COUNTRY UPDATE-Cyprus: AML

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Member of Financial Action Task Force? No, but it is a member of MONEYVAL.

On FATF blacklist? No.

Member of Egmont? Yes.

Money laundering background

The financial services and international business sector in Cyprus is one of the vital pillars of the Cyprus economy. That said, Cyprus aims to be in full compliance with the AML European framework, and in this respect constantly implements changes in its local laws to align with EU Directives and Regulations.

Cyprus has been assessed by Moneyval twice. In March 2013, in the course of the negotiations regarding financial support for Cyprus after the invitation of the President of the Eurogroup Working Group, Moneyval assessed whether Customer Due Diligence (CDD) measures are implemented effectively within the Cypriot banking sector, and then assessed again in May 2019.

Moneyval's assessment after the 2013 appraisal was positive for Cyprus. Moneyval noted that: "In general, the banks interviewed demonstrated high standards of knowledge and experience of AML/CFT issues, an intelligent awareness of the reputational risks they face and a broad commitment to implementing the customer due diligence requirements set out in the law and in subsidiary regulations issued by the Central Bank of Cyprus. Implementation of CDD measures, as described by the banks, appeared strong under most headings."

Deloitte, the international accounting firm, in the context of an evaluation conducted in 2013, described Cyprus' compliance requirements as being 'more rigorous and consistent in comparison to those of many other jurisdictions that had sought to implement the Third Money Laundering Directive', an assessment which has undoubtedly strengthened Cyprus' records in relation to AML business.

Moneyval's 2019 assessment report is expected to be delivered by December 2019. A positive appraisal in relation to compliance is significantly important for Cyprus, since it is likely to affect its international image and the way it is being perceived by investors and grading agencies.

It is important to note that on November 13, 2018, Cyprus published the first National Risk Assessment of Money Laundering and Terrorist Financing Risks (NRA). The Advisory Authority against Money Laundering and Terrorist Financing, which is the advisory body to the Council of Ministers in this field, comprising of the competent supervisory authorities, the Financial Intelligence Unit - FIU, the relevant Government Ministries/Departments and the private sector, decided to conduct Cyprus' first NRA in 2015. The NRA project had a duration of two years.

The NRA falls within the actions undertaken by the Cypriot authorities in order to identify, assess and understand the country's money laundering and terrorist financing threats and vulnerabilities. This was also in compliance with the relevant Recommendations of the Financial Action Task Force, as well as the provisions of the 4th EU AML/CFT Directive, which have been transposed into domestic legislation. Relevant specific risk- mitigating actions have been drawn up by the Cypriot authorities on the basis of the findings of the assessment, aimedi at strengthening the risk mitigating factors of the system. Implementation of these actions commenced at the beginning of 2018 and are being followed up by the Advisory Authority.

It is worth noting that Cyprus is also one of the 45 countries on the OECD's "white list" of "largely compliant" jurisdictions that have implemented internationally agreed standards relating to taxation, and was an early adopter of the organisation's Common Reporting Standard, which helps to fight tax evasion and improve international tax and financial transparency.

Legislation on prevention of money laundering activities

Cyprus's first anti-money laundering legislation was the Prevention and Suppression of Money Laundering Activities Law (61(I)/1996), which implemented the recommendations of the Vienna Convention of 1988. In 2007 this law was replaced by the Prevention and Suppression of Money Laundering Activities Law of 2007 (188(I)/2007) as amended from time to time (the "Cyprus AML Law" or the "Law"), which implemented the Third Money Laundering Directive, (Directive 2005/60/EC of the European Parliament and of the Council of October 26, 2005) and the 40+9 recommendations of the FATF. Law 13(I)/2018 amending the Cyprus AML Law transposed

the EU's Fourth AML Directive (Directive 2015/849) which broadens the scope of AML oversight under Directive 2005/60/EC, to include new areas such as external threats to domestic markets and introduces more rigorous rules regarding ultimate beneficial ownership.

Objectives of the AML Laws

The principal objectives of Cyprus's AML Law are to prevent the laundering of proceeds of serious criminal offences ("predicate offences"), including terrorist financing and related activities, to detect and prosecute money laundering activities and to provide for the restraint and confiscation of illicit funds. The law makes money laundering or assisting in it a criminal offence and establishes a Unit for Combating Money Laundering (MOKAS).

According to the Law, no person shall, in the course of a financial business that he carries on in or from Cyprus, form a business relationship, or carry out a one-off transaction with or on behalf of another, without applying the prescribed procedures with regard to identification, recordkeeping and internal reporting as set out in the law, and such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering. Persons who transact relevant business must also keep their employees informed about these procedures and about the legislation that relates to money laundering.

