explained in paragraph 2.10 above, supervisory authorities are empowered by virtue of Section 58(2)(a) of the Law to impose

an administrative fine of up to CYP3.000 to any person under their supervision who allegedly fails to take the preventive measures against money laundering prescribed in the Law. The Law provides that the allegedly non-compliant person should first be given the opportunity to be heard before a Supervisory Authority determines the imposition of the administrative fine.

2.12 Confiscation orders (Section 8 of the Law)

Courts in Cyprus are empowered to make a confiscation order on the assets of a person, if they decide that a person has benefited from committing a predicate offence. A confiscation order can be made before a person is sentenced or otherwise dealt with in respect of any predicate offence.

2.13 Restraint and charging orders (Sections 14 and 15 of the Law)

By a restraint order, the Courts may prohibit any person from dealing with any realisable property. In addition, they may also make a charging order on realisable property.

2.14 Non-execution or delay in the execution of a customer's transaction (Section 67A of the Law)

Section 67A of the Law protects the persons that provide financial services from a possible claim for damages from a customer in the event of refusal to execute or delay in executing any transaction for the account of that customer due to failure by the customer to provide sufficient details or information on the nature of the transaction and/or the parties involved as required by the Guidance Notes issued by the Central Bank of Cyprus in accordance with Section 60(3) of the Law.

2.15 Orders for the disclosure of information (Section 45 of the Law)

The Courts may, on application by the investigator, make an order for the disclosure of information by a person who appears to the Court to be in possession of the information to which the application relates. Such an order applies irrespective of any legal or other provision which creates an obligation for the maintenance of secrecy or imposes any constraints on the disclosure of

information. As already stated under a previous paragraph in relation to "tipping off", a person who makes any disclosure which is likely to obstruct or prejudice an investigation into the commitment of a predicate offence, knowing or suspecting that the investigation is taking place, is guilty of an offence.

2.16 Service of orders to a supervisory authority (Section (71) of the Law)

Service of an order made under this Law to a supervisory authority shall be deemed as service to all persons who are subject to the control of the supervisory authority. Provided that the supervisory authority concerned shall be obliged to notify forthwith all the persons subject to its control about the order made under the Law.

3 DIRECTIVE OF THE CENTRAL BANK OF CYPRUS FOR THE REGULATION OF THE MONEY TRANSFER SERVICES

3.1 Introduction

Section (2) of Article 48 of the Central Bank of Cyprus Law (Law 138(I) of 2002), defines the Central Bank of Cyprus as the responsible authority for the granting of licences and the supervision of businesses engaged in the provision of money transfer services from and to Cyprus. According to this legal requirement, the Central Bank of Cyprus has issued a Directive by which it regulates the exercise of these activities. The said Directive, which came in force on 1 September, 2003, includes, among others, provisions regarding the prevention of money laundering with which all MTBs are obliged to abide and take all necessary measures for their implementation. In particular, the Directive includes the following relevant provisions:

3.2 Terms and conditions for the operation of a business engaged in the provision of money transfer services (Section 2(1)(d))

Section 2(1)(d) of the Directive provides that a legal person which applies for a licence from the Central Bank of Cyprus for the operation of a MTB must “apply appropriate procedures for the prevention of money laundering activities”.

3.3 Submission of an application (Section 5(2)(i))

Section 5(2)(i)) of the Directive requires that an application submitted for the granting of a licence for the operation of a MTB shall inter-alia, contain “a plan containing rules prepared in accordance with acceptable and feasible procedures for the prevention of

money laundering activities in accordance with the provisions of the Prevention and Suppression of Money Laundering Activities Law (Law 61(1) of 1996)".

3.4 Obligations of licensees (Section 11)

Section 11 of the Directive provides that all MTBs should take measures for the prevention of money laundering. In particular Section 11 states:

"Every licensee is obliged to take all necessary measures for the effective prevention of money laundering as provided for in the Prevention and Suppression of Money Laundering Activities Laws of 1996 to 2000 and any other laws which amend or replace them.

These measures shall include the continuous training of the undertaking's staff so that they are able to recognise transactions which might be related to money laundering, as well as instructions as to what action they should take in such circumstances.

Furthermore, every licensee shall establish effective internal control and communication procedures for the prevention of activities associated with money laundering".

4 CUSTOMER IDENTIFICATION PROCEDURES

4.1 Legal requirements

The Law requires persons carrying on financial business, including MTBs, to maintain customer identification procedures in accordance with Sections 62 to 65 of the Law. The essence of these requirements is that except where the Law states that customer identification need not be made (Section 64 of the Law) a MTB must always verify the identity of all persons carrying on business with them.

The Law does not specify what may or may not represent "adequate evidence" of identity of customers. In this regard, the Central Bank of Cyprus, as the supervising authority of MTBs and in accordance with Section 60(1) of the Law, issues this Guidance Note to set out the practice which must be adopted by MTBs so that they achieve compliance with the requirements of the Law on the issue of customer identification procedures.

4.2 Know your customer

The strict and proper implementation of the "know your customer" principle is of essential and vital significance for the prevention of money laundering by all persons engaged in financial activities. MTBs must ascertain to their full satisfaction that they are dealing with a person (natural or legal) which really exists.

When a customer requests the transfer of funds, the MTB must ascertain the volume and nature of business that this customer is expected to carry out so that there is full understanding of the customer's normal activities. In order to be able to judge whether a transaction is suspicious or not, it is necessary to have a constant and continuous understanding of the size and nature of the customer's activities during the business relationship with the MTB. Details for the source of funds, e.g. how the payment was made, from where and by whom, must always be recorded to make easier the subsequent checking of the transactions. It is noted that suspicions for transactions associated with money laundering may arise at any stage and very often during the evolvement of the business relationship rather than at the beginning.

4.3 Timing of identification

The Law requires that the verification of a customer's identity is carried out as soon as is reasonably practicable after contact is first made between the MTB and a prospective customer. As a rule, MTBs should proceed with the execution of instructions for funds transfers, provided that they have requested and obtained satisfactory evidence of identity of the customer. What constitutes satisfactory evidence of identity should be judged in the light of the risk of money laundering attached to each individual customer.

4.4 Procedures of customer identification

MTBs must obtain the best identification documents possible, those which are the most difficult to be acquired illegally and which have been issued by a reliable source. However, it must be appreciated that no single form of documentation can be fully guaranteed as genuine or representing the real identity of the customer. Some ways of ascertaining a customer's identity are more reliable than others and in most cases it would be reasonable for the purpose of ascertaining the customer's identity to obtain more than one identification document.

Also, it is recommended that a separate file for each customer is maintained where the appropriate documentary evidence should be kept. Alternatively, the reference numbers of identity and other details should be recorded. The member of staff who ascertains the identity of the customer and the initial transaction must also be recorded in the relevant file.

4.5 Failure or refusal to provide identification evidence

The failure or refusal by a customer requesting the transfer of funds to provide satisfactory identification evidence within a reasonable timeframe and without adequate explanation are elements which may lead to a suspicion that the customer is engaged in money laundering. In such circumstances, MTBs should not proceed with the funds transfer and should consider making a suspicion report to MOKAS based on the information in their possession.

4.6 Specific identification issues

4.6.1 Natural persons

The following information should be obtained and verified from customers who are natural persons:

(v) true name and/or names used;

(vi) current temporary address in Cyprus for non residents of Cyprus;

(vii) for all customers, current permanent address in Cyprus or abroad, including postal code;

(viii) date of birth;

(ix) details of profession or occupation/employment.

In the case of a **new** customer who gives instructions for the transfer of funds through a bank in Cyprus which operates as an **authorised agent of the MTB**, the above information should be ascertained by the bank concerned **irrespective of the amount** of the requested fund transfer. Whatever identification documents are received, will be kept by the bank acting as authorised agent of the MTB. However, the customer's ordering form of the funds transfer transmitted by the

bank, which acts as an authorised agent, to the MTB, should in all cases, be accompanied by a **written confirmation** of the bank concerned that it has established the identity of the ordering customer and has obtained all relevant identification data.

The safest way of verifying the real name of a customer is by reference to a document that has been issued from a reputable source which also bears a photograph of the customer. In this respect, a valid passport or identity card must be requested and obtained, the numbers of which must be recorded by the MTB.

There is obviously a wide range of documents that customers might produce as evidence of their identity. It is therefore up to each MTB to judge the reliability of such documents taking also into consideration all the procedures which must be followed for the verification of the customer's identity.

For customers who are not normally residing in Cyprus, it is important that verification procedures similar to those for customers residing in Cyprus should be carried out and the same information obtained.

4.6.2 Corporate customers (companies)

Because of the difficulties of identifying beneficial ownership, corporate accounts are one of the most likely vehicles for money laundering, particularly when fronted by legitimate trading activities.

Particular attention must be given on the establishment of the legal existence of the company and the verification of the authorisation of the persons who appear to be acting on behalf of the company. In the case of companies it is necessary to look behind the legal identity in order to ascertain the identity of the natural persons who have the ultimate control of the activities and assets, with special attention given to the shareholders or other persons which contribute the biggest part of capital or other financial means. At the same time information must be obtained so as to verify that the company is engaged in legitimate commercial or other activities.

The verification of the identity of a company comprises the establishment of the following:

(xxxvi) its registered number;

(xxxvii) its registered corporate name and any trading names used;

(xxxviii) its registered address and the address of its principal administrative office;

(xxxix) the identity of its directors;

(xl) the identity of all those persons duly authorised to operate the accounts;

(xli) in the case of private companies, the registered shareholders and, where the registered shareholders act as nominees, the identity of the principal ultimate beneficial owners.

