



**OFFICE
FOR PREVENTION AND FIGHT AGAINST
MONEY LAUNDERING**



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ORDER

23.08. 2018

no. 41

***Regarding the approval of the Instruction
on the application of Article 4 par. (1), letter l)
of Law no. 308 of 22.12.2017 “On Prevention
and Combating Money Laundering”***

In accordance with art. 19 par. (1), letter f), art. 22 par. (1), letter k), art. 22 par. (2), art. 37 par. (10), par. (12) of the Law no. 308 of 22.12.2017 „On prevention and combating of money laundering and terrorist financing”, (Official Monitor of the Republic of Moldova no. 58-66 art. 133 of 23.02.2018),

I ORDER:

1. To approve the Instruction of the application of art. 4 par. (1), letter l) of the Law no. 308 of 308 of 22.12.2017 „On prevention and combating of money laundering and terrorist financing”, according to Annex no. 1.
2. To approve the Program on the activity of „natural and legal persons selling goods in the amount of at least MDL 200,000 or its equivalent only if the payments are made in cash” is approved in the field of prevention and combating money laundering and terrorist financing, according to Annex no. 2.
3. Interaction with the reporting entities, their supervisory and regulatory bodies, as well as the control over the execution of this Order is exercised by the Supervision and Compliance Service.

Director

Vasile ŞARCO

INSTRUCTION

Regarding the application of Article 4 par. (1), letter l) of Law no. 308 of 22.12.2017 “On Prevention and Combating Money Laundering”

1) The following Instruction regulates the way of applying the provisions of art. 4 par. (1), letter l) of Law no. 308 of 22.12.2017 “On Prevention and Combating Money Laundering and Terrorist Financing” (hereinafter – the Law), for the purpose of identifying cash transactions of at least MDL 200,000 or its equivalent and those susceptible for reporting.

2) For the purposes of this Instruction, a reporting entity in accordance with art. 4 par. (1), letter l) of the Law, is the natural or legal person who trades (sells) in cash goods (services) worth at least MDL 200,000 and is not included in the category of reporting entities referred to in art. 4, par. (1), letter a)-k) of the Law.

3) In the case of individuals, the transaction must have a commercial character with the aim of obtaining profit as a result of the entrepreneurial activity.

4) The reporting entity will report cash transactions of at least MDL 200,000 and suspected to the Office via the secured channel (coded email), which will be published on the Office’s website.

5) The reporting entity shall report the transactions specified in par. 4 by completing the special form prepared by the Office, as set out in Annex 1 to this Guideline.

6) The traded goods and services may be of any kind, both mobile and immovable, thereby the goods marketed in accordance with art. 4 par. (1), letter l) of the Law no. 308 are: immovable property, means of transport, tourist sheets, articles and luxury goods exceeding the value of MDL 200,000.

7) The list of goods could be expanded as a result of the assessment of sectors where the risk of using cash for the procurement of goods can be identified.

8) Articles and luxury goods within the meaning of the present Instruction describe an object that characterizes and translates it into a field that is less affordable, and is designed for status, recognition and the most important quality that can reflect tradition and history.

9) In this category of goods may be include: art and antiques, art paintings, furniture and religious art or result of the handicraft works, watches.

10) As an exception to point 2, in the case of payment for the good, the commercialized service shall be performed on the account of the natural or legal person through a reporting entity referred to in Article 4 par. (1), letter a)-k) of the Law (financial institution, leasing, etc.) rather than cash, the natural or legal person will not assume the status of reporting entity.

11) The sale of goods or services can be done through a single transaction amounting to at least MDL 200,000 or by operations that „appear to be related”.

12) The concept of "seemingly interconnected" operations represents the cases of the sale of goods and services by successive operations within a maximum of ten calendar days and their value exceeds the ceiling of at least MDL 200,000 or when the obligation for payment of a good comes from the contract or invoice whose value exceeds MDL 200,000, and payments are made in a longer period of time in cash.

13) The natural and legal persons as reporting entity will apply precautionary measures in accordance with the provisions of art. 5-8 of the Law and of the program on the activity of "natural and legal persons who sell goods in the amount of at least MDL 200,000 lei or its equivalent only if the payments are made in cash" in the field of prevention and combating money laundering and terrorist financing, which will include:

- identify and verify customer identities based on identity documents or other documents, information obtained from a credible and independent source;
- identify the beneficial owner so that the reporting entity is certain that it knows who the beneficial owner is;
- understanding the purpose and nature of the transaction.

14) If the reporting entity is unable to comply with the transaction under the requirements of paragraph 13, it shall refrain from performing the operation/transaction itself and inform the Office on the reasons for non-compliance.

