



## **Implications of the Third Money Laundering Directive**

### **“The Cyprus perspective”**

**By Dr. Pavlos Neofytou Kourtellos**

For the purpose of harmonizing Cyprus’s legislation with the Third Money Laundering Directive (2005/60/EC) Cyprus recently enacted the relevant internal legislation. This article is an account of the regulatory environment to this area with an eye close to the Cyprus implementing law.

#### **The legal framework: Where are the rules?**

##### **FATF**

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is therefore a "policy-making body" created in 1989 that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. FATF issued 40 Recommendations (revised) in 2003 on the matter. The third Anti-Money Laundering Directive is in line with the FATF recommendations.

#### **FATF’s Public Statement**

FATF issued a public statement on 28th February 2008 by which, inter alia, advises on the deficiencies of the anti-money laundering system of the “northern part of Cyprus”<sup>1</sup>, and calls upon its members and urges all jurisdictions to pay special attention in transactions with financial institutions operating in the northern part of Cyprus.

“Northern part of Cyprus” refers to the areas of the Republic of Cyprus under Turkish military occupation and which, therefore, are not under the effective control of the Government of the Republic

#### **International Conventions**

1990 Council of Europe Convention on Laundering, Search, Seizure and Consolidation of the Confiscation of the Proceeds of Crime.

2005 Council of Europe Convention on Laundering, Search, Seizure and Consolidation of the Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

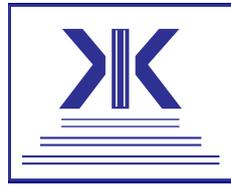
The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

#### **European Union**

Directive 91/308/EEC of 10 June 1991 on the Prevention of the use of the financial system for the purpose of Money Laundering (the 1st Directive).

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<sup>1</sup> :“northern part of Cyprus” refers to the areas of the Republic of Cyprus under Turkish military occupation and which, therefore, are not under the effective control of the Government of the Republic



Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 on the prevention of the use of the financial system for the purpose of money laundering (the 2nd Directive).

Directive 2005/60/EC of the European Parliament and of the Council 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the 3rd Directive, also known as the “**3MLD**”).

Directive 2008/20/EC amending 3MLD (technical in nature and its provisions do not need to be transposed by the Member States)

### **Regulator:**

The Committee for the Prevention of Money Laundering (AML-C)

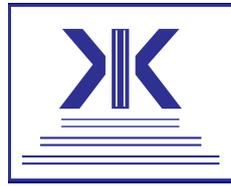
### **Key Features of the 3MLD**

It represents the minimum threshold of anti-money laundering and anti-terrorist financing regulations, as Article 5 provides for flexibility, expressly empowering member states to enforce tighter, more stringent regulations on their home state. It introduces an enhanced due diligence framework which will necessitate system enhancements and updates and staff training for those covered by the Directive.

It prohibits both the laundering of money and the financing of terrorism. The definition of money laundering remains unchanged compared to the existing directive. However, an important change brought by the directive in this context is the new definition of serious crimes at the origin of the proceeds to be laundered (Article 3.5). Thus it maintains an all-crime approach by considering a serious crime *“all offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months”*.

### **Main Areas of Change**

- Special provisions in respect of Financial and other Business activities
- Customer Identification & Due Diligence
- New terms; Politically exposed persons
- Monitoring
- Training
- Procedures & control
- Record Keeping



## **The “3MDL” in a nutshell**

- New terms appear throughout which will require parties to financial transactions to be mindful of who they are dealing with, where funds come from and what the purpose of spending those funds are.
- Additions to the list of entities which must apply customer due diligence are provided (Article 2).
- The term 'beneficial owner' has also been defined to prevent the legal owner from acting as a façade for a beneficial entity.
- A new category; to watch out for includes 'politically exposed persons', which essentially refers to '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'.
- Article 4 also provides for member states to extend the Directive to other professions as they see fit.
- The standard 'know your client' requirements be met prior to the establishment of a business relationship or the carrying out of the transaction. The derogations of Article 9 adopt a risk-based approach and verification of identity can occur during the establishment of the business relationship where there is little risk of terrorist financing and money laundering occurring
- Risk based approach, which provides for a simplified customer due diligence process, under which some customer due diligence requirements do not have to be applied in certain circumstances
- Article 13 provides for enhanced customer due diligence requirements, which triggers further KYC requirements in cases of high risk customers. This 'high risk' category includes customers not physically present for identification purposes and non-domestic politically exposed persons.
- EU member states are required to establish a Financial Intelligence Unit (FIU), (Article 21) if they have not already done so under the 1991/308/EEC Directive.

