

INSTRUCTION NO.15, FEBRUARY 16, 2009
ON THE PREVENTION OF MONEY LAUNDERING AND FIGHT AGAINST THE FINANCING
OF TERRORISM FROM THE CUSTOMS AUTHORITIES

Pursuant to articles 102/4 and 118 of the Constitution as well as article 28/3, letter 'c', of Law no. 9917, of May 19th, 2008 "On the prevention of money laundering and terrorism financing" law no.8449 8449, of January 27th.1999 " Customs code of the Republic of Albania ", amended, the Minister of Finance

INSTRUCTS:

Article 1
Purpose

The intent of this instruction is to define the reporting methods and procedures for the customs authorities as well as the exchange of information among the General Directorate of Customs and the General Directorate for the Prevention of Money Laundering, (Competent Authority)

Article 2
Definitions

Terms used hereunder in this instruction and in conformity with the law no.9917 of May 19th, 2008, will mean the following:

1. Money Laundering – circulation and recycling of monies, derived from penal offenses as well as the conversion, transmission, transformation and transposition of the proceeds and property derived from criminal offences aiming at concealing their illegal origin, according to the definition of Article 287, of the Penal Code of the Republic of Albania.
2. Financing of Terrorism – has the same meaning as provided in articles 230/a to 230/d of the Penal Code.
3. Suspicious Transactions – any transaction (regardless of the amount), that due to its nature or character is unusual for the person's activity, or for some other reason raises suspicion for money laundering or financing of terrorism.
4. Client – according to the definition provided in article 2, of law no.9917 of May 19th, 2008, means any individual, natural person, legal person or the legal representative, residing or not in Albania, foreigner or albanian, privat or public, that should be identified by customs authorities.
5. Competent Authority – is the General Directorate for the Prevention of Money Laundering, that reports directly to the Minister of Finance and acts as the Financial Intelligence Unit in Albania.
6. Cash – for purposes of this instruction include paper money or coins, national and foreign in circulation.
7. Illegal Income - are "Proceeds of penal offenses" according to the definition of Article 36 paragraph 1, letter 'b' of the Penal Code.
8. Person entering or exiting through the border – is any individual, residing or not in Albania that enters or exit the territory of the Republic of Albania.
9. Cross Border Value Transaction Report (CBVTR)- is the form attached in annex II that is part of this instruction, to be filled out by any person, Albanian or foreigner entering or leaving the territory of the Republic of Albania having the obligation to declare: cash amounts, any negotiable instrument, precious metals or stones, valuables or antique objects of equal to or greater than 1 000 000 (one milion) ALL or its corresponding value in foreign currencies, the intention of transporting and to present supporting documents that corroborate the declaration.
10. Suspicious Activity Report (SAR) – is the form included in Annex II that is filled out for every suspicion, according to the guidelines attached in the annex, integral part of this instruction. SAR is sent to the competent authority. Suspicious activity indicators relevant to customs authorities are included in the annex I, attached and part of this instruction.
11. "Bearer's negotiable instruments" - means unconditional payment orders or promises, which are

easily transferable from a person to another and, which must meet a set of criteria including the criteria hereby defining that they must be signed by the issuer or the bearer, they must be a guaranteed and unconditional payment order or promise, they must be payable to the holder or according to the order upon request or after a specified deadline. This includes but is not limited to cheques, cambial, promisory notes, credit cards and traveler's cheques.

Article 3

“Client” identification

1. Customs Authority will keep the following client information:
 - a) for individuals: name, father's name, last name, date of birth, place of birth, place of permanent residence and of temporary residence, type and number of identification document, as well as the issuing authority;
 - b) for individuals, which carry out for-profit activity: name, last name, number and date of registration with the National Registration Center, Taxpayer Identification Number (TIN), and address;
 - c) for private legal entities, which carry out for-profit activity: name, date of registration with the National Registration Center, Taxpayer Identification Number (TIN) and address;
 - d) for private legal entities, which do not carry out for-profit activity: name, number and date of court decision related to registration as legal person, statute and the deed of incorporation, number and date of the issuance of the license by tax authorities, permanent location, and the type of activity;
 - e) for legal representatives of a client: name, last name, date of birth, place of birth, permanent and temporary residence, type and number of identification document, as well as the issuing authority and copy of the affidavit.
2. Customs agencies when gathering data from the client, accept according to the stipulations of this instruction only original documents or notarised copies. Pursuant to this instruction tax authorities will maintain in customer's file copies of the valid documents in the above mentioned form imprinted with agency's seal.
3. Customs authorities when they deem it necessary should ask the client to provide additional identification documents to verify the data supplied previously.
4. In order to ascertain the transaction, customs authority requests and maintains in client's file a copy of the bank voucher, that substantiates the payment as well as a copy of the invoice or contract of the parties involved in the transaction

