

GUIDANCE NOTE TO INTERNATIONAL FINANCIAL SERVICES COMPANIES, INTERNATIONAL TRUSTEE SERVICES COMPANIES, INTERNATIONAL COLLECTIVE INVESTMENT SCHEMES AND THEIR MANAGERS OR TRUSTEES AS APPROPRIATE
ISSUED BY THE CENTRAL BANK OF CYPRUS
UNDER SECTION 60(3) OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 1996

1. BACKGROUND

Definition of money laundering

Money Laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. If undertaken successfully, it allows them to maintain control over those proceeds and, ultimately, to provide a legitimate cover for their source of income. Failure to prevent the laundering of the proceeds of crime permits criminals to benefit from their actions, thus making crime a more attractive proposition.

Stages of money laundering

There is no specific method of laundering money. Despite the variety of methods employed, the laundering process is accomplished in three basic stages which may comprise transactions by the launderers that could alert a financial institution to criminal activity:

- (a) Placement - the physical disposal of the initial proceeds derived from illegal activity.
- (b) Layering - separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity.
- (c) Integration - the provision of apparent legitimacy to criminally derived wealth. If the layering process is successful, integration schemes place the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing as normal business funds.

The three basic steps may occur as separate and distinct phases or may occur simultaneously or, more commonly, they may overlap. How the basic steps are used depends on the available laundering mechanisms and requirements of the criminal organisations.

Certain points of vulnerability have been identified in the laundering process which the money launderer finds difficult to avoid and where his activities are, therefore, more susceptible to being recognised, specifically:

- entry of cash into the financial system;
- cross-border flows of cash; and
- transfers within and from the financial system.

Vulnerability of financial sector businesses to money laundering

Historically, efforts to combat money laundering have, to a large extent, concentrated on the deposit-taking procedures of financial sector businesses where the launderer's activities are most susceptible to recognition. However, criminals have responded to the measures taken by the financial sector over recent years by recognising that cash payments made into financial sector businesses can often give rise to additional enquiries. Other means have, therefore, been sought to convert the illegally earned cash or to mix it with legitimate cash earnings before it enters the financial system, thus making it harder to detect at the placement stage. Equally, it is also emphasised that there are many crimes (particularly the more sophisticated ones) where cash is not involved.

Investment businesses are more likely to find themselves being used at the layering and integration stages of money laundering. The liquidity of many investment products particularly attracts sophisticated money launderers since it allows them, quickly and easily, to move their money from one product to another, mixing lawful and illicit proceeds and integrating them into the legitimate economy. Investment businesses are also able to transfer monies across borders quickly and efficiently.

2. MAIN PROVISIONS OF THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW

Main purpose of the Law

The main purpose of the Prevention and Suppression of Money Laundering Activities Law (hereinafter to be referred to as "the Law") is to define and criminalise the laundering of the proceeds generated from all serious criminal offences and provide for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes. Upon the enactment of the Law, the Confiscation of Proceeds of Trafficking of Narcotic Drugs and Psychotropic Substances Law (Law 39(I) of 1992) which dealt only with drug money laundering, was repealed as all its main provisions have been incorporated in the new legislation. The main provisions of the Law, which are of direct interest to IFCs/ITCs/ICIS their Managers or Trustees as appropriate and their employees, are as follows:

Prescribed offences (Section 3 of the Law)

The Law has effect in respect of offences which are referred to as "prescribed offences" and which comprise of:

- (a) laundering offences, and
- (b) predicate offences

Laundering offences (Section 4 of the Law)

Under the Law, every person who knows, or ought to have known that any kind of property is proceeds from a predicate offence is guilty of an offence if he carries out any of the following:

- (i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a predicate offence to evade the legal consequences of his actions;
- (ii) conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property;
- (iii) acquires, possesses or uses such property;
- (iv) participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counseling or advice for the commission of any of the offences referred to above;
- (v) provides information with respect to investigations that are being performed 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.

Commitment of the above offences is punishable on conviction by a maximum of fourteen (14) years imprisonment or a fine or both of these penalties, in the case of a person who knows that the property is proceeds from a predicate offence, or by a maximum of five (5) years imprisonment or a fine or both of these penalties, in the case of a person who ought to have known.

It is a defence, under Section 26 of the Law, in criminal proceedings against a person in respect of assisting another to commit a laundering offence that he intended to disclose to a police officer or the Unit for Combating Money Laundering (hereinafter to be referred to as "the Unit") his suspicion or belief that the agreement or arrangement related to proceeds from a predicate offence and that his failure to make the disclosure was based on reasonable grounds. Also, under section (26) of the Law, any such disclosure should not be treated as a breach of any restriction upon the disclosure of information imposed by contract.