The FIU is required to have access to financial, administrative and law enforcement information in order to fulfil its duties. Institutions and persons covered by the Directive are required to report suspicious or unusual activity to the FIU. The extent of what exactly the terms 'suspicious or unusual' encompass would appear to be discretionary.

## **The Impact on Legal Professionals**

The 3MLD applies to notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of transactions for their client concerning the:

- i. buying and selling of real property or business entities;
- ii. managing of client money, securities or other assets;
- iii. opening or management of bank, savings or securities accounts;
- iv. organization of contributions necessary for the creation, operation or management of trusts, companies or similar structures;



Reasonable questions on the applicability of the anti-money laundering rules to the legal profession arise. This issue remains somewhat controversial. It was the 2<sup>nd</sup> Directive which initially brought lawyers within the scope of the money laundering regime. The call of the Council of the Bars and Law Societies of Europe on the Commission to halt the progress of 3MLD because it threatened the independence of legal advisors and threatened fundamental rights to seek legal advice was of no result.

What remains untouched from the regime in the previous directive is the legal privilege exemption. In its preamble the Directive notes that where independent professionals providing legal advice which are legally recognised and controlled, such as lawyers, are ascertaining the legal position of a client or representing a client in legal proceedings, it would not be appropriate to put them in respect of these activities under an obligation to report suspicions of money laundering or terrorist financing.

Thus, there must be exemptions from any obligation to report information obtained either before, during or after judicial proceedings or in the course of ascertaining the legal position for a client. Legal advice provided shall remain subject to the obligation of professional secrecy unless the legal counsellor is taking part in money laundering or terrorist financing, the legal advice is provided for such purpose or the lawyer knows that the client is seeking advice for these purposes.

It remains the feeling though that the 3MLD intensifies scrutiny behind legal professional privilege. The most important addition relates to trust and company service providers.

By “*Trust and company services providers*” the directive understands (Article 3.7) “any natural or legal person which by way of business provides any of the following services to third parties:

- (a) forming companies or other legal persons;
- (b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;
- (d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;
- (e) acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards.”

### **Independent legal professionals should report suspicions of money laundering and/or terrorist financing.**

The directive maintains the obligation for independent legal professionals to report, on own initiative, suspicions of money laundering and/or terrorist financing. This reporting obligation applies unless the situation is covered by the legal privilege exception in Article 23(2).

In addition to the reporting obligation on own initiative, independent legal professionals are also subject to the obligation to provide the Financial Intelligence Units (FIUs), at their request, with all



necessary information, in accordance with the procedures established by the applicable legislation at national level.

As far as law firms are concerned, it is noted that Article 34 refers to the need that persons have “compliance management” in place. Thus, a compliance officer would have to be appointed to ensure swift compliance with the reporting obligations.

### **Cyprus-The Implementing Legislation**

The Prevention and Suppression of Money Laundering Activities Law of 2007 (Law 188(I) 2007) (hereinafter “**the Law**”) came into force on January 1, 2008.

#### **An insight to the Law**

The main purpose of 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 of their profits.

#### **Prescribed offences (Section 3)**

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

- Laundering offences
- Predicate offences

#### **Laundering offences (Section 4)**

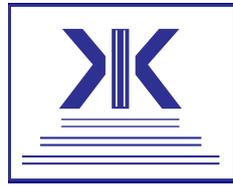
For the purposes of the Law, the following conduct, when committed intentionally, shall be regarded as money laundering:

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;

(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;

(c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.



Every person who (a) Knows or (b) at the material time ought to have known that any kind of property constitutes proceeds from the commission of a predicate offence and carries the above activities commits an offence punishable by 14 years imprisonment or by a pecuniary penalty of up to EURO 500.000 or by both of these penalties in the case of (a) and by 5 years imprisonment or by a pecuniary penalty of up to EURO 50.000 or by both in the case of (b).

Knowledge, intent or purpose required as an element of the activities may be inferred from objective factual circumstances.

Bearing in mind that the state of mind required to prove guilt in money laundering and / or terrorist financing is 'knowledge, intent or purpose', it is unclear how much suspicion is enough to warrant an investigation into such state of mind.

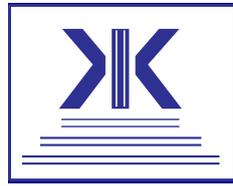
### **Predicate offences (Section 5)**

- All criminal offences punishable with imprisonment exceeding 1 year, as a result of which proceeds have been derived which may constitute the subject of a money laundering offence as defined by the Law.
- Financing of terrorism offences, as well as the collection of funds financing persons or organizations associated with terrorism.
- Drug Trafficking offences, as defined by the Law.

