

**Drug Trafficking Offences**  
**DRUG TRAFFICKING (MONEY LAUNDERING)**  
**REGULATIONS 1995**

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**Revoked**  
**Subsidiary**  
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Regulations made under section 68 of the Drug Trafficking Offences Ordinance 1995.

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**Revoked by Ord. 1995-14 as from 1.1.1996**

**(LN. 1995/040)**

**1.4.1995**

Amending enactments	Relevant current provisions	Commencement date
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**Title and commencement.**

1. These regulations may be cited as the Drug Trafficking (Money Laundering) Regulations 1995, and shall take effect on the 1st day of April 1995.

**Interpretation.**

2.(1) In these regulations -

“applicant for business” means a person seeking to form a business relationship, or carry out a one-off transaction, with a person who is carrying out financial business in Gibraltar;

“business relationship” has the meaning given by regulation 3;

“Case 1”, “Case 2”, “Case 3” and “Case 4” have the meanings given in regulation 7;

“European institution” has the same meaning as in the Banking Ordinance 1992;

“insurance business” means long term business within the meaning of Council Directive 79/267/EEC;

“the Money Laundering Directive” means Council Directive 91/308/EEC;

“one-off transaction” means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant financial business;

“relevant financial business” has the meaning given by regulation 4; and

“supervisory authority” has the meaning given by regulation 15.

(2) In these regulations, “ecu” means the European currency unit as defined in Article 1 of Council Regulation No. 3180/78/EEC and the exchange rates as between the ecu and the currencies of the member States to be applied for each year beginning on 31st December shall be the rates applicable on the last day of the preceding October for which rates for the currencies of all the member States were published in the Official Journal of the Communities.

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(3) In these regulations except in so far as the context otherwise requires, “money laundering” means doing any act which constitutes an offence under sections 54, 55 or 56 or under a corresponding law.

(4) For the purposes of these regulations, a business relationship formed by any person acting in the course of relevant financial business is an established business relationship where that person has obtained, under procedures maintained by him in accordance with regulation 7, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business.

#### **Business relationships.**

3.(1) Any reference in this regulation to an arrangement between two or more persons is a reference to an arrangement in which at least one person is acting in the course of a business.

(2) For the purposes of these regulations, “business relationship” means any arrangement between two or more persons where -

- (a) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis, and
- (b) the total amount of any payment or payments to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

#### **Relevant financial business**

4.(1) For the purposes of these regulations, “relevant financial business” means, subject to sub-regulation (2) the business of engaging in one or more of the following -

- (a) deposit-taking business carried on by a person who is for the time being an authorised institution under the Banking Ordinance 1992;
- (b) acceptance by a building society of deposits made by any person (including the raising of money from members of the society by the issue of shares);
- (c) business of the Savings Bank;

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- (d) any home regulated activity carried on by a European institution in respect of which the relevant requirements of the Banking Ordinance 1992 have been complied with;
- (e) investment business within the meaning of the Financial Services Ordinance 1989;
- (f) any of the activities in points 1 to 12, or 14, of the Annex to the Second Banking Co-ordination Directive other than an activity falling with sub-paragraphs (a) (b), (d) or (e) above;
- (g) insurance business carried on by a person who has received official authorisation pursuant to Article 6 or 27 of the First Life Directive.

(2) A business is not relevant financial business in so far as it consists of such business in relation to any person who is an exempted person for the purposes of section 4 of the Financial Services Ordinance 1989.

(3) In this regulation -

“building society” has the same meaning as in the Building Societies Ordinance;

“deposit-taking business” has the same meaning as in the Banking Ordinance 1992;

“the First Life Directive” means the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No. 79/267/EEC);

“the Second Banking Co-ordination Directive” means the Second Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (No. 89/646/EEC).