In the case of employees of persons whose activities are supervised by one of the authorities established under Section 60, the Law recognises that the disclosure may be made to a competent person (e.g. a Money Laundering Compliance Officer) in accordance with established internal procedures and such disclosure shall have the same effect as a disclosure made to a police officer or the Unit.

Predicate offences (Section 5 of the Law)

Criminal offences as a result of which proceeds were generated that may become the subject of a laundering offence, as defined above, are the following:

- (a) premeditated and attempted murder;
- (b) drug trafficking;
- (c) illicit importation, exportation, purchasing, selling, disposition, possession, transfer and trafficking of arms and munitions;
- (d) importation, exportation, purchasing, selling, disposition, possession, transfer of stolen objects, pieces of art, of antiquities, of tokens of cultural heritage;
- (e) the abduction of a minor or a mentally retarded person or of any other person against his will for any unlawful purpose;
- (f) the detachment of money or of property of any other kind by use or threat of use of force or other illicit act;
- (g) offences relating to corruption of public or private servants;
- (h) living on the earnings of prostitution and offences associated with the procuration and seduction of women and minors;
- (i) offences contrary to the provisions of the Convention for the Natural Protection of Nuclear Material (Ratification and Other Provisions) Law of 1997.
- (j) offences contrary to the provisions of the Convention for the Prohibition of Chemical Weapons (Ratification) Law of 1998.

For the purposes of money laundering offences it does not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not (Section 4(2) of the Law).

Failure to report (Section 27 of the Law)

It is an offence for any person who, in the course of his trade, profession, business or employment, acquires knowledge or reasonable suspicion that another person is engaged in money laundering not to report his knowledge or suspicion, as soon as it is reasonably practical after the information came to his attention, to a police officer or to the Unit. Failure to report in these circumstances is punishable on conviction by a maximum of five (5) years imprisonment or a fine not exceeding Cy£3.000 (three thousand pounds) or both of these penalties.

Tipping - off (Section 48 of the Law)

Further to the offence (v) under the section on laundering offences above, it is also an offence for any person to prejudice the search and investigation in respect of prescribed offences by making a disclosure, either to the person who is the subject of a suspicion or any third party, knowing or suspecting that the authorities are carrying out such an investigation and search. "Tipping-off" under these circumstances is punishable with imprisonment up to five (5) years.

Relevant financial business (Section 61 of the Law)

The Law recognises the important role of the financial sector for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all institutions, including IFCs/ITCs/ICIS their Managers or Trustees, engaged in "relevant financial business", which is defined to include the activities listed below:

- (a) Deposit taking;
- (b) Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transactions including forfeiting);
- (c) Finance leasing, including hire purchase financing;
- (d) Money transmission services;
- (e) Issuing and administering means of payment (e.g. credit cards, travelers' cheques and bankers' drafts);
- (f) Guarantees and commitments;
- (g) Trading for own account or for account of customers in:-
 - (i) money market instruments (cheques, bills, certificates of deposits etc.);
 - (ii) foreign exchange;
 - (iii) financial futures and options;
 - (iv) exchange and interest rate instruments;
 - (v) transferable instruments;
- (h) Underwriting share issues and the participation in such issues;

- (i) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues including the areas of mergers and acquisitions of business;
- (j) money broking;
- (k) Investment business, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investment" includes long term insurance contracts, whether linked long-term or not;
- (l) Safe custody services;
- (m) Custody and trustee services in relation to stocks.

Procedures to prevent money laundering (Section 58 of the Law)

The Law requires all persons carrying on financial business, as defined above, to establish and maintain specific policies and procedures to guard against their business and the financial system in general being used for the purposes of money laundering. In essence these procedures are designed to achieve two purposes: firstly, to facilitate the recognition and reporting of suspicious transactions and, secondly, to ensure through the strict implementation of the "know-your-customer" principle and the maintenance of adequate record keeping procedures, should a customer come under investigation, that the IFC/ITC/ICIS its Manager or Trustee as appropriate is able to provide its part of the audit trail. The Law requires that all persons engaged in relevant financial business institute a number of procedures. In fact, it is illegal for any person, in the course of relevant financial business, to form a business relationship or carry out an one-off transaction with or for another, unless the following procedures are instituted:

- Customer identification procedures;
- Record keeping procedures in relation to customers' identity and their transactions;
- Procedures of internal reporting to a competent person - (e.g. a Money Laundering Compliance Officer) appointed to receive and consider information that give rise to knowledge or suspicion that a customer is engaged in money laundering activities;
- Other internal control and communication procedures for the purpose of forestalling and preventing money laundering;
- Measures for making employees aware of the above procedures to prevent money laundering and of the legislation relating to money laundering; and
- Provision of training to their employees in the recognition and handling of transactions suspected to be associated with money laundering.

