

INSTRUCTION NO. 11 FEBRUARY 5, 2009

ON REPORTING METHODS AND PROCEDURES OF NON FINANCIAL PROFESSIONS

This instruction is issued pursuant to articles 102/4 and 118 of the Constitution as well as article 28/3, letter “a”, “ç” and “d”, of the Law no. 9917, dated 19.05.2008 “On the prevention of money laundering and terrorism financing” and sets out detailed rules on the reporting methods and procedures of attorneys, notaries, legal representatives, certified public accountants, auditors and financial consulting offices designated as obliged entities in letter ‘k’ and ‘m’ of article 3 of the law 9917 in accordance with required criteria and obligatory deadlines for the reporting.

Article 1 GENERAL RULES

The purpose of this instruction is to prevent the use of the entities of letter ‘gj’ and ‘i’ of article 3. Of the law 9917, lawyers, notaries, legal representatives and certified public accountants, independent approved accountants as well as financial consulting offices for money laundering and terrorism financing. This will be achieved through the implementation by the obliged entities listed in this instruction, of the reporting requirements with regard to value transactions as well as suspicious activity reports

Article 2 DEFINITIONS

1. Terms used in this instruction will have the same meaning with the terms defined in article 2, of the law no. 9917 of May 19, 2009 “On the prevention of money laundering and terrorism financing”

2. In addition to what is prescribed in paragraph 1 of this article, with the aim of implementation of this instruction the following terms will mean:

- Throughout this instruction, law no. 9917, dated 19.05.2008 “On the prevention of money laundering and terrorism financing”, will be referred by using the term “**of the Law**”.
- “**Beneficial owner**” is a natural or legal person, on whose behalf the transaction is being carried out. Here are also included those persons that exercise the final effective control on the natural person.
- “**Final effective control**” is the relation where a person :
 - owns directly or indirectly the majority of shares, voting rights of a legal person or possesses over 25% of the shares;
 - alone possesses the majority of votes of a legal person based on an agreement with partners or other shareholders;
 - determines *de facto* the decision making of the legal person
 - controls in any way the election, nomination and dismissal of the administrator of the legal person.
- “**Obliged entity**” is a natural or legal person that establishes a business relationship with customers during his normal activity, as stipulated in letter ‘k’ and ‘m’, of article 3, of the law.
- “**Linked transactions**” means two or more transactions (including direct transfers)
, where each of them is smaller than the amount specified as threshold, according to letter “a” and “b” of article 12, of the law.
- “**Suspicious Activity Report**” (SAR) is the form attached to this instruction that enables all the obliged entities to fulfill the requirements of paragraph 1, of article 12, of the law, through the application of the guidelines.
- “**Non financial professions**” in this category are included notaries, attorneys, legal representatives, certified public accountants, auditors and financial consulting offices
- “**Cash Transaction Report**” (CTR), is the form attached to this instruction that should be filled out and reported by every obliged entity for every cash transaction equal or greater than 1,500,000 ALL (one and a half million ALL) or its corresponding value in foreign currency carried out as a single

transaction or a series of linked transactions, in line with the reporting requirements set out in paragraph 2, of article 12 of the law.

- **“Value Transaction Report” (VTR)** is the form attached to this instruction that should be filled out and reported by every obliged entity for every non cash transaction equal or greater than 6,000,000 ALL (six million ALL) or its corresponding value in foreign currency carried out as a single transaction or a series of linked transactions, in line with the reporting requirements set out in paragraph 2, of article 12 of the law.

- **“Self Auditing Report”** is the the form attached to this instruction that should be completed and reported by all the obliged entities upon request from the “Competent Authority” once or twice a year and it contains the measures undertaken by the entities towards implementing the requirements of the letter ‘h’, of article 11, of the law. The report regarding the measures could be partial or comprehensive.

Article 3 OBLIGED ENTITIES

Pursuant to Law №. 9917, dated 19.05.2008 “On the prevention of money laundering and financing of terrorism”, obliged entities of this instruction will be all the natural and legal persons defined in Article 3, para ‘gj’ and ‘I’ of the said law and namely lawyers, notaries, legal representatives and certified public accountants, independent approved accountants as well as financial consulting offices when they prepare, carry out or control on behalf of their customers the following activities:

- i) conveyance of real estate property titles, management of money, shares or other assets;
- ii) management of bank accounts;
- iii) management of capital shares to be used for the foundation, operation or management of commercial companies;
- iv) establishment, operation or management of legal persons;
- v) legal agreements, trading of shares or capital belonging to joint stock companies as well as the transfer of the commercial activity;

Article 4 CLIENT IDENTIFICATION

1. In order to ensure the prevention of money laundering and terrorism financing, the obliged entities should identify their customers through valid original documents or notarized copies, such as;

- Identity Card;
- Passport;
- Picture Certificate;
- Drivers license;

Entities may request additional documents for the identification of the natural persons and verifying the address when in doubt of the veracity of the identification data as well as in all cases when there is sufficient information about money laundering and terrorism financing, such as:

- Payment booklet for water, electricity and water;
- Electricity, water and telephone bill;
- Lease contract of the apartment;
- Apartment purchase contract;

In addition to aforementioned , for the identification of the customers defined in letter ‘b’, ‘c’, ‘d’, ‘e’, the obliged entities will require the following documents

- An extract issued by the National Registration Center;
- Licenses relevant to the exercising of the activity;
- NIPT (Tax Identification Number);

- The Statute, articles of incorporation, decisions of the shareholder's assembly (or the sole partner) with all the amendments.