### **Systems and training to prevent money laundering.**

5.(1) No person shall, in the course of financial business carried on by him in Gibraltar, form a business relationship, or carry out a one-off transaction, with or for another unless that person -

- (a) maintains the following procedures established in relation to that business -

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- (i) identification procedures in accordance with regulations 7 and 9;
  - (ii) record-keeping procedures in accordance with regulation 12;
  - (iii) except where the person concerned is an individual who in the course of relevant financial business does not employ or act in association with any other person, internal reporting procedures in accordance with regulation 14; and
  - (iv) such other procedures of internal control and communications as may be appropriate for the purposes of forestalling and prevent money laundering;
- (b) takes appropriate measures from time to time for the purposes of making employees whose duties include the handling of relevant financial business aware of-
- (i) the procedures under (a) which are maintained by him and which relate to the relevant financial business in question, and
  - (ii) the enactments relating to money laundering; and
- (c) provides such employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering.
- (2) Any person who contravenes this regulation shall be guilty of an offence and liable -
- (a) on conviction on indictment, to imprisonment not exceeding a term of two years or a fine or both;
  - (b) on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (3) In determining whether a person has complied with any of the requirements of sub-regulation (1), the court may take account of -
- (a) any relevant supervisory or regulatory guidance which applies to that person;

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- (b) in a case where no guidance falling within (a) applies, relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

(4) In proceedings against any person for an offence under this regulation, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

- (5) In this regulation -

“enactments relating to money laundering” means the enactments referred to in regulation 2 (3) and the provisions of these regulations; and

“supervisory or regulatory guidance” means guidance issued, adopted or approved by a supervisory authority.

### **Offences by bodies corporate, partnerships and unincorporated associations.**

6.(1) Where an offence under regulation 5 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by the members, sub-regulation (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.

(3) Where an offence under regulation 4 committed by a partner or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association, he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### **Identification procedures; business relationships and transactions.**

7.(1) Subject to regulations 8 and 10, identification procedures maintained by a person are in accordance with this regulation if in Cases 1

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to 4 set out below they require, as soon as is reasonably practicable after contact is first made between that person and an applicant for business concerning any particular business relationship or one-off transaction -

- (a) the production by the applicant for business of satisfactory evidence of his identify; or
- (b) the taking of such measures specified in the procedures as will produce satisfactory evidence of his identity;

and the procedures are, subject to sub-regulation (6), in accordance with this regulation if they require that where that evidence is not obtained the business relationship or one-off transaction in question shall not proceed any further.

(2) Case 1 is any case where the parties form or resolve to form a business relationship between them.

(3) Case 2 is any case where, in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is carried out on behalf of another person engaged in money laundering.

(4) Case 3 is any case where, in respect of any one-off transaction, payment is to be made by or to the applicant for business of the amount of ecu 15,000 or more.

(5) Case 4 is any case where, in respect of two or more one-off transactions -

- (a) it appears at the outset to a person handling any of the transactions -
  - (i) that the transactions are linked; and
  - (ii) that the total amount, in respect of all the transactions, which is payable by or to the applicant for business is ecu 15,000 or more; or
- (b) at any later stage, it comes to the attention of such a person that the provisions of paragraph (a) are satisfied.

(6) The procedures referred to in sub-regulation (1) are in accordance with this regulation if, when a report is made in circumstances falling within Case 2 (whether in accordance with regulation 14 or directly to a customs officer), they provided for steps to be taken in relation to the one-off



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transaction in question in accordance with any directions that may be given by a customs officer.

(7) In these regulations references to satisfactory evidence of a person's identify shall be construed in accordance with regulation 11 (1).

### **Payment by post etc.**

8.(1) Where satisfactory evidence of the identity of an applicant for business would, apart from this sub-regulation, be required under identification procedures in accordance with regulation 7 but -

- (a) the circumstances are such that a payment is to be made by the applicant for business; and
- (b) it is reasonable in all the circumstances -
  - (i) for the payment to be sent by post or by any electronic means which is effective to transfer funds; or
  - (ii) for the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means;

then, subject to sub-regulation (2), the fact that the payment is debited from an account held in the applicant's name at an institution mentioned in sub-regulation (4) (whether the account is held by the applicant alone or jointly with one or more other persons) shall be capable of constituting the required evidence of identity.