The Directors, Managers, Secretary and other officers of a body corporate as well as the body corporate itself, who fail to comply with the above requirements commit an offence punishable on conviction by a maximum of two (2) years imprisonment or a fine of Cy£2.000 (two thousand pounds) or both of these penalties.

In determining compliance with Section 58 of the Law, a Court may take into account any relevant supervisory or regulatory guidance issued by the supervisory authority concerned and, where no guidance applies, any other relevant instructions issued by the supervisory authority.

Supervisory authorities (Section 60 of the Law)

The Law designates the Central Bank of Cyprus as the supervisory authority for all persons licensed to carry on banking business in or from within Cyprus. In this regard, the Central Bank of Cyprus has been assigned with the duty of assessing compliance of all banks with the special provisions of the Law in respect of their business. In addition, the Council of Ministers, under Section 60–(1)(b) of the Law designated on 22 April, 1998, the Central Bank of Cyprus as the supervisory authority for all persons authorised to carry on international financial services business from within Cyprus.

The Central Bank of Cyprus, in its capacity as supervisory authority, may issue guidance notes to all in Cyprus. The purpose of the guidance notes issued by the Central Bank of Cyprus, as the supervisory authority of the international financial services sector, is to provide a practical interpretation of the requirements of the Law in respect to business carried on by IFCs/ITCs/ICIS their Managers or Trustees as appropriate and to indicate good financial business practice.

Where a supervisory authority is of the opinion that a person falling within its responsibility has failed to comply with the provisions of the Law relating to financial business it has a legal obligation to refer the matter to the Attorney General. Where a supervisory authority obtains information and is of the opinion that any person may have been engaged in money laundering then it has a legal obligation to disclose the relevant information to the Unit.

Orders for the disclosure of information (Section 45 of the Law)

Courts in Cyprus may, on application by the investigator, make an order for the disclosure of information by a person, including an IFC/ITC/ICIS its Manager or Trustee as appropriate, who appears to the Court to be in possession of the information to which the application relates. Such an order applies irrespective of any legal or other provision which creates an obligation for the maintenance of secrecy or imposes any constraints on the disclosure of information. As already stated under "tipping off", a person who makes any disclosure which is likely to obstruct or prejudice an investigation into the commission of a predicate offence, knowing or suspecting that the investigation is taking place, is guilty of an offence.

3. INTERNAL CONTROLS, POLICIES AND PROCEDURES

Statutory requirements

The Law under Section 58 requires all persons carrying on relevant financial business to establish and maintain appropriate internal control and communication procedures, as may be appropriate, for the purposes of forestalling and preventing money laundering.

Recommended procedures

IFCs/ITCs/ICIS their Managers or Trustees as appropriate are expected to establish clear responsibilities and accountabilities and institute the appropriate internal controls and procedures established through the Money Laundering Compliance Officers on the basis of Section 6 of this Guidance Note which deals with the Recognition and Reporting of Suspicious Transactions.

All IFCs/ITCs/ICIS their Managers or Trustees as appropriate operating from Cyprus should:

- (a) have procedures for the prompt validation of suspicions and subsequent reporting to the Unit for Combating Money Laundering (please refer to Section 6 of the Guidance Note);
- (b) provide the Money Laundering Compliance Officer with the necessary access to systems and records to fulfill this requirement (please refer to Section 6 of the Guidance Note); and,
- (c) maintain close co-operation and liaison with the law enforcement agencies.

It is recognised that the international financial sector encompasses a wide and divergent range of businesses. It is equally recognised that the extent of necessary procedures and controls will also vary in relation to the size and structure of each organisation.

As good practice, financial sector businesses are recommended to make arrangements to verify, on a regular basis, compliance with policies, procedures and controls relating to money laundering activities, in order to satisfy management that the requirement to maintain such procedures has been discharged. Larger financial sector businesses may wish to ask their internal audit or compliance departments to undertake this role, while smaller institutions may wish to introduce a regular review by management.

It is important that the procedures and responsibilities for monitoring compliance with and effectiveness of money laundering policies and procedures are clearly laid down by all IFCs/ITCs/ICIS their Managers or Trustees as appropriate.

4. CLIENT IDENTIFICATION PROCEDURES

Statutory requirements

The Law requires all persons carrying on financial business to maintain client identification procedures in accordance with Sections 58 and 62-65. The essence of these requirements is that, except where the Law states that client identification need not be made, an IFC/ITC/ICIS its Manager or Trustee as appropriate must verify the identity of a prospective client.

The Law does not specify what may or may not represent adequate evidence of identity. The Central Bank of Cyprus as the supervisory authority for IFC/ITC/ICIS their Managers or Trustees as appropriate issues this guidance note under the provisions of Section 60 of the Law in order to set out the practice to which IFCs/ITCs/ICIS their Managers or Trustees as appropriate should adhere in order to comply with the requirements of the Law on the subject of client identification.