The identity of the persons mentioned in (iv), (v) and (vi) above, should be established in accordance with the procedures for identifying the identity of natural persons or corporate customers, as the case may be.

The MTB must request and obtain the following documents:

(v) the company's Certificate of Incorporation;

(vi) Certificate of registered office;

(vii) Certificate of directors and secretary;

(viii) in the case of private companies, Certificate of registered shareholders; and

(ix) Memorandum and Articles of Association;

In the case of new customer who gives instructions for the transfer of funds through a bank in Cyprus, which operates as an authorised agent of the MTB, the above information should be ascertained by the bank concerned irrespective of the amount of the requested fund transfer. Whatever identification documents are received, will be kept by the bank acting as authorised agent of the MTB. However, the customer's ordering form of the funds transfer transmitted by the bank which acts as an authorised agent to the MTB, should in all cases, be accompanied by a written confirmation of the bank concerned that it has established the identity of the ordering customer and has obtained all relevant identification data.

The term beneficial owner mentioned above, refers to the natural person(s) who ultimately own or exercise effective control over a company. Principal beneficial owners are considered to be persons with direct or indirect interests in excess of 5% in a company's share capital. MTBs must verify the identities of a sufficient number of principal beneficial owners of private companies and non-listed public companies so that the aggregate shareholding of such persons identified is not less than 75% of a company's share capital.

In the case of a company requesting the transfer of funds whose direct / immediate and principal shareholder is another company registered in Cyprus or abroad, MTBs are required, before making the transfer, to ascertain the identity of the natural person(s) who is/are the principal/ultimate beneficial shareholder(s) and/or is/are controlling the said company. Identification of the natural person(s) who is/are the ultimate beneficial shareholder(s)/owner(s) and/or is/are controlling the investing company should be carried out irrespective of the layers of companies behind the company requesting the transfer.

Apart from principal beneficial owners identified above, MTBs must also look for the persons who have the ultimate control over a company's business and assets. Ultimate control will often rest with those persons who have the power to manage funds, accounts or investments without requiring authorisation and who would be in a position to override internal procedures. In such circumstances, MTBs must also obtain identification evidence for any other person(s) who exercises ultimate control as defined above even if that person has no direct or indirect interest or possess an interest of less than 5% in a company's share capital.

In cases where the major shareholder of a company requesting the transfer of funds is a trust set up in Cyprus or abroad, MTBs are required to ascertain the identity of the trustees, settlors and beneficiaries of the trust.

4.6.3 Higher risk countries- Non-cooperative countries and territories ("NCCTs")

The Financial Action Task Force's ("FATF") Forty Recommendations constitute today's primary internationally recognised standards for the prevention and detection of money laundering. The Government of Cyprus has formally endorsed FATF's Forty Recommendations and has directly assured the President of FATF that the competent authorities of Cyprus will take all necessary actions to ensure

full compliance and implementation of the Recommendations. In this regard, the Central Bank of Cyprus is committed for the implementation of FATF's Forty Recommendations and all its other related initiatives in an effort to reduce the vulnerability of the financial system to money laundering activities.

In February, 2000 FATF engaged in a major initiative to identify non-cooperative countries and territories ("NCCTs") in the fight against money laundering. In this respect, FATF has issued a report setting out twenty five criteria against which countries and territories are evaluated for the purpose of identifying relevant detrimental rules and practices in their anti money laundering systems that are in breach of FATF's Forty Recommendations and prevent international cooperation in this area. Since June, 2000, and following an evaluation of a number of countries against the above set of criteria, FATF has been publishing lists of jurisdictions which were, from time to time, being identified as non-cooperative. The current list of NCCTs is set out in "Appendix 1" to this Guidance Note.

In view of the aforementioned, all MTBs are required to apply the following:

(iii) Exercise **additional monitoring procedures** and pay special attention to transactions with persons from countries included on the NCCTs list; and

(iv) Whenever the above transactions have no apparent economic or visible lawful purpose, their background and purpose should be examined and the findings established in writing. If a MTB cannot satisfy itself as to the legitimacy of the transaction, then a **suspicious transaction report** should be filed with MOKAS.

5. RECORD KEEPING PROCEDURES

5.1 Legal requirements

The Law requires, under Section (66), persons that provide financial services to retain records concerning customer identification and details of transactions for use as evidence in any possible investigation into money laundering. This is an essential constituent of the audit trail procedures that the Law seeks to establish.

The details and documents maintained by MTBs on their customers' identity and transactions must be sufficient to:

- meet with the requirements of the Law,
- facilitate the evaluation of the degree of compliance of the MTB with the procedures in place for the prevention of money laundering,
- reconstruct the transactions made, and
- enable the MTB to satisfy, within reasonable time, requests for the provision of information from the Central Bank of Cyprus or, based on a court order, from MOKAS.

The Law does not describe the precise form of documents which should be kept but the objective is to ensure that in any possible investigation for money laundering, MTBs will be in a position to provide MOKAS with, the necessary information relating to a suspicious transaction.

5.2 Records of customer identification

The Law specifies, under Section 66, that, where evidence of a customer's identity is required, the records retained must include the following:

(a) A record that indicates the **customer's identity** obtained in accordance with the procedures provided in the Law and which comprises either a copy of the evidence or which provides sufficient information to enable details as to a person's identity to be re-obtained.

(b) A record containing **details relating to all transactions** carried out by that customer in the course of relevant financial business.

The prescribed period of record keeping is **at least five years** commencing with the date on which the relevant business or all activities taking place in the course of transactions were completed.

5.3 Format of Records

It is recognised that copies of all documents cannot be retained indefinitely. Prioritisation is, therefore, a necessity. Although the Law prescribes a period of retention, where the records relate to on-going investigations, they should be retained until it is confirmed by MOKAS that the case has been closed.

The retention of hard-copy evidence creates excessive volume of records to be stored. Therefore, retention may be in other formats other than original documents, such as electronic or other form. The overriding objective is for the MTBs to be able to retrieve the relevant information without undue delay and in a cost-effective manner.

When setting a document retention policy, MTBs are, therefore, advised to consider both the statutory requirements and the potential needs of MOKAS.

Section 47 of the Law provides that where relevant information is contained in a computer, the information must be presented in a visible and legible form which can be taken away by MOKAS.

5.4 Funds transfers

The extensive use of electronic payment and message systems by criminals to move funds rapidly in different jurisdictions has complicated the investigation trail. Investigations are at times even more difficult to pursue when the identity of the original ordering customer or ultimate beneficiary of a funds transfer is not clearly shown in an electronic payment message instruction.

It is of the utmost importance to include full information on the originator of all funds transfers made by electronic means, both domestic and international, regardless of the payment message system used. The records of electronic payments and relevant messages must be treated in the same way as any other records in support of entries in the accounts and kept for a minimum of five years.

5.4.1 Outgoing funds transfers

All outgoing funds transfers performed by MTBs should contain accurate and meaningful information on the originator. In this respect, all outgoing transfers must always include the name, the address of the originator and a unique reference number which will permit the subsequent tracing of the transaction. The address of the originator may be substituted with the customer identification number or date and place of birth or the national identity number or, in the case of legal entities, its registration number with the competent authority.

5.4.2 Incoming funds transfers

For each incoming fund transfer that a MTB accepts in favour of a customer, it should retain either the original or an electronic record of the incoming payment order. MTBs should ensure that all incoming funds transfers contain the name and address of the ordering customers as well as full details of the institution outside Cyprus which received and executed the payment order. In addition, the identity of the beneficiary should be verified by obtaining details on his/her name, address and identity or passport number.

In cases where any of the information mentioned above is missing in the relevant message, MTBs should contact the originator's institution and request that information be made available before proceeding with the execution of the transaction. Section 67A of the Law provides protection to MTBs from possible claims from their customers for non-execution or delay in the execution of any transaction for account of a customer. Hence, as per Section 67A, non-execution or delay in the execution of any transaction for the account of customer due to the non provision of sufficient details or information for the nature of the transaction and/or the parties involved, as required by the Guidance Notes issued by the Central Bank of Cyprus, does not constitute breach of any contractual or other obligation owed by the MTBs to their customers. If full originator information is not eventually made available, then the MTBs should consider filing a suspicious transaction report with MOKAS.

6. THE ROLE OF THE MONEY LAUNDERING COMPLIANCE OFFICER

6.1 Appointment of a Money Laundering Compliance Officer

The Law, in accordance with Sections 58 and 67, requires that MTBs institute internal reporting procedures and that they identify a person (hereinafter to be referred to as "the Money Laundering Compliance Officer") to whom the MTBs' employees should report their knowledge or suspicion of transactions/activities involving money laundering.

In accordance with the provisions of the Law, all MTBs should proceed with the appointment of a Money Laundering Compliance Officer. The person so appointed should be a member of the MTBs' managerial team so as to command the necessary under the circumstances authority. MTBs should communicate to the Central Bank of Cyprus the names and positions of persons whom they appoint, from time to time, to act as "Money Laundering Compliance Officers".

6.2 Duties of the Money Laundering Compliance Officer

The role and responsibilities of Money Laundering Compliance Officers, should be clearly specified by MTBs and documented in appropriate manuals and/or job descriptions of the employees of the MTBs.