- (2) Sub-regulation (1) shall not have effect to the extent that -
  - (a) the circumstances of the payment fall within Case 2; or
  - (b) the payment is made by any person for the purpose of opening a relevant account with an institution falling within sub-regulation (4) (a) or (b).
- (3) For the purposes of sub-regulation (1) (b), it shall be immaterial whether the payment or its details are sent or given to a person who is bound by regulation 5 (1) or to some other person acting on his behalf.
- (4) The institutions referred to in sub-regulation (1) are -
  - (a) any institution which is an authorised credit institution in accordance with the Banking Ordinance 1992; or

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(b) a Building Society in accordance with the Building Societies Ordinance.

(5) For the purposes of this regulation -

“authorised institutions” means a credit institution, as defined in Article 1 of the First Council Directive on the co-ordination of laws, regulations and administrative provision relating to the taking up and pursuit of the business of credit institutions (77/780/EEC), which is authorised to carry on the business of a credit institution by a competent authority of a member state; and

“relevant account” means an account from which a payment may be made by any means to a person other than the applicant for business, whether such a payment -

(a) may be made directly to such a person from the account by or on behalf of the applicant for business; or

(b) may be made to such a person indirectly as a result of-

(i) a direct transfer of funds from an account from which no such direct payment may be made to another account, or

(ii) a change in any of the characteristics of the account.

#### **Identification procedures; transactions on behalf of another.**

9.(1) This regulation applies where, in relation to a person who is bound by regulation 5 (1), an applicant for business is or appears to be acting otherwise than as principal.

(2) Subject to regulation 10, identification procedures maintained by a person are in accordance with this regulation if, in a case to which this regulation applies, they require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting.

(3) In determining, for the purposes of sub-regulation (2), what constitutes reasonable measures in any particular case regard shall be had to all the circumstances of the case and, in particular, to best practice which, for the time being, is followed in the relevant field of business and which is applicable to those circumstances.

(4) Without prejudice to the generality of sub-regulation (3), if the conditions mentioned in sub-regulation (5) are fulfilled in relation to an applicant for business who is, or appears to be, acting as an agent for a

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principal (whether undisclosed or disclosed for reference purposes only) it shall be reasonable for a person bound by regulation 5 (1) to accept a written assurance from the applicant for business to the effect that evidence of the identify of any principal on whose behalf the applicant for business may act in relation to that person will have been obtained and recorded under procedures maintained by the applicant for business.

(5) The conditions referred to in sub-regulation (4) are that, in relation to the business relationship or transaction in question, there are reasonable grounds for believing that the applicant for business-

- (a) acts in the course of a business in relation to which an overseas regulatory authority exercise regulatory functions;
- (b) 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.

### **Identification procedures; exemptions.**

10.(1) Subject to sub-regulation (2), identification procedures under regulations 7 and 9 shall not require any steps to be taken to obtain evidence of any person's identity-

- (a) where there are reasonable grounds for believing that the applicant for business is a person who is bound by the provisions of regulation 5 (1);
- (b) where there are reasonable grounds for believing that the applicant for business is otherwise a person who is covered by the Money Laundering Directive;
- (c) where any one-off transaction is carried out with or for a third party pursuant to an introduction effected by a person who has provided an assurance that evidence of the identity of all third parties introduced by him will have been obtained and recorded under procedures maintained by him, where that person identifies the third party and where-
  - (i) that person falls within paragraph (a) or (b); or
  - (ii) there are reasonable grounds for believing that the conditions mentioned in regulation 9 (5) (a) and (b) are fulfilled in relation to him;

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- (d) where the person who would otherwise be required to be identified in relation to a one-off transaction is the person to whom the proceeds of that transaction are payable but to whom no payment is made because all of those proceeds are directly reinvested on his behalf in another transaction-
  - (i) of which a record is kept, and
  - (ii) which can result only in another reinvestment made on that person's behalf or in a payment made directly to that person;
- (e) in relation to insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation where the policy-
  - (i) contains no surrender clause, and
  - (ii) may not be used as collateral for a loan;
- (f) in relation to insurance business in respect of which a premium is payable in one instalment of an amount not exceeding ecu 2,500; or
- (g) in relation to insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed ecu 1,000.

(2) Nothing in this regulation shall apply in circumstances falling within Case 2.