Article 4

Customs authority reporting

1. Customs authorities will report to the competent authority immediately and in any case no later than 72 hours upon the registration of the transaction according to the forms and guidelines in annexes II and III that are attached to this instruction, any suspicion, signal, notification or data relevant to money laundering and/or financing of terrorism.
2. Customs authorities will report to the competent authority twice a month, in accordance with the forms and guidelines in annex II, that are attached to this instruction, for all cross border declarations of transportation of cash in the territory of the Republic of Albania.
3. The forms and suspicious transaction reports should be accompanied by all the supporting evidence about the client and the transaction being performed.

Article 5

Preventive measures undertaken by the customs authorities

1. Customs agencies apply the requirements of Article 11, of law no. 9917, of May 19th, 2008 “On the prevention of money laundering and financing of terrorism”.
2. Customs authority should create a centralized system for the collection and analysis of the data. To this end the General Directorate of Customs will create a central unit that will be responsible for the identification and the collection of suspicious transactions. The General Director of the General Directorate of Customs will appoint within the directorate, at the head of this unit a person of a management level.
3. The Central Unit has the following competencies and functions:
 - a) appoint a contact person in the headquarters and every regional directorate that will liaise with the competent authority;
 - b) organizes the monitoring process and ensures the implementation of the legal responsibilities regarding the prevention of money laundering and fight against the terrorism financing;
 - c) analyses every transaction that has been identified as suspicious and determines whether considers it suspicious according to the law and this instruction;
 - d) if the information is categorized as suspicious the head of the unit upon authorization from the General Director or his deputy, will forward this information to the competent authority;
 - e) will be advised by other employees of the General Directorate of Taxation regarding the ways of identification of suspicious transactions;
 - f) will organize special training of the General Director of Customs to acquaint him with laws and policies concerning money laundering and financing of terrorism; should have the necessary abilities to scrutinize the transactions in order to detect money laundering and financing of terrorism; be aware of the reporting requirements and the filing of reports; be aware of customer due diligence, as well as client’s risk categories;
 - g) prepares a written report at least once a year regarding the monitoring process (including the number of suspicious reports identified) and presents it to the General Director of the General Directorate of Customs;
 - h) monitors the clients as well as the transactions referred to the competent authority and communicates that through the General Director of Customs to the competent authority twice a year.
4. The head of the central unit and its employees should be vested with the authority to obtain any information necessary for the fulfillment of their duties. They should preserve the confidentiality of the data obtained through their activity.
5. The head of the central unit will report only to the General Director of Customs.
6. The General Director of Customs will appoint the internal audit to check the compliance with obligations of this instruction of the central unit.
7. The General Director of Customs will issue a regulation regarding the organization and operation of the central unit as well as the forms of its cooperation with other departments in the customs administration, pursuant to law no. 9917, of May 19th, 2008.

Article 6

Information exchange

1. The information exchange among the two institutions is based on mutual trust.
2. Customs authorities will respond to requests of the competent authority not later than 15 days from the date the information request is received.
3. In urgent cases, when there are grounded reasons for money laundering and financing of terrorism and it is believed that there is a pressing need for information from the General Directorate of Customs, the contact person of the competent authority will present a verbal request to the contact person in the General Directorate of Taxation. Such requests should be documented within three days with a written letter sent to the General Directorate of Customs. The information requested verbally will be provided by the tax authorities to the competent authority within 48 hours.
4. When the competent authority has frozen or is about to freeze a transaction for 72 hours and requests information from the General Directorate of Customs, this information should be provided

within 48 hours. The request can be verbal or in writing. Every verbal request should be documented in writing within three working days.

5. The competent authority should respond to requests of the customs authorities no later than 15 days from the day the information request is received. In urgent cases the request can be made verbally from the contact persons and should be documented in writing within three days.