Introduction - “Know your client”

The need within financial sector businesses for the “know your client” process is vital for the prevention of money laundering and underpins all other activities. An IFC/ITC/ICIS its Manager or Trustee as appropriate should establish to its satisfaction that it is dealing with a person (natural or legal) that actually exists, and identify those persons duly authorised to undertake investment transactions.

When a business relationship is being established, the nature of the business that the client expects to conduct with the IFC/ITC/ICIS its Manager or Trustee concerned should be ascertained to show what might be expected as normal activity. In order to be able to judge whether a transaction is or is not suspicious, an IFC/ITC/ICIS its Manager or Trustee as appropriate needs to have a clear understanding of the pattern of its client’s business, as this develops into an ongoing relationship. Suspicious transactions may arise at any stage and frequently occur within an established business relationship rather than at the outset.

What is Identity and when it must be verified

A person’s identity comprises his/her name and all other names used, together with the current permanent address at which the person can be located. Date of birth is also a useful indicator. Ideally, to identify someone face to face an official document bearing a photograph of the person should also be obtained. However, photographic evidence of identity is only of value to identify clients who are seen face to face. It is neither safe nor reasonable to require a prospective client to send a passport through the post.

Whenever a business relationship is to be established, or a one-off transaction or series of linked transactions of **Cy£8.000** or more is undertaken, the identification procedures must be followed. Once identification procedures have been satisfactorily completed, then as long as records are maintained in accordance with Section 5, and some contact is maintained with the client no further evidence is needed when subsequent transactions are undertaken.

Irrespective of the size and nature of the transactions and any exemptions in force, identity should be verified in all unusual and unexplained circumstances and, if money laundering is known or suspected, identity must be verified and the details reported in line with the procedures set out in section 6.

Exemptions from requirement to verify identity

Verification of identity is **not** required in the following circumstances:

(i) Persons engaged in relevant financial business in or from within the Republic

When there are reasonable grounds for believing that the client is a person engaged in relevant financial business (as defined in Section 61 of the Law) in or from within the Republic.

(ii) One-off Transactions: Single or Linked

Verification of identity is not normally needed in the case of a single one-off transaction when payment by, or to, the client is **less than Cy£8.000**.

However identification procedures should be undertaken for linked transactions that together exceed the exemption limit, i.e. where, in respect of two or more one-off transactions:

- it appears at the outset to a person handling any of the transactions that the transactions are linked and that the aggregated amount of these transactions is Cy£8.000 or more; or
- at any later stage it comes to the attention of such a person that the transactions are linked and that the Cy£8.000 limit has been reached.

Establishing Satisfactory Evidence of Identity

In circumstances other than those covered by the exemptions set out in the paragraphs above, identity must be verified. Other than in general terms, the law does not specify what constitutes effective and adequate verification of identity. This section of the Guidance Note therefore sets out what might reasonably be expected of IFCs/ITCs/ICIS their Managers or Trustees as appropriate in this respect.

The verification procedures necessary to establish the identity of the prospective client should basically be the same whatever type of financial services are required. The best identification documents possible should be obtained from the prospective client i.e. those that are the most difficult to obtain illicitly and those issued by reputable sources. However, it must be appreciated that no single form of identification can be fully guaranteed as genuine or representing correct identity and the identification process will generally need to be cumulative.

Some forms of identification are more reliable than others and, in many cases, it will be prudent for the IFC/ITC/ICIS their Managers or Trustees as appropriate to carry out more than one check, by requesting more than one document. It is recommended that each client's file should show the steps taken to verify his identity.

Where practical, file copies of the supporting evidence should be retained. Alternatively, the reference numbers and other relevant details should be recorded.

The member of staff undertaking the account opening procedures or the initial transaction should be recorded in the client's file.

Whenever possible, the prospective client should be interviewed personally.

Timing of Verification Requirements

Where evidence of identity is required, the Law provides this must be obtained "as soon as is reasonably practicable" after contact is first made between the client and the IFC/ITC/ICIS its Manager or Trustee as appropriate. What constitutes an acceptable time span must be determined in the light of all the circumstances including the nature of the business and the geographical location of the parties concerned. As a rule, IFCs/ITCs/ICIS their Managers or Trustees as appropriate should only start processing the business provided that satisfactory evidence of identity has been obtained.

Procedures to verify identity

Personal Clients

The following information should be obtained from prospective personal clients and should be independently verified:

- true name and/or names used;
- current temporary Cyprus address (if any), including postal code;
- current permanent address outside Cyprus;
- date of birth;
- profession or occupation.

Ideally the name or names used should be verified by reference to a document obtained from a reputable source which bears a photograph. Wherever possible a current valid full passport or national identity card should be requested and the number registered. In addition, IFCs/ITCs/ICIS their Managers or Trustees as appropriate are advised, if in any doubt, to seek to verify identity with a reputable credit or financial institution in the client's country of residence.