### **Who is subject to Anti-Money Laundering? “General Obligations to everyone”**

The Law recognizes the important role of the financial sector, accountants and lawyers for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all financial institutions as well as professionals engaged in “**Financial business and other activities**”. According to the Law, a number of financial institutions, organizations and professional bodies is obliged to comply with the Law in order to assist in the combat against money laundering:

- Banking institutions
- Cooperative Institutions
- Financial Institutions eg. Investment Firms and/or Stockbroking firms
- Private Collective Investment Schemes
- Insurance Companies
- Accountants
- Lawyers (certain activities)
- Real Estate agents
- Dealers in precious metals and precious stones / jewellers
- Trust and Company Service Providers
- Money Transfer Services



## **Key Terms Defined**

- “Financial Business”
- “Other Activities”
- “Politically exposed persons”
- “Ultimate Beneficial Owner”

### **“Financial Business”**

“Financial business” includes the following:

- Acceptance of deposits by the public.
- Lending money to the public.
- Finance leasing, including hire purchase financing.
- Money transmission services.
- Issue and administration of means of payment such as credit cards, travellers’ cheques, bankers’ drafts and electronic money.
- Guarantees and commitments.
- Trading in one’s own account or on account of another person in:-
- Stocks or securities including cheques, bills of exchange, bonds, certificates of deposits;
- Foreign exchange;
- Exchange futures and options;
- Exchange and interest rate instruments;
- Transferable instruments
- Participation in share issues and the provision of related services.
- Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues and consultancy services as well as services in the areas of mergers and acquisitions of business.
- Money broking.
- Investment services including dealing in investments managing investments, giving investment advice and establishing and operating collective investment schemes.
- Safe custody services.
- Custody and trustee services in relation to stocks.
- Any of the services and activities related to:-
  - i. Cyprus Investment Firms
  - ii. Open-Ended Undertaking for Collective Investment in Transferable Securities.
- Agent for the conclusion of insurance policies.

### **“Other Activities”**

- Exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their customers in the context of carrying out financial business



- Exercise of professional activities on behalf of independent lawyers with the execution of privileged information, when they participate, whether-
- by assisting in the planning or execution of transactions for their clients concerning the
  - (aa) buying and selling of real property or business entities;
  - (bb) managing of client money, securities or their assets;
  - (cc) opening or management of bank, saving or securities accounts;
  - (dd) organisation of contributions necessary for the creation, operation or management of companies;
  - (ee) creation, operation or management of trusts, companies or similar structures.
- by acting on behalf and for the account of their clients in any financial or real estate transaction.
- Dealing in real estate transactions, conducted by real estate Agents.
- Trading in goods such as precious stones or metals, wherever payment is made in cash in an amount of EURO 15.000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked.
- The following trust services and company services to third parties:
  - forming companies or other legal persons;
  - acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons;
  - providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;
  - acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;
  - acting as or arranging for another person to act as a nominee shareholder for another person.

### **“Politically exposed persons”**

It is required to conduct enhanced due diligence for non-domestic Politically Exposed persons. The term refers to the natural persons who have their place of residence in another European Union Member State or in third countries and who are or have been entrusted with prominent public functions and their immediate family members or persons known to be close associates of such persons.

### **“Ultimate Beneficial Owner”**

Means the natural person(s) who ultimately own or control the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

- (a) in the case of corporate entities:
  - (i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that



legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

- (ii) the natural person(s) who otherwise exercises control over the management of a legal entity;
- (b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:
  - (i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
  - (ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
- (iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

### **Obligations for financial business**

The Law requires all persons carrying on financial and other business activities, to establish and maintain adequate and appropriate systems and procedures to guard against their business and the financial system in general, being used for the purposes of money laundering or financing of terrorism. In essence these procedures are designed to achieve two purposes:

- to facilitate the recognition and reporting of suspicious transactions and,
- to ensure the strict implementation of the "know-your-client" (KYC) principle and the maintenance of adequate record keeping procedures.

### **Customer Due Diligence**

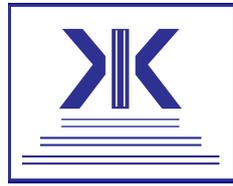
What is the Customer Due Diligence?

- Verification of Identity
- Identifying Beneficial Owner
- Purpose + Nature of business relationship
- Ongoing monitoring

### **Due Diligence & Customer Identification procedures (Section 60) -When?**

When establishing a business relationship;

- When carrying out occasional transactions amounting to EURO 15.000 or more, whether the transaction is 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 customer identification data

### **Ways of Customer identification procedures and customer due diligence measures (Section 61)**

- 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 in 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 up-to-date.

