



CYPRUS LAW DIGEST

The Ultimate Legal Guide to Investing in Cyprus



**Patrikios Pavlou
& Associates LLC**

MONEY LAUNDERING

OFFPRINT

Editor-in-chief:

Geena Papantonopoulou (geenap@nb.org)

Editor:

Marina Tsikouri (marinat@nb.org)

Business development managers:

Georgia Siakandari (georgias@nb.org)

Juliana Berberi (juliber@nb.org)

Art Director:

Theodoros Mastrogiannis (mastroth@nb.org)

Creative Director:

Andreas Menounos (andreasm@nb.org)

Desktop Publishing – Films:

Yannis Dedousis (yannisd@nb.org)

CYPRUS LAW DIGEST

ISSN 2241-391X

www.cypruslawdigest.com

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NOMIKI BIBLIOTHIKI

23, Mavromichali Str., 106 80 Athens Greece
Tel.: +30 210 3678 800 • Fax: +30 210 3678 857
e-mail: info@nb.org
http://www.nb.org



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Published under the Auspices of



Ministry of Commerce Industry and Tourism



CYPRUS CHAMBER OF COMMERCE AND INDUSTRY



CIPA CYPRUS INVESTMENT PROMOTION AGENCY



CYPRUS LAW DIGEST

■ TAX

MONEY LAUNDERING

Katerina Philippidou, *Advocate, Barrister, LL.M.*
Eleana Christofi, *Advocate, LL.M., MSc*
Patrikios Pavlou & Associates LLC

Introduction

Money laundering is an international problem and requires the active assistance of a number of professionals and institutions to address it and suppress it. Money Laundering is the process of converting illegal proceeds into assets by hiding their true criminal origin and rendering those assets untraceable as to their origin by providing a legal cover on their source; usually by transferring those proceeds and/or mixing them with legitimate funds or by reinvesting the same. Certain professionals, who are described as “sensitive professionals”, with high risk of being involved or being aware of money laundering activities, are being used, either unknowingly or knowingly, at some stage of the process of money laundering. International and domestic legislation, regulations and professional ethics are society’s weapons against Money Laundering.

The Cyprus Law

Cyprus has enacted strict Anti-Money Laundering Regulations, ratifying International Conventions and harmonizing domestic legislation with EU Directives. The Prevention and Suppression of Money Laundering Activities Law of 2007 (Law 188(I)/2007, hereinafter “the Law”) as amended in 2010 by Law 58(I)/2010 and further in 2012 by Law 80(I)/2012 implements the provisions of the Third Money Laundering Directive (2005/60/EC) and regulates the activities and services of a number of professionals who by virtue of their business activities are in a “privileged” position in assisting in Money Laundering. 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, Lawyers (certain activities), Trust and Company Service Providers, Money Transfer Services and Dealers in precious metals and precious stones (referred to as “sensitive professionals”) are within the ambit of the law. The Law in section 2 details what constitutes “Financial Business” and “Other Business” which are subject to its provisions.

The main purpose of the Law is to define and criminalise the laundering of the proceeds generated from all serious criminal offences, to prevent and suppress money laundering and also provide for the tracing, freezing and confiscation of assets generated by money laundering activities.

The “sensitive professionals” need to comply with the provisions of the Law and implement adequate and appropriate procedures in order to achieve two purposes: (1) to facilitate the recognition and reporting of suspicious transactions and (2) to ensure strict implementation of the “Know Your Client” principle (“KYC”) and the maintenance

of adequate record keeping procedures. The Law empowers the Council of Ministers to appoint various Supervisory Authorities which are responsible for monitoring the compliance of their members with the money laundering legislation and also for taking measures against non-compliance, such as corrective action to remedy the non-compliance or imposition of fines. Should a person or entity fail to comply with the specific requirements of the Law, then such person or entity is subject to an administrative fine of up to €200.000 and in the case that the offence continues, to an administrative fine of up to €1.000 for each day that non-compliance continues.

The Law, as per article 3, applies in relation to prescribed offences, which comprise of Money Laundering Offences and Predicate Offences.

What are Money Laundering Offences?

Section 4 provides for the Money Laundering Offences which comprise of the following conduct with regard to property derived from the commitment of a predicate offence:

- Convert, transfer or remove such property with the purpose of concealing or disguising its illicit origin or assistance in any way to any person, who is involved in the commission of the predicate offence, to carry out any of the above actions or to act in any other way in order to evade the legal consequences of his actions;
- Conceal or disguise the true nature, the source, location, disposition, movement of and rights in relation to property or the ownership of this property;
- Acquire, possess or use such property;
- Participate, associate, co-operate, conspire in order to commit or attempt to commit, aid and abet and provide counselling or advice for the commission of any of the offences referred to above;
- Provide information in relation to investigations that are carried out 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 from the commission of the said offence.

Any person who (a) knows or (b) ought to have known that any type of property constitutes proceeds from the commission of a predicate offence and proceeds to one of the above-mentioned acts, commits a Money Laundering Offence punishable by fourteen years imprisonment or by a pecuniary penalty of up to Euro 500.000 or by both of these penalties in the case of (a) above and by five years' imprisonment or by a pecuniary penalty of up to Euro 50.000 or by both, in the case of (b) above.