There are obviously a wide range of other documents that clients might produce as evidence of their identity and it is for each IFC/ITC/ICIS its Manager or Trustee as appropriate to decide the appropriateness of such documents.

In addition to the name verification, it is important that the current temporary and/or permanent address should also be verified. Some of the best means of verifying address are:

- requesting sight of a recent utility bill, local authority tax bill, bank statement (to guard against forged or counterfeit documents care should be taken to check that the documents offered are originals);

- a face-to-face visit to the applicant for business at his temporary or permanent home address or at his work;
- checking a local telephone directory where a temporary or permanent address is maintained.

In addition to the above, an introduction from a respected client personally known to the IFC/ITC/ICIS its Manager or Trustee as appropriate, or from a trusted member of staff, may assist the verification procedure but such personal introductions without full verification should not become the norm. Details of the introduction should be recorded in the client's file.

For prospective clients who request the IFC's/ITC's/ICIS's its Manager's or Trustee's services via post, it will not be practical to seek sight of a passport or national identity card. Verification of identity should therefore be sought from a reputable credit or financial institution in the applicant's country of permanent or temporary residence. Verification details should be requested covering true name or names used, current temporary and/or permanent address and verification of signature.

Partnerships and Unincorporated Business Clients

In the case of partnerships and other unincorporated businesses whose partners/directors are not known to the IFC/ITC/ICIS its Manager or Trustee as appropriate, the identity of at least two partners should be verified in line with the requirements for personal clients. Furthermore, in the case of partnerships, IFCs/ITCs/ICIS their Managers or Trustees as appropriate should also obtain the original or certified copy of the certificate of registration.

In cases where a formal partnership arrangement exists, a mandate from the partnership authorising those persons duly authorised to undertake investment transactions on behalf of the partnership should be obtained.

Corporate Clients

Because of possible difficulties of identifying beneficial ownership and the complexity of their organisations and structures, corporate clients are one of the most likely vehicles for money laundering, particularly when fronted by a legitimate trading company. Particular care should be taken to verify the legal existence of the client and to ensure that any person purporting to act on behalf of the client is so authorised. The principal requirement is to **look behind the corporate entity to identify those who have ultimate control over the business and the company's assets**, with particular attention paid to any shareholders or others who inject a significant proportion of the capital or financial support. Enquiries should be made to confirm that the company exists for a legitimate trading or economic purpose.

Before a business relationship is established, measures should be taken by way of company search and/or other commercial enquiries to ensure that the prospective corporate client has not been, or is not in the process of being, dissolved, struck off, wound up or terminated.

Identification should aim at verifying the identity of:

- the company;
- at least one director;
- all those persons duly authorised to undertake investment transactions;
- in the case of private companies, the major beneficial shareholders.

The company's business profile in terms of the nature and scale of its activities must also be established. Where deemed appropriate under the circumstances, a search of the file at the Companies' Registry should be made.

The following documents must be obtained:

- the original or certified copy of the Certificate of Incorporation;
- the original or certified copy of its Memorandum and Articles of association;
- in the case of Cyprus incorporated international business companies or overseas companies registered in Cyprus, a copy of the Exchange Control Law permit granted by the Central Bank of Cyprus. Any individuals who need to be identified in connection with such companies must be identified in accordance with the procedure outlined in this Guidance Note.

IFCs/ITCs/ICIS their Managers or Trustees as appropriate may accept as clients companies whose own shares or those of their holding companies (if any) have been issued or may be issued in the form of **bearer shares provided** that the prospective corporate client fulfills one of the undermentioned prerequisites:

- (a) Its shares are traded on a recognised stock exchange;
- (b) It is authorised as a collective investment scheme, under the laws of properly regulated and supervised jurisdictions;
- (c) Its shares are beneficially owned or controlled by governments or governmental undertakings;
- (d) Its shares are beneficially owned by multinational corporations with a good international reputation and a proven track record of financial stability.

IFCs/ITCs/ICIS their Managers or Trustees as appropriate may also establish business relationships with companies whose own shares or those of their holding companies (if any) have been issued or may be issued to bearer and do not meet the above prerequisites **provided** that:

- (a) The identity and background of the beneficial owners/director(s) of the company is ascertained before establishing the business relationship.
- (b) Before establishing the business relationship, the director(s) is/are asked to provide an estimation of the amount of funds likely to be invested. The bigger the estimated amount, the more reluctant the IFC/ITC/ICIS its Manager or Trustee should be. At least twice a year, a review should be carried out and a note prepared summarising the results of the review

which must be kept in the client's file. Any serious deviation from the estimates, should be investigated.

