The Financial Intelligence Analysis Unit ("FIAU") has published a revised version of the Implementing Procedures Part I, which are effective from its date of publication. Following a series of legislative amendments to the Prevention of Money Laundering Act and to the Prevention of Money Laundering and Funding of Terrorism Regulations ("PMLFTR"), the need was felt to also reflect the said changes in the Implementing Procedures Part I; and this in an effort to provide subject persons with more in-depth qualitative guidance to assist them in better fulfilling their AML/CFT obligations.

An initial document containing the FIAU’s proposals for the revision of the Implementing Procedures Part I was issued for consultation in October 2018, with interested parties invited to submit their feedback by December of the same year. Throughout the said period, feedback was received from over 20 different entities, including supervisory authorities, sectoral representative bodies and individual subject persons. The FIAU also took into consideration the feedback it received and the concerns raised during the outreach sessions held on the 18th and 19th of December 2018.

In an effort to further assist interested parties, the FIAU has also published a copy of the initial consultation document with all changes made following the consultation exercise tracked out for ease of reference.

The salient amendments to the Implementing Procedures Part I are listed hereunder:

1. The Risk Based Approach

The revised Implementing Procedures Part I aim to reflect the now more significant Risk Based Approach which subject persons are required to adopt and implement vis-à-vis their AML/CFT obligations. The revised Chapter 3 of the Implementing Procedures Part I provides subject persons with a better understanding of what the Risk Based Approach entails, and lays down detailed guidance on the carrying out of business risk assessments and customer risk assessments, which are the basis for the correct application of a Risk Based Approach to AML/CFT obligations.

2. Customer Due Diligence (CDD)

The revised Chapter 4 of the Implementing Procedures Part I lays out the various CDD obligations. This section was revamped so as to provide subject persons with a better understanding of their CDD obligations as required by the PMLFTR. The revised Implementing Procedures Part I emphasise the importance of conducting appropriate and effective on-going monitoring, being one of the corner stones of CDD obligations. Chapter 4 not only aims to provide subject persons with appropriate and sufficient guidance in this regard, but also on other areas which directly impinge on their CDD obligations including when subject persons are faced with high-risk scenarios.
Through previous amendments to the Implementing Procedures Part I in January 2017, the FIAU recognised the usability of technological alternatives for carrying out CDD obligations, particularly for the identification and verification of customers. The revised Implementing Procedures Part I are further enhancing the guidance provided in this regard. In this regard, new technological alternatives have been added, and the Implementing Procedures Part I now offer more flexibility on the use of such technological alternatives to fulfil AML/CFT obligations, reflecting the traction that such alternatives have gained.

3. Outsourcing

Chapter 6 of the revised Implementing Procedures Part I has been dedicated to outsourcing. The aim of this Chapter is to provide subject persons with a clear understanding of which AML/CFT obligations may be outsourced, the respective responsibilities of the subject person and of the outsourced service provider, as well as the conditions under which such outsourcing arrangements can take place.

4. Non-Reputable Jurisdictions and High-Risk Jurisdictions

Following the consultation period, amendments have been made to Chapter 8 dealing with Non-Reputable Jurisdictions and High-Risk Jurisdictions. These changes have been made to aid subject persons in their interpretation of what constitutes a non-reputable jurisdiction and in identifying high-risk jurisdictions.

5. Sanctions Screening

In view of the recent changes to the National Interest (Enabling Powers) Act, the consultation document had omitted any reference to subject persons’ sanction screening obligations. However, having assessed the feedback received, a new Section 4.11 has been added to the Implementing Procedures Part I to remind subject persons of their sanctions screening, freezing of assets and reporting obligations emanating from the National Interest (Enabling Powers) Act, as well as to explain the coordination in place between national competent authorities to monitor the implementation of, and ensure compliance with, targeted financial sanctions.

IMPLEMENTING PROCEDURES PART II

The Implementing Procedures Part I are intended to be supplemented by sector specific Implementing Procedures and ad-hoc guidance which address specific matters or issues particular to a given category of subject persons. At present there are sector specific Implementing Procedures addressed to banks, land-based casinos and the remote gaming sector. Ad-hoc guidance issued by the FIAU includes the Supervisory Guidance Paper on ML and TF Institutional/Business Risk Assessment, the Guidance Note on Funding of Terrorism – Red Flags and Suspicious Activities, the Guidance Note to assist banks and payment institutions in complying with AML/CFT obligations when providing payment accounts with basic features under the Credit Institutions and Financial Institutions Regulations, and the Guidance Note on Transfers of Funds having Missing or Incomplete Information.
Given that most aspects dealt with in the Implementing Procedures Part II addressed to banks are now considered and catered for in the revised Implementing Procedures Part I, the FIAU is hereby repealing the sector specific Implementing Procedures addressed to banks. In this regard, it should be noted that the FIAU has initiated discussions with the Malta Bankers Association on the drafting of a new version of the Implementing Procedures Part II addressed to banks.

The FIAU will strive to continue issuing further guidance and providing AML/CFT training in line with its strategy as Malta’s AML/CFT supervisor. To this effect work has already commenced on a number of sector-specific and ad-hoc guidance to complement the already existing AML/CFT guidance. Subject persons are invited to keep abreast with FIAU initiatives in this regard by following the FIAU’s newsletter and LinkedIn profile.

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