Entities under scrutiny

A number of financial institutions, organizations and professional bodies, whose profession or business encompass a high risk of being involved in money laundering offences, such as banking institutions, cooperative societies, investment firms, stockbroking firms, accountants, insurance companies, real estate agents, advocates, trust and company service providers, money transfer services and dealers in precious metals and precious stones as well as casinos (referred to as "sensitive professionals") fall within the ambit of the Law.

The Law details what constitutes "Financial Business" and "Other Business" which are subject to its provisions. These are obliged to operate effective procedures for customer identification, recordkeeping and internal reporting and to appoint an appropriate person as money laundering compliance officer.

The law also contains powers to confiscate the assets of persons who are convicted of a predicate offence and to restrain the assets of such persons and of persons who are reasonably suspected of involvement in money laundering activities.

Regulatory authorities

Prevention of money laundering falls within the ambit of the respective regulatory body (for example, the Central Bank of Cyprus for credit institutions, the Cyprus Bar Association for lawyers, the Institute of Certified Public Accountants of Cyprus for lawyers and the Cyprus Securities and Exchange Commission for capital markets). In addition, the Unit for Combating Money Laundering (MOKAS) is the second-tier body responsible for preventing, investigating and prosecuting money laundering and terrorist financing across all relevant businesses and professions.

Unit for Combating Money Laundering (MOKAS)

MOKAS is a government agency within the attorney general's department and is composed of government lawyers from the attorney general's office, police officers and customs officers. An officer from the attorney general's office heads MOKAS, and its purpose is to prevent money laundering activities. The law provides for mandatory reporting of suspicious transactions to MOKAS.

MOKAS is responsible for analysing and investigating information which is related to suspected money laundering activities that the institutions provide subject to the law and for facilitating the prosecution of offences under the law. It is also responsible for conducting inquiries into any suspicion in relation to the financing of terrorism. In connection with its investigations it has the power to apply to the court for freezing orders, confiscation orders and disclosure orders which lift bank secrecy.

Section 55(2)(c) of the Law gives MOKAS authority to request and receive information or documentation with regard to the ultimate beneficial owners of legal or other entities including trust funds or settlements, as well as information on the business relationship and its nature and the beneficiaries of bank accounts or bank balances, as well as any other information or data related to certain suspicious transactions which are in the possession of persons involved in financial business or any other business or of the public sector, if this is necessary for the purposes of analysing and suspicious transactions which might be connected to offences related to the legalisation of profits from Illegal activities, terrorist financing or tracing of illegal proceeds, without the need to obtain a disclosure order.

This authority can be also exercised in the event that MOKAS receives relevant inquiries from a counterpart overseas.

MOKAS is engaged in policy issues in the area of anti-money laundering measures, as well as in awareness raising and training initiatives that involve both the public and the private sectors.

MOKAS is obliged to prepare and publish an annual report with regard to its activities.

"Know your customer" principles

Undertakings transacting relevant financial business must put in place and operate "know your customer" or "KYC" procedures. The identity of all customers must be verified, apart from relevant domestic organisations that are themselves subject to the anti-money laundering law and banks and credit institutions incorporated in countries whose anti-money laundering procedures are equivalent to

those applying in Cyprus. Verification of identity must take place before any business relationship is established or any transaction is executed.

Each Regulatory Authority issued directives and guidance notes for the regulated professionals setting out the key principles and requirements as follows:

- Accounts must be in the full name of the holder. Secret, anonymous or numbered accounts or accounts in fictitious names are prohibited. Failure or refusal to provide satisfactory identification evidence is grounds for suspicion that the customer may be engaged in money laundering. The relevant organisation should not carry out any business for the customer and should consider making a suspicion report to MOKAS.
- A risk-based approach should be adopted. The extent and number of checks required to establish a customer's identity will depend on the perceived risk according to the type of service, product or account sought by the customer and the projected turnover of the account.
- Organisations should obtain satisfactory evidence that they are dealing with a real person, whether natural or legal, and obtain sufficient evidence of identity to establish that the prospective customer is who he claims to be.
- Adequate steps should be taken to identify the beneficial owner of funds and, in the case of legal persons, to ascertain the ownership and control structure of the customer. For PEPs of higher risk clients enhanced due diligence should be performed.
- Prior to doing any business, adequate information must be obtained in the following areas in order to construct the customer's business profile:
  - the purpose and reason for opening an account or requesting services;
  - the projected level and nature of the activity to be undertaken;
  - the projected annual turnover of the account or size of transaction, the origin of incoming funds and the destination of outgoing payments;
  - the customer's sources of wealth and income; and
  - the nature and scale of his business or professional activities.

