

CYPRUS FIDUCIARY ASSOCIATION

Induction Course in Administrative Service

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Live Online

Compliance

Athena Yiallourou

Director- Risk & Compliance

Trident Trust Company (Cyprus) Limited



CYPRUS FIDUCIARY ASSOCIATION

AML & COMPLIANCE (CONTENT)

The content of the Compliance session will include

- Main Provisions of “The Prevention and Suppression of Money Laundering Activities Law of 2007-2021” (AML Law)

(<https://www.centralbank.cy/images/media/redirectfile/AML/The-Prevention-and-Suppression-of-Money-Laundering-Activities-Laws-of-2007-to-2019-unofficial-consolidation.pdf>) in English including all amendment up to 2019

- *http://www.cylaw.org/nomoi/enop/non-ind/2007_1_188/full.html (in Greek including all amendments up to 2022)*

- The Law Regulating Companies providing Administrative Services and Related Matters of 2012 and any further amendments

- Reporting Obligations and Suspicious Transactions

- **Know Your Client –Due Diligence and uploading of clients**
- **Risk Assessment (4th Directive provisions, Sanctions, risk categories)**
- ***Client Economic Profile***
- ***Transaction Monitoring***
- ***Monitoring of Client Information***
- ***UBO register obligations***
- ***Sanctions monitoring***

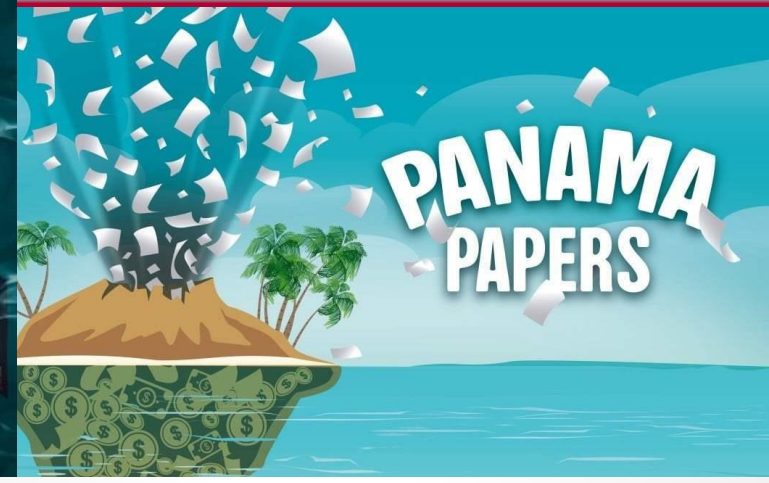
As explained by the International Compliance Association:

- ***Money laundering is the generic term used to describe the process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such proceeds appear to have derived from a legitimate source.***
- ***Money laundering offences have similar characteristics globally. There are two key elements to a money laundering offence:***
 - 1. The necessary act of laundering itself i.e. the provision of financial services; and***
 - 2. A requisite degree of knowledge or suspicion (either subjective or objective) relating to the source of the funds or the conduct of a client.***

MOVIE 1 – MONEY LAUNDERING

<https://www.youtube.com/watch?v=257wV-AbKaE>

[The Different Ways Money Laundering Works - Bing video](#)



The Russian LAUNDROMAT EXPOSED



Between January 2011 and October 2014 \$20.8 billion from 19 Russian banks was laundered.



The money went to 5,140 companies with accounts at 732 banks in 96 countries

How was this scale of criminality possible?
 How did it work?

- CLICK HERE TO FIND OUT -

Anti Money Laundering

What is Anti-Money Laundering (AML)? As very well described by the Association of Certified Anti Money Laundering Specialists (ACAMS) is

- ***The system designed to assist institutions in their fight against money laundering and terrorist financing. In many jurisdictions, government regulations require obliged entities including banks, securities dealers, money services businesses, betting houses, casinos, service providers, to establish such programs.***

At a minimum, the anti-money laundering program should include:

- ***Written internal policies, procedures and controls;***
- ***A designated AML compliance officer and monitoring;***
- ***On-going employee training; and***
- ***Independent review to test the program.***

THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING ACTIVITIES LAW OF 2007-2022 “AML Law”

The main purpose of this Law, which came into effect on 1st January 2008, is to define and criminalize the laundering of the proceeds generated from all serious criminal offences or terrorist financing activities, and provides for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes.

