

Anti-Money Laundering Update | Cyprus

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<http://www.anti-moneylaundering.org/europe/cyprus.aspx>

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CENTRAL AUTHORITY FOR REPORTING

The UNIT for Combating Money Laundering (MOKAS) at the Attorney General's office.

MOKAS functions under the Attorney General of the Republic and it is composed of representatives of the Attorney General, the Chief of Police, and the Director of the Department of Customs and Excise, accountants and financial analysts.

The main functions of MOKAS include:

1. Gathering, classification, evaluation and analysis of information relevant to money laundering and financing of terrorism offences submitted by reporting entities in accordance with the legislation and regulations, together with information from international and domestic partners.
2. Co-operation and exchange of information with other Financial Intelligence Units 'FIUs'.
3. Issuing guidance directives and providing training to financial institutions, the Police, professionals and others.
4. Issuing administrative orders for the postponement of transactions.
5. Members of the Unit can apply and obtain court orders i.e. disclosure orders, freezing orders, confiscation orders.

OTHER ANTI-MONEY LAUNDERING REGULATOR(S)

- The Central Bank of Cyprus
- The Authority for the Supervision and Development of Cooperative Societies
- The Securities and Exchange Commission
- The Council of the Institute of Certified Public Accountants (for accountants)
- The Council of the Cyprus Bar Association (for lawyers)
- The Unit for Combating Money Laundering (for estate agents and dealers in precious stones and metals)

The abovementioned Supervisory Authorities are responsible for monitoring the compliance of the members falling under their supervision based on the provisions of the ***Prevention and Suppression of Money Laundering Activities Law of 2007 N. 118(I)/2007*** as amended (hereinafter the "AML Law" - as well as the Directives that are regularly issued for the better implementation thereof.

In case of non-compliance each Supervisory Authority may take the following measures regarding persons falling under its supervision:

- i. Take corrective action to remedy the situation within a specified time period.
- ii. Impose an administrative fine up to €200.000 after giving the supervised person the opportunity to be heard. A further fine of €1.000 per day may be imposed for each day of non-compliance.
- iii. Amend, suspend or revoke their operating license.

A lawyer who fails to comply with the above requirements is referred to the competent Disciplinary Body which decides accordingly.

In case a Supervisory Authority has information or believes that a person falling under its supervision is involved in the commission of a money laundering or financing of terrorism offence it must provide the information to MOKAS.

ARE LAWYERS COVERED BY ANTI-MONEY LAUNDERING LEGISLATION?

Yes, lawyers are covered by the anti-money laundering legislation, namely the **AML Law**. According to the provisions of the Cyprus Bar Association Directive, the anti-money laundering legislation covers:

- (a) Lawyers and limited liability companies (LLC), according to the Advocates Law, Cap 2,
- (b) General partnership or limited partnership whose general partners are lawyers.
- (c) Subsidiary companies, owned directly or indirectly, by any of the above, provided that these activities also include trust services and services to third parties as specified in the AML Law.

Like the legitimate client, the launderer will need legal services and legal advice hence lawyers could become directly involved in the money laundering process. The law does not only cover lawyers but it also requires the latter to maintain specific policies and procedures to guard against their business and the wider financial sector in general, being used for the purposes of money laundering. In essence these policies and procedures are designed to facilitate the recognition and reporting of suspicious transactions and to ensure through the implementation of the KYC principle and adequate record-keeping procedures that lawyers are able to provide their part of the audit trail, should a client come under investigation.

HAS THE THIRD EU MONEY LAUNDERING DIRECTIVE BEEN IMPLEMENTED? IF NOT, WHEN IS IT EXPECTED TO BE IMPLEMENTED? (This box is only applicable to EU member countries)

In Cyprus the Third EU Money Laundering Directive was implemented through the enactment of the **AML law** on 31.12.2007 with effect since 01.01.2008.

LIST THE LAWS REGARDING ANTI-MONEY LAUNDERING, INDICATING WHICH LAWS ARE APPLICABLE TO LAWYERS.