- Court's decision for the registration as a natural or legal person.

The obliged entities should identify their clients when they conduct a transaction amounting to; a) not less than 1.500.000 (one million five hundred thousand) ALL or its corresponding value in foreign currencies, performed as a single transaction or a series of linked transactions. If the amount of transaction is unknown at the time of the transaction, the identification should be effectuated as soon as the amount is known and the above mentioned threshold is achieved;

2. For the customer identification the obliged entities are required to demand the necessary documentation as well as record and maintain data in accordance with the definitions of letters 'a', 'b', 'c', 'd' and 'e', of paragraph 1, of article 5 of the law.

The obliged entity will maintain in the customer file copies of the sealed unexpired documents provided by the customer in the aforementioned form.

3. The obliged entities are required to perform ongoing monitoring of the business relationship with their customers, to ensure that they are in line with the knowledge that the entity has for the customer, the activity and its categorization in accordance with the risk exposure. The entities should constantly update their customer data and when they have reason to suspect that the conditions and factual situation of the customer has changed the updating should be done immediately.

4. In order to mitigate the money laundering risk, the obliged entities should apply customer enhanced due diligence:

a) before establishing a business relationship;

b) before conducting a transaction on their behalf.

To implement customer enhanced due diligence the obliged entities should require the physical presence of the customers or their representatives:

5. The entities should verify in accordance with the list defined in Article 28, para 2 of the law, whether a customer or beneficiary owner is a politically exposed person and if yes:

a) For obliged entities that have more than three employees, should obtain approval from the highest level of administration or management before establishing a business relationship with him.

b) obtain a declaration regarding the source of funds used to perform the transaction/transactions;

c) to perform ongoing monitoring of the business relationship with the customer. When a customer becomes a Politically Exposed Person, the requirements of the letter 'a', 'b', and 'c' of para 5, of this article should be implemented.

The Competent Authority will provide the obliged entities with the updated list of Politically Exposed Persons.

6. The obliged entities will request from their Non Profit Organization (NPO) customers to provide information and documents that prove the financing sources, previously derived incomes, nature of the activity, administration and management methods,

Upon completion of this verification process, the obliged entities should obtain written approval from their highest levels of administration or management before establishing a business relationship with these NPO's.

Article 5

ORGANIZATION AND RESPONSIBILITIES OF THE REPORTING UNIT OF THE OBLIGED ENTITY

1. Obligated entities of this instruction should set up a structure for the prevention of being exploited for the purpose of money laundering, draft and implement internal rules and regulations for the prevention of money laundering and the financing of terrorism;

2. Entities should nominate a responsible person and/or a deputy for the prevention of money laundering, at the administrative/management level in the central office and in every representative office, branch, subsidiary or agency, to which all employees shall report all suspicious facts, which may comprise a suspicion related to money laundering or terrorism financing.

If the number of the employees of the entities referred to in this law is less than 3 persons, the obligations of this law shall be fulfilled by the administrator or by an authorized employee of the entity and the drafting of internal regulation is not required.

3. Entities should periodically train their employees on the prevention of money laundering and terrorism financing based on an annual program, including here notifications regarding the legal changes in penal offences. Training should be documented and put at the disposal of the representatives of the “Competent Authority”, when requested;

4. Entities should present additional information, data and documents to the “Responsible Authority” in line with the time limits in cases foreseen by the law. When the entity present an extension request the “Competent Authority” may allow for an extended period that in no case exceeds 15 days.

Article 6

REPORTING TO THE COMPETENT AUTHORITY

1. When the entities suspect that the transaction/s, property/ies or business relationship is proceed/s of a criminal offence or is intended to be used for financing terrorism, shall immediately and no later than 72 hours file a Suspicious Activity Report (SAR) to the Competent Authority, wherein they state their doubts

2. When the subject, suspects that a transaction may be related to money laundering or terrorism financing, it should immediately report the case to the Competent Authority and ask for instructions as to whether it should execute the transaction or not. The responsible authority shall be obliged to respond within 48 hours.

3. The subjects are obligated to report the following to the Competent Authority all transactions:

a. in cash, equal to or greater than 1,500,000 (one million and five hundred thousand) ALL or its equivalent in other currencies, carried out as a single transaction or a series of linked transactions, within seventy hours.

b. non-cash, equal to or greater than 6,000,000 (six million) ALL or its equivalent in other currencies executed as a single transaction or as series of linked transactions, carried out within seventy hours.

4. The Subjects of this instruction will report, upon request by the Competent Authority by means of the Self-Audit Report measures taken to implement the requirements of the law.