The main provisions of the Law are as follows:

A. The Law has effect in respect of any

(a) Laundering offences; (as per article 4 of the Law)

(b) Predicate offences . (as per article 5 of the Law)

B. Under the Law every person who KNOWS or OUGHT TO HAVE KNOWN that any kind of property constitutes proceeds from a prescribed offence is guilty of an offence if he carries out any of the following:

- **Converts or transfers or moves such property for the purpose of concealing or disguising its illicit origin.**
- **Conceals or disguises the true nature, source, location, disposition, movement and rights in respect to property or ownership of this property**
- **Acquires, possesses or uses such property.**
- **Participates in, associates or conspires to commit or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences under article 3.**
- **Provides information in respect to investigations performed in relation to laundering offences for the purpose of enabling the person who has gained profit to retain them or their control.**

COMPLIANCE – AML LAW (CONTINUED)

Commitment of the above offences is punishable by fourteen (14) years imprisonment or by fine of up to Euro500.000 or by both penalties, in the cases of a person who knows that the property constitutes proceeds from a predicate offence, or

by five (5) years imprisonment or a fine of up to Euro50.000 or by both penalties, in the case of a person who ought to have known.

AML LAW Important aspects (1)

- Beneficial/Real Owner is the physical person who maintain ownership or control of a client entity either directly or indirectly. In relation to ownership this means is the owner/benefit of 25% plus one share of the shareholding of an entity or in the cases where no specific Physical person can be determined the physical person(s) who exercise control over the entity. (Article 2)
- Cyprus Company UBO Registry includes the names of the Beneficial Owners of the entities. Access to the Registry is restricted to : (i) Regulatory Authorities, MOKAS, Tax/Customs Authorities, Police – unconditional access(ii) Obligated entities for applying KYC procedures (iii) any person or entity with a legitimate interest (Article 61A)
- Cyprus UBO Trust Registry will include all parties to the Trust i.e. Trustee, Settlor, Protector, Beneficial Owner and any other party exercising control over the Trust. Restricted Access. (Article 61B)

AML LAW Important aspects (2)

- Duties of the Obligated Entities include: Compliance with Personal Data protection requirements, apply (i) Risk Assessment procedures, (ii) Compliance monitoring procedures, (iii) procedures as to verification of the staff integrity upon recruitment and evaluation (Article 58)
- Risk assessment of clients taking as a minimum the factors included in Appendix III i.e. Client, Geographical/Country, Product, Service, Transactional Risks, which assessment should be documented and updated from time to time and be available to the Regulatory Authorities. (Article 58A(1) + Article 64 (3))
- Internal Audit unit requirement (Article 58(b))
- Appointment of member of the Board of Directors to ensure compliance with the provisions of the Law (Article 58(d))

AML LAW Important aspects (3)

- Expansion of the Advisory Authority to include Tax Commissioner, National Betting Authority and National Gaming authority & Casino Regulator. (Article 56 (1))
- High Risk Clients : Three categories of clients are by default considered as High Risk . (i) Clients related with Third High Risk Countries (ii) Correspondent Relations with Banks from Third Countries (iii) Political Exposed Persons (as per PEP interpretation under article 2) (Article 64 (1))
- Protection of any person submitting a Suspicious Report to MOKAS. (Article 69B)
- Other provisions in relation to the duties and responsibilities of the Regulatory Authorities, the Co operation of FIU units between EU countries, confiscation rules etc. Obligated Entities: Inclusion of entities dealing in the gaming/gambling industry. (Article 2A (1) (f))
- Implement sufficient procedures for the identification of the final Beneficial owners/controllers both upon initiation of the business relationships and during the review and monitoring procedures (based on the client risk category). Reliable Electronic ID applications are acceptable. Conducting ongoing monitoring of the Business relationship (Article 61)

The ASP Law – Main provisions

- The Law regulating companies providing Administrative Services and related matters of 2012 and further amendments.

