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. 20,410 on the 22nd May 2020 by means of Legal Notice 214 of 2020 – a copy of such may also be accessed through the news section on the FIAU website.

These amendments seek to address the technical compliance shortcomings within the PMLFTR that were identified by MONEYVAL assessors during the 5th Round Mutual Evaluation of Malta. 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 amendments which came into force with the issuance of the aforementioned Legal Notice revised Regulations 8, 11, 12, 15 and 21 of the PMLFTR, with changes made to Regulations 15 and 21 deemed to be the most significant and hence, being described below.

It is essential that subject persons and interested parties read and familiarise themselves with the law as amended.

Amendments to Regulation 15 of the PMLFTR

The amendments to Regulation 15(3) and Regulation 15(7) seek to revise the timeframe for the submission of suspicious transaction reports (hereinafter referred to as “STRs”) by subject persons and supervisory authorities respectively. Through the amendments, the previous 5 working-day submission period for both subject persons as well as supervisory authorities is being replaced by an obligation to make prompt submissions of STRs to the FIAU.

Subject persons and supervisory authorities will in the coming weeks be provided with further guidance on the interpretation of the requirement to submit STRs in a prompt manner, through amendments to Chapter 5 of FIAU’s Implementing Procedures (Part I), which were issued for consultation and are being finalised following feedback received from subject persons and supervisory authorities.

Furthermore, additional amendments to Regulation 15(3) and Regulation 15(7) seek to clarify that the obligation to submit an STR subsists also where there is an attempt to carry out a transaction or activity, as long as the subject person knows, suspects or otherwise has reasonable grounds to suspect that it is related to proceeds of crime or funding of terrorism.
Amendments to Regulation 21 of the PMLFTR

Through the amendment of Regulation 21(3), it is now being expressly stated in a statutory instrument, that any administrative penalty imposed by the FIAU in accordance with policies and procedures established by its Board of Governors has to be effective, proportionate and dissuasive.

Through amendments made to Regulation 21(7), the FIAU is now empowered to impose administrative sanctions on individuals who have a senior managerial role within a subject person and who are found to be responsible (i.e. who have caused or contributed to) for AML/CFT breaches committed by that subject person. The said cause or contribution can take place either through an act or omission of the individual, which has to be intentional or occasioned through gross negligence (including through the lack of proper oversight of subordinates).

To this effect, the FIAU will be able to impose administrative penalties of not less than Euro 1,000 but not more than Euro 250,000 on individuals who hold directorship or similar positions/functions (something the FIAU already had the ability to do), as well as on individuals holding senior executive management functions, the Money Laundering Reporting Officer and the officer responsible for AML/CFT compliance within a subject person.

The FIAU will also have the power to recommend to any relevant supervisory authority, that the said individual be suspended or precluded from exercising any of the said functions within that or any other subject person, not only when it imposes an administrative penalty on the individual concerned, but also in the absence (instead) of such penalty.

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