As a minimum, the duties of a Money Laundering Compliance Officer include the following:

(xii) To receive information from the MTB's employees and authorised agents which is considered by the latter to be knowledge of money laundering activities or which is cause for suspicion connected with money laundering. A specimen of such an internal report (hereinafter to be referred to as "Internal Money Laundering Suspicion Report") is attached, as "Appendix 2", to this Guidance Note. All such reports should be filed and kept in a separate file.

(xiii) To validate and consider the information received as per paragraph (i) above by reference to any other relevant information and discussion of the circumstances of the case with the reporting employee concerned and, where appropriate, with the employee's superior(s).

(xiv) If following the evaluation described in paragraph (ii) above, the Money Laundering Compliance Officer decides to notify MOKAS, then he/she should complete a written report and submit it to MOKAS the soonest possible. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Report to the Unit for Combating Money Laundering ("MOKAS")" is attached, as "Appendix 3", to this Guidance Note. All such reports should be kept on file.

(xv) If following the evaluation described in paragraph (ii) above, the Money Laundering Compliance Officer decides not to notify MOKAS then he/she should fully explain the reasons for such a decision.

(xvi) The Money Laundering Compliance Officer acts as a first point of contact with MOKAS, upon commencement of and during an investigation as a result of filing a report to MOKAS under paragraph (iii) above.

(xvii) The Money Laundering Compliance Officer responds to requests from MOKAS and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with MOKAS.

(xviii) The Money Laundering Compliance Officer provides advice and guidance to other employees and authorised agents of the MTB on money laundering matters.

(xix) The Money Laundering Compliance Officer acquires the knowledge and skills required which should be used to improve the MTB's internal procedures for recognising, detecting and preventing transactions associated with money laundering.

(xx) The Money Laundering Compliance Officer determines whether the MTB's employees and authorised agents need further training and/or knowledge for the purpose of learning to combat money laundering and organises appropriate training sessions/seminars.

(xxi) The Money Laundering Compliance Officer is primarily responsible, in consultation with the senior management of the MTB, towards the Central Bank of Cyprus, in implementing the various Guidance Notes issued by the Central Bank of Cyprus under Section 60(3) of the Law as well as all other

instructions/ recommendations issued by the Central Bank of Cyprus, from time to time, on the prevention of money laundering.

(xxii) Finally, the Money Laundering Compliance Officer is expected to avoid errors and/or omissions in the course of discharging his duties and, most importantly, when validating the reports received on money laundering suspicions, as a result of which a report to MOKAS may or may not be filed. He/she is also expected to act honestly and reasonably and to make his/her determination in good faith. In this connection, it should be emphasised that the Money Laundering Compliance Officer's decision may be subject to the subsequent review of the Central Bank of Cyprus which, in the course of examining and evaluating the anti-money laundering procedures of an MTB and its compliance with the provisions of the Law, is legally empowered to report to MOKAS any transaction or activities for which it forms the suspicion that money laundering may have been carried out.

6.3 Annual Report of the Money Laundering Compliance Officer

Money Laundering Compliance Officers have also the additional duty of preparing an Annual Report which is a tool for assessing MTBs' level of compliance with their obligations laid down in the Law and the Central Bank of Cyprus's Guidance Notes for the prevention of money laundering.

The Money Laundering Compliance Officer's Annual Report should be prepared within two months from the end of each calendar year (i.e. by the end of February, the latest) and should be submitted to the senior management of the MTB. It is expected that the MTB's Senior Management will then take all action as deemed appropriate under the circumstances to remedy any deficiencies identified in the Annual Report.

A copy of the Annual Report shall also be forwarded within the same time limit specified above, to the Supervision of International Banks, Regulation and Financial Stability Department of the Central Bank of Cyprus.

The Money Laundering Compliance Officer's Annual Report should deal with money laundering preventive issues pertaining to the year under review and, as a minimum, cover the following:

(xiii) Measures taken and/or procedures introduced for securing compliance with changes in the Law and the Central Bank of Cyprus's Guidance Notes;

(xiv) information on the ways by which the effectiveness of the customer identification procedures have been managed and tested for compliance with Central Bank of Cyprus's Guidance Notes;

(xv) material deficiencies and weaknesses identified by the Money Laundering Compliance Officer in anti-money laundering policies and procedures of the MTB, outlining the seriousness of the issue and any risk implications and, outlining the action taken and/or the recommendations made for rectifying the situation;

(xvi) the number of internal money laundering suspicion reports received from employees and authorised agents of the MTB, indicating any comments / observations thereon;

(xvii) any perceived deficiencies and weaknesses in the anti-money laundering internal reporting procedures and recommendations for change/improvements;

(xviii) any other information, comments or observations concerning communication with staff and authorised agents on money laundering preventive issues;

(xix) the number of suspicious reports submitted to MOKAS with information on the main reasons for suspicion and highlights of any particular trends;

(xx) information on the co-operation with MOKAS and figures on the requests for information received from MOKAS concerning suspicious cases reported and the number of disclosure court orders received by the MTB under the Law for the production of information relating to other money laundering investigations;

(xxi) information on the training courses/seminars attended by the Money Laundering Compliance Officer and any other educational material received;

(xxii) information on training/education provided to staff and authorised agents in the year under review;

(xxiii) recommendations for additional human and technical resources which might be required to ensure compliance with the provisions of the Law and the Central Bank of Cyprus's Guidance Notes.

7. RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS

7.1 Legal requirements

Section 27 of the Law requires that any knowledge or suspicion of money laundering should be promptly reported to a Police Officer or MOKAS. The Law also provides, under Section 26, that such a disclosure cannot be treated as a breach of the duty of confidentiality owed by MTBs to their customers by virtue of the contractual relationship existing between them.

The Law also recognises, under Section 26, that suspicions may only be aroused after the transaction has been completed and, therefore, allows subsequent disclosure provided that such disclosure is made on the person's concerned initiative and as soon as it is reasonable for him to make it.

In the case of employees of persons engaged in financial activities, the Law recognises, under Section 26, that the internal reporting to the Money Laundering Compliance Officer is considered as satisfying the reporting requirement imposed by virtue of Section (27) i.e. once an employee has reported his/her suspicion to the Money Laundering Compliance Officer he or she is considered to have fully satisfied his/her statutory requirements, under Section (27).

7.2 Recognition of suspicious transactions

Although it is difficult to define a suspicious transaction, as the types of transactions which may be used by money launderers are almost unlimited, a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account. It is, therefore, imperative that MTBs should know enough about their customers' business in order to recognise that a transaction or a series of transactions is not in line with the normal business of a particular customer.

Questions that may be raised when a MTB needs to determine whether a transaction is suspicious or not are the following:

- Is the size of the transaction inconsistent with the usual activities of the customer?
- Is the transaction rational in the context of the customer’s business or personal activities?

- Has the nature of transactions conducted by the customer changed?

Sufficient guidance should be given to the employees and the authorised agents of the MTB to enable them to recognised a suspicious transaction. A list containing examples of suspicious transactions/activities, is attached as "Appendix 4" to this Guidance Note. MTBs should also monitor the types of transactions and the circumstances which give rise to internal reports of suspicious transactions from the employees and authorised agents with a view of updating, from time to time, their internal instructions for the recognition of suspicious transactions.

7.3 Reporting of suspicious transactions/activities to MOKAS

All Money Laundering Compliance Officers' Reports to MOKAS should be sent or delivered at the following address:

Unit for Combating Money Laundering ("MOKAS"),
The Law Office of the Republic,
27 Katsoni Street, 2nd & 3rd Floors,
CY-1082 Nicosia.
Tel.: 22 446018, Fax: 22 317063
E-mail: mokas@mokas.law.gov.cy
Contact person:
Mrs Eva Rossidou – Papakyriakou,
Head of the Unit for Combating Money Laundering ("MOKAS")

The form attached to this Guidance Note, as "Appendix 3", should be used at all times when submitting a report to MOKAS. Disclosures can be forwarded to MOKAS by post or by facsimile message or by hand.

7.4 Co-operation with MOKAS

Having made a disclosure report, a MTB may subsequently wish to terminate its relationship with the customer concerned for commercial or risk avoidance reasons. In such an event, however, MTBs should exercise particular caution, as per Section 48 of the Law, not to alert the customer concerned that a disclosure report has been made. Close liaison with the MOKAS should, therefore, be maintained in an effort to avoid any frustration or difficulties to the investigations conducted.

After making the disclosure, MTBs are expected to adhere to any instructions given by the MOKAS and, in particular, as to whether or not to continue or suspend a transaction. It is noted that Section 26(2)(c) of the Law empowers MOKAS to instruct MTBs to refrain from executing or delay the execution of a customer's order without such action constituting a violation of any contractual or other obligation of the MTB and its employees.

8 INTERNAL CONTROL PROCEDURES AND RISK MANAGEMENT

8.1. Legal requirements

Section 58 of the Law requires that all persons engaged in relevant financial and other business, for the purposes of prevention of money laundering, apply appropriate procedures for internal control, communication and detailed examination of any transaction which by its nature may be considered to be associated with money laundering.

Section 11 of the Central Bank of Cyprus Directive for the regulation of the money transfer services, requires that every MTB establishes effective internal control and communication procedures for the prevention of activities associated with money laundering. Furthermore, section 5(2)(i) requires that all persons that apply for the granting of a licence for the operation of MTBs prepare a plan with acceptable and feasible procedures for the prevention of money laundering activities in accordance with the provisions of the Law.

