

**INSTRUCTION NO. 12 APRIL 05, 2009**  
**ON THE REPORTING METHODS AND PROCEDURES OF THE OBLIGED ENTITIES**  
**PURSUANT TO LAW NO. 9917, MAY 19<sup>TH</sup> 2008 “ON THE PREVENTION OF MONEY**  
**LAUNDERING AND FINANCING OF TERRORISM”**

**GENERAL PROVISIONS**

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, May 19th 2008 “On the prevention of money laundering and terrorism financing” and sets out detailed rules on the reporting methods and procedures for the entities defined in letters ‘ a ’, ‘ b ’, ‘ c ’, ‘ d ’, ‘ e ’, ‘ f ’, ‘ g ’, ‘ h ’, ‘ j ’, ‘ l ’, and ‘ o ’ of article 3 of the law 9917, May 19th 2008 “On the prevention of money laundering and terrorism financing”, in accordance with applicable criteria and reporting deadlines defined in article 12 of the law and article 8 of this instruction.

**Article 1**  
**PURPOSE**

The purpose of this instruction is to prevent the use of the obliged entities for money laundering and terrorism financing. This will be achieved through the implementation by the obliged entities of the legal requirements to report to the “Competent Authority” regarding value transactions as well as suspicious activity reports.

Entities should take the necessary measures to implement the procedures of the required standards, to ensure accurate and timely reporting of the forms attached to this instruction, in accordance with article 12 of the law as well as the Self Audit Report.

**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:

Pursuant to this instruction, law 9917 of May 19, 2009 “On the prevention of money laundering and terrorism financing” will be referred with 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.

• **“Obligated entity”** is a natural or legal person that establishes a business relationship with customers during his normal activity, as stipulated in letter ‘ a ’, ‘ b ’, ‘ c ’, ‘ d ’, ‘ e ’, ‘ f ’, ‘ g ’, ‘ h ’, ‘ j ’, ‘ l ’, and ‘ o ’ of article 3, of the law.

**“Linked transactions”** means two or more transactions (including direct transfers), where each of them is equal or 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 its guidelines.

**“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 undertaken could be partial or comprehensive.

### **Article 3 OBLIGED ENTITIES**

Obliged entities of this instruction are all the entities defined in article 3 of the law, excluding those specified in letters ‘f’, ‘k’, ‘l’ and ‘n’, whose responsibilities will be stated in other sublegal acts.

### **Article 4 CLIENT IDENTIFICATION**

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’, of article 5 of the law, 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;

- a) Before they establish a business relationship;
- b) when the client seeks to conduct
  - a wire transfer within or outside the country;
  - a transaction amounting to not less than:
    - i) not less than 200.000 (two hundred thousand) ALL or its corresponding value in foreign currencies for buying or selling gambling chips, or their respective electronic value, in the case of games of chance, casinos or hippodromes (racetracks) of any sort;

ii) 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 obliged in accordance with the circumstances 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, paragraph 2 of the law, whether a customer or beneficiary owner is a politically exposed person and if yes:

- a) 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 financial transaction;
- c) to perform enhanced and ongoing monitoring of the business relationship.

When a customer becomes a Politically Exposed Person, the requirements of the letter 'a', 'b', and 'c' of paragraph 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 income, 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**

### **ENHANCED DUE DILIGENCE**

1. The entities shall apply enhanced due diligence for the transactions specified in Article 9 of the law.
2. The obliged entities before establishing a business relationship with banks should:
  - define specific procedures for the ongoing monitoring of business relations;
  - verify that the corresponding banks are not from countries that do not implement or partially implement the money laundering prevention legislation;
  - get assurances about the high reputation and sound activity of correspondent banks;
3. Obligated entities should not establish business relations with banks that are used by shell banks.
4. When the obliged entities verify cases described in paragraph 3 of this article, they should report this to the "Competent Authority" by means of SAR report.
5. The obliged entities should take into account based on enhanced due diligence all the transactions that are complex, unusual and suspicious, have no economic or legal background requesting additional information that do justify:
  - a) source of income;
  - b) intent;
  - c) time;
  - d) location, and
  - e) type and content of the transaction;
6. The entities must apply enhanced due diligence to transactions and business relations with clients that are not Albanian citizens and reside temporarily in the Republic of Albania.
7. The entities must apply enhanced due diligence to transactions with clients residing or acting in countries that do not apply or partly apply the relevant international standards on the prevention and fight against money laundering and financing of terrorism.
8. The obliged entities should obtain information regarding the legal regime of these countries concerning the prevention of money laundering and financing of terrorism before they establish a business relationship with this category of customers.
9. In cases when the obliged entities fail to fulfill enhanced due diligence obligations, they shall not establish or carry on business relations with the client;
10. Obligated entities should report to the "Competent Authority" its inability to fulfill its enhanced due diligence obligations within 72 hours and declare the reasons for this.

## **Article 6**

### **MONEY OR VALUE TRANSFER TRANSACTION**

The obliged entity requests from the financial institutions sending an wire transfer, originator data, to be recorded in the form accompanying the transfer, including:

First name;  
Last name;  
Permanent and temporary residence;  
Number of identification document;  
Account number of the originator, if it has one;

Name of the financial institution from which the transfers is made.

In case there is no account number of the originator, the transfer shall be accompanied by a unique reference number.

If the obliged entity receiving the transfer notes that the originator data is missing or incomplete, refuses to accept the transfer and reports the case within 72 hours to the “Competent Authority”.