- Prevention and Suppression of Money Laundering Activities Law of 2007 (188(I)/2007), as amended

Until 2004 the applicable law was the **Prevention and Suppression of Money Laundering Activities Law, No.61 (I) of 1996** as amended. This law was replaced, consolidated and amended with the enactment of the AML Law of 2007 which was further amended with Law No.58 (I) of 2010, Law No.80 (I) of 2012, Law No 192(I) of 2012 and Law No 101(I) of 2013.

ARE VISITING LAWYERS SUBJECT TO LOCAL LAWS REGARDING ANTI-MONEY LAUNDERING, AND, IF SO, TO WHAT EXTENT?

AML Laws is domestic legislation implementing the Third EU Money Laundering Directive, hence it regulates the conduct of professionals and professional bodies in Cyprus. Thus a visiting lawyer who conducts business in Cyprus is subject to AML legislation and must meet the standards required under the Cyprus law.

LIST ANY MONEY LAUNDERING GUIDANCE FOR LAWYERS (FOR EXAMPLE, LAW SOCIETY OR BAR ASSOCIATION GUIDELINES) CURRENTLY IN PLACE.

- The Cyprus Bar Association issues Money Laundering Guidance notes

- The Cyprus Bar Association Directive to the Members of CBA “Prevention of Money Laundering and Terrorist Financing” (February 2009)
- The Cyprus Bar Association Directive to the Members of CBA “Prevention of Money Laundering and Terrorist Financing” (August 2013)
- MOKAS has developed an educational program for lawyers and accountants.

IS THE LAW SOCIETY/BAR ASSOCIATION INVOLVED IN SUPERVISING OR ENFORCING COMPLIANCE WITH ANTI-MONEY LAUNDERING REGULATIONS?

The Cyprus Bar Association is the Supervisory Authority for lawyers designated by the Council of Ministers. The Association has specific obligations under the AML Law to report to MOKAS any information they obtain which in their opinion is, or may be indicative of money laundering and report to the Attorney General those law firms which do not comply with the provisions of the AML law.

According to Section 59 of the AML Law:

- The Association is authorised to issue directives, providing detailed instructions regarding the requirements of the law in respect of business carried out by firms and to indicate good business practise.
- The Association follows up, evaluates and supervises the adoption of Part VII of the law and directives issued.
- The Association may take all necessary measures in the event where a lawyer fails to comply with the provisions of part VII of the law or its directives.

Failure to comply with any requirements of the AML Law is subject to an administrative fine of up to 200,000 Euro which is imposed by the supervisory authority. In case the offence continues, an additional administrative fine of up to 1.000 Euro is imposed for every day during which the offence continues. In addition, a lawyer who fails to comply with the requirements of the AML Law is referred to the Disciplinary Board which decides accordingly. Depending on the outcome of the Disciplinary Board’s investigation, criminal offence proceedings can arise that can lead to arrest or prosecution. This is irrespective of whether money laundering or terrorist financing has taken place or not.

DESCRIBE CLIENT DUE DILIGENCE REQUIREMENTS, INCLUDING WHEN IT MUST BE UNDERTAKEN BY LAWYERS.

At all times lawyers are required to establish and maintain policies, procedures and control systems to prevent money laundering and to ensure the reporting of any cases that may be known or suspected.

All lawyers to which the AML Law applies should follow appropriate procedures for:

- Identifying clients (Section 4)
- Record- Keeping (Section 5)
- Recognising and Reporting Suspicions on Money Laundering(Section 6)
- The education and training of partners and staff. (Section 58) As good practice, lawyers are recommended to make arrangements to verify on a regular basis, compliance with policies, procedures and control systems relating to anti-money laundering activities. Lawyers need to

satisfy themselves that the requirement in the AML Law to maintain such procedures has been fulfilled.

DOES YOUR COUNTRY FOLLOW A RISK-BASED APPROACH TO CLIENT DUE DILIGENCE BY LAWYERS?

Part VII of the AML Law sets out the measures that need to be taken to prevent money laundering and terrorist financing. These measures follow the risk based approach. A risk based approach involves specific measures and procedures in assessing the most cost effective and proportionate way to manage the money laundering and terrorist financing risks faced by lawyers.