8.2. Duty to establish procedures

Effective money laundering preventive procedures embrace routines for proper management oversight, systems and controls, segregation of duties, training and other related policies. The Senior Management should be fully committed to an effective money laundering preventive programme by establishing appropriate procedures and ensuring their effectiveness. MTBs have an obligation to ensure that:

(vi) All their employees and authorised agents know to whom they should be reporting money laundering knowledge or suspicion;

(vii) there is a clear reporting chain under which money laundering knowledge or suspicion is passed without delay to the Money Laundering Compliance Officer;

(viii) internal policies, procedures and controls for the prevention of money laundering are documented in an appropriate manual which is communicated to management, authorised agents and all employees in charge of customers' operations;

(ix) explicit responsibility is allocated within the organisation for ensuring that the MTB's policies and procedures are managed effectively and are in full compliance with the Central Bank of Cyprus's Guidance Notes; and

(x) the Money Laundering Compliance Officer reviews and evaluates, at regular intervals, the effectiveness and adequacy of policies and procedures introduced by the MTB for preventing money laundering and verifying compliance with the provisions of Central Bank of Cyprus's Guidance Notes.

8.3. Duty for on-going monitoring of transactions and introduction of management information systems

On-going monitoring of customers' transactions is an essential aspect of effective money laundering preventive procedures.

Section 58(b)(iv) of the Law requires MTBs, inter-alia, to examine in detail any transaction which by its nature may be associated with money laundering. The background and purpose of such transactions should, as far as possible, be examined by taking care not to breach Section 48 of the Law concerning tipping-off. The extent of the examination of transactions needs to be risk-sensitive. For all transactions, MTBs should have systems in place to be able to aggregate the daily and monthly transactions of their customers on a fully consolidated basis and detect unusual or suspicious patterns of activity and warn MTBs that a customer may possibly be involved in unusual transactions. This can be done by establishing limits for the incoming and outgoing transfers. Particular attention should be paid to all transactions that exceed these limits and that do not appear to make economic or commercial sense or that involve large amounts of incoming transfers that are not consistent with the normal and expected transactions of a particular customer.

MTBs should ensure that they have in place adequate management information systems to provide Managers and Money Laundering Compliance Officers with information needed to identify, analyse and effectively monitor transactions as well as ensure the timely and correct completion of the monthly "Statement of Funds Transfers" submitted to the Central Bank of Cyprus. The management

information systems may be used for the extraction of information related to missing details from the documents pertaining to a transaction, customers' identity and the business relationship of the customer with the MTB. MTBs are required to install and put into operation adequate management information systems for the on-going monitoring of transactions, by 31 December, 2005, the latest.

9. EDUCATION AND TRAINING

9.1 Legal requirements

The Law requires, under Section 58, that all persons engaged in financial activities provide adequate training to all their employees in the recognition and handling of transactions suspected to be associated with money laundering.

Also, under Section 58 of the Law, it is required that appropriate measures are taken, to make employees aware of:

(iii) The policies and procedures put in place to prevent money laundering including those for customer identification, record keeping and internal reporting; and

(iv) The legislation relating to money laundering.

Section 11 of the Directive of the Central Bank of Cyprus for the regulation of money transfer services requires that MTBs take measures for the continuous training of their staff so that they are able to recognise transactions which might be associated with money laundering, as well as instructions as to what action they should take in such circumstances.

9.2 Education and training of employees and authorised agents

The effectiveness of the procedures and recommendations contained in this Guidance Note issued by the Central Bank of Cyprus on the subject of money laundering depends on the extent to which staff and authorised agents of MTBs appreciate the serious nature of the background against which the Law has been enacted and the education and training provided to staff on their duties and legal responsibilities regarding this serious problem. Staff and authorised agents must be aware that they can be held personally liable for failure to report information regarding money laundering in accordance with internal procedures. All employees and authorised agents of MTBs must, therefore, be encouraged to co-operate and to provide a prompt report of any knowledge or suspicion of transactions involving money laundering. It is, therefore, important that MTBs introduce comprehensive measures to ensure that staff and authorised agents are fully aware of their duties and responsibilities.

All staff must be informed of the importance of the correct implementation of the "know your customer" principle for the purpose of preventing money laundering. Within this framework, the education and training provided must cover, besides the procedure for ascertaining the true identity of customers, the need of acquiring enough knowledge of customers' business and professional activities, in order to enable the employees to judge in future, what might be a suspicious transaction for a particular customer. Staff and authorised agents must be continuously alerted for the detection of changes in the pattern and the nature of customers' transactions as well as the circumstances that may raise suspicions for criminal activities.

9.3 Contents, time and methods of educating and training employees and authorised agents

MTBs are required to plan and implement a program of continuous training for all their staff and authorised agents.

The content, time and methods of training must correspond to the needs of the MTB, taking into consideration its size and organisational structure and the available time and resources.

It is emphasised that arrangements should be made for regular refresher training to be provided at regular intervals to ensure that staff and authorised agents are reminded of their responsibilities according to the Law and the Guidance Notes of the Central Bank of Cyprus.

10. REPEAL/CANCELLATION OF PREVIOUS GUIDANCE NOTES AND SUPPLEMENTS

The following Guidance Notes and their Supplements issued by the Central Bank of Cyprus, under Section 60(3) of the Law are, hereby, repealed and cancelled:

Edition	Title	Date of issue
Guidance Note	Guidance Note of the Central Bank of Cyprus issued to MTBs under Section 60(3) of the Prevention and Suppression of Money Laundering Activities Law of 1996	11 October, 2002
Guidance Note	Non Cooperative Countries and Territories	20 January, 2003
Supplement 1 to the Central Bank of Cyprus Guidance Note issued on 20 January, 2003	Non Cooperative Countries and Territories	20 February, 2003
Supplement 2 to the Central Bank of Cyprus Guidance Note issued on 20 January, 2003	Non Cooperative Countries and Territories	9 July, 2003
Supplement 3 to the Central Bank of Cyprus Guidance Note issued on 20 January, 2003	Non Cooperative Countries and Territories	9 March, 2004

APPENDIX 1

List of non-cooperative countries and territories ("NCCTs") January, 2004

1. Cook Islands
2. Indonesia
3. Myanmar

Nauru

4. Nigeria
5. Philippines

APPENDIX 2

INTERNAL MONEY LAUNDERING SUSPICION REPORT

REPORTER

Name: ..... Tel:.....
Branch/Dept:..... Fax:.....
Position: .....

CUSTOMER

Name: ....
Address:..... .....
..... Date of birth:.....
Telephone:..... Occupation/Employer:.....
Fax:..... Details on employer:.....
Passport No:..... Nationality:.....
ID Card No:..... Other ID:.....

INFORMATION/SUSPICION

Brief description of activities/transaction ....
....
....

Reason(s) for suspicion..... .....
....
....

REPORTER'S SIGNATURE ..... **Date**.....

FOR MONEY LAUNDERING COMPLIANCE OFFICER'S USE

Date received.....Time received.....Ref.....
MOKAS Advised Yes/No Date .....Ref.....

APPENDIX 3

MONEY LAUNDERING COMPLIANCE OFFICER'S REPORT TO THE UNIT FOR COMBATING MONEY LAUNDERING ("MOKAS")

I. GENERAL INFORMATION

Name of Money Transfer Business _____
Address, telephone and fax numbers _____
_____
Date of the transaction _____

II. DETAILS OF NATURAL PERSON(S) AND/OR LEGAL ENTITY(IES) INVOLVED IN THE SUSPICIOUS TRANSACTION(S)

(A) NATURAL PERSONS

Name(s) _____ _____
_____ _____

Residential address(es) _____ _____
_____ _____

_____ _____
_____ _____

Business address(es) _____ _____
_____ _____

_____ _____
_____ _____

Occupation and Employer _____ _____

	_____	_____
	_____	_____
	_____	_____
Date and place of birth	_____	_____
	_____	_____
	_____	_____
	_____	_____
Nationality and passport number(s)	_____	_____
	_____	_____
	_____	_____
	_____	_____

(B) LEGAL ENTITIES

Company's name, country
and date of incorporation _____
_____
_____

Business address _____
_____
_____

Main activities _____
_____

	Name	Nationality and passport number	Date of birth	Residential address	Occupation and employer
Registered shareholder(s)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Beneficial shareholder(s) (if different from above)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Authorised signatory(ies)	1. _____ 2. _____ 3. _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____

(3) FULL DESCRIPTION OF SUSPICIOUS TRANSACTIONS

(4) KNOWLEDGE/SUSPICION OF MONEY LAUNDERING
(please explain, as fully as possible, the knowledge or suspicion connected with money laundering)

IV OTHER INFORMATION
(if any)

–

–

MONEY LAUNDERING
COMPLIANCE OFFICER'S Signature ..... Date .....

NB: The above report should be accompanied by photocopies of the following:

10. For natural persons, the relevant pages of customers' passports or ID card evidencing identity.
11. For legal entities, certificates of incorporation, directors and shareholders.
12. All documents relating to the suspicious transaction(s).

APPENDIX 4

EXAMPLES OF SUSPICIOUS TRANSACTIONS/ACTIVITIES

(i) Customers who make regular and large wire transfers that cannot be clearly identified as bona fide transactions, or receive regular large payments from countries which are known to be associated with the production, processing or trafficking of drugs.