- (c) The IFC/ITC/ICIS its Manager or Trustee obtains a confirmation from a bank that it has under its custody the bearer share certificates and, in case of their release, shall inform it accordingly.
- (d) At least once every year, the directors confirm that the capital base and the shareholding structure of the company or that of its holding company (if any) has not been altered by the issue of new bearer shares or the cancellation of existing ones.
- (e) When the company's beneficial ownership changes, then the IFC/ITC/ICIS its Manager or Trustee as appropriate should consider whether it is advisable to continue the business relationship.

Trustee or Nominee clients

An IFC/ITC/ICIS its Manager or Trustee as appropriate must always establish the identity of a trustee or nominee acting in relation to a third party in accordance with the identification procedures for personal or corporate clients as the case may be.

An IFC/ITC/ICIS its Manager or Trustee as appropriate must also take all measures deemed appropriate under the circumstances for the purpose of establishing the identity of any person or persons on whose behalf a trustee or nominee is acting.

5. RECORD KEEPING PROCEDURES

Statutory requirements

The Law requires, under Sections 58 and 66, persons carrying on relevant financial business to retain records concerning client identification and details of transactions for use as evidence in any possible investigation into money laundering. This is an essential constituent of the audit trail procedures that the Law seeks to establish.

The records prepared and maintained by any IFC/ITC/ICIS its Manager or Trustee as appropriate on its client relationships and transactions should be such that:

- requirements of legislation are fully met;
- competent third parties will be able to assess the IFC's/ITC's/ICIS's its Manager's or Trustee's observance of money laundering prevention policies and procedures;
- any transactions effected via the institution can be reconstructed; and
- the institution can satisfy within a reasonable time any enquiries or court orders from the appropriate authorities as to disclosure of information.

The Law requires relevant records to be retained for at least **five years** from the date of completion of the business. However, where the records relate to on-going investigations, they should be retained until it is confirmed by the Unit that the case has been closed.

Client identification records

The Law specifies, under Section 66, that, where evidence of a person's identity is required, the records retained must include the following:

- (a) A record that indicates the nature of a person's identity obtained in accordance with the procedures provided in the Law and which comprises either a copy of the evidence or which provides sufficient information to enable details as to a person's identity to be re-obtained.
- (b) A record containing details relating to all transactions carried out by that person in the course of relevant financial business.

The prescribed record retention period is at least five years commencing with the date on which the relevant business or all activities taking place in the course of transactions were completed.

In accordance with the Law, the date when the relationship with the client has ended is the date of:

- (i) the carrying out of an one-off transaction or the last in the series of one-off transactions;
- (ii) the termination of the business relationship i.e. the closing of the account(s);

- (iii) if the business relationship has not formally ended, the date of which the last transaction was carried out.

Transaction records

The precise nature of the records required is not specified but the objective is to ensure that in any subsequent investigation the IFC/ITC/ICIS its Manager or Trustee as appropriate can provide the Unit with its part of the audit trail.

For each transaction, consideration should be given to retaining a record of:

- the name and address of its client;
- the name and address (or identification code) of its counterparty;
- the investment dealt in, including price and size;
- whether the transaction was a purchase or a sale;
- the form of instruction or authority;
- the account details from which the funds were paid (including, in the case of cheques, sort code, account number and name);
- the form and destination of payment made by the business to the client;
- whether the investments were held in safe custody by the business or sent to the client or to his/her order and, if so, to what name and address.

Format and retrieval of Records

It is recognised that the retention of hard-copy evidence creates excessive volume of records to be stored. Therefore, retention may be in other formats other than original documents, such as electronic or other form. The overriding objective is for the IFCs/ITCs/ICIS their Managers or Trustees as appropriate to be able to retrieve the relevant information without undue delay and in a cost effective manner.

When setting a document retention policy, IFCs/ITCs/ICIS their Managers or Trustees as appropriate are therefore, advised to consider both the statutory requirements and the potential needs of the Unit.

Section 47 of the Law provides that where relevant information is contained in a computer, the information must be presented in a visible and legible form which can be taken away by the Unit.

6. RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS

(A) Recognition of suspicious transactions

As the types of transactions which may be used by a money launderer are almost unlimited, it is difficult to define a suspicious transaction. However, 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. Therefore, the first key to recognition is knowing enough about the client's business to recognise that a transaction, or series of transactions, is unusual.

Questions that an IFC/ITC/ICIS its Manager or Trustee as appropriate might consider when determining whether an established client's transaction might be suspicious are:

- Is the size of the transaction consistent with the normal activities of the client?
- Is the transaction rational in the context of the client's business or personal activities?
- Has the pattern of transactions conducted by the client changed?

Examples of what might constitute suspicious transactions are given in **Appendix A** to this Guidance Note. These are not intended to be exhaustive and only provide examples of the most basic way by which money may be laundered. However, identification of any of the types of transactions listed in Appendix A should prompt further investigation and be a catalyst towards making at least initial enquiries about the source of funds.