15) The natural and legal persons as reporting entity are obliged to execute the provisions of the Law no.308 of 22.12.2017 "On prevention and combating money laundering and terrorist financing".

16) The annex to the Instruction sets out examples of situations where natural and legal persons fall under the provisions of Article 4 par. (1), letter l) of the Law, as well as cases where natural and legal persons are not reporting entities.

ANNEX: 1

Case study 1

The company carries out the economic activity in the field of construction and commercial real estate and if the client-buyer buys a real estate and is paid in cash at least MDL 200,000 (whether it represents a tranche of the total amount or the full payment) in the company's accounting, then the legal entity is considered a reporting entity and is expected to report the transaction to the Office. If the client is directed to deposit money into the account of the company through the financial institution where the legal entity has bank accounts, the legal entity will not be considered a reporting entity.

Case study 2

The company carries out activity in the field of trading of household products and in case of sale of a company asset (real estate, means of transport) worth at least MDL 200,000 in cash, the legal entity will be considered reporting entity with the condition that the funds are collected into the company's accounts, and in the case of depositing money to the bank account opened at the financial institution, the legal entity is not a reporting entity.

Case study 3

The natural person sells a real estate, a vehicle or other type of good worth at least MDL 200,000 in cash. Thus, in this case, the natural person is not a reporting entity, and in case when more real estate, vehicles are sold, as result of the economic activity, the natural person will become a reporting entity.

Case study 4

The legal person carries out activity in the field of trading petroleum products and on 01.01.2018 a natural person buys petroleum products in the amount of MDL 50 000 with cash payment, subsequently on 05.01.2018 and 09.01.2018 the same natural person buys additional petroleum products amounting MDL 80,000 and MDL 70,000 respectively, so in the mentioned case the legal entity will obtain the quality of reporting entity on the grounds that the client-natural person has purchased within 10 days petroleum products amounting at least MDL 200,000 lei with cash payment.

The special form for natural or legal persons who sell in cash goods worth at least MDL 200,000 or its equivalent.

Date / Period _____	Criteria (S/N):		
	Number of transactions:		
	Total amount (in MDL):		
1. Financial transaction data:			
Object of the transaction (the traded good)			
Date of the operation			
No. and date of the Document (contract, invoice)			
2. Data about the person who sells the good:			
Name of person, identification code			
Address of the person; contacts; telephone number, etc.			
Series, number and date of the identification document; issuing body			
Document representing the person selling the property, power of attorney			
Data about the representative, Name/Surname; ID, home address, contacts, telephone number, etc.			
3. Data about the customer's person who sells the good:			
Type of person: legal / physical, domestic or foreign person (J/A; J/S; F/A; F/S)			
Name of the natural or legal person (name, surname, ID, fiscal code for legal persons)			
Address of the legal person's headquarters or domicile of the natural person			
Data about the representative, Name/Surname; ID, home address, contacts, telephone number, etc.			
4. Reasons for suspicion in case of a suspicious transaction			
6. Data about the individual submitting the form:			
_____	_____	_____	L.Ş.
Name, Surname	Function	Signature	
_____ identification code			

Program on the activity of "natural and legal persons who sell goods in the amount of at least MDL 200,000 or its equivalent only if the payments are made in cash" **in the field of prevention and combating money laundering and terrorist financing.**

I. GENERAL PROVISIONS

1. The present Program on Prevention and Combating of Money Laundering and Terrorist Financing, hereinafter referred to as "the Program", is developed for the implementation by "natural and legal persons selling goods in the amount of at least MDL 200,000 or its equivalent only if the payments are carried out in cash", further referred as reporting entity, in accordance with the provisions of Law no.308 of 22.12.2017" On the prevention and combating of money laundering and terrorist financing.

2. The present program is relevant and will be applicable for entities that will systematically record operations selling goods amounting at least MDL 200,000 in cash or as a result of the evaluation of the entrepreneurial activity would be the reason that such operations could be recorded.

3. This Program does not refer to and will not be implemented by natural or legal persons who sell goods in the amount of at least MDL 200,000 in cash through a single occasional operation.

4. The purpose of the Program is to establish measures to prevent and combat money laundering and terrorist financing, which help to exclude the possibility of engaging the entity in transactions that can facilitate illicit activities as well as to reduce the risk of money laundering and terrorist financing.