### **In a nutshell:**

The standard 'know your client' requirements should be met prior to the establishment of a business relationship or the carrying out of the transaction. The derogations of Article 9 adopt a risk-based approach and verification of identity can occur during the establishment of the business relationship where there is little risk of terrorist financing and money laundering occurring.

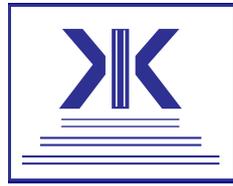
The risk based approach is apparent in Sections 63, which provides for a simplified customer due diligence process, under which some customer due diligence requirements do not have to be applied in certain circumstances. In contrast, Section 64 provides for enhanced customer due diligence requirements, which triggers further KYC requirements in cases of high risk customers. This 'high risk' category includes customers not physically present for identification purposes and non-domestic politically exposed persons, as mentioned above.

### **Simplified due diligence measures (section 63)**

In respect of the following customers:

(a) Credit or financial institution covered by the EU Directive.

(b) Credit or financial institution carrying out one or more of the financial business activities as these are defined in section 2 of this law and which is situated in a country outside the European Economic Area, which:



- (i) in accordance with a decision of the Advisory Authority for Combating Money Laundering and Terrorist Financing, imposes requirements equivalent to those laid down by the EU Directive and
- (ii) it is under supervision for compliance with those requirements.

(c) Listed companies whose securities are admitted to trading on a regulated market in a country of the European Economic Area or in a third country which is subject to disclosure requirements consistent with community legislation;

(d) Domestic public authorities of countries of the European Economic Area.

Provided that, in (a) and (b) cases, persons engaged in financial or other business activities have to gather sufficient information to establish if the customer qualifies for an exemption as mentioned in these paragraphs.

Due diligence pursuant to the provisions of paragraphs (a), (b) and (d), of section 60, section 61 and of paragraph (1) of section 62 are not required to be applied in respect of:

(a) life insurance policies where the annual premium is no more than euro 1,000 or the single premium is not more than euro 2,500;

(b) insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral;

(c) a pension or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme;

(d) electronic money, as defined by section 2 of the Electronic Money Institution Law,

(i) if the device cannot be recharged, the maximum amount stored in the device is no more than euro 150; or

(ii) if the device can be recharged, a limit of euro 2,500 is imposed on the total amount transacted in a calendar year, except when an amount of euro 1,000 or more is redeemed in the same calendar year by the bearer.

#### **Enhanced due diligence measures (section 64)**

In addition to the measures referred to in sections 60, 61 and 62 in the following situations:

(a) Where the customer has not been physically present for identification purposes, apply one or more of the following measures:

(i) Obtain additional documents, data or information for verifying customer's identity;



(ii) take supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution covered by the EU Directive.

(iii) Ensure that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution which operates in a country within the European Economic Area.

(b) In respect of cross-frontier correspondent banking relationships with credit institutions-customers from third countries, it is required to:

(i) Gather sufficient information about the credit institution-customer to understand fully the nature of the business and the activities of the customer and to assess, from publicly available information, the reputation of the institution and the quality of its supervision;

(ii) Assess the systems and procedures applied by the credit institution-customer for the prevention of money laundering and terrorist financing;

(iii) Obtain approval from senior management before entering into correspondent bank account relationship;

(iv) Document the respective responsibilities of the person engaged in financial or other business activities and of the credit institution-customer.

(v) With respect to payable-through accounts, must be ensured that the credit institution-customer has verified the identity of its customers and performed ongoing due diligence on the customers having direct access to the correspondent bank accounts and that it is able to provide relevant customer's due diligence data to the correspondent institution, upon request.

(c) In respect of transactions or business relationships with politically exposed persons residing in a country within the European Economic Area or a third country, it is required from persons engaged in financial or other business activities to:

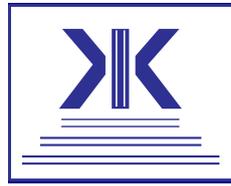
(i) have appropriate risk-based procedures to determine whether the customer is a politically exposed person;

(ii) have senior management approval for establishing business relationships with such customers;

(iii) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;

(iv) conduct enhanced ongoing monitoring of the business relationship.

(2) Enhanced customer due diligence measures must be taken in all other instances which due to their nature entail a higher risk of money laundering or terrorist financing.