#### **Article 7**

#### **PREVENTIVE MEASURES OF THE OBLIGED ENTITIES**

The obliged entity:

- a) Drafts internal regulations and guidelines that take into account the money laundering and terrorism financing risk, which can arise from business relationships with their customers or businesses.
- b) Nominates a responsible person and 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 whom all employees shall report all suspicious facts, which may comprise a suspicion related to money laundering or terrorism financing.
- c) Establishes a centralized system, in charge of data collection and analysis;
- d) Train their employees on the prevention of money laundering and terrorism financing through regular organization of training programs;
- e) Authorizes the internal audit to check the compliance with the obligations of the law and this instruction;
- f) Submit to the “Competent Authority” within the time limits specified, information, data and additional documents. If a postponement is requested by the obliged entity the “Competent Authority” may extend this time limit for a period of no more than 15 days.

#### **Article 8**

#### **REPORTING TO COMPETENT AUTHORITY**

1. Entities suspecting that the transaction/s, property/ies, business relation/s is/are proceeds of a criminal offence or are intended to be used for financing terrorism, they shall immediately and no later than 72 hours present to the responsible authority a report, in which they state their doubts..
  - a) The suspicious case is reported through the Suspicious Activity Report (SAR), by describing the suspicious activity, regardless of the amount of the transactions performed, is being performed or will be performed.
  - b) The information can be transmitted per fax, e-mail or telephone.
2. When the entity suspects that a transaction may involve money laundering or financing of terrorism, should report this issue immediately to the “Competent Authority” and ask for instructions on whether should perform the transaction or not. The Competent Authority is obliged to respond within 48 hours

The entities shall be required to report the following to the responsible authority within the time limits set forth in this instruction all transactions:

a) all cash transactions, equal to or greater than 1,500,000 (one million and five hundred thousand) ALL or its equivalent in other currencies, executed as a single transaction or as series of linked transactions within 72 hours.

b) all non-cash transactions, 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 performed within 72 hours.

4. The obliged entities of the law upon request from the Competent Authority will report about the measures taken towards implementation of legal requirements by using the Self Audit Report.

### **Article 9 OBLIGATIONS TO MAINTAIN DATA**

1. The entities must keep financial transactions data , both national and international with all the supporting documentation and account files, regardless of whether the transaction is performed on behalf of the customer or third parties, to allow the reestablishing of the entire cycle of transactions, aiming at providing information to the Competent Authority for a period of 5(years) from the date when the last financial transaction among the customer and the obliged entity has been carried out.

2. The information specified in paragraph 1, shall upon the request of the competent authority, be stored longer than 5 years.

### **Article 10 EXCLUSION FROM SPECULATION WITH PROFESSIONAL SECRECY OR ITS BENEFITS**

Entities shall not use professional confidentiality or benefits deriving from it as a rationale for failing to comply with the legal provisions of this law, when information is requested or when, in accordance with this law, the release of a document, which is relevant to the information, is ordered.

### **Article 11 INSPECTIONS AND TRAINING**

1. The Competent Authority verifies through inspections carried out alone or jointly with the supervisory authorities, compliance with the legal obligations and evaluates their fulfillment 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;
- requested documentation to be presented to them.

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, paragraph 'b' of the law.

Every obstacle in the performance of the inspection shall be considered a contravention, penalized in accordance with Article 27, paragraph 5 of the law.

2. 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.
3. The "Competent Authority" will organize and participate in programs aiming at enhancing public awareness regarding the money laundering and terrorism financing phenomena.

#### **Article 12**

#### **ADMINISTRATIVE SANCTIONS**

1. If during inspections the "Competent Authority" notes violations committed by the obliged entities are expressed in inspection's act in accordance with the specifications of article 10 of law no.7697, April 7<sup>th</sup> 1993, "On administrative infractions", amended.
2. Noted violations should be deliberated in the presence of the violator, in accordance with the specification of article 12, of law no.7697, April 7<sup>th</sup> 1993, "On administrative infractions", amended.
3. A preliminary notification of the violation is made, that includes the date and time of the deliberation of the said violation.
4. Deliberation is carried out by an ad hoc group appointed by the General Director of the "Competent Authority". Upon being informed about the inspector's and the ad hoc group proposals the General Director determines the administrative sanction to and notifies the obliged entity officially.
5. The administrative decision can be appealed in Tirana's District Court in accordance with the specification of article 43 of Civil Procedures Code, within five days from the official notification date, in accordance with article 18, of law no.7697, April 7<sup>th</sup> 1993, "On administrative infractions", amended.
6. No. 7697, dated July 04, 1993 "On the Administrative violations", as amended. The execution procedures of the administrative sanctions will be enforced in accordance with the articles 510 through 526/a of the Civil Procedures Code.
7. The final ruling is an executive title as specified in article 18, of law no.7697. The execution procedures of the administrative sanctions will be enforced in accordance with the articles 510 through 526/a of the Civil Procedures Code.

#### **Article 13**

#### **PROPOSAL FOR LICENSE REVOCATION**

1. The responsible authority may request the licensing/supervisory authority to restrict, suspend or revoke the license of an entity when:
  - a. it ascertains or has facts to believe that the entity has been involved in money laundering or terrorism financing;
  - b. when the entity repeatedly commits one or several of the administrative violations set forth in article 27 of this law and the sublegal acts.

**Article 14**  
**FINAL PROVISIONS**

The obliged entities defined in article 3, of this instruction will be in charge of the implementation of this instruction and annexes attached, as its 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 their relevant guidelines

The “Competent Authority” will be responsible for the control and implementation of this instruction.

This instruction and its annexes I, II, III and IV, will be the only acceptable standards for with reference to reporting to the “Competent Authority” and are subject to amendments in accordance with legislation and various administrative rules and orders of the Minister of Finance and will be uniformly used by all the obliged entities

All the forms and instructions previously used by the obliged entities will be repealed, upon entry into force of this instruction and its attached annexes I, II, III and IV.

This instruction and its attached annexes enter into force upon publication in the “Official Gazette”.