For the purposes of the above section, it does not matter whether or not the Predicate Offence is subject to the jurisdiction of the Cypriot Courts. Also, the "knowledge, intention or purpose" which are required as elements of the offences mentioned above, may be inferred from objective factual circumstances.

What are the Predicate Offences?

Section 5 of the Law provides for the Predicate Offences which are:

- All criminal offences punishable with imprisonment which exceeds one year, as a result of which proceeds have been derived which may constitute the subject of a money laundering offence as defined by section 4 above.

- Financing of Terrorism offences as these are specified in Section 4 of the Financing of Terrorism (Ratification and other provisions) Laws of 2001 and 2005, as well as the collection of funds for financing of persons or organizations associated with terrorism.
- Drug Trafficking offences, as these are defined by the Law.

What are the related powers of the Court?

Where a person is convicted for a predicated offence, the Court before sentencing him will proceed to an investigation to determine whether or not the defendant obtained any proceeds from the commitment of the offence, following the procedure prescribed in the law, and if so, the Court will issue an Order for the confiscation of the said proceeds.

The Law also furnishes the Court, under broad specified circumstances, with the power to issue freezing orders over the property of a person who is or will be under investigation for the commitment of a predicate offence. The Court also has the power to issue a Receivership Order, Tracing Orders as well as Disclosure Orders. Privileged information, to which reference is made below, are excluded from the Disclosure Orders, which can be addressed to any person against whom there is reasonable suspicion that he might possess information which will assist the investigation against a person who may have committed or benefitted from the commitment of a predicate offence.

Which is the Responsible Body for Combating Money Laundering?

The Law establishes the Unit for Combating Money Laundering (MOKAS) which, inter alia, is responsible for collecting, classifying, evaluating and analysing information in relation to money laundering offences and offences of financing terrorism, conducts investigation when there is reasonable suspicion that an offence as referenced above was committed, and cooperates with other respective Units from other countries.

Other Offences:

The Law imposes a heavy burden upon professionals, who are expected to comply with the provisions of the Law and at the same time honour their duty of confidentiality towards their clients. The strict letter of the law is that a person who (a) knows or has reasonable suspicion that another person is involved in the commitment of money laundering offences or offences related to the financing of terrorism and (b) the information, on which his knowledge or reasonable suspicion is based, came to his attention in the course of his employment, profession or business, commits an offence if he does not reveal such information to the Unit, as soon as this is possible following his becoming aware of such information (section 27). An offence under section 27 is punishable with imprisonment of up to five years or with a fine of up to EURO 5,000 or with both of these punishments. However it should be noted, that the omission to reveal information which came to the attention of a lawyer and consists of privileged information, does not constitute an offence. Privileged information is defined as “(a) communication between lawyer and client for the purposes of providing legal advice or for the provision of professional services in relation to any legal proceedings, either commenced or not, the disclosure of which in any legal proceeding is protected by the privilege of confidentiality in accordance with

the legislation in force, excluding any communication between lawyer and client with the purpose of committing a predicated offence, and (b) any other information which is not admissible before a court for reasons of protecting public interest in accordance with the legislation in force.

Obligations under the Law

The Law provides that any person carrying on either financial or other business activities must apply adequate and appropriate systems and procedures in order to prevent money laundering and terrorist financing. More specifically section 58 provides for the appropriate procedures to be followed which, inter alia, comprise the following:-

- Customer identification and due diligence,
- Record-keeping,
- Internal reporting and reporting to MOKAS,
- Detailed examination of each transaction that by its nature may be considered to be particularly vulnerable to be associated with money laundering offences or terrorist financing and in particular complex or unusually large transactions and all other unusual patterns of transactions which have no apparent economic or visible lawful purpose.

How to recognise a “suspicious” transaction?

Usually, a suspicious transaction will be one that is incompatible with a client’s known, legitimate business or his personal activities or is inconsistent with the normal business for that type of client, taking into account, inter alia, the size and complexity of the transaction in comparison to the client’s normal activities, the pattern of the activities he is usually engaged in etc. It is thus essential for the service provider to be well informed of the client’s business.

In which cases should customer identification procedures and due diligence measures be taken?

- When establishing a business relationship,
- When carrying out occasional transactions amounting to €15,000 or more, whether carried out in a single operation or in several operations which appear to be linked,
- When there is a suspicion of money laundering or terrorist financing, regardless of the amount of the transaction,
- When there are doubts about the veracity or adequacy of previously obtained customer identification data.

Identification procedures and customer due diligence requirements must be applied to both new as well as to existing customers at appropriate times.

Customer identification procedures and customer due diligence measures

- Identifying the customer and verifying the customer’s identity on the basis of documents, data or information obtained from a reliable and independent source;

- Identifying the beneficial owner and taking risk-based and adequate measures to verify the identity on the basis of documents, data or information obtained from a reliable and independent source so that the person carrying on financial or other business knows who the beneficial owner is; as regards legal persons, trusts and similar legal arrangements, taking risk based and adequate measures to understand the ownership and control structure of the customer;
- Obtaining information on the purpose and intended nature of the business relationship;
- Conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the information and data in the possession of the person engaged in financial or other business in relation to the customer, the business and risk profile, including where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.

