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ANTI -MONEYLAUNDERING

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GENERAL INTRODUCTION TO MONEY LAUNDERING

1. Money Laundering in the Real World

- The United Nations Office on Drugs and Crime estimates that the annual earnings from criminal activities amount to 3,6% of the GDP or USD 2,1 trillion.



- What is Money Laundering?

Money Laundering is the 'processing of illegal or dirty money through a cycle of transactions so that criminal proceeds emerge as apparently clean money or assets'.



The Basic Principles

Supervised persons must be satisfied that:

- they know who they are dealing with
- the rationale & purpose of the relationship are clear
- it all makes sense
- consequently they can effectively monitor higher risk situations

You can always say NO!!!!





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As the first US President, George Washington said:

'Associate yourself with men of good quality if you esteem your reputation 'for its better to be alone than in bad company'

"It takes 20 years to build a reputation and five minutes to ruin it"

Warren Buffet



2. Combating Financial Crime in Cyprus

- Comprehensive framework to combat money laundering and terrorist financing
- Top domestic and foreign policy priorities
- Fully committed to the highest transparency standards - one of the countries featuring on the OECD White List

UPDATES IN THE CYPRUS LEGAL FRAMEWORK AND INTERNATIONALLY

A. Cyprus Legal Framework updates

- *Company/Fiduciaries/Trustee Services*

Recent enactment of the 'Law for the Regulation of Fiduciaries, Trustees, Administration Services and Company Directors Providers' for the general regulation of this sector by the Cyprus Securities and Exchange Commission.

Recent amendment (September 2013)

→ imposes the obligation for the registration of Trusts (**no beneficiary details registered**) in specific registers which are not for public use.

- ***Predicate Offences***

Extension the list of predicate money laundering offences under the AML Law : by the *inclusion in this list of 'tax crimes'* ie the violation of the 'The Assessment and Collection of Taxes' Law.

- ***Cyprus Gambling Law***

→ any gambling is illegal (i.e. online casino gambling), and is a crime punishable with over one year imprisonment, from which proceeds were generated that may become the subject of a money laundering offence.

- ***Amended AML Law (September 2013)***
 - ✓ The powers of the Cyprus Financial Intelligence Unit have been enhanced, (i.e. in collection of information , exchange of financial information).
 - ✓ Inclusion of domestic Politically Exposed Persons
 - ✓ Imposition of administrative fines not only for supervised entities but also **personal fines** for the Compliance Officers, members of the Board of Directors and other officials of the supervised entity.
- ***Amended Cyprus International Trusts Law***
 - imposes on the Trustee of a Cyprus international trust obligations mirroring the obligations of entities regulated under the AML Law

B. International Developments

(1) FATF

a) Financial Action Task Force (FATF) Recommendations: Revamped

- Several of the latest Recommendations have already been implemented in Cyprus.

b) FATF blacklist

- FATF list of "Non-Cooperative Countries or Territories"

The latest June 2013 FATF blacklist of "Non-Cooperative Countries or Territories" :

-Iran -Democratic People's Republic of Korea (DPRK) -Ecuador -
Ethiopia, Indonesia- Kenya- Myanmar -Pakistan - Sao Tomé and
Principe Syria Tanzania -Turkey-Vietnam-Yemen

(2) Foreign Account Tax Compliance Act (FATCA) and AML

- FATCA = US Tax Reform aimed at combating tax evasion.
- In order to comply with these rules, Banks would be expected to put into place *specific AML due diligence*.
- Status in Cyprus: Cyprus is undergoing negotiations to sign an intergovernmental agreement (IGA) with the USA in respect of FATCA.

EVALUATIONS OF THE CYPRUS AML SYSTEM BY EUROPEAN AND INTERNATIONAL ORGANISATIONS (Real Findings / Misconceptions)

A. **MONEYVAL** (Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism)

- 2011 evaluation Cyprus - highly commended for the **comprehensive** and **sound** manner in which it took AML measures.

B. **FATF** (Financial Action Task Force)

- cooperative country against money laundering having comprehensive anti-money laundering system.

Cyprus in comparison

- On the basis of the number of areas in full compliance, Cyprus ranks 7th out of 17 in the FATF / Moneyval Evaluation Reports.

<u>Country</u>	<u>Organisation Performing Review</u>	<u>Compliant</u>	<u>Largely Compliant</u>	<u>Partially Compliant</u>	<u>Non- Compliant</u>	<u>N/A</u>
Cyprus	Moneyval	12	28	9	0	0
Netherlands	FATF	6	22	20	1	0
Ireland	FATF	16	12	16	5	0
Luxembourg	FATF	1	9	30	9	0
Malta	Moneyval	25	15	9	0	0

* The figures in this table are taken from public documents published for each country

C. International Monetary Fund (IMF)

Recognised the “soundness” of Cyprus’s legal AML framework (review started last September).

D. The Basel Institute on Governance

- Very good ranking position in the Basel AML Index
- Lower money laundering risk than the eurozone average and lower than EU countries like Germany, Luxembourg, Austria and the Netherlands.