(ii) Numerous incoming wire transfers in favour of a specific customer when each transfer is below the reporting requirement in force in the remitting country.

(iii) Wire transfer activity to/from a non-cooperative jurisdiction without an apparent business reason, or when it is inconsistent with the customer's business, activities or history.

(iv) Wire transfers to or for an individual where the relevant message does not contain full information on the originator, or the person on whose behalf the transaction is conducted.

(v) Many small incoming wire transfers of funds, the total or the larger part of which are almost immediately transferred to another country in a manner inconsistent with the customer's business, activities or history.

(vi) Large incoming wire transfers on behalf of a foreign customer with little or no explicit reason.

(vii) Wire transfer activity that is unexplained, repetitive, or shows unusual patterns. Payments or receipts with no apparent links to legitimate contracts for the provision of goods or services.

A N N E X 2 L

Law on the European Arrest Warrant and Annex

Official Gazette, Annex I(I)
No. 3850, 30.4.2004 L. 133(I)/2004

THE LAW ON THE EUROPEAN ARREST WARRANT AND THE SURRENDER PROCEDURES BETWEEN MEMBER STATES OF THE EUROPEAN UNION OF 2004 IS PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF CYPRUS ACCORDING TO SECTION 52 OF THE CONSTITUTION.

No. 133(I) of 2004

A LAW TO PROVIDE FOR THE EUROPEAN ARREST WARRANT AND THE SURRENDER PROCEDURES OF REQUESTED PERSONS BETWEEN MEMBER STATES OF THE EUROPEAN UNION 2004.

For the purposes of harmonization with the European Union act referred to as- "Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States" (OJ L 190, 18.7.2002, p.1).

The House of Representatives enacts as follows:

PART I

Short title.

1. This Law may be cited as the European Arrest Warrant and Surrender Procedures of Requested Persons Between Member States of the European Union Law of 2004.

General provisions.

2. (1) The prerequisites and the procedure relating to the issuance and the execution of the European arrest warrant

are subject to the provisions of this Law.

(2) The implementation of the provisions of this Law shall not have the effect of violating the obligation to respect fundamental rights and fundamental legal principles, according to section 6 of the Treaty on European Union. In any case, the requested person shall not be extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Purpose of the European arrest warrant.

3. (1) The European arrest warrant is a decision or Order issued by a judicial authority of a Member State of the European Union with a view to the arrest and surrender of a person who is in the territory of another Member State of the European Union and who is requested by the competent authorities of the issuing State of the warrant in the framework of criminal proceedings:

(a) for the purposes of conducting a criminal prosecution or

(b) for the purposes of executing a sentence or detention order.

Content and form of the European arrest warrant.

4. (1) The European arrest warrant shall contain the following information:

(a) The identity and nationality of the requested person, if known

(b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority of the warrant

(c) reference to the enforceable judgment, the arrest warrant or the relevant decision of the judicial authority

(d) the nature and legal classification of the offence

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person

(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State and

(g) if possible, other consequences of the offence, including any incidental penalty for the offence

(2) The European arrest warrant may concern more than one offence.

(3) The European arrest warrant shall be translated into the official language or one of the official languages of the executing Member State of the warrant. Where a European arrest warrant is submitted to the Cypriot authorities it shall be formulated in one of the official languages of the Republic of Cyprus or in English.

(4) The issuing judicial authority may, if possible, fill in the document enclosed hereby, Annex I, which provides for the above-mentioned information.

Central authority.

5. The Ministry of Justice and Public Order, in its capacity as central authority, shall assist the competent issuing and executing authorities of the European arrest warrant, notably with regard to the administrative transmission and receipt of the European arrest warrant, as well as for all other official correspondence relating thereto. The central authority may also proceed to the keeping of

statistics.

PART II

Issuance of the European arrest warrant

Competent issuing judicial authority of the European arrest warrant.

6. The competent authority for the issuance of the European arrest warrant shall be the District Judge to the district of whom is subject the territorial jurisdiction of trial of the offence for which are required the arrest and surrender of the requested person, or the Court which has issued the decision with regard to the sentence or the detention order.

Issuance of the European arrest warrant.

7. The European arrest warrant shall be issued for acts which are punishable according to Cypriot criminal laws with a custodial sentence or a detention order for a maximum period of at least twelve (12) months or in the event where a penalty or order has already been passed for a sentence for a period of at least four (4) months.

Transmission of the European arrest warrant.

8. (1) Where the residence or the place where the requested person stays in are known, the District Judge may transmit the European arrest warrant directly to the executing judicial authority.

(2) The competent District Judge may, in any event, decide to proceed to an entry in the Schengen Information System (SIS). Such an entry shall be effected according to section 95 of the Schengen Agreement, when the said agreement shall be applicable to the Republic of Cyprus. This entry shall be equivalent to a European arrest warrant, provided that the information prescribed by section 4 subsection 1 of this Law are also laid down.

(3) Where the residence or the place where the requested

person stays in are not known, the competent District Judge, via the central authority, proceeds to the required investigations, notably through the Schengen Information System, when the said Agreement shall be applicable to the Republic of Cyprus and the contact points of the European Judicial Network, in order to obtain that information from the executing State. In view of the transmission of the European arrest warrant, the District Judge may also call on Interpol through the central authority.

(4) In any event, the competent District Judge may forward the warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish authenticity.

(5) All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contact between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

(6) The competent District Judge may forward at any time to the executing judicial authority any useful information, in addition to that included in the warrant.

Request for seizure and handing over of property.

9 (1) The competent District Judge shall have the right, along with the transmission of the European arrest warrant, to request from the executing judicial authority the seizure and handing over of objects which may be used as evidence or which have been in the possession of the requested person as a result of the offence.

(2) Any rights which the executing Member State or third parties may have acquired in the property referred to in subsection 1 shall be preserved. Where such rights exist, the competent District Judge shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

Waiving the privilege or immunity of the requested person regarding jurisdiction.

10. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State of the warrant and the power to waive the privilege or immunity lies with an authority of another State or international organization, the competent District Judge shall submit to that authority the relevant request with which it shall enclose the European arrest warrant.

PART III

Execution of the European arrest warrant

Competent executing judicial authority of the European arrest warrant.

11. (1) The competent authority for the arrest and custody of the requested person as well as for the executing decision of surrender or refusal shall be:

(a) The competent District Judge in the district of whom is found or is believed to be found the requested person

(b) The District Judge of Nicosia, in the event where it is not known where the requested person stays in.

(2) Where the requested person consents to surrender to the issuing State of the warrant, the competent judicial authority for the issuance of the executing decision of the warrant shall be the District Judge in the District of whom

the requested person stays in or is arrested.

(3) Where the requested person does not consent to surrender to the issuing State of the warrant, the competent judicial authority for the issuance of the executing decision shall be the District Court in the District of which the requested person stays in or is arrested.

Execution of the European arrest warrant.

12. (1) Without prejudice to sections 13 to 15 of this Law, the European arrest warrant shall be executed provided that:

(a) The act for which the European arrest warrant has been issued constitutes an offence punishable by a custodial sentence or detention order, according to the law of the issuing State and that it constitutes an offence in accordance with Cypriot criminal laws, regardless of its legal classification. In the event where the punishable act constitutes an offence in relation to taxes, duties, customs and exchange, the absence of imposition of the same kind of taxes or duties in the Republic of Cyprus or the absence of a provision of the same kind on taxes, duties, customs and exchange, shall not prevent the execution of the warrant.

(b) The Courts of the issuing State of the warrant have sentenced the requested person on the grounds of an offence to a custodial sentence or detention order for a period of at least four (4) months.

(2) The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three (3) years and as

they are defined by the law of the issuing State of the warrant and without verification of the double criminality of the act, give rise to the execution of the European arrest warrant:

(i) Participation in a criminal organization,

(ii) terrorism,

(iii) trafficking in human beings,

(iv) sexual exploitation of children and child pornography,

(v) illicit trafficking in narcotic drugs and psychotropic substances,

(vi) illicit trafficking in weapons, munitions and explosives,

(vii) corruption,

(viii) fraud affecting the financial interests of the European Communities,

(ix) laundering of the proceeds of crimes,

(x) counterfeiting currency, including the euro,

(xi) computer-related crime,

(xii) environmental crime, including illicit trafficking in endangered animal species and endangered plant

species and varieties,

(xiii) facilitation of unauthorized entry and residence,

(xiv) murder, grievous bodily injury,

(xv) illicit trade in human organs and tissue,

(xvi) kidnapping, illegal restraint and hostage-taking,

(xvii) racism and xenophobia,

(xviii) organized or armed robbery,

(ixx) illicit trafficking in cultural goods, including antiques and works of art,

(xx) swindling,

(xi) racketeering and extortion,

(xii) counterfeiting and piracy of products,

(xiii) forgery of administrative documents and trafficking therein,

(xiv) forgery of means of payment,

(xv) illicit trafficking in hormonal substances and other growth promoters,

(xvi) illicit trafficking in nuclear and radioactive materials,

(xvii) rape,

(xviii) arson,

(xix) crimes within the jurisdiction of the International Criminal Court,

(xx) unlawful seizure of aircraft/ships,

(xxi) sabotage.

Grounds for mandatory non-execution of the European arrest warrant.