<https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=ef871632-f8f7-4e64-a50c-87458c7a1e53>

- -Exempted persons :
 - (a) Lawyers , their partnerships or subsidiaries regulated under the Cyprus Bar Association
 - (b) members of the Institute of Certified Public Accountants of Cyprus (ICPAC), their partnerships and subsidiaries.

- Regulated services (Article 4) :
 - Management and Administration of Trusts
 - Management and Administration of Companies by providing the following services: **Nominee Shareholding, Directorship, Secretary, Registered Office address and or official mailing address and or electronic address of companies**
 - Management and administration to Partnerships. *General or Limited Partnership services to Partnerships,*
 - Other related services i.e. **Opening and managing Bank accounts, Safe keeping of financial instruments on behalf of clients and other similar services.**

The ASP Law- special conditions

Provision of administrative services by natural persons does not require authorisation, provided those are provided as below (article 4(3)):

(i) Directors duties/Secretarial duties

- In a company whose securities are admitted to trading on a regulated market
- In a company where by Law an independent non executive director is requested.
- In a company owned in majority by the Republic of Cyprus or any public body
- In a company where the natural person is either the 100% or more that 25% + 1 owner himself of his spouse or any other family member upto fourth degree relation.
- If the natural person is an employee of the company or member of the same group of companies.
- In less than 10 (ten) companies

Similar exceptions exist in relation to services for Trusts.

It is noted that no exceptions exists as to the provision of Nominee Shareholding.

Regulators' Directives

- Cysec – Directive Regarding the Prevention and Suppression of Money Laundering and Terrorist Financing 2020 (2020)
- <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=cbc6fdb5-de6c-41b1-b5b9-12fa9ed1d274> (Greek)
- <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=8853f7d3-1bc8-4004-a588-3f068cb02b13> (English)
- ICPAC – Directive to Members of ICPAC on Anti-Money Laundering and Combating Terrorist Financing Activities 2021 (2021)
- <https://www.icpac.org.cy/selk/common/PreviewDocument.ashx?itemId=cEFGZmZpOXIWUmVXeVpZ ZHljSnRVUT09&refItemId=VkRhbE0vOGx6dGJWd1FZczVsQ1czdz09&refTableId=VG02SHJYekJmTIMxe FhIRkNyNDRYQT09&language=TII1bHFPOHZNb0xtbHhSUKnrUTlidz09> (Greek)
- <https://www.icpac.org.cy/selk/en/common/PreviewDocument.ashx?itemId=cEFGZmZpOXIWUmVXe VpZZHljSnRVUT09&refItemId=VkRhbE0vOGx6dGJWd1FZczVsQ1czdz09&refTableId=VG02SHJYekJmTI MxeFhIRkNyNDRYQT09&language=MWIHQmZyOHBzVSs3SmR5QlhYRXIMQT09> (English)
- CBA- - Directive to the Members of CBA on Anti-Money Laundering and Counter Terrorist Financing Activities 2021 (2021)
- [https://www.cyprusbarassociation.org/files/AML/2021\(1\).pdf](https://www.cyprusbarassociation.org/files/AML/2021(1).pdf) (Greek)
- <https://www.cyprusbarassociation.org/files/laundrying/CBAs AML Directive 2019.pdf> (English 2019)

Other Reports and Directives applicable for Cyprus Obligated Entities

- The National Assessment of Money Laundering and Terrorist Financing Risks of Cyprus 2021.
- EU Moneyval Cyprus Report 2020.
- EU 4th 5th and 6th AML Directives
- FATF recommendations 2012 as amended March 2022
- FATF Guidance for Risk-Based Approach for Trust and Company Service Providers (June 2019)
- EU, UN, US and UK sanction decisions/regulations and Lists

- The Cyprus Companies UBO register is kept from the Cyprus Registrar of Companies.
- The information for all entities registered and active prior to 12/3/2021 should be submitted by end of July 2022. (interim period)
- Any changes should be submitted within 15 days from the date of the change
- Any new information i.e. new incorporation should be submitted within 30 days from the date of incorporation.