Transposition of the Fourth EU Anti-Money Laundering Directive into Cyprus AML Law

As noted above, the 4th EU Money Laundering Directive has been transposed into national law with the introduction of the 'Prevention and Suppression of Money Laundering Activities Amendment Law' of 2018, which amended the Cyprus AML Law and has subsequently introduced important changes in relation to AML scrutiny procedure and activities.

The Amending Law introduces some very important changes as outlined below:

The increase of the threshold for people holding a controlling interest to 25%

The Amending Law provides that a shareholding of 25% plus one share or an ownership interest of more than 25% in an entity held by a natural person or group of persons acting together is an indication of direct significant control. A shareholding of 25% plus one share or an ownership interest of more than 25% held by one or more corporate entities controlled by the same natural person or group of persons acting together is an indication of indirect significant control.

The increase of the threshold for determining verifying significant control is a long-awaited and welcome change. The threshold of 10% plus which had previously applied in Cyprus (among the lowest in Europe) had created unnecessary work for regulated professionals in AML compliance due diligence and 'Know your client' procedures in looking into holdings with no material influence and had long been considered excessively low.

Changes to the definition of Politically Exposed Persons (PEPs)

The Amending Law defines a Politically Exposed Person as a natural person who has been entrusted with important public office, or a close relative or a person known to be a close associate of the individual concerned. It defines the term "important public office" as including the following:

- heads of state, heads of government, ministers and deputy or assistant ministers;
- members of parliament or of similar legislative bodies;
- members of the governing bodies of political parties;
- members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal except in exceptional circumstances;
- members of courts of auditors or of the boards of central banks;
- ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
- members of the administrative, management or supervisory bodies of State-owned enterprises;

- directors, deputy directors and members of the board or equivalent organ of an international organisation.

It makes clear that middle-ranking or lower-ranking roles do not come within the scope of the definition.

A close relative of a PEP includes their spouse or equivalent-to-spouse, their parents, their children and their children's spouses or equivalents-to-spouses. A close associate of a PEP includes individuals who are known to have joint beneficial ownership with the PEP of legal entities or legal arrangements, or any other close business relations, or individuals who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of the PEP.

Broadening of the scope of the AML Law

Obliged entities are the regulated persons and businesses subject to the requirements of the AML law. In addition to the regulated professionals previously covered, such as banks, financial organizations, auditors, lawyers and administrative service providers, the Amending Law introduces new categories, namely providers of gambling services and estate agents, persons trading in high-value goods as well as any person trading goods accepting payment in cash of more than 10,000, either in a single transaction or a series of connected transactions.

Predicate offences

The Amending Law replaces the previous definition of a predicate offence; all criminal offences that are punishable by imprisonment that exceeds one year from which proceeds in any form were generated that may become the subject of a money laundering offence. The new Law provides that any criminal offence constitutes a predicate offence. Therefore, tax offences which are criminal offences, now constitute predicate offences for the purposes of the AML Law.

Revision of provisions relating to disclosure or "tipping off"

Article 48 of the AML Law has been amended to increase the maximum penalty for "tipping off" to imprisonment for up to two years, a fine of up to EUR 50,000 or both. The new article 48 also makes clear that a professional adviser such as an auditor or a lawyer who attempts to deter a client from engaging in illegal activity does not commit any offence of "tipping off".

Revision on the articles related to the Advisory Authority

Article 56 of the AML Law expands the participation of public bodies in the Advisory Authority and includes as members the Tax Department, the National Betting Authority and the National Gambling and Casino Supervisory Authority. Article 57 increases the powers of the Advisory Authority and extends its role to keeping public authorities informed of the risks arising from money laundering and terrorist financing, and to coordinating their activities aimed at identifying, understanding and mitigating the risks.

Due diligence exercise and verification of identity

Article 61 of the AML Law is amended to allow obliged entities to adopt a risk-based approach on the conduct of the customer due diligence they are required to undertake regarding verification of identity, corporate structure, ultimate beneficial owners and source of funds. In addition, the Amending Law introduces new provisions extending due diligence requirements to life or investment insurance contracts.