#### **Identification procedures; supplementary provisions.**

11.(1) For the purposes of these regulations, evidence of identity is satisfactory if -

- (a) it is reasonably capable of establishing that the applicant is the person he claims to be; and
- (b) the person who obtains the evidence is satisfied in accordance with the procedures maintained under these regulations in relation to the relevant financial business concerned, that it does establish the fact.

(2) In determining for the purposes of regulation 7 (1) the time span in which satisfactory evidence of a person's identity has to be obtained, in

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relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including, in particular -

- (a) the nature of the business relationship or one-off transaction concerned;
- (b) the geographical locations of the parties;
- (c) whether it is practical to obtain the evidence before commitments are entered into between the parties or before money passes;
- (d) in relation to Case 3 or 4, the earliest stage at which there are reasonable grounds for believing that the total amount payable by an applicant for business is ecu 15,000 or more

### **Record-keeping procedures.**

12.(1) Record-keeping procedures maintained by a person are in accordance with this regulation if they require the keeping, for the prescribed period, of the following records -

- (a) in any case where, in relation to any business relationship that is formed or one-off transaction that is carried out, evidence of a person's identity is obtained under procedures maintained in accordance with regulation 7 or 9, a record that indicates the nature of the evidence, and
  - (i) comprises a copy of the evidence; or
  - (ii) provides such information as would enable a copy of it to be obtained; or
  - (iii) in a case where it is not reasonably practicable to comply with (i) or (ii), provides sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained; and
- (b) a record containing details relating to all transactions carried out by that person in the course of relevant financial business.

(2) For the purposes of sub-regulation (1), the prescribed period is, subject to sub-regulation (3), the period of at least five years commencing with -

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- (a) in relation to such records as are described in sub-regulation (1) (a), the date on which the relevant business was completed within the meaning of sub-regulation (4); and
  - (b) in relation to such records as are described in sub-regulation (1) (b), the date on which all activities taking place in the course of the transaction in question were completed.
- (3) Where a person who is bound by the provisions of regulation 5 (1) -
- (a) forms a business relationship or carries out a one-off transaction with another person;
  - (b) has reasonable grounds for believing that that person has become insolvent; and
  - (c) after forming that belief, takes any step for the purpose of recovering all or part of the amount of any debt payable to him by that person which has fallen due;

the prescribed period for the purposes of sub-regulation (1) is the period of at least five years commencing with the date on which the first such step is taken.

(4) For the purposes of sub-regulation (2) (a), the date on which relevant business is completed is, as the case may be -

- (a) in circumstances falling within Case 1, the date of the ending of the business relationship in respect of whose formation the record under sub-regulation (1) (a) was compiled;
- (b) in circumstances falling within Case 2 or 3, the date of the completion of all activities taking place in the course of the one-off transaction in respect of which the record under sub-regulation (1) (a) was compiled;
- (c) in circumstances falling within Case 4, the date of the completion of all activities taking place in the course of the last one-off transaction in respect of which the record under sub-regulation (1) (a) was compiled;

and where the formalities necessary to end a business relationship have not been observed, but a period of five years has elapsed since the date on which the last transaction was carried out in the course of that relationship, then the date of the completion of all activities taking place in the course of that last transaction shall be treated as the date on which the relevant business was completed.

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**Record-keeping procedures; supplementary provisions.**

13. For the purposes of regulation 12 (3) (b), a person shall be taken to be insolvent if, but only if -

- (a) in the case of an individual, a petition is presented to the court under section 5 of the Bankruptcy Ordinance for the making of a receiving order against him;
- (b) in the case of a deceased individual, a petition is presented to the court under section 101 of the Bankruptcy Ordinance for an order for the administration of his estate according to the law of bankruptcy;
- (c) in the case of a company registered in Gibraltar-
  - (i) a petition is presented to the court under section 158 of the Companies Ordinance for the winding up of the company on the ground that the company is unable to pay its debts; or
  - (ii) the company resolves by extraordinary resolution that it cannot by reason of its liabilities continue its business; or
  - (iii) a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge;
- (d) in the case of a building society registered in Gibraltar, a petition for winding up is presented by a judgment creditor under section 23 (1) (d) of the Building Societies Ordinance;
- (e) in the case of a co-operative society, a receiver is appointed by the Registrar under section 39 (2) of the Co-operative Societies Ordinance;
- (f) in the case of a society registered under the Friendly Societies Ordinance, an application is made to the Registrar under section 72 of that Ordinance for investigation into the affairs of the society;
- (g) in the case of a partnership, whether limited or unlimited, or an association or company which may be wound up by the court under Part VIII of the Companies Ordinance, a petition for winding up is presented to the court.