- Information submitted to the Register include
 - Name and Surname of UBO(s) or Controlling party(ies) or Executive Manager(s)
 - Identification details of the above i.e. ID/Passport number, date of expiry, nationality, resident address
 - Details of shareholding i.e. direct/indirect, percentage
 - Details of Controlling party manner i.e. voting rights
 - Details of Management i.e. position.

In the case of any change in any of the above information this should be duly submitted within the 15 days timeframe.

- CySEC is the responsible authority for the UBO Trust Register.
- Restricted access will exist except for authorities.
- Requests will be evaluated by CySEC and consent of Trust will be requested, although if claim has a legitimate background no consent does not bind CySEC's decision.
- All details/information of all physical persons related to the Trust i.e. Settlor, Trustee, Protector, Beneficiaries etc should be submitted and updated where necessary.

Compliance –Meaning

1.

the action or fact of complying with a wish or command.

"the ways in which the state maintains order and compliance"

excessive acquiescence.

"the appalling compliance with government views shown by the commission"

synonyms: acquiescence, agreement, assent, consent, concession, concurrence, acceptance

antonyms: defiance

2.

the state or fact of according with or meeting rules or standards.

"all imports of timber are in compliance with regulations"

synonyms: obedience to, accordance with, observance of, observation of ,adherence to, conformity to, respect for; *archaic* abidance by

"the company's compliance with international law"

antonyms: violation, infringement

How to achieve Compliance

- INTRODUCTION TO RULES REGARDING ANTI-MONEY LAUNDERING AND TERRORIST FINANCING
- VIDEO
- https://www.youtube.com/watch?v=17M_MdSpz9c

COMPLIANCE - WHAT DO WE NEED TO KNOW IN ORDER TO BE COMPLIANT

The main principles and actions that all persons involved in the Financial Sector should have in mind are :

- To have a general knowledge of the AML Directives of the relevant Regulator and the recent EU AML Directives.
- To be familiar with the general provisions of the AML Manual of the Organisation.
- To have a clear understanding of the Acceptance Policy of the Organisation.
- To have full knowledge of the Internal Suspicious Reporting Procedure of the Organisation.
- To have clear understanding of the AML requirements and procedures which are requested for the Administrative position held by each person.
- To maintain and update the Client Profile through the business relationship with the client and follow up the completion of any “Know your Client” (KYC) requirements and monitor client’s transactions.

COMPLIANCE – SUSPICIOUS TRANSACTION REPORT (STR)

- **A Suspicious Transaction, if not by its own nature an illegal one, is usually one which is inconsistent with the customer's known, legitimate business or personal activities or in general will not comply with the Economic Profile of the client.**
- **Any staff member may file the suspicion with the Money Laundering Compliance Officer (MLCO).**
- **The MLCO will review and decide whether to notify MOKAS. It is noted that the contact person with MOKAS is only the MLCO and the suspicious report does not constitute a part of the official report to MOKAS, if any.**

General Due Diligence measures (Due Diligence are the reasonable steps taken to avoid committing an offence)

- **Meet your client Face to Face and if this is not possible with immediate effect, verify the client's identity on the basis of Documents, date or information from a reliable and independent source.**
- **Identify the Beneficial Owner and rank them on a risk based approach on the basis of Customer Risk, Product Risk, Country Risk or Sector Risk.**
- **Obtain information on the purpose and nature of the business relationship.**
- **Risk assess the client.**
- **Contact ongoing monitoring and updating of the client records.**
- **Report any suspicious transaction.**

Clients should be identified and their identification should be duly verified on the basis of documents, data and information obtained either directly from the client or from a reliable and independent source.