II. GENERAL NOTIONS USED IN THE PROGRAM

Under the present program, the following notions shall mean:

suspicious activity or transaction - activity or transaction with goods or illicit goods, including financial means and funds, about which the reporting entity knows or indicates reasonable grounds for suspicion that actions of money laundering, associated offenses, actions of terrorism financing and of proliferation of weapons of mass

destruction are in course of preparation, of attempt, of accomplishment or are already performed;

actual beneficiary - a natural person that ultimately owns or controls a natural or legal person or beneficiary of an investment company or manager of the investment company, or a person in whose name an activity is carried out or a transaction is performed and/or who owns, directly or indirectly, the right of ownership or control of at least 25% of the shares or of the voting rights of the legal person or of the goods under fiduciary administration;

goods - financial means, as well as funds, income, any category of corporeal or incorporeal, movable or immovable, tangible or intangible values (assets) and acts or other legal instruments in any form, including in electronic or digital form that attest a title or a right, including any share quota (interest) in respect of those values (assets);

client - a natural or legal person that is in the process of establishment of a business relationship or has already established a business relationship with the reporting entity or has benefited or benefits from the services of the reporting entity;

members of families of politically exposed persons - husband/wife, children and their husbands/wives, concubine and parents of the politically exposed person;

persons associated with politically exposed persons - natural persons known as being, together with a politically exposed person the beneficial owners of a legal person or engaged in joint business relationships, as well as natural persons known as being the sole beneficial owners of a legal person about which it is known that it was founded for de facto benefit of the politically exposed person;

persons with senior management positions - responsible persons or employees having sufficient knowledge about exposure of institution to money laundering and terrorism financing risk that hold sufficiently high positions to make decisions with effect on this exposure and that are not necessarily members of the management board;

politically exposed persons - natural persons that exercise or exercised during the last year prominent public functions at national and/or international level as well as members of the governing authorities of political parties;

business relationship - professional or commercial relationship related to professional activities of the reporting entities and persons regulated by the present law and which, at the time of contact establishment, is considered to be of a certain duration;

professional secret - information, data and documents held on the basis of the present law with respect to a particular person – personal data, data about financial assets, business relationships, ownership structure, sale network and about intentions of

business development, the disclosure of which may cause damages to the concerned person;

money laundering - actions established in art. 243 of the Criminal Code and in the international treaties to which the Republic of Moldova is a party;

transaction - actions based on prior understanding between two or more parties through which the goods are transferred, liquidated, transformed, placed or it is achieved their circulation;

occasional transaction - transaction carried out through a single operation or through several operations, by one or more natural or legal persons, in the absence of business relationship with the reporting entity.

III. MEASURES ON PREVENTION AND FIGHT AGAINST MONEY LAUNDERING AND FINANCING OF TERRORISM

5. When recording sales transactions of goods amounting at least MDL 200,000 or equivalent where payments are made in cash, the entity will obtain at least the following information:

- For natural person:
 - a) Name, surname and patronymic;
 - b) date and place of birth;
 - c) the identification number or other data contained in an official unexpired identity document, which contains the photograph of the holder (eg passport, identity card, residence permit issued by the empowered authorities of the Republic of Moldova);
 - d) citizenship, home address and/or residence, telephone number;
 - e) the occupation and, where appropriate, the name of the employer or the type of carried out;
- For legal person:
 - a) client's name;
 - b) headquarters and/or client address;
 - c) state identification number, telephone no.;
 - d) information on the identity of the persons who, according to the articles of association and/or the decision of the statutory bodies, are invested with the power to lead and represent the entity, as well as their powers.

6. Particular attention will be paid by the reporting entity to transactions or business relationships with the involvement of politically exposed persons.

7. For transactions with politically exposed persons, family members of politically exposed persons and persons associated with politically exposed persons, the entity will establish enhanced customer due diligence measures, including the following:

- developing and implementing appropriate risk management systems to determine whether a client, potential client or client of a client is a person politically exposed.

- obtaining the approval of a person with senior management positions in establishing or continuing business relationships with such clients;

- adopting appropriate measures to determine the source of the goods involved in the business relationship or transactions with such clients;

- conducting increased and continuous monitoring of the business relationship;

8. When the client is a non-resident natural person, the reporting entity will apply enhanced customer due diligence measures expressed by:

- obtaining additional customer information (type of activity, business figure);

- obtaining additional information about the nature and purpose of the business relationship.

IV. PRECAUTIONARY MEASURES:

- SIMPLIFIED CUSTOMER MEASURES

a) If the reporting entity plans simplified customer due diligence measures, it must perform the risk assessment and be able to demonstrate that the ML/TF risk is low. The risk assessment data is stored in the same order as the other data obtained during customer identification.

b) The reporting entity is required to conduct continuous monitoring of the client's business relationships, assessing among other things, whether its ML/TF risk is reduced in the future.