5. Reporting will be carried out by means of forms to be sent via electronic mail or regular mail.

6. When the subjects are in possession of important information that should be reported urgently, the preliminary information may be passed on through the telephone. The information should also be sent through the forms to Competent Authority.

7. The entities of this instruction shall be prohibited to inform the customer or any other person about the verification procedures regarding suspicious cases, as well as any reporting made to the Competent Authority.

8. The entities of this instruction that report or submit information in good faith in compliance with the provisions of this law, shall be exempted from penal, civil or administrative liability arising from the disclosure of professional or banking secrecy.

Article 7

DATA STORAGE OBLIGATIONS

The entities must keep the documentation used for the identification of the client and the client's beneficiary owner for 5 years from the date of the termination of the business relation between the client and the entity.

In order to ensure the reconstruction of the entire cycle of transactions, with the aim of providing information to the responsible authority when requested by the latter, the information shall, be kept longer than 5 years, even when the business relationship has terminated. Upon request from the Competent Authority the entities should immediately turn out all client relevant data and information linked to the transactions performed on behalf of the customer

Article 8 TRAINING AND INSPECTIONS

1. The Competent Authority verifies through on site inspections alone or jointly with the supervisory authorities, compliance with the legal obligations and evaluates their fulfilment from the obliged entities, in accordance with the provision of letter 'd', of article 22, of the law.

- Inspections are conducted by the employees of the GDPML based on a program that is approved by the general Director that includes:

- Name of the obliged entity to be inspected;
- legal bases for the inspection;
- objective of the inspection;
- names of the participating inspectors;
- date and time of the inspection;
- documentation to be presented to them.

2. The objective of the inspection consists in verifying the compliance of the obliged entities with the legal requirements. This is achieved by checking the documentation, whereby compliance is evaluated. All the registers, documents, materials deemed by inspectors as necessary for the ascertaining and the control shall be made available, based on Article 22, para 'b' of the law. Every obstacle in the performance of the inspection shall be considered a contravention, penalized in accordance with Article 27, of the law.

3. Upon completion of the inspection the persons assigned will draw up a proceedings report. The proceedings report should contain the date, month, year, inspection site, names of the persons assigned to perform the inspection, name of the obliged entity inspected, specification of the inspection order (number, date, title), findings as well as verified contraventions, claims from the obliged entities. When the obliged entity refuses to sign the refusal is reflected in the proceedings report and bears only the signatures of the inspection team. The obliged entity will be provided with a copy of the original proceedings report.

4. The Competent Authority will organize and participate, alone or in conjunction with public or private institutions, in the training activities relevant to prevention of money laundering and terrorism financing.

Article 9 ADMINISTRATIVE SANCTIONS

1. When the Competent Authority ascertains during on-site inspections violations by the entities it duly notes them in a written proceedings report in accordance with the provision of the article 10, of Law No.7967, dated 07.04.1993, amended: "On the administrative sanctions".

2. The verified violations should be deliberated in the presence of the violator in accordance with the provision of the article 12, of Law No.7967, dated 07.04.1993, amended: "On the administrative sanctions".

3. A preliminary notification should be sent to the violator mentioning the date and the time of the hearing regarding the contravention.

4. The contravention should be taken into a consideration by an ad-hoc group.

5. The General Director of the Competent Authority after being acquainted with the proposal made by inspectors and the ad-hoc group will impose the administrative sanction on the entity and will announce it officially.

6. The administrative sanction can be appealed in the court of first instance of Tirana within five days of official notice, in accordance with the provision of article 43 of Civil Procedure Code.

7. The final judgement is an executive title according to Article 18 of the Law № 7697. The execution procedures will be carried out in accordance with Articles 510 - 526/a of the Civil Procedure Code.

Article 10 **PROPOSAL FOR LICENSE WITHDRAWAL**

The Competent Authority may request from the Licensing and/or Supervisory Authority to limit, suspend or revoke the license of an obliged entity when:

- a) it ascertains or has ground to believe that the obliged entity is involved in money laundering or financing of terrorism;
- b) the obliged entity has repeatedly carried out one or several contraventions defined in Article 27 of the law and its bylaws.

Article 11 **FINAL PROVISIONS**

The implementation of this instruction and its attached annexes, that are an integral part:

- Annex I : “Suspicious Activity Report” (SAR);
- Annex II : “Cash Transaction Report” (CTR);
- Annex III : “Value Transaction report”(VTR);
- Annex IV : “Self Audit Report”;

and the relevant guidelines, will be performed by the obliged entities defined in Article 3 of this instruction.

The Competent Authority will be responsible for the control and implementation of this instruction. This instruction and its annexes I, II, III dhe IV, will be the only acceptable standards for reporting to Competent Authority, and they are subject to amendments in accordance with the legislation, various administration rules as well as orders of the Minister of Finance. They will be consistently used by all the obliged entities. Upon entry into force of this instruction, the instruction №. 5 “On the prevention of money laundering and fighting of the financing of terrorism” of the Minister of Finance, dated 03.06.2004 as well as the forms and instruction attached are repealed..

This Instruction and annexes attached will enter into force upon being published in the “Official Gazette”.