Physical Persons (minimum requirements) :

- Passport/Identity Card**
- Proof of Residential Address**

- Reference Letter /CV (depending on the Risk Factor)**
- Other Public information of the physical person.**

Additional to the above, the following information should be obtained:

- i. Contact details i.e. Full Residential and Business Addresses**
- ii. Telephone number (home and mobile) and fax (if any)**
- iii. e-mail address**
- iv. Date and place of birth**
- v. Details of profession and other occupations of Physical person including the name of employer/business organisation.**
- vi. Details of source of wealth**
- vii. Details of personal assets**
- viii. Tax status**

For Legal Entities :

- Recent Corporate Documents according to the legal entity type i.e. Company, Partnership, Trust, Fund etc.**
- Structure/Corporate Documents resulting to the Ultimate Beneficial Owner (where applicable).**
- Information from Public registers where available.**
- Financial reports**
- Business activities, countries of activities, business partners etc.**

One of the provisions of article 60 of the AML Law requires that upon the Verification of the Identity of the Client, all clients' transactions should be monitored according the Risk Assessment of the client performed taking into consideration mainly the following factors which are not exhaustive and might include additional aspects.

- **Customer Risk**
- **Product Risk**
- **Transaction Risk**
- **Country Risk**

- **Customer Risk (i.e. PEP, High Net Worth Individual, Negative Publications, Non Face to Face Clients, Bearer Shares, Complex Structures)**
- **Product Risk (i.e. Dealing in Precious Stones, Internet trade, New Technologies, Products which support anonymity).**
- **Transaction Risk (i.e. Value and type of transactions, Loans, POAs, Crypto currency transactions).**
- **Country Risk (i.e. Sanctions, countries with inadequate AML Supervision, countries unrelated with the business activities of the client).**

Risk Assessment should be executed not only upon the uploading of the client but should be reviewed and amended accordingly during all the period of the business Relationship.

- **The maintenance of a Client Economic Profile (CEP) is an important requirement of the Law and its creation is a responsibility of all Staff members of the Financial Sector.**
- **The CEP should include, apart from the Identification Information , all updates and information acquired during the client relationship such as business activities, names of business associates, web publications (positive and negative), details on significant transactions etc.**
- **The CEP is an important tool for reviewing any request of the client for AML purposes and can also be used as a business development tool for promotion of new services to clients. (GDPR restrictions should apply to Automated profiling and marketing)**

- **Establishment of Business Relationship.**
Detailed Description of the actual business activity should include field of activity, countries of business activity, names and countries of main business associated, estimated annual turnover, assets and source of funds.
- **Post Incorporation Transactions.**
A description of any actions performed after the establishment of the business activity with main details of the action verifying that is compliant with the initial Business activity as stated during the Establishment of the Business Relationship.
- **Updated Shareholding Structure of the Client company.**

- **Example 1.**

Personal Investment Company of the Beneficial Owner Mr. John Smith

Principal activity description should include Types of Investments, Banks or investment Firms names, Value of Property or Portfolio, **Source of Funds, details for the value of wealth of BO i.e. Personal Investment Company of Mr. John Smith for about \$\$\$\$ of property/funds/shares etc.**

Post Incorporation Actions could include actions like:

- **Account opening with Morgan Stanley**
- **POA in favour of ABC legal firm for the execution of a purchase of an apartment in London.**
- **Meeting with Mr. John Smith in our offices for general discussion.**
Short memo saved in our file.
- **Execution of a contract for the Leasing of a Yacht.**

COMPLIANCE- CLIENT ECONOMIC PROFILE (CONTINUED)

- **Example 2**

Holding Company

Principal activity should include name(s), country (ies) and activities of the subsidiary company(ies) , **source of funds, value of assets.**

Post Incorporation Actions could include actions like:

- **Execution of a Share Purchase Agreement (SPA) agreement for the purchase of 35% of shares in ABC Ltd dealing in steel production in Germany**
- **Issuance of a Specific Power of Attorney (POA) in favour of Calvin Klein for the execution of a purchase agreement of ABC Ltd.**
- **Issuance of a Specific POA in favour of Lady Gaga to represent the company in the AGP of ABC Ltd.**
- **Meeting with Philip Plein – accountant of the company for Audit obligations.**
- **Opening of Bank Account with SO EASY BANK**

- One of the main requirements of all regulators and Internal Auditors is to maintain records of the Transaction Monitoring of the client's day to day activities.