Such measures and procedures are:

- Identifying the money laundering risks associated with particular clients, services, financial instruments and geographical areas.
- Ensuring the uniform application of the policies, measures and procedures.
- Managing and mitigating the risks by applying effective measures and controls.
- Monitoring the effective operation of the procedures and controls.

ARE THERE ENHANCED DUE DILIGENCE MEASURES FOR CERTAIN TYPES OF CLIENTS, FOR EXAMPLE, POLITICALLY EXPOSED PERSONS?

Yes, lawyers are required to take reasonable measures to determine whether a customer is a domestic Politically Exposed Person (PEP) or a person who is entrusted with a prominent function by an international organization.

PEPs (Politically Exposed Persons) are individuals who are or have been entrusted with prominent public functions in the Republic or in another country and their immediate family members, or persons known to be close associates of such persons.

These include: heads of State, heads of government, members of parliament, ministers and deputy/assistant ministers, members of supreme courts, members of boards of central banks, ambassadors, high ranking officers in the armed forces.

In relation to PEPs lawyers are required to perform additional enhanced due diligence measures. These measures include: the approval by senior Management for establishing business relationships with such clients, taking adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction and to conduct enhanced ongoing monitoring of the business relationship.

ARE THERE SIMPLIFIED DUE DILIGENCE MEASURES FOR CERTAIN TYPES OF CLIENTS, FOR EXAMPLE, LISTED COMPANIES?

According to Section 63 of the AML Law no further steps to verify over and above normal commercial practice and due diligence procedures will usually be required where the perspective client is a company quoted on a recognised stock exchange and whose titles are accepted for dealing in a regulated market of the European Economic Area or in a third country which is subject to the declaration requirements which comply with the community legislation.

ARE LAWYERS PERMITTED TO RELY ON THIRD PARTY DUE DILIGENCE? IF YES, PLEASE DESCRIBE.

It is for lawyers themselves to discharge their obligation under the AML Law to verify identity. The few occasions when it is reasonable to rely on others to undertake the procedures or to confirm identity include:

a) Occasions where the client is introduced by one of the lawyer's overseas branch offices or associated firms. For these, the lawyer should obtain the introducer's written confirmation that it has verified the client's identity and that relevant identification data is retained by the overseas branch, office or firm.

b) Occasions where a lawyer merges with another firm, or acquires the practice of another firm, in whole or in part, and where it is not necessary for the identity of clients to be re-verified, provided that satisfactory identification records are available.

(CBA, Directive to the Members of the CBA, par. 5.08, August 2013)

WHEN IS A LAWYER UNDER AN OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS?

Section 27 provides that a person having any knowledge or suspicion that another person is involved in money laundering and who has become aware of the information on which the knowledge or reasonable suspicion is based in the course of his occupation, profession or business, such person is under an obligation to report such information to MOKAS as soon as reasonably practicable.

A suspicious transaction will often be one which is inconsistent with a client's known, legitimate business or personal activities or with the normal business for that type of client.

DOES ATTORNEY/CLIENT PRIVILEGE AND/OR DUTIES OF CONFIDENTIALITY PROVIDE A DEFENCE

OR PARTIAL/TOTAL EXCEPTION TO THE REQUIREMENT TO REPORT SUSPICIOUS TRANSACTIONS?

The legislation protects those reporting suspicion of money laundering from claims in respect of any alleged breach of client confidentiality. This ensures that no action can be taken against the reporter even where the suspicions are later proved to be ill founded. Section 26 of the AML Law provides that such a disclosure cannot be treated as a breach of the duty of confidentiality owed by lawyers to their clients by virtue of the contractual relationship existing between them and the lawyers will not accept responsibility towards the clients involved.

However lawyers are not bound to disclose 'privileged information' which is defined in section 44 of the AML Law.

Privileged information means:

Communication between an advocate and a client for the purpose of obtaining legal advice or professional legal services in relation to legal proceedings whether these have commenced or not, which would in any legal proceedings be protected from disclosure by virtue of the privilege of confidentiality under the law in force at the relevant time; provided that a communication between an advocate and a client for the purposes of committing a prescribed offence shall not constitute privileged information.