Sufficient guidance must be given to staff to enable them to recognise suspicious transactions. The type of situations giving rise to suspicions will depend on an IFC's/ITC's/ICIS's client base and range of services and products. IFCs/ITCs/ICIS their Managers or Trustees as appropriate might also consider monitoring the types of transactions and circumstances that have given rise to suspicious transaction reports by staff, with a view to updating internal instructions and guidelines from time to time.

(B) Reporting of suspicious transactions

Statutory requirements

The Law requires under Section 27 that any knowledge or suspicion of money laundering should be promptly reported to a Police Officer or to the Unit for Combating Money Laundering. The Law also provides, under Section 26, that such a disclosure cannot be treated as a breach of the duty of confidentiality owed by IFCs/ITCs/ICIS their Managers or Trustees as appropriate to their clients by virtue of the contractual relationship existing between them.

The Law also recognises, under section (26), that, in certain instances, the suspicions may be aroused after the transaction has been completed and, therefore,

allows subsequent disclosure provided that such disclosure is made on the person's concerned initiative and as soon as it is reasonable for him/her to make it.

The Law, in accordance with sections (58) and (67), requires that financial institutions establish internal reporting procedures and that they identify a person (hereinafter to be referred to as "the Money Laundering Compliance Officer" ("MLCO")) to whom employees should report their knowledge or suspicion of transactions involving money laundering. In case of employees, the Law recognises, under section (26), that internal reporting to the MLCO will satisfy the reporting requirement imposed by virtue of section (27) i.e. once the employee has reported his/her suspicion to the MLCO he/she is considered to have fully satisfied his/her statutory requirements, under section (27).

Appointment of a Money Laundering Compliance Officer

In accordance with the provisions of the Law, all IFCs/ITCs/ICIS their Managers or Trustees as appropriate should proceed with the appointment of a Money Laundering Compliance Officer. The person appointed as MLCO should be sufficiently senior to command the necessary authority.

IFCs/ITCs/ICIS their Managers or Trustees as appropriate should communicate to the Central Bank of Cyprus the names and positions of persons whom they appoint, from time to time, to act as Money Laundering Compliance Officers.

Duties of Money Laundering Compliance Officers

The role and responsibilities of Money Laundering Compliance Officers including those of Chief and Assistants, should be clearly specified by IFCs/ITCs/ICIS their Managers or Trustees as appropriate and documented in appropriate manuals and/or job descriptions.

As a minimum, the duties of an MLCO should include the following:

- (a) To receive from the IFC's/ITC's/ICIS's its Manager's or Trustee's employees information which is considered by the latter to be knowledge of money laundering activities or which is cause for suspicion connected with money laundering.
- (b) To validate and consider the information received as per paragraph (a) above by reference to any other relevant information and discuss the circumstances of the case with the reporting employee concerned and, where appropriate, with the employee's superior(s). The evaluation of the information reported to the MLCO should be recorded and retained on file.
- (c) If following the evaluation described in paragraph (b) above, the MLCO decides to notify the Unit, then he/she should complete a written report and submit it to the Unit the soonest possible. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Report to the Unit for Combating Money Laundering") is attached, as **Appendix B**. All such reports should be kept on file.

- (d) If following the evaluation described in paragraph (b) above, the MLCO decides not to notify the Unit then he/she should fully document the reasons for such a decision.
- (e) The MLCO acts as a first point of contact with the Unit, upon commencement of and during investigation as a result of filing a report to the Unit under (c) above.
- (f) The MLCO responds to requests from the Unit and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with the Unit.
- (g) The MLCO provides advice and guidance to other employees of the IFCs/ITCs/ICIS their Managers or Trustees as appropriate on money laundering matters.
- (h) The MLCO acquires the knowledge and skills required which should be used to improve the IFC's/ITC's/ICIS's its Manager's or Trustee's internal procedures for recognising and reporting money laundering suspicions.
- (i) The MLCO determines whether the IFC's/ITC's/ICIS's its Manager's or Trustee's employees need further training and/or knowledge for the purpose of learning to combat money laundering.
- (j) The MLCO is primarily responsible, in consultation with the IFC's/ITC's/ICIS's its Manager's or Trustee's senior management and Internal Audit Department (if any), towards the Central Bank of Cyprus in implementing the various Guidance Notes issued by the Central Bank of Cyprus under section 60(3) of the Law as well as all other instructions/recommendations issued by the Central Bank of Cyprus, from time to time, on the prevention of the criminal use of the financial system for the purpose of money laundering.

