

TO : i. **Cyprus Investment Firms**
ii. **UCITS Management Companies**
iii. **Administrative Services Companies**

FROM : **Cyprus Securities and Exchange Commission**

DATE : **August 4, 2014**

CIRCULAR No : **CI144-2014-25**

FILE No : **E.K. 02.03.001**

SUBJECT : **Findings of on-site inspections – compliance officer’s annual report on the prevention of money laundering and terrorist financing – relevant persons’ liability and administrative sanctions**

The Cyprus Securities and Exchange Commission (the ‘Commission’) wishes, with this circular, to inform Cyprus Investment Firms, UCITS Management Companies and Administrative Services Companies (the ‘Regulated Entities’) of the following:

A. Findings of on-site inspections, assessing the compliance of Regulated Entities with their obligations relating to the prevention of money laundering and terrorist financing

1. In the years 2013 and 2014, the Commission visited a number of Regulated entities for the purpose of conducting on-site inspections assessing the compliance of the said Regulated Entities with their obligations deriving from the Prevention and Suppression of Money Laundering and Terrorist Financing Law (the ‘Law’) and Directive DI144-2007-08 of the Commission for the Prevention of Money Laundering and Terrorist Financing (the ‘Directive’). In carrying out the said inspections, the Commission found that the measures and procedures adopted by a number of Regulated Entities for compliance with their obligations under and Directive, were insufficient.

Regulated Entities are directed to the Commission’s circular CI144-2013-20, dated 12 July 2013, which is also relevant to this issue.

2. The following commonly occurring weaknesses/deficiencies were identified:
 - i. Insufficient inclusion of, and harmonization with, the Directive’s provisions in the client acceptance policy.

- ii. Failure to execute the appropriate client categorization policy as per the client acceptance policy and the provisions of the Law and the Directive.
 - iii. Insufficient procedures for the determination and verification of a client's identity and the performance of client due diligence on high-risk clients, particularly politically exposed persons.
 - iv. Insufficient procedures for the management and implementation of financial sanctions imposed against various persons by the United Nations and the European Commission.
 - v. Failure to obtain all required documents for the determination of a client's identity and the performance of client due diligence.
 - vi. Failure to certify and/or translate, as per Directive's provisions, the documents obtained for the determination of a client's identity and the performance of client due diligence.
 - vii. Failure to sufficiently update client records with appropriate documents and information and/or client files contained invalid documents and information.
 - viii. Failure to obtain all the relevant data/information required for the construction of a client's economic profile.
 - ix. Failure to maintain a separate document for recording the data/information required for the construction of a client's economic profile.
 - x. Insufficient or infrequent monitoring of clients' accounts and transactions.
 - xi. Where the Regulated Entity relied on third parties for the determination of a client's identity and the performance of client due diligence, failure, as per the Law and Directive, of said third parties to meet the legal requirements for performing such duties.
 - xii. Failure to include all the relevant procedures to be followed by the Regulated Entity under the Law and Directive, in the Regulated Entity's Manual for the prevention of Money Laundering and terrorist financing.
3. The Commission urges all Regulated Entities to:
- i. Urgently revisit the adequacy and effectiveness of policies, regulations and procedures implemented and maintained for compliance with their legal obligations in relation to the prevention of money laundering and terrorist financing, and take remedial measures where the need arises.
 - ii. Urgently reexamine all client files so as to ensure that all required documents, data or information are contained therein, as per the provisions of the Law and Directive.

B. Annual Statement in relation to the prevention of money laundering and terrorist financing

4. The anti money laundering compliance officer (AMLCO) is under the obligation to prepare an annual report (the 'Annual Report'), which is significant tool for assessing the Regulated Entity's level of compliance with its obligations as per the Law and Directive.

The Annual Report is prepared and submitted to the Regulated Entity's board of directors for approval, within two months from the end of each calendar year (i.e. by the end of February at the latest).

5. Under paragraph 5(i) of the Directive, the board of directors assesses and approves the Annual Report and takes all actions as deemed appropriate under the circumstances to remedy any weaknesses and/or deficiencies identified in the Annual Report.
6. The Annual Report, after its approval by the board of directors, is submitted to the Commission, together with the minutes of the meeting during which the Annual Report was discussed and approved. It is provided that the said minutes include the measures decided for the correction of any weaknesses and/or deficiencies identified in the Annual Report, and the implementation timeframe for these measures. These minutes and the Annual Report are submitted to the Commission within twenty days from the date of the relevant meeting, and not later than three months from the end of the calendar year.
7. According to paragraph 10(4) of the Directive, the Annual Report deals with the prevention of money laundering and terrorist financing during the year under review and contains, as a minimum, the issues set out in the abovementioned paragraph.
8. The Commission has proceeded to the assessment of the Annual Reports and the relevant minutes of the board of directors and has identified several weaknesses/deficiencies.
9. With regard to the Annual Reports, the Commission has found the reports to be of a moderate to poor quality, while they do not reference or make insufficient reference to the matters set out in paragraph 10(4) of the Directive.
10. The above weaknesses/deficiencies of the Annual Report do not seem to be reflected in the minutes of the board of directors' meeting in which the Annual Report was discussed and approved.

Additionally, the said minutes do not include neither the measures decided for the correction of any weaknesses and/or deficiencies identified in the Annual Report nor the relevant implementation timeframe for such measures.

11. The Commission urges AMLCOs to prepare the Annual Report as per the requirements of paragraph 10(4) of the Directive. In addition the contents of the board of directors' meeting, in which the Annual Report was discussed and approved, must be consistent with the contents of paragraph 10(3) of the Directive.

C. Relevant persons' liability – Administrative sanctions.

12. The role and responsibility of the board of directors of a Regulated Entity in relation to the prevention of money laundering and terrorist financing is particularly important. In accordance to paragraph 5(d) of the Directive, the board of directors must ensure that all obligations under the Law and Directive are complied with. Further, the board of directors must verify that appropriate, effective and adequate systems and procedures are in place, in order to achieve compliance with the above.
13. The role of the compliance officer in relation to the prevention of money laundering and terrorist financing is equally important. The duties of the compliance officer are set out in paragraph 9 of the Directive.
14. The Commission urges all members of the board of directors to:
 - a. Devote sufficient time in the performance of their duties with respect to matters relating to the prevention of money laundering and terrorist financing.
 - b. Monitor and periodically evaluate the effectiveness of the systems and procedures in place so as to ensure that the Regulated Entity complies, at all times, with its obligations under the Law and Directive.
15. Further to the above, the Commission urges all AMLCOs to perform their duties under paragraph 9 of the Directive, fully and effectively.
16. Article 59(6) of the Law provides for strict administrative sanctions