- ENHANCED CUSTOMER MEASURES

a) In cases where the reporting entity encounters difficulties in understanding the legal and economic transactions/activities of the client, then precautionary measures will be applied.

b) Under internal policies and internal control procedures, the reporting entity will determine the measures to be applied to reduce the risk that occurs during customer or beneficiary verification, such as:

- to receive more information about the client (the profession, other information from external sources);

- to find out why business transactions or business relationships have been initiated;
- information about the source of the funds, the good or the kind of activity carried out, the registered turnover.
- other data and information that enables the reporting entity to know the nature and purpose of the transaction or event recorded by the client.

V. POLICY FOR PREVENTION AND COMBATING OF MONEY LAUNDERING AND TERRORIST FINANCING

9. The reporting entity's policies are issued in order to ensure that an activity is carried out in accordance with the national and international legal obligations in force regarding the prevention of money laundering and terrorist financing, the observance of prudent, healthy practices and the promotion of high ethical standards and professionalism and to prevent the use of the reporting entity in the conduct of criminal activities by its clients.

10. The reporting entity in the process of registering cash transactions in amounts of at least MDL 200,000 may also identify transactions that would involve suspect indices being guided by the following criteria:

- The customer refuses to submit the information requested by the reporting entity, including information which is not provided by law but is required to know the client and the nature of the transaction;
- The client presents information that raises suspicions of being false and/or wrong to the reporting entity;
- The customer is accompanied or supervised by a third party or acts through a third party but does not communicate or refuse to provide the data, and the beneficiary of the transaction is that third person.
- Transactions with customers in high-risk jurisdictions;
- Performing transactions involving the politically exposed persons that do not reveal the necessity to perform such operations through cash.

11. The suspicious nature of the activities and transactions is established on the basis of objective and subjective criteria, according to international and national standards in the field, being determined by the unusual way in which transactions are carried out in correlation with risk-based indicators, reported to the current activities, economic efficiency and other criteria adjusted to client knowledge procedures.

12. The internal programs will include information on the requirements of the legislation in terms of customer knowledge as well as specific practical aspects, in particular in order to enable staff to recognize suspicious operations and to take appropriate action. All staff will be trained to ensure that they know their responsibilities, and will be informed of any techniques, money laundering typologies, and terrorist financing.

VI. RESPONSIBILITIES AND OBLIGATIONS

13. The entity and its employees are required not to disclose to the natural or legal persons performing the transaction or third parties about the transmission of the information to the OPFML. The reporting entity will designate a person responsible for implementing and supervising the implementation and enforcement of the provisions of this Program.

14. The entity assures the protection of its employees against any threats or hostile actions in relation to the reporting of cash or suspicious transactions.

15. The entity approves the present Program on the Prevention and Combating of Money Laundering and Terrorist Financing, as well as any changes it has made or whenever necessary, and as a result of changes to legislation in the field of prevention and combating of money laundering and terrorist financing.

16. The entity approves questionnaires on customer identification, politically exposed persons and final beneficiary.

VII. REPORTING SUSPECT ACTIVITIES OR TRANSACTIONS

17. The reporting entity will immediately inform the Office for Prevention and Fight against Money Laundering on suspicious goods, suspected money laundering activities or transactions, associated crime and terrorist financing activities that are under preparation, attempted, or already executed. Data on suspicious activities, suspicious transactions, and suspicious goods shall be indicated in a special form approved by the Director of the Office and should be transmitted to the Office for Prevention and Fight against Money Laundering within 24 hours after the identification of the act or circumstances of the suspicion.

The reporting entity will inform the Office for Prevention and Fight against Money Laundering about cash transactions or transactions carried out in cash through a transaction with a value of at least MDL 200,000 or through several cash operations that

seem to have a connection between them within 10 calendar days from the date of registration of the operation.

VIII. KEEPING DATA REGARDING TRANSACTIONS REGISTERED BY THE REPORTING ENTITY

18. The reporting entity shall keep, for a period of 5 years after the termination of business relationship, all data related to national and international activities and transactions to the extent that they can respond promptly to requests of Office for Prevention and Fight against Money Laundering, of authorities with supervision functions of the reporting entities and law enforcement agencies. The kept data must be sufficient to allow the reconstitution of each activity or transaction in the manner in which it is necessary to serve as evidence in criminal proceedings, contraventions and any other legal proceedings.

19. The entity will provide access to documents and information regarding the identification and verification of the clients, the actual beneficiary, as well as on the monitoring of the clients' operations, including the supporting documents, in case of request. At the request of the competent authorities, the term for holding and retaining information related to clients and their operations may be extended for a specified period of time in the request.

IX. FINAL PROVISIONS

20. The provisions of laws, governmental decisions and other legal acts should be followed immediately, without waiting for the modification or completion of this Program.

21. The reporting entity in case of violation of the requirements of this Program is liable in accordance with the procedure established by law.