6. If there are objective reasons for the postponement of responses this could be demanded verbally by contact persons by providing arguments and reasons, as well as document it in writing. Discrepancies are resolved by the General Director of Customs Authority and the competent authority or the Minister of Finance afterwards.

7. The General Directorate of Customs, pursuant to Article 22, letter 'b', of law no. 9917, of May 19th, 2008, will provide database access to the competent authority (GDPML). The method and technical specifications, will be described from the relevant specialists and the officials of those institutions. This access should be provided within two months of entry into force of this instruction.

Article 7 **Employee responsibilities**

1. It is forbidden to the employees of the General Customs Directorate to inform the client or any other person regarding the verification procedures of suspicious cases and any other report sent to the competent authority.

2. Employees of the General Directorate of Customs, that provide confidential information to the competent authority in accordance with legal requirements are exempted from penal or administrative liability.

3. For violations or noncompliance with the law and this instruction, when they do not constitute a penal offense, the employees of the General Directorate of Customs, will have administrative responsibility and will be sanctioned by the competent authority, according to Article 27 of the law no. 9917, of May 19th, 2008.

Article 8 **Entry into force**

This instruction enters into force upon publication in the official gazette

MINISTER OF FINANCE
Ridvan Bode

ANNEX I **SUSPICIOUS ACTIVITY INDICATORS FOR CUSTOMS AUTHORITIES**

Article 4(1) of this instruction requires from the customs authority among other things, to report to the competent authority, within 72 hours, suspicions related to import/export activity under the customs jurisdiction.

The following list contains indicators of activities that should lead the customs employees to file a suspicious activity report.

The list of money laundering indicators broken down in two groups:

1. Smuggling of currency.

- Automobiles and trucks: with false compartments or cargo by the side of passengers or drivers;
- Trans-oceanic containers with false compartments or cargo;
- Control of airplanes whereby problems have been identified regarding cargo or luggage belonging to passenger/crew;
- he unchecked/undocumented/ air based delivery or transportation that is not subject of review;
- Individuals that try to circumvent currency reporting requirements;
- Clients that transfer huge amounts of money abroad in cash.
- The passenger provides a contradicting or incomplete explanation regarding the purpose of his journey and the return date;
- Traveling destination is known to be a hotspot for narcotics and other illegal activities;
- The passenger is highly cooperative and offers information without being asked;
- The passenger uses always the same flight or schedule;
- There are signs of remodeling or modification of the vehicle that might signal the presence of hiding compartments;
- The group of passengers or family members is carrying currency in amounts that fall slightly under the reporting threshold;
- Frequent cross border cash declarations;
- Unsubstantiated declarations of cross border cash transportation;

2. Suspicious transactions related to the behavior of the customer/business.

- Importimi i mallrave me vlera të rritura dhe/ose të paguarit e një vlere më të lartë nga ajo e mallrave;
- Import/export that is inconsistent with the activity and the size of the business;
- Insurance data shows extraordinary costs regarding insurance cost for transportation of imported goods;
- Imports/exports that do not make sense from the business point of view and are not conducted in accordance with normal market activity ;
- Clients pay considerable amounts in cash for the imported goods while such payments could be normally performed by check or bank transfer;
- Customs' violations committed by the business in the past;
- Business was established recently and has carried out within a short period of time a sizable import/export activity;
- Business uses services of suspicious transport companies;
- Business is going through financial difficulties and nevertheless continues import considerable amounts;
- Business is not specialized in commerce but does carry out time after time commercial activities ;
- Business specialized in import/export of products from a number of countries does change the source of purchases and or the destination of its products;
- Business demand to change the custom's branch;
- Goods are imported from a country that is known to be a producer of narcotics or their trafficking;
- Goods are imported or exported in an unusual or indirect manner;
- The number of the seal is not the same with the one in the custom's declaration;
- Seal is impossible to be identified or is perfectly clear;
- Importer utilizes letters of credit, foreign banks or business accounts in tax heavens;
- Importer was involved in the past in fraudulent cases;
- Importer has import/export or smuggling business relations suspicious persons;
- Importer was involved in the past in suspicious activities as well as smuggling;
- Importuesi ndryshon shpesh pikën e hyrjes për ekzaminimin e mallit;

- False origin or fraudulent importing of goods;
- Fake goods suspected or discovered while in transit;
- Importer uses the services of a suspicious transport company;
- Importer has frequent business activities in countries that are non-cooperative in the prevention of money laundering and terrorism financing arena;