E. Transparency International

Cyprus ranks 29th on the Transparency International 2012 Ranking outranking a lot of EU Countries.

F. AML Independent Audits

Clean Bill of health for the AML system

- Two parallel audits (April 2013), by Deloitte Financial Advisory and Moneyval - evidence the island's commitment to strict implementation of effective anti-money laundering measures.
- Audits based on in-depth assessment/audit of the effective implementation of the Customer Due Diligence requirements in Cyprus banks.

Findings of the Assessments

Solid level of compliance across the sector.

- Customer Due Diligence (CDD)

Deloitte notes that the results of the audit ‘***appear to indicate a generally solid level of compliance across the six banks***’ signifying at the same time that only 4 out of the 24 areas of CDD, require further attention.

- Moneyval notes that, ‘*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 CDD 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 : 'Cyprus had a **stricter legal framework** beyond normal EU standards'.
- *Cyprus as an international business center*
 - ✓ Moneyval pointed out 'a number of individual features of international banking business, **none of which are unique to Cyprus** and many of which can be found in banking systems worldwide.
 - ✓ The two Reports also specify weakness areas needing further improvement.

Troika Summary of the Reports

- The Troika Summary of the Reports, points out to a Cyprus AML system full of shortcomings.
- The Summary has created **serious concerns** since:
 - ✓ it did not consult the authors of the Reports; and
 - ✓ did not include any of the positive features which have been revealed in the Reports, leading to the reporting of erroneous and distorted conclusions in the media, especially the international press.

Important points of the Summary

- Reporting of transactions (according to the Summary)
 - ✓ between 2008 and 2010, banks reported not a single suspicious transaction and flagged only one in 2011 and “a few” in 2012.
 - ✓ the sample customer transactions, identified 29 potentially suspicious transactions during the last 12 months, none of which were reported by the Cypriot banks.
- However, the summary **failed to mention** that:
 - ✓ the above 29 suspicious cases had been identified in an analysis of 570,000 transactions
 - ✓ that Deloitte in its report stated that there is ‘a very low level of suspicious activity that may be undetected’.

Introducers

- Troika Summary : 'banks place significant reliance on introducers'
- Banks in Cyprus as in many EU countries including Luxembourg and Malta, in their cooperation with such introducers apply the AML framework for the reliance on third parties
- Banks run internal assessments/evaluations of the introducers with which they cooperate and have stricter criteria on the readiness of the CDD documentation compared to other countries as shall be described below.

International Business

- Deloitte's remark
'most customers are corporate entities and supporting documentation is obtained to confirm the identification of the customer, the directors and the owners.'

The assessors did not come upon any examples to suggest lack of understanding or weak compliance on this aspect'.

Implementation of Beneficial Ownership, Customer Due Diligence and other AML requirements And comparison with other jurisdictions

= Requirements in the 3rd EU AMLD (3rd EU AML Directive)

- Specific and detailed customer due diligence provisions relating to the *identification and verification* of the customer's and, where applicable, the *beneficial owner's identity*.



= Examples of AML requirements and their application/comparison

1. Beneficial Ownership

Definition

“the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted”

- There are **marked differences** in the way MS expect their institutions to identify the beneficial owner.
- With regard to Member States that have not transposed the definition literally there are *Threshold differences*:
 - ✓ In Cyprus a lower **stricter** threshold of **10%** + one share applies
 - ✓ In some Member States, the threshold is set generally at “**25% or more**” e.g. Ireland, Latvia, Malta, the Netherlands, Luxembourg.

2. Politically exposed Persons

- The 3rd EU AMLD defines '**politically exposed persons**' (PEPs) as natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons.



- The Directive imposes- enhanced customer due diligence measures in respect of transactions with PEPs residing in another Member State or in a third country.
- The extension of the enhanced CDD obligations to domestic (local) PEPs **has not been effected by any state in the EU except Cyprus**.
- The definition of PEPs , in Luxembourg PEP is not consistent with that of the FATF

3. Tax Crimes- Predicate Offences

- **Tax crimes (including tax evasion)** have been included in the list of crimes to be treated as predicate offences for money laundering through an amendment of the 'The Assessment and Collection of Taxes' Law.
- The **intentional failure** of a person to pay any tax due under this Law or a late payment, is now regarded as a predicate offence carrying a sentence of imprisonment of at least one year, instead of six months at maximum provided prior to the amendment.
- This will bring the proceeds of tax crimes within the scope of the powers and authorities used to combat money laundering.





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- Many crucial jurisdictions do not consider tax crimes as a predicate offence for example Luxembourg or do so in circumstances which are unjustifiably restricted for example Netherlands, Malta.
- In addition in some countries such as Austria and Germany, tax evasion is not a predicate offence but specific tax-related offences are.

Future of the AML regime

- AML is a challenge for all the international community.
- The AML regime in Cyprus will continue to apply and follow the FATF and EU recommendations on AML and will be strengthened when necessary.



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Thank you for your attention