Transactions can include:

- i. Any change in the structure of the client
- ii. Opening of Bank account/change of bank signatory
- iii. Review and execution of other transactions related to the services provided i.e. Trading contracts, Invoices, Sale/Purchase Agreements, Consultancy agreements, Financial Agreements.
- iv. Bank transactions.

- Transaction Monitoring should be documented and recorded by the ASP and at least present the following:
 - i. Compliance of transaction with the Business activity of the client.
 - ii. Verification that the transaction is within the estimated annual Turnover and investigate any possible deviation.
 - iii. Confirm that the parties of each transaction are known business associates (as stated on drafting of Client profile)
 - iv. Transaction is reasonable taking into consideration i. & ii above as well as the related market conditions
 - v. Update Records with any new information, unjustified deviations of turnover and act accordingly.

Monitoring at (i) Execution and (ii) Review/ Inspection

- Example 1 :
ABC Ltd (Cyprus) requested the Execution of a SPA for the purchase of shares in GERMAN COMPANY for the amount of US20m from another Cyprus entity.

What information/documents should be requested for review in relation to the above transaction?

- Example 2:

Payment instruction from ABC Ltd for USD25000,- f/o George Consultant as payment of consultancy services.

What information/supportive docs should exist for the above transaction?

- Example 3 :

Shareholder/Beneficial Owner of New Project Ltd., decided to sell its participation for the amount of USD10,- to a new shareholder/Beneficial Owner and requested execution of the Sale/Purchase Agreement.

How this will be supported?

In the strict sense of the Law, Cyprus should be compliant of any EU and UN sanctions. US, UK or other sanctions are not directly applicable as they are addressed to their nationals.

Nevertheless all Regulators, direct their obliged entities to also take into consideration also US and UK sanctions as any task or transaction of the clients might be related with those countries. i.e. a payment order in US dollars going through a US Bank, or a merchandise which might be transported through a UK or US port.

- Sanction compliance is very difficult and all details of any such request or transaction should be scrutinised in order to obtain the maximum information and record all steps in case of any future need.
- Important aspects of each transactions are :
 - (i) Compliance with business activities of client
 - (ii) Source of Funds (in detail)
 - (iii) Destination of Funds (in detail)
 - (iv) Value of transaction
 - (v) Third party screening
 - (vi) Confirmation of beneficial ownership of all parties
 - (vii) Banks to be used
 - (viii) Reasoning of transaction

- GDPR Regulation principles (art. 5 par. 1 and 2):

Personal Data should be :

- processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');
 - collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes ('purpose limitation');
 - adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
 - accurate and, where necessary, kept up to date; ('accuracy');
 - kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed ('storage limitation');
 - processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').
- The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

MAIN RISKS in case of NON- COMPLIANCE

A. REGULATORY RISK

The Risk which applies if the Financial Provider is not compliant with the Law and the Regulator's Directives.

Failure to be compliant with the above might result to

- Comments , Warnings, Corrective guidelines and Fines from the Regulator.

New AML Legislation requires Publication of breaches by the Regulators and allow imposition of significant penalties.

B. BUSINESS RISK

The risk which the Financial Provider has to be exposed to the danger of being used for Money Laundering or Terrorist Financing.

The implementation of systems and procedure which allow the Organisation to address the Regulatory Risk will enable them to minimise the Business Risk .

Tick the box culture will not assist!!

- **C. LEGAL RISK**

The risk for the service provider to be liable to a legal claim or assist an illegal transaction

GROW COMPLIANT !!

- **COMPLIANCE cannot exist without ethics and willingness to do the right thing .**
- **ETHICS should be the core factor in addressing compliance issues.**
- **BUSINESS DEVELOPMENT and expansion can be initiated from information provided within the procedures of Know Your Client**

**“Act as if what you do
makes a difference.
It does.”**

William James

At your disposal!

Athena Yiallourou

Director – Risk & Compliance

Trident Trust Company (Cyprus) Limited

Email: ayiallourou@tridenttrust.com

Tel 25820650