**The following procedures should be adopted:**

- Customer identification procedures and customer due diligence;
- Record-keeping procedures in relation to clients' identity and their transactions;
- Procedures of internal reporting to a competent person (Money Laundering Compliance Officer) and reporting to MOKAS;
- Other internal control and risk management procedures for the purpose of forestalling and preventing money laundering and financing of terrorism;
- The thorough examination of every transaction that is considered to be of high risk due to its nature and especially complicated or unusually large transactions and all transactions that are being executed with no profound economic reason;
- Measures for making employees aware of the above procedures, the legislation relating to money laundering and financing of terrorism, the directives issued by the competent Supervisory Authority and the relevant EU directives.
- Provision of training to their employees for the recognition and handling of transactions suspected to be associated with money laundering and financing of terrorism.

**The Unit for Combating Money Laundering (MOKAS)**

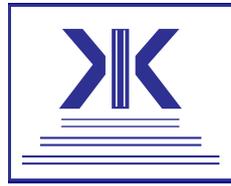
MOKAS is the Financial Intelligence Unit (FIU) of Cyprus. It is the national center for receiving, requesting, analyzing and disseminating disclosures of suspicious transactions reports and other relevant information concerning suspected money laundering and terrorist financing. Established according to section 54 of the Prevention and Suppression of Money Laundering Activities Law 2007 (former Law No.61(I)/96), now amended and consolidated by the new Law.

**Functions**

- 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.
- Co-operation and exchange of information with other FIUs.
- Issuing guidance directives and providing training to financial institutions, the Police, professionals and others.
- Issuing administrative orders for the postponement of transactions.
- Members of the Unit can apply and obtain court orders ie disclosure orders, freezing orders, confiscation orders.

It 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.

**Advisory Authority for Combating Money Laundering**



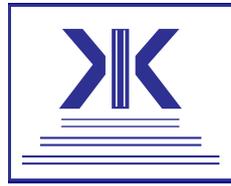
This Authority is headed by the Attorney General or his representative (Head of the FIU) and its functions are the following:

- Inform the Council of Ministers of any measures taken and the general policy applied against money laundering and financing of terrorism offences;
- Advise the Council of Ministers about additional measures which, in its opinion, should be taken for the better implementation of this Law;
- Promote the Republic internationally as a country, which complies with all the conventions, resolutions and decisions of international bodies in respect of combating laundering and financing of terrorism offences.
- Designate the third countries outside the European Economic Area which impose procedures and take measures for preventing money laundering and financing of terrorism equivalent to those laid down by the EU Directive. For this purpose, it applies the relevant decision of the European Commission according to Article 40(4) of the EU Directive. Furthermore, it notifies the competent Supervisory Authorities who in turn notify the persons falling under their supervision of the said decision.

### **Supervisory Authorities**

The Supervisory Authorities in the Financial sector are the following:

- The Central Bank of Cyprus
- The Authority for the Supervision and Development of Cooperative Societies
- The Securities and Exchange Commission
- The Commissioner of Insurance
- The Council of the Institute of Certified Public Accountants of Cyprus
- The Council of the Cyprus Bar Association
- The Unit for Combating Money Laundering for real estate agents and traders of precious stones and metals
- Other Supervisory Authorities are appointed following a decision by the Council of Ministers.
- The Supervisory Authorities are responsible for monitoring the compliance of the members falling under their supervision based on the provisions of the Law as well as the Directives that are regularly issued for the better implementation of the Law.
- In case of non-compliance each competent Supervisory Authority may take the following measures regarding persons falling under its supervision:
- To take corrective action to remedy the situation within a specified time period.
- 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.
- Amend, suspend or revoke their operating license.
- A lawyer or auditor who fails to comply with the above requirements is referred to the competent Disciplinary Body which decides accordingly.



## **CONCLUSION**

The drivers behind 3 MLD include the recommendations of FATF, and the rise in international terrorism. Indeed massive flows of “dirty” money can damage the stability and reputation of the financial sector and the soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole.

The 3MLD builds on the policy already reflected by its predecessors. It has a rather preventive character and it focuses on the avoidance of the misuse of the financial system in the EU by money launderers and terrorist financiers. In this regard, therefore, there has been a focus on the processing of money *before* the commission of the offence, as opposed to its disposal *after* its commission.

It certainly gives a clearer indication of what is expected from the persons subject to the obligations of the directive while trying to adapt those obligations to the real risk that may appear in any situation. As regards the law professionals, the new directive does no longer give Member States the possibility to allow law professionals to disclose to their clients that a report on suspicions of money laundering has been filed with the competent authorities (so called “*tipping off*”). That possibility could clearly undermine any subsequent investigation. It is also true that the new directive reinforces the key role of the financial intelligence units.

In a sense the goal of the directive is to make life difficult for money launderers and hinder their ability to use the financial system for unlawful purposes. It shall no doubt result to make the life difficult for every professional engaged in the provision of financial services, lawyers included.