DOES LOCAL LAW PROVIDE ANY CRIMINAL AND/OR CIVIL INDEMNITY TO A LAWYER WHO HAS REPORTED A SUSPICIOUS TRANSACTION?

Reporting entities have indemnity from any claim for breach of any duty of confidence. This indemnity extends to the initial disclosure of the suspicion and to the information on which it is based.

ONCE A SUSPICIOUS TRANSACTION REPORT HAS BEEN FILED, IS A LAWYER ALLOWED TO PROCEED WITH THE LEGAL ADVICE/TRANSACTION, AND, IF SO, MUST CONSENT FROM AUTHORITIES BE OBTAINED FIRST?

After filing a suspicious transaction report, lawyers should adhere to any instructions given to them by the MOKAS, and in particular, as to whether or not to continue a transaction or continue providing the requested service or terminate the business relationship.

IS THERE A TIPPING-OFF PROHIBITION? IF YES, PLEASE DESCRIBE.

Yes, the AML Law provides for a tipping off prohibition.

According to Section 48:

‘Any person who discloses that information or other relevant material regarding knowledge or suspicion of money laundering has been submitted to the FIU or makes a disclosure which may impede or prejudice the interrogation and investigation carried out in respect of prescribed offences or the ascertainment of proceeds, knowing or suspecting that the said interrogation and investigation are taking place, shall be guilty of an offence punishable by imprisonment not exceeding five years.’

The tipping off offence prohibits a lawyer from informing either a suspected victim of crime that his assets are at risk, or the person who is the subject of a suspicion that a report has been submitted and an investigation is being carried out. Such operations are likely to prejudice the investigation.

DESCRIBE ANY RESTRICTIONS ON ACCEPTING A NEW CLIENT.

The Client’s identification procedure prescribed in the AML Law should be applied. The AML Law requires all persons carrying out financial business to apply client identification procedures in accordance with Sections 58 and 61 to 66. The essence of these requirements is that except where the Law states that Client identification need not be made, a firm must verify the identity of a prospective client.

A lawyer should require from a prospective client to produce documents as evidence of identity. A copy of such document(s) should be taken and retained. The client’s record must include inter alia the following:

- Information in relation to the identity of the prospective client.
- The details of every transaction carried out by and/or on behalf of the client

Clients who are not acceptable include clients who fail or refuse to submit the required documentation and information for verification of their identity and the creation of their economic profile without adequate justification.

ARE THERE ONGOING MONITORING REQUIREMENTS FOR EXISTING CLIENTS? IF YES, PLEASE DESCRIBE.

According to Sections 58 and 68 of the AML Law lawyers are required to keep and maintain records in relation to the identity of their clients and the transactions carried out by them. Therefore an on-going client due diligence on the business should be done, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted with the lawyer's knowledge of the client, their business and risk profile and where necessary, the source of funds. Records must be reviewed and updated.

DESCRIBE ANY OTHER WAYS IN WHICH LAWYERS ARE AFFECTED BY ANTI-MONEY LAUNDERING LEGISLATION.

In Cyprus the Third EU Money Laundering Directive was implemented through the enactment of the AML law on 31.12.2007 with effect since 01.01.2008 .

HAVE LAWYERS IN YOUR JURISDICTION BEEN IMPLICATED IN MONEY LAUNDERING, INCLUDING ANY TYPE OF COMPLAINT, ARREST OR PROSECUTION?

Some lawyers have been requested to provide information to the FIU.

HAS THE FINANCIAL ACTION TASK FORCE (FATF) OR A FATF-STYLE REGIONAL BODY CONDUCTED A MUTUAL EVALUATION OF THIS COUNTRY, AND, IF SO, WHAT WERE THE FINDINGS CONCERNING LAWYERS' COMPLIANCE WITH THE FATF 40+9 RECOMMENDATIONS?

Cyprus is not a member of the FAFT. It is a member of the Moneyval Committee of the Council of Europe which is an associated member of the FAFT. Cyprus' anti money-laundering system has been assessed three times by the Moneyval Committee and the findings for lawyers are that there is compliance with the FAFT 40+9 recommendations.

Sources:

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8. [http://www.cyprusbarassociation.org/v1/files/laundrying/CBA DIRECTIVE 2013 -
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