13. The executing judicial authority of the warrant shall refuse to execute the European arrest warrant in the following cases:

(a) Where the offence on which the European arrest warrant is based is covered by amnesty according to Cypriot criminal laws, provided that the Republic of Cyprus has jurisdiction to prosecute the offence,

(b) where the executing judicial authority of the warrant is informed that the requested person has been finally judged by a Member State of the European Union in respect of the same acts, provided that, where there has been a sentence, the sentence has been executed or is currently being executed or may no longer be executed under the law of the sentencing Member State,

(c) where the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under Cypriot criminal laws,

(d) where the European arrest warrant has been issued in view of the prosecution or punishment of a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political believes, sexual orientation or action in favor of freedom,

(e) where the person who is the subject of the European arrest warrant, in view of the execution of custodial sentence or detention order, is a national and the Republic of Cyprus undertakes the obligation to execute the sentence or detention order according to its criminal laws,

(f) where the person who is the subject of the European arrest warrant in view of his prosecution is a national, unless it is ensured that after being heard, he or she shall be transferred to the Republic of Cyprus, in order to serve a custodial sentence or a detention order which shall be passed against him/her in the issuing State of the warrant.

Grounds for optional non-execution of the European arrest warrant.

14. The judicial authority which decides about the execution of the European arrest warrant may refuse to execute the said warrant in the following cases:

(a) Where the person who is the subject of the European arrest warrant is prosecuted in the Republic of Cyprus for the same offence as that on which the European arrest warrant is based,

(b) where the Cypriot authorities have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt

proceedings,

(c) where the criminal prosecution or punishment of the requested person is statute-barred according to the laws of the Republic of Cyprus and the offence falls within the jurisdiction of Cypriot judicial authorities under Cypriot criminal laws,

(d) where the requested person has been finally judged in respect of the offence on which the European arrest warrant is based, in a Member State of the European Union, which prevents further proceedings,

(e) where the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been a sentence, the sentence has been executed or is currently being executed or may no longer be executed under the law of the sentencing country,

(f) where the European arrest warrant has been issued for an offence, which: (i) is regarded by Cypriot criminal law as having been committed in whole or in part in the territory of the Republic of Cyprus or in a place treated as such, or (ii) has been committed outside the territory of the issuing Member State of the warrant and Cypriot criminal laws do not allow prosecution for the same offence when committed outside the territory of the Republic of Cyprus,

(g) where the European arrest warrant has been issued for the purposes of execution of a custodial

sentence or detention order, provided that the requested person stays in Cyprus, or is a national or resident of Cyprus, and the Republic of Cyprus undertakes to execute the sentence or detention order in accordance with its criminal laws.

Guarantees for the execution of the European arrest warrant.

15. (1) Where the European arrest warrant has been issued for the purposes of executing a sentence or detention order imposed by a decision rendered *in absentia*, and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia*, the execution of the European arrest warrant by the competent judicial authority may be subject to the condition that the issuing judicial authority of the warrant gives an assurance deemed adequate to guarantee that the person who is the subject of the European arrest warrant will have an opportunity to apply for a retrial of the case in the issuing Member State of the warrant and to be present at the judgment

(2) Where the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the European arrest warrant by the competent judicial authority may be subject to the condition that the legal system of the issuing State of warrant provides for a review of the penalty imposed -- on request or at the latest after twenty (20) years--

or

for the application of measures of clemency to which the person is entitled to apply under the law of the issuing State of the warrant, aiming at a non-execution of such

penalty or measure.

(3) Where a person who is the subject of a European arrest warrant for the purpose of prosecution is a resident of the Republic of Cyprus, the execution of the European arrest warrant by the competent judicial authority may be subject to the condition that the requested person, after being heard, is returned to the Republic of Cyprus in order to serve there the custodial order or detention order passed against him in the issuing State of the warrant.

Receipt of the European arrest warrant.

16. (1) Where the central authority receives the European arrest warrant and satisfies itself that the warrant has been issued in due form, it shall issue a certificate and shall see to the arrest of the requested person.

(2) Upon presentation of the certificate mentioned in subsection (1) of this section to the competent judge along with the European arrest warrant, the judge shall proceed to the issuance of the European arrest warrant for the purposes of this Law, provided that he satisfies himself that the conditions of issuance of the arrest warrant of the requested person, are met.

(3) Where the authority which adopts the European arrest warrant is not competent for seeing to the execution of the warrant, it shall transfer the latter to the competent authority and shall keep the issuing judicial authority of the warrant informed.

(4) (a) In the event of urgency, the competent judicial authority of the executing State may issue a temporary arrest warrant of a requested person for

whom there is a European arrest warrant, and prior to its transmission, at the request, by post, by wire or through the International Organization of Criminal Police or by any other means, of the issuing State of the warrant.

(b) The request for temporary arrest shall …….the European arrest warrant and shall announce the intention to proceed to its transmission.

(c) The temporary arrest shall not exceed three (3) days from the date of arrest of the requested person.

(d) Where the European arrest warrant is transferred within the above-mentioned time-limit, the provisions of section 16, subsections 1 to 3 shall be applied.

(e) If the European arrest warrant is not received within the time-limit prescribed in ……..the arrested person shall be released.

(f) The release shall not prevent any further arrest if the European arrest warrant is issued at a subsequent stage.

Arrest and rights of the requested person.

17. (1) Where the requested person is arrested on the basis of the European arrest warrant, he or she shall be conducted within twenty-four (24) hours to the District Judge. After having satisfied himself with regard to the identity of the requested person, the District Judge shall inform the latter about the existence and the content of the warrant, the right to have legal counsel and an interpreter and the possibility of consent to the surrender in the issuing State

of the warrant.

(2) The arrested person is directly or through his or her legal counsel entitled, to request and receive at his or her expense, copies of all the documents.

(3) Upon entry in the Schengen Information System (SIS), in accordance with section 95 of the Treaty of year 1990 on the application of the Schengen Treaty of year 1985, entry which does not yet constitute a European arrest warrant, when the relevant provisions of the Treaty shall be applicable to the Republic of Cyprus, it shall be possible to have the arrest of the requested person effected upon order of the competent Judge. The custody of the arrested person may not be longer than twenty (20) days, within which the European arrest warrant must be received. This time-limit is subject to prolongation by the competent District Judge in the event of serious grounds. In view of the prolongation, the District Judge informs the issuing judicial authority of the warrant. After the expiration of forty (40) days the person in detention shall be in any event released.

(4) If the arrested person in accordance with the above mentioned subsections challenges his identity, the Judge shall take a final decision within five (5) days, after having heard the arrested person and his or her legal counsel.

Detention of the requested person.

18. (1) After the arrest of the requested person and the attestation of his or her identity, the competent District Judge shall decide whether it is advisable to keep the person in detention, in order to prevent the latter absconding or to

release the person with or without restrictive measures. The District Judge may order the temporary dismissal of the requested person and the imposition of restrictive measures.

(2) The restrictive measures which have been imposed on the requested person may be replaced by detention, in the event of danger of the person absconding.

Consent to surrender.

19.(1) If the arrested person declares that he or she consents to surrender, that consent and, if appropriate, the express renunciation of entitlement to the speciality rule referred to in section 36 of this Law, shall be given before the competent District Judge.

(2) The District Judge shall clearly inform the requested person of the consequences of the consent to surrender, the renunciation of entitlement to the speciality rule and the right to be assisted by a legal counsel and an interpreter. The requested person shall also be informed by the District Judge about the irrevocable character of his or her declarations.

(3) For the purposes of information relating to the previous section and the answers of the requested person, minutes shall be kept. Where, after the said information, the requested person declares that he wishes to proceed to the relevant declarations, the consent and, if appropriate, the renunciation referred to in subsection 1 of this section shall be inserted in the minutes.

No consent to surrender.

20. (1) Where the arrested person does not consent to surrender, the competent Judge shall fix a hearing day.

(2) The person in question shall have the right to appear in Court with legal counsel and an interpreter of his or her choice or, where he or she does not have one, the person in question shall have the right to ask for the appointment of legal counsel by the competent Judge.

Decision about the execution of the European arrest warrant.

21. (1) The decision about the execution of the European arrest warrant shall be issued within the time-limits referred to in section 23 of this Law.

(2) Where the judicial authority which decides about the execution of the warrant considers that the information which has been transferred by the issuing Member State of the warrant is not adequate so as to allow the making of a decision on the issue of surrender, it shall request, through the Central Authority, the urgent producing of required additional information, in particular in relation to sections 4 and 13 to 15 of this Law, and it may also fix a deadline in view of their receipt, taking into consideration the obligation to observe the time-limits prescribed in section 23 of this Law.

(3) The decision concerning the execution or non-execution of the European arrest warrant shall be substantiated.

Decision in the event of multiple requests.

22. (1) If two or more Member States have issued a European arrest warrant for the same person, the decision on which one of the European arrest warrants shall be executed shall be taken by the competent District Judge who decides about the execution of the warrant. During the adoption of this decision, due consideration shall be given to all the

circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

(2) The competent Judge who decides about the execution of the warrant may seek the advice of "Eurojust" when making the choice referred to in paragraph 1.

(3) In the event of a conflict between a European arrest warrant and a request for extradition submitted by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence, shall be taken by the Minister of Justice and Public Order with due consideration to all the circumstances, in particular those referred to in subsection (1) and those mentioned in the applicable convention.

(4) The provisions of this Article shall be without prejudice to Member States' obligations under the Statute of International Criminal Court.

Time-limits for the execution of the European arrest warrant.

23. (1) In cases where the requested person consents to surrender, the competent District Judge shall decide about the execution of the European arrest warrant within ten (10) days after consent has been given.