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14. Internal reporting procedures maintained by a person are in accordance with this regulation if they include provision -

- (a) identifying a person (“the appropriate person”) to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant financial business and which, in the opinion of the person handling that business, gives rise to a knowledge or suspicion that another person is engaged in money laundering;
- (b) requiring that any such report be considered in the light of all other relevant information by the appropriate person, or by another designated person, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;
- (c) for any person charged with considering a report in accordance with (b) to have reasonable access to other information which may be of assistance to him and which is available to the person responsible for maintaining the internal reporting procedures concerned; and
- (d) for securing that the information or other matter contained in a report is disclosed to a customs officer where the person who has considered the report under the procedures maintained in accordance with the preceding provisions of this paragraph knows or suspects that another person is engaged in money laundering.

**Supervisory authorities.**

15.(1) References in these regulations to supervisory authorities shall be construed in accordance with the following provisions.

(2) For the purposes of these regulations, each of the following is a supervisory authority -

- (a) the Financial and Development Secretary in respect of Building Societies;
- (b) the person, who under administrative arrangements made in respect of authorised institutions and insurance companies subject to regulation in accordance with Council Directives known as Co-ordination Directives in respect of such institutions and insurance companies has been notified to the Commission and to the appointed competent authorities of the



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other member States as the competent authority under those Directives;

- (c) the Authority appointed under the Financial Services Ordinance for the purposes of persons and relevant financial business regulated by that Ordinance.

### **Supervisors etc. to report evidence of money laundering.**

16.(1) Subject to sub-regulation (2), where a supervisory authority -

- (a) obtains any information; and
- (b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering,

the authority shall, as soon as is reasonably practicable, disclose that information to a customs officer.

(2) Where any person is a secondary recipient of information obtained by a supervisory authority, and that person forms such an opinion as is mentioned in sub-regulation (1) (b), that person may disclose the information to a customs officer.

(3) Where any person within sub-regulation (6) -

- (a) obtains any information whilst acting in the course of any investigation, or discharging any functions, to which his appointment or authorisation relates; and
- (b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering,

that person shall, as soon as is reasonably practicable, either disclose that information to a customs officer or disclose that information to the supervisory authority by whom he was appointed or authorised.

(4) Any disclosure made by virtue of the preceding provisions of this regulation shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Any information -

- (a) which has been disclosed to a customs officer by virtue of the preceding provisions of this regulation; and

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- (b) which would, apart from the provisions of sub-regulation (4), be subject to such a restriction as is mentioned in that sub-regulation;

may be disclosed by the customs officer, or any person obtaining the information directly or indirectly from him, in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings, but not otherwise.

(6) Persons falling within this regulation are persons or inspectors appointed under -

- (a) the Banking Ordinance 1992;
- (b) the Insurance Companies Ordinance;
- (c) the Building Societies Ordinance;
- (d) the Financial Services Ordinance 1989.

(7) In this regulation, “secondary recipient”, in relation to information obtained by a supervisory authority, means any person to whom that information has been passed by the authority.

#### **Transitional provisions.**

17.(1) Nothing in these regulations shall require a person who is bound by regulation 5 (1) to maintain procedures in accordance with regulations 7 and 9 which require evidence to be obtained in respect of any business relationship formed by him before the date on which these regulations come into force as to the identity of the person with whom that relationship has been formed.

(2) For the purposes of regulation 2(4), any business relationship referred to in sub-regulation (1), shall be treated as if it were an established business relationship.

(3) In regulation 10(1)(g), the reference to the total payable in respect of any calendar year not exceeding ecu 1,000 shall, for the period commencing with the coming into force of these regulations and ending with 30th December, 1995, be construed as a reference to the total payable in respect of that period not exceeding ecu 750.