Amendments to the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01)

Background

The Financial Intelligence Analysis Unit (“FIAU”) wishes to inform interested parties that a series of amendments to the Prevention of Money Laundering and Funding of Terrorism Regulations (“PMLFTR”) S.L. 373.01, were published in Government Gazette No. 20,350 on the 20th February 2020 by means of Legal Notice 26 of 2020 – a copy of such may also be accessed through the news section of the FIAU website.

These amendments seek to transpose into Maltese law the provisions of Directive (EU) 2018/843 (“5th AMLD”) amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. Other minor amendments have also been made so as to further clarify certain provisions, as well as to enhance the legislative framework in place for the prevention of ML/FT.

The below list sets out the most significant changes made to the PMLFTR, and hence is not a comprehensive list describing all of the changes made to the said Regulations. It is essential that subject persons and interested parties read the law as amended.

Summary of amendments

- **Widening of the definition of “relevant activity”** provided in Regulation 2(1) to include the following non-financial businesses;
  
  i. Natural or legal persons, including free ports, trading in works of art or acting as intermediaries in the sale of works of art where the value of transactions amounts to or exceeds EUR 10,000.
  
  ii. Free ports storing works of art the value of which equals or exceeds EUR10,000.
  
  iii. Persons who undertake to provide directly, or through other persons to whom they are related, material aid, assistance, or advice on tax matters.
  
  iv. Real estate agents acting as intermediaries in the letting of immovable property where the monthly rent amounts to EUR 10,000 or more.

- **Revision of the definition of “occasional transaction”** provided in Regulation 2(1) as well as the introduction of a new definition of “Work of Art” also provided under Regulation 2(1), as a consequence of the broader definition of “relevant activity” as explained above.

- **Amendment to the definition of “politically exposed person”** under Regulation 2(1) to provide for an exhaustive list of prominent public functions, including those prominent public functions as identified by Orders issued by the Minister responsible for Finance.
• Changes to other definitions under Regulation 2(1);
  
  i. “beneficial owner” and “electronic money” to mirror changes in corresponding definitions under the 5th AMLD.
  
  ii. “casino”, “gaming licensee”, “gaming service” and paragraph (d) of the definition of “supervisory authority” to reflect recent changes in the Maltese gaming legislation.
  
  iii. paragraph (e) of the definition of “supervisory authority” to reflect amendments to the Accountancy Profession Act.
  
  iv. “trust and company service provider” to further clarify and ensure that all those carrying out TCSP services are subject to AML/CFT obligations.

• Amendments to Regulation 7 on customer due diligence obligations to include additional Customer Due Diligence ("CDD") obligations as well as clarify existing ones. This includes an explicit reference to additional means which can be used by subject persons to verify the identity of customers as well as an additional requirement on subject persons servicing legal entities or arrangement or arrangements incorporated or administered in the EU, to obtain proof that the beneficial ownership information of these entities or arrangements has been duly registered with a designated beneficial ownership register.

• Addition of Regulation 7A dealing with CDD exemptions for electronic money. Whilst the FIAU is still able to exempt issuers of prepaid instruments from carrying out CDD measures following the outcome of an appropriate risk assessment, the proposed exemption criteria under this Regulation are made more stringent. Furthermore, this new regulation allows acquirers to accept payments via anonymous prepaid instruments issued in other countries as long as the acquirers can ascertain that the anonymous prepaid instruments were issued in full compliance with the stipulated criteria under this regulation. As a result of the introduction of this new regulation, regulation 7(10) which formerly dealt with CDD exemptions in relation to electronic money, has been deleted.

• Revision to Regulation 11 to harmonise and streamline the obligation of conducting enhanced due diligence measures, particularly when dealing with non-reputable jurisdictions. A specific amendment to sub-regulation (9) of Regulation 11 clarifies further those instances in which subject persons are required to carry out EDD measures.

• Amendments to Regulation 16(2), which further clarifies the instances when subject persons are allowed to share information on suspicious transactions and other information submitted to the FIAU.

25th February 2020