(2) In cases where the requested person does not consent to surrender, the final decision for the execution of the warrant shall be taken within sixty (60) days from the arrest of the requested person.

(3) In special circumstances, where the European arrest warrant cannot be executed within the time-limits prescribed in subsections 1 and 2, the Court before which the case is pending shall immediately inform, through the Central Authority, the issuing judicial authority, giving the reasons for the delay. In these cases, time-limits may be extended by a further thirty (30) days.

(4) Where in exceptional circumstances the judicial authority which decides about the execution of the warrant , including the Supreme Court in the event of an appeal, cannot observe the time-limits prescribed in this section, it shall inform Eurojust, giving the reasons for the delay.

Legal remedy against the decision.

24.(1) In the event of non consent of the requested person, the requested person and the Attorney General of the Republic of Cyprus shall have the right to lodge an appeal before the Supreme Court against the final decision of the competent Judge, within 3 days of the publication of the decision.

(2) The Supreme Court shall decide within eight (8) days after the appeal has been lodged. The requested person shall be summoned with due care of the Chief Registrar of the Supreme Court, in person or through his or her authorized attorney, within twenty-four (24) hours before the hearing.

Hearing or provisional transfer of the requested person until the adoption of the decision on

25. (1) Pending the decision on the execution of the warrant, where the European arrest warrant has been issued for the purposes of prosecution and the provisional transfer of the requested person is sought from the issuing Member State of the European arrest warrant, the judicial authority which decides about the execution of the warrant shall be obliged:

the execution of the warrant.

(a) Whether to accept the requested person to be heard in accordance with the provisions of subsections (2) and (3) of this Law,

(b) whether to accept the provisional transfer of the requested person to the issuing State of the warrant in accordance with subsections 4 and 5 of this Law.

(2) The hearing of the requested person shall be effected by the Judge in whom lies territorial jurisdiction, assisted by any other person who shall be determined according to the law of the Member State of the applicant Court.

(3) The hearing of the requested person is effected in accordance with the Law on Criminal Procedure, in connection with the capacity of the requested person at the stage of his or her examination, and the terms mutually agreed between the issuing judicial authority of the warrant and the judicial authority which decides the execution of the warrant.

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(4) The terms and duration of the provisional transfer are mutually agreed between the issuing judicial authority of the warrant and the judicial authority which decides about the execution of the warrant.

(5) In the event of provisional transfer, the requested person shall have the right to return to Cyprus, in order to appear to the surrender procedure which concerns him or her.

Privileges and immunities.

26.(1) Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution under Cypriot legislation, the time-limits referred to in section 23 shall not start running unless the competent Judge is informed of the fact that the privilege or immunity has been waived.

(2) Where the power to waive the privilege or immunity lies with an authority of the Republic of Cyprus, the judicial authority shall transfer this issue to the Attorney General of the Republic of Cyprus in view of, if appropriate, the adoption of measures relating to the lifting of immunity.

(3)(a) After the adoption of a decision by the Attorney General of the Republic of Cyprus, the Attorney General shall inform the competent judicial authority.

(b) After the acknowledgement of lifting a privilege or immunity, the surrender procedure shall be instituted with regard to the requested person in accordance with this section.

Multiple international obligations.

27. (1) Where the requested person has been extradited to the Cypriot State from a third country and is protected by provisions relating to the speciality rule according to the arrangement on the basis of which that person has been extradited, the competent judicial authority which decides about the execution of the warrant shall not have the power to issue a decision on the execution of the warrant, unless the consent of the State from which the requested person has been extradited for his or her surrender to the issuing Member State of the warrant, has been obtained. For this

purpose, the executing authority of the warrant shall submit, through the Central Authority, a request to the competent authority of the third State.

(2) The time-limits referred to in section 23 shall not start running until the day on which this speciality rule ceases to apply.

Notification of the decision.

28. The judicial authority which decides about the execution of the European arrest warrant shall promptly notify the decision on the European arrest warrant to the issuing judicial authority of the warrant.

Time-limit of the surrender of the requested person.

29. (1) With due care of the Central Authority, the requested person shall be surrendered as quickly as possible and at dates to be agreed on with the competent authority of the issuing State of the warrant. The time-limit for the surrender of the requested person shall not exceed ten (10) days, from the time of the issuance of the final decision on the execution of the European arrest warrant. During the surrender, with due care of the Central Authority, all the information relating to the duration of detention of the requested person in the framework of the procedure of execution of the European arrest warrant shall be forwarded to the competent authority of the issuing State of the warrant.

(2) Where the surrender of the requested person within the time-limit prescribed in section 1 has proved to be impossible due to an Act of God in one of the Member States, at the request, formulated in writing, of the Central Authority, the Judge and the issuing judicial authority of the

warrant shall immediately agree on a new date of surrender. In this case, the surrender shall be effected within ten (10) days of the newly agreed date.

(3) Exceptionally, the surrender may be temporarily suspended for serious humanitarian reasons, notably where it is reasonably estimated that the surrender would put the life or the health of the requested person in danger. The European arrest warrant shall be executed as soon as these grounds cease. The Judge, at the request, formulated in writing, of the Central Authority, shall inform the issuing judicial authority and shall agree with this new date of surrender. In this case, the surrender shall take place within ten (10) days of the newly agreed date.

(4) Where with the expiration of the above time-limits, the requested person continues to be in detention, he or she shall be released. In the event where restrictive measures have been imposed on him or her, these measure shall be waived by operation of law.

Postponed or conditional surrender.

30. (1) After having decided on the execution of the European arrest warrant, the competent judicial authority may postpone the surrender of the requested person, in order for him or her to be prosecuted in the Republic of Cyprus, or, if that person has already been sentenced, to execute in the Republic of Cyprus a …… sentence for an offence which is different from the one on which the European arrest warrant is based.

(2) Instead of postponing the surrender, the judicial authority which decides about the execution of the warrant, may

temporarily surrender the requested person to the issuing Member State of the warrant under the terms which shall be agreed on in writing with the issuing judicial authority of the warrant.

Seizure and handing over of objects.

31. (1) The competent judicial authority for the execution of the warrant shall proceed ex officio or at the request of the issuing judicial authority of the warrant, to the seizure and handing over of objects which may be used as evidence or are in the possession of the requested person as a result of the offence.

(2) The handing over of the objects shall be effected even where it is not possible to execute the European arrest warrant due to the death or escape of the requested person.

(3) Where the objects are liable to seizure or confiscation in the Republic of Cyprus, the competent authority, may, if the objects are needed in connection with pending criminal proceedings, temporarily retain them or hand them over to the issuing Member State, on condition that they are returned.

(4) Any rights which the authorities of the Republic of Cyprus or third parties may have acquired to the objects subject to seizure, shall be preserved.

PART IV

Transit of the requested person

Terms of transit through the territory of the Republic of Cyprus.

32. (1) The transit through the territory of the Republic of Cyprus of a requested person to be surrendered to another Member State, may be permitted by the competent authority provided for in section 33 of this Law, at the request of the issuing judicial authority of the warrant.

(2) In the transit request relating to the requested person, the following information shall be provided for:

(a) the identity and nationality of the requested person,

(b) the existence of a European arrest warrant,

(c) the nature and legal classification of the offence and

(d) the description of the circumstances of the offence, including the date and place of commission.

(3) Where the person who is the subject of the European arrest warrant for the purposes of serving a custodial sentence or detention order, is a national, the competent authority shall refuse his or her transit. In the event where this person resides in Cyprus, the competent authority may refuse his or her transit.

(4) Where the person who is the subject of a European arrest warrant, for the purposes of prosecution, is a national, the competent authority shall refuse his or her transit, unless it is ensured that after being heard, that person shall be in transit in the Republic of Cyprus, in order to serve there the

custodial sentence or detention order passed against him or her by the issuing Member State of the warrant. Where that person resides in the Republic of Cyprus, his or her transit may be subject to the above mentioned condition.

(5) The provisions of this section shall apply mutatis mutandis when the transit concerns a person to be extradited by a third country to a Member State. In this case, the extradition request shall have the meaning of the European arrest warrant.

(6) The provisions of this section shall not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State of the warrant shall provide the competent authority of the Republic of Cyprus with the information provided in subsection 2.

Competent authority.

33. (1) The Central Authority shall be responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests.

(2) The transit request and the information prescribed in subsection 2 of section 32 shall be addressed to the Competent Authority by any means capable of producing a written record.

Transit request of a Cypriot authority.

34. The Central Authority shall make a request for the transit of the requested person through the territory of a Member State of the European Union to the competent authority of that State, when this is imposed for his or her surrender to Cyprus. In this request, the information referred to in subsection 2 of section 32 of this Law shall be included.

PART V

Effects of the surrender

Deduction of the period of detention served in the executing State of the warrant.

35. The period of detention of the requested person served in the executing State of the European arrest warrant in the framework of the surrender procedure to the competent Cypriot authority, shall be deducted from the total period of detention in Cyprus in the event of a custodial sentence or detention order passed against the requested person.

Speciality rule.

36. (1) The requested person who has surrendered to the Cypriot authorities shall neither be prosecuted nor be sentenced or be deprived by any other means of his or her liberty, on the grounds of an offence which has been executed prior to his or her surrender, and which is different from that on the basis of which the European arrest warrant has been issued.

(2) Subsection 1 shall not apply in the following cases:

(a) Where the person having had an opportunity to leave the Cypriot territory has not done so within forty-five (45) days of his or her final discharge, or that person has returned after leaving it.