Creation of a central register of UBOs

Article 61A of the Law replicates the wording of the requirement of the directive that the national authorities "are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held." In the course of AML due diligence on companies or other legal entities, obliged entities must obtain the requisite information to establish the identity of the beneficial owner.

This information must be submitted to a central register of beneficial owners, which is yet to be established. The detailed provisions regarding the establishment and operation of the register and access to it are to be set out in regulations which will be issued under the AML Law.

The police, the Customs Department, the Tax Department and the Unit for Combatting Money Laundering and Terrorist Financing (MOKAS) and the competent Supervisory Authorities (Cyprus Bar Association, the Central Bank, the Cyprus Securities and Exchange Commission, the Institute of Certified Public Accountants, the Real Estate Registration Council, the National Betting Authority and the National Gambling and Casino Supervisory Authority) will have direct access to the information kept in the register.

Obliged entities will have access to the information for the purposes of their due diligence and KYC procedures. Any person or organisation who can prove a legitimate interest, providing sufficient evidence, will also have access to the register. In this context 'legitimate interest' is the interest of a person in relation to the prevention of the use of the financial system for the purpose of money laundering, terrorist financing and other related predicate offences, to be further defined in the regulations.

The public authorities have unrestricted real-time access to the register for the purposes of carrying out their duties, without the companies concerned being informed of the authorities' enquiry. Information may be exchanged with equivalent authorities overseas.

Persons who can prove a legitimate interest will have access to the name, the month and the year of birth, the nationality and country of residence of the beneficial owner, and the nature and extent of the beneficial owner's rights. Access to this information will be regulated by the Processing of Personal Data (Protection of the Individual) Law.

There are also provisions allowing information on individuals to be exempted from access on a case-by-case basis, if access would expose the beneficial owner to the risk of deception, abduction, extortion, violence or intimidation, or if the beneficial owner is a minor or an incapable person.

Creation of a central trust register

The Amending Law introduces a requirement for trustees of any express trust governed by Cyprus law or any other analogous legal arrangement to obtain and hold adequate, accurate and up-to-date information on beneficial ownership of the trust or arrangement, including the identity of the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries and any other natural person exercising effective control over the trust.

The information referred to in paragraph 1 must be held in a central register when the trust generates tax consequences in Cyprus. The public authorities and Supervisory Authorities will have the same access as to the register of ultimate beneficial owners (see above). Obliged entities will also have access for the purposes of customer AML due diligence. There is no provision regarding access by persons with a legitimate interest. As in the case of the register of ultimate beneficial owners, detailed provisions regarding the register are to be set out in secondary legislation under the AML Law.

Simplified and enhanced due diligence measures

Risk itself is variable in nature, and the variables, on their own or in combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventative measures, such as customer due diligence measures. Therefore, there are circumstances in which simplified due diligence may be appropriate and others in which more extensive and detailed due diligence is required.

Simplified due diligence

Article 38 of the Amending Law replaces article 63 of the AML Law with a new article allowing an obliged entity to apply simplified customer due diligence measures if it determines that the business relationship or the transaction presents a lower degree of risk, taking account of the risk factors set out in Annex II of the AML Law regarding types of customers, geographic areas, and particular products, services, transactions or delivery channels. Nevertheless, obliged entities should carry out sufficient monitoring to detect unusual or suspicious transactions.

Enhanced due diligence

Correspondingly, article 39 of the Amending Law replaces article 64 of the AML Law with a new article requiring more extensive and detailed due diligence measures when dealing with natural persons or legal entities established in third countries identified as high-risk third countries, as well as in other cases of higher risk. In their assessment, obliged entities should take account of the factors set out in Annex III of the AML Law.

The following factors are indicative of higher risk, and require enhanced due diligence measures:

- customers in high-risk countries, as per the Commission's classification;
- correspondent business relationships with persons in other countries;
- PEPs.

Obliged entities should use a risk-based approach to determine if enhanced due diligence is required. For example, enhanced customer due diligence measures need not be invoked automatically with regard to branches or majority owned subsidiaries of customers which are located in high-risk third countries, as long as the branch or subsidiary complies fully with group-wide policies and procedures in accordance with article 68A.

Obliged entities are required to examine, as far as reasonably possible, the background and purpose of all complex and unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose, and increase the depth and extent of monitoring of the business relationship in order to determine whether those transactions or activities are suspicious

Penalties

Section 4 of the AML Law provides that every person who knows or should have known that any kind of property is the proceeds of a predicate offence is guilty of an offence if he does any of the following:

- Converts, 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 of the offence.

