

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3419 of 22nd July, 2004



I ASSENT,

FRANCIS RICHARDS,

GOVERNOR.

21st July, 2004.



GIBRALTAR

No. 14 of 2004

AN ORDINANCE to amend the Criminal Justice Ordinance 1995 for the purposes of transposing into the law of Gibraltar Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering and for related matters.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Ordinance may be cited as the Criminal Justice (Amendment) Ordinance 2004 and comes into operation on the day the Government appoints by notice in the Gazette.

Amendments to the Criminal Justice Ordinance 1995.

2.(1) The Criminal Justice Ordinance 1995 (“the Principal Ordinance”) is amended in accordance with the provisions of this section.

(2) Section 2 of the Principal Ordinance is amended—

(a) by inserting the following after subsection (2)—

“(2A)(1) Where a person undertakes relevant financial business in accordance with section 8 and that person —

(a) knows or suspects that another person is engaged in money laundering;

(b) the information or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and

(c) he does not disclose the information or other matter to a customs or police officer as soon as is reasonably practicable after it comes to his attention,

he is guilty of an offence.

(2) A person is not guilty of an offence under subsection (1) if—

(a) that person is a notary, independent legal professional, auditor, external accountant or tax advisor, and

(b) the information has been obtained on or received from one of their clients-

(i) in the course of ascertaining the legal position for their client; or

(ii) whilst performing the task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings,

whether such information is received or obtained before, during or after such proceedings.”;

(b) in subsection (3)(a) after “the disclosure” insert “when made in good faith”.

(3) In section 3(5) of the Principal Ordinance after “the disclosure” insert “when made in good faith”.

(4) For section 5(4) of the Principal Ordinance substitute—

“(4) Nothing in subsections (1) to (3) makes it an offence for a notary, independent legal professional, auditor, external accountant or tax advisor to disclose any information or other matter—

(a) to a client or his representative in connection with the giving by the notary, independent legal professional, auditor, external accountant or tax advisor of advice in connection with ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings; or

(b) to any person, in contemplation of, or in connection with, ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is

received or obtained before during or after such proceedings.”.

(5) In section 6 of the Principal Ordinance—

- (a) after the definition of “Banking Supervisor” in subsection (1) insert—

““Consolidated Banking Directive” means Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions.”;

- (b) in the definition of “home regulated activity” for “Annex to the Second Banking Coordination Directive” substitute “Annex I to the Consolidated Banking Directive”;
- (c) delete the definition of “Second Banking Coordination Directive”;
- (d) delete subsection (4).

(6) In section 8 of the Principal Ordinance—

- (a) in subsection (1) after “engaging in one or more of the following” insert “businesses or activities”;
- (b) in subsection (1)(f) for “Annex to the Second Banking Coordination Directive” substitute “Annex I to the Consolidated Banking Directive”;
- (c) after paragraph (1)(g) insert—

“(h) auditors, external accountants and tax advisors;

(i) real estate agents;

(j) notaries and other independent legal professionals, when they participate whether—

(i) by assisting in the planning or execution of transactions for their client concerning the—

(A) buying and selling of real property or business entities;

(B) managing of client money, securities or other assets;

(C) opening or management of bank, savings or securities accounts; or

(ii) by acting on behalf of and for their client in any financial or real estate transaction;

(k) controlled activity under the Financial Services Ordinance 1989;

(l) dealers in all high value goods whenever payment is made in cash and in an amount of EUR 15 000 or more;

(m) casinos;

(n) currency exchange offices / bureaux de change;

(o) money transmission / remittance offices.”.

(7) In section 12(5) of the Principal Ordinance for the definition “authorised credit institution” substitute “means a credit institution as defined in the Consolidated Banking Directive;”.

(8) In section 14 of the Principal Ordinance—

(a) after section (1)(g) insert —

“(h) in relation to a casino where—

(i) a customer purchases or sells chips with a value of less than EUR 1000; or

(ii) if the casino is subject to state supervision, it shall be deemed to have complied with the identification requirement if it registers and

identifies its customers immediately on entry, regardless of the number of gambling chips they purchase.

(i) where the customer is a credit or financial institution to which the Money Laundering Directive applies or is based or incorporated in or formed under the law of a country other than a member state in which there are in force provisions at least equivalent to those required by the Money Laundering Directive.”;

(b) after subsection (2) insert–

“(3) Where identification would be required in the circumstances set out in subsection (1) (e), (f) and (g), this requirement will not apply where it is established that payment is being effected from an account held in the customer’s name with a credit institution subject to the provisions of the Money Laundering Directive.”.

(9) In section 20(4) of the principal Ordinance after “any disclosure” insert “when made in good faith”.

(10) After subsection 21(3) of the principal Ordinance insert–

“(4) Relevant financial businesses as defined in subsections 8(1)(h), (i), (j) and (m) shall not be required to comply with the requirements of Part III for any existing business relationships or one-off transactions commenced or effected before the coming into operation of this subsection.

(5) Relevant financial services businesses as defined in section 8(1)(k) shall implement such specific procedures, in respect of business relationships (except one-off transactions), as may be contained in supervisory or regulatory guidance as defined in section 9(5).”.

(11) After section 44 of the Principal Ordinance insert–

“PART V

GENERAL

Regulations

45. The Government may make regulations generally for carrying out any of the purposes or provisions of this Ordinance or any matters incidental or consequential thereto as may appear to the Government to be necessary or proper for giving full effect to this Ordinance or to the obligations of the Government under Community law.”.

3. In section 6(1) of the Principal Ordinance amend the definition of the Money Laundering Directive to add at the end “as the same may from time to time be amended”.

Passed by the Gibraltar House of Assembly on the 2nd day of July, 2004.

P. E. MARTINEZ,

Clerk to the Assembly (Acting).