(b) Where the offence is not punishable by a custodial sentence or detention order.

(c) Where the criminal proceedings do not give rise to the application of a measure restricting personal liberty.

(d) Where the surrendered person could be liable to a penalty or a measure not involving the deprivation of

liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty.

(e) Where the judicial authority of execution of the warrant gives its consent following the submission of a relevant request, in accordance with subsection 4 of this section.

(f) Where the surrendered person has expressly renounced the benefit of the speciality rule, along with his or her consent to surrender to the Republic of Cyprus, to the competent judicial authority of the executing State of the warrant.

(g) Where the surrendered person has expressly renounced the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent Judge, following the information given by the latter to that person with regard to the consequences of the renunciation of the speciality rule and to the right to appear in Court assisted by legal counsel and/or, if appropriate, by an interpreter. For the information and the declarations of that person a report shall be drawn up.

(3) The request for consent under point (e) of the previous subsection, which is submitted to the executing judicial authority of the warrant, shall be accompanied by information mentioned in section 4 subsection 1 of this Law and by the translation provided for in subsection 3 of the same section.

(4) Where the consent of the Cypriot judicial authority having decided the execution of the warrant is requested in order to prosecute, to sentence or detain the person who surrendered in the issuing State of the warrant for a different offence committed previously to the issuance of the European arrest warrant, the above-mentioned judicial authority shall take a decision within thirty (30) days at the latest, after the receipt of the request, the translation and the information provided for in section 4 of this Law. Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with section 12 of this Law. The judicial authority shall refuse to consent if the grounds provided for in section 13 of this Law are met, as well as in the case where the issuing State of the warrant does not provide the requested guarantees prescribed in section 15 of this Law. The judicial authority may refuse the consent for the grounds laid down in section 14 of this Law.

Subsequent surrender to a Member State of the European Union.

37. (1) A person which has surrendered to the competent Cypriot authorities in execution of the European arrest warrant, may, without the consent of the executing State of the warrant, surrender to another Member State of the European Union, provided that a relevant European arrest warrant has been issued for an offence preceding the surrender of that person, where:

(a) The requested person, even if he or she had the opportunity to leave the territory of the Republic of Cyprus, has not done so within forty-five (45) days of his or her final discharge, or has returned to it after leaving it.

(b) The requested person does not benefit from the speciality rule, in accordance with section 36 subsections 2(a), (e) and (g) of this Law.

(c) The requested person consents to surrender to a different Member State than the executing Member State, under the European arrest warrant. The declaration related to the consent shall be made before the competent Judge, following the information provided by the latter on the consequences of the consent and his or her right to appear in Court with legal counsel or, if appropriate, an interpreter. For the information and the declarations of the requested person, a report shall be drawn up.

(2) Where the consent of the executing judicial authority of the warrant is required, the Central Authority shall submit a relevant request to the above mentioned authority. The consent request shall be accompanied by the information referred to in section 4 subsection 1 of this Law and the translation provided for in subsection 3 of the same section.

(3) Where the consent of the Cypriot judicial authority which has decided the execution of the warrant is required, for the purposes of surrender of the requested person to another Member State for an offence which has been committed prior to his or her surrender in accordance with a European arrest warrant, the above mentioned judicial authority shall decide within thirty (30) days of the receipt of the request and the translation referred to in section 4 subsection 3 of this Law, at the latest. The consent shall be given where

the offence, on the basis of which it is requested, gives rise to a surrender, according to section 12 of this Law. The judicial authority may refuse to consent where the grounds prescribed in section 13 of this Law are met and the issuing State of the warrant does not provide, if appropriate, possible guarantees prescribed in section 15 of this Law. The judicial authority may refuse to consent for the grounds provided for in section 14 of this Law.

Subsequent extradition to a third State.

38. (1) A person, who has been surrendered to the Cypriot authorities in execution of a European arrest warrant, shall not be extradited to a third country, without the consent of the competent authority of the executing Member State of the warrant.

(2) Where the European arrest warrant is executed by the Cypriot judicial authority, the consent to the subsequent extradition of the requested person to a third country shall be given in accordance with the provisions of the conventions which are binding for Cyprus and in accordance with domestic law.

PART VI
Final and transitional provisions

Procedural Regulation.

39. The Supreme Court may make a procedural regulation for the better execution of the provisions of this Law.

Expenses.

40. In the event of expenses incurred from the execution of the European arrest warrant in the territory of Cyprus, these expenses shall be borne by the Cypriot government. All other expenses, including the expenses of transit shall be borne by the issuing Member State of the warrant.

Relation to other legal instruments.

41. Without prejudice to the application of this Law to the relations between the Republic of Cyprus and third States, this Law shall replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States of the European Union, provided that the Framework Decision shall be incorporated in the law of the Member State:

(a) The European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978 and the European Convention on the Suppression of Terrorism of 27 January 1977 as far as extradition is concerned.

(b) The Convention of 10 March 1995 on Simplified Extradition procedure between the Member States of the European Union.

(c) The Convention of 27 September 1996 relating to Extradition between the Member States of the European Union.

(d) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, where this instrument is applicable to the Republic of Cyprus.

Transitional provision.

42. (1) Extradition requests received before the entry into force of this Law, shall be governed by the relevant legal provisions on extradition. Extradition requests received after the entry into force of this Law, shall be governed by the provisions of this Law.

(2) When the relevant provisions of the Schengen Agreement become applicable to the Republic of Cyprus and until the Schengen Information System is able to transmit all the information prescribed in section 4 subsection 1 of this Law, the entry of the requested person in that System shall produce the effects of the European arrest warrant, until the competent executing judicial authority which decides about the execution receives the original in due form.

ANNEX

EUROPEAN ARREST WARRANT [1]

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

[1] This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

(a) Information regarding the identity of the requested person: .....

Name: .....

Forename(s):.....

Maiden name, where applicable:.....

Aliases, where applicable:.....

Sex: .....

Nationality:.....

Date of birth: .....

Place of birth: .....

Residence and/or known address: .....

Language(s) which the requested person understands (if known): .....

.....

Distinctive marks/description of the requested person: .....

.....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

(b) Decision on which the warrant is based:.....

1. Arrest warrant or judicial decision having the same effect.....

Type:.....

2. Enforceable judgement:.....

.....

Reference: .....

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s): .....

.....

2. Length of the custodial sentence or detention order imposed:

.....

Remaining sentence to be served: .....

.....

.....

(d) Decision rendered in absentia and:

— the person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia,

or

— the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia but has the following legal guarantees after surrender (such guarantees can be given in advance)

Specify the legal guarantees

....

....

....

(e) Offences:

This warrant relates to in total:.....offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....

.....

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

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I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

- ☐ participation in a criminal organisation;
- ☐ terrorism;
- ☐ trafficking in human beings;
- ☐ sexual exploitation of children and child pornography;
- ☐ illicit trafficking in narcotic drugs and psychotropic substances;
- ☐ illicit trafficking in weapons, munitions and explosives;
- ☐ corruption;
- ☐ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting of currency, including the euro;
- ☐ computer-related crime;
- ☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- ☐ facilitation of unauthorised entry and residence;
- ☐ murder, grievous bodily injury;
- ☐ illicit trade in human organs and tissue;
- ☐ kidnapping, illegal restraint and hostage-taking;
- ☐ racism and xenophobia;
- ☐ organised or armed robbery;
- ☐ illicit trafficking in cultural goods, including antiques and works of art;
- ☐ swindling;
- ☐ racketeering and extortion;
- ☐ counterfeiting and piracy of products;
- ☐ forgery of administrative documents and trafficking therein;
- ☐ forgery of means of payment;
- ☐ illicit trafficking in hormonal substances and other growth promoters;
- ☐ illicit trafficking in nuclear or radioactive materials;
- ☐ trafficking in stolen vehicles;
- ☐ rape;
- ☐ arson;
- ☐ crimes within the jurisdiction of the International Criminal Court;
- ☐ unlawful seizure of aircraft/ships;
- ☐ sabotage,

II. Full descriptions of offence(s) not covered by section I above:

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(f) Other circumstances relevant to the case (optional information):

(*NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence*)

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g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:
Description of the property (and location) (if known):

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(h) The offence(s) on the basis of which this warrant his been issued is(are) punishable by/has (have) led to a custodial life sentence or lifetime detention order.

— the legal system of the issuing Member State allows for a review of the penalty or measure imposed — on request or at least after 20 years — aiming at a non-execution of such penalty or measure,
and/or

— the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:
Official name:
Name of its representative [(2)]: .....
.....
Post held (title/grade): .....
.....
File reference:.....
Address:.....
.....
Tel: (country code) (area/city code) (...) .....
Fax: (country code) (area/city code) (...).....
E-mail:.....
Contact details of the person to contact to make necessary practical arrangements for the surrender:.....
.....

[(2)] In the different language versions a reference to the "holder" of the judicial authority will be included.

Where a central authority has been made responsible for the transmission and administrative, reception of European arrest warrants:

Name of the central authority:

.....

Contact person, if applicable (title/grade and name):

Address:.....

.....

Tel: (country code) [area/city code) (..) .....

Fax: (country code) (area/city code) (...).....

E-mail.....

Signature of the issuing judicial authority and/or its representative:

.....

.....

Name: .....

Post held (tide/grade) .....

Date: .....

Official stamp (if available)