The MLCO is expected to avoid errors and/or omissions in the course of discharging his/her duties and, most importantly, when validating the reports received on money laundering suspicions, as a result of which a report to the Unit may or may not be filed. He/she is also expected to act honestly and reasonably and to make his/her determination in good faith. In this connection, it should be emphasised that the MLCO's decision may be subject to the subsequent review of the Central Bank of Cyprus which, in the course of examining and evaluating the anti-money laundering procedures of IFCs/ITCs/ICIS their Managers or Trustees as appropriate and their compliance with the provisions of the Law, is legally empowered to report an IFC/ITC/ICIS its Manager or Trustee as appropriate which, in its opinion, does not comply with the provisions of the Law to the Attorney General or to the Unit where it forms the opinion that actual money laundering has been carried out. Provided that an MLCO acts in good faith in deciding not to report a suspicion to the Unit, no report will be made by the Central Bank of Cyprus to the Attorney General, if it is later found that his/her judgement in connection with the above suspicion was wrong.

Internal Organisational Procedures

IFCs/ITCs/ICIS should make the necessary arrangements in order to introduce measures designed to assist the functions of the Money Laundering Compliance Officer and the reporting of suspicious transactions by employees. IFCs/ITCs/ICIS their Managers or Trustees as appropriate have an obligation to ensure:

- That all their employees know to whom they should be reporting money laundering knowledge or suspicion; and
- That there is a clear reporting chain under which money laundering knowledge or suspicion is passed without delay to the Money Laundering Compliance Officer.

Disclosure procedures

All Money Laundering Compliance Officers' Reports to the Unit for Combating Money Laundering should be sent or delivered at the following address:

Unit for Combating Money Laundering,
Office of the Attorney General of the Republic,
1 Apelli Street,
CY-1403 Nicosia.

Tel.: 02-302123

Fax: 02-445080

Contact person: Mrs Eva Rossidou – Papakyriakou
Head of Unit for Combating Money Laundering

The form attached to this Guidance Note, as **Appendix B** should be used and followed at all times when submitting a report to the Unit.

Co-operation with the Unit

Having made a disclosure report, an IFC/ITC/ICIS its Manager or Trustee as appropriate may subsequently wish to terminate its relationship with the client concerned for commercial or risk avoidance reasons. In such an event, however, IFCs/ITCs/ICIS their Managers or Trustees as appropriate should exercise particular caution, as per Section 48 of the Law, not to alert the client concerned that a disclosure report has been made. Close liaison with the Unit should, therefore, be maintained in an effort to avoid any frustration to the investigations conducted.

After making the disclosure, IFCs/ITCs/ICIS their Managers or Trustees as appropriate are expected to adhere to any instructions given by the Unit and, in particular, as to whether or not to continue a transaction or operate the suspected client's account or other instructions as may be deemed necessary.

7. EDUCATION AND TRAINING

Statutory requirements

The Law under Section 58 requires all persons carrying on relevant financial business to take appropriate measures to make employees whose duties include the handling of relevant financial business aware of:

- Policies and procedures maintained to prevent money laundering including those of identification, record keeping and internal reporting;
 - The requirements imposed by the Law,
- and, also, to provide such employees with training in the recognition and handling of suspicious transactions.

The need for staff awareness

The effectiveness of the procedures and recommendations contained in the various Guidance Notes and other relevant instructions issued by the Central Bank of Cyprus on the subject of money laundering depends on the extent to which staff of IFCs/ITCs/ICIS their Managers or Trustees as appropriate appreciate the serious nature of the background against which the Law has been enacted and are fully aware of their responsibilities. Staff must also be aware of their own personal statutory obligations. They can be personally liable for failure to report information in accordance with internal procedures. All staff must, therefore, be encouraged to cooperate and to provide a prompt report of any knowledge or suspicion of transactions involving money laundering. It is, therefore, important that IFCs/ITCs/ICIS their Managers or Trustees as appropriate introduce comprehensive measures to ensure that staff are fully aware of their responsibilities.

All relevant staff should be educated in the importance of “know your customer” requirements for money laundering prevention purposes. The training in this respect should cover not only the need to know the true identity of the client but also, where a business relationship is being established, the need to know enough about the type of business activities expected in relation to that client at the outset to know what might constitute suspicious activity at a future date. Relevant staff should be alert to any change in the pattern of a client’s transactions or circumstances that might constitute criminal activity.

Employees to be trained, content, timing and methods of training

As a means of assistance in the discharge of their legal obligations, IFCs/ITCs/ICIS their Managers or Trustees as appropriate should refer to Section 6 of this Guidance Note which deals with the Recognition and reporting of suspicious transactions.

In addition to the above, IFCs/ITCs/ICIS their Managers or Trustees as appropriate are expected to establish a programme of continuous training for all levels of their staff.

The timing, content and methods of training for the various levels/types of staff should be tailored to meet the needs of the particular IFC/ITC/ICIS its Manager or Trustee, depending on the size and nature of the organisation and the available time and resources.

It will also be necessary to make arrangements for refresher training at regular intervals to ensure that staff do not forget their responsibilities.

13/1/2000