The measures to be taken by the persons engaged in financial or other business activities to give effect to the above are to be applied on a risk-sensitive basis and must be appropriate given the risks undertaken in providing services.

The Law sets out the KYC requirements and due diligence procedures to be followed in order for professionals to effectively discharge their duty for due diligence and KYC in accordance with the Law. The Law implements a risk-based approach by which enhanced customer due diligence measures must be taken in all instances which due to their nature entail a higher risk of money laundering or terrorist financing, whereas simplified customer due diligence and identification procedures are to be followed in certain circumstances as provided by section 63.

Generally, for the purposes of the above, proof of identity is deemed to be adequate where it is reasonably possible to establish, and the person examining the same is satisfied, that the customer is the person he claims to be. It is noteworthy that a client's omission to provide satisfactory evidence of identity could suggest that he is engaging in a suspicious transaction and this may be an appropriate case to be reported to MOKAS. Further to the name and date of birth of the client, it is vital to verify his current permanent address, as it constitutes an integral part of the proof of the identity of a person.

The above procedures aim to reveal the person who ultimately controls or owns a corporate or legal entity or arrangement. Section 2 provides that the "Ultimate Beneficial Owner" is the natural person who ultimately owns or controls the entity and/or the natural person on behalf of whom the transaction or activity is conducted.

The beneficial owner shall at least include:

(a) With regard to corporate entities:

- (i) The natural person who ultimately owns or controls the company, through direct or indirect ownership or control of a sufficient percentage of the shares or voting rights, including through bearer share holdings. A percentage of 10% plus one share is deemed sufficient to satisfy this criterion;

- (ii) The natural person who otherwise exercises control over the management and administration of the company;
- (b) With regard to legal entities, such as foundations and legal arrangement, e.g. trusts, which administer and distribute funds:
 - (i) Where the future beneficiaries have already been determined, the natural person who is the beneficiary of 10% or more of the property of the legal arrangement or legal entity;
 - (ii) Where the beneficial owners of the legal arrangements or legal entity have not been determined yet, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
 - (iii) The natural person who controls the 10% or more of the property of the legal arrangement or entity.

What happens in cases where the client is acting on behalf of another person?

In such cases, reasonable measures should be taken to collect adequate documents, data or information for establishing and verifying the identity of that third person and also that the customer is in fact duly authorized by the third person for this purpose. Accordingly, where the client is a company or a legal entity, it should be verified that the natural person appearing to act on behalf of the client is properly authorized for this purpose and his identity must be established and verified.

What are the particular duties of the persons engaged in financial or other business activities under Cyprus Law?

According to the Law, some of the said duties are the following:-

- The identification and reporting of suspicious transactions; breach of which is punishable by imprisonment of up to five years or a fine of up to the amount of €5.000 or both,
- The adoption of client identification and record keeping procedures and client due diligence in accordance with the Law,
- The retention of the relevant records for at least five years from the carrying out of the transaction or the end of the business relationship,
- The appointment of a money laundering compliance officer,
- The adoption of enhanced due diligence measures in relation to high-risk clients,
- Non-disclosure of information regarding knowledge or suspicion for money laundering nor of any material that may impede or prejudice the interrogation and investigation carried out by the relevant authorities; this offence is punishable by imprisonment of up to five years,
- To adequately inform the employees of the relevant principles and procedures for the prevention of money laundering and of the requirements provided by the Law and ongoing training of employees.

Conclusion

It is vital nowadays, when money laundering is a scourge harming the financial sector of various countries, to abide by the appropriate procedures provided by the Law which aim to combat this phenomenon. All professionals should balance their duty towards their clients and their duty under the law and towards the sustainment of global economy and refuse to provide their services to clients who are not sufficiently transparent as to their person or their business. All professionals should refuse to deal with such clients and/or report them, where this is appropriate, thus benefitting the society as a whole rather than a few individuals/entities, who engage in illicit or suspicious operations.

PATRIKIOS PAVLOU & ASSOCIATES LLC

PATRICIAN CHAMBERS
332 AGIOU ANDREOU STR.
3035 LIMASSOL
PO BOX 54543,
3725 LIMASSOL, CYPRUS

Tel.: +357 25 87 15 99
Fax: +357 25 34 45 48
E-mail: info@pavlaw.com
Url: www.pavlaw.com

Languages

English, French, German, Greek, Italian, Russian, Slovak, Ukrainian

Number of Lawyers: 22

Contact

Stavros Pavlou

Member

Cyprus Bar Association, International Bar Association, Cyprus-Russian Business Association, Society of Trust and Estate Practitioners, Euroadvocaten, International Tax Planning Association, Association of International Tax Consultants, Asociación Europea de Abogados.

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NOMIKI BIBLIOTHIKI

23 Mavromichali street, 106 80 Athens, Greece

T: +30 210 367 8800 (30 lines), F: +30 210 367 8857

E: info@nb.org



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ISSN: 2241-391X



14267