On conviction, a person who knowingly commits such an offence is subject to imprisonment of up to 14 years, a fine of up to 500,000 euros or both. A person who did not know that the property was the proceeds of a predicate offence, but should have known, is subject to imprisonment of up to five years, a fine of up to 50,000 euros or both. Failure to report a suspicion of money laundering activities is punishable by imprisonment of up to five years, a fine of up to 5,185 euros or both.

Duty to report suspicious activities — legally bound individuals and entities

Organisations that carry out "relevant financial business", which is widely defined and includes all banking, money transmission and investment activities, are required to take adequate steps to prevent their services being misused for money laundering. They are obliged to operate effective procedures for customer identification, recordkeeping and internal reporting and to appoint an appropriate person as money laundering compliance officer.

Such organisations and their employees must promptly report any knowledge or suspicion of money laundering to a police officer or MOKAS. The Law requires 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 to report his knowledge or suspicion as soon as is reasonably practical.

After the initial disclosure, relevant organisations are expected to follow any instructions that MOKAS gives, particularly as to whether or not to execute or suspend a transaction. No liability for a breach of any contractual or other obligation is attached to a bank that refrains from or delays executing a customer's order on instructions from MOKAS. Any person who prejudices the investigation of money laundering offences by "tipping off", that is making a disclosure, either to the person who is the subject of a suspicion or to a third party, knowing or suspecting that the authorities are carrying out such an investigation, is guilty of an offence under the Law.

The Law requires organisations that carry out relevant financial business to retain records that concern customer identification and details of transactions for use as evidence in any possible investigation into money laundering for five years from the completion of the relevant business or, if MOKAS conducts an investigation, until MOKAS confirms that the case has been closed. Retention may be in electronic or other form as long as it allows all relevant information to be retrieved without delay.

In addition to ad hoc reporting of suspicious transactions, all banks in Cyprus are required to submit a monthly report to the Central Bank of Cyprus of amounts in excess of 10,000 euros or its equivalent, which their customers deposit in cash ,and incoming and outgoing funds transfers in excess of 500,000 euros or its equivalent.

Anti-bribery and corruption laws

Cyprus has a comprehensive legal framework for deterring and punishing bribery and corruption. The main measures are as follows:

• The Prevention of Corruption Law, Cap 161 of 1920 as amended by Law 97(I)/2012, was introduced when Cyprus was a British colony and continues to have effect. It prohibits bribery of public officials.

• The Civil Servants Law of 1/1990 (as amended from time to time) governs the conduct of civil servants in general. It makes specific provision regarding bribery of public officials at sections 69 and 70.

• The Criminal Code, Cap 154 (as amended from time to time) is a compilation of criminal law provisions. It specifically provides for criminal sanctions for bribery of public officials in sections 100 to 103 and of witnesses in section 118.

• The Law Sanctioning the Criminal Law Convention on Corruption No. 23(III) of 2000 and Law 22(III) of 2006 transpose the provisions of the Criminal Law Convention on Corruption 1999, aligning Cyprus law with best practice in the field of bribery of foreign public officials, bribery in the private sector, trading in influence, money laundering of proceeds from corruption offences, account offences, participatory acts and corporate liability.

• The Law Providing for Registration, Funding of Political Parties and Other Similar Matters No. 20(I) of 2011 establishes a legal framework for political parties in Cyprus, covering their legal status and registration requirements, and rules concerning the transparency of their financial administration. Moreover, the supervision of the financing of political parties has been entrusted to the Auditor General, an independent institution under the Constitution of Cyprus.

Cyprus is also a signatory to the following international anti-corruption conventions:

• United Nations Convention against Corruption (UNCAC), New York, October 31, 2003, entered into force December 14, 2005, ratified by Cyprus February 23, 2009.

• Agreement for the Establishment of the International Anti-Corruption Academy as an International Organisation (IACA), Vienna, September 2, 2010, entered into force March 8, 2011, ratified by Cyprus August 19, 2011.

• Criminal Law Convention on Corruption, Strasbourg, January 27, 1999, entered into force July 1, 2002, ratified by Cyprus January 17, 2001 (the Criminal Law Convention on Corruption).

• Additional Protocol to the Criminal Law Convention on Corruption ratified on November 21, 2006, entered into force on March 1, 2007.

• Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, November 8, 1990, entered into force September 1, 1993, ratified by Cyprus on November 15, 1996.

• European Framework Decision No. 2003/568/JHA, Combating Corruption in the Private Sector.

Cyprus is also a member of the Group of States against Corruption of the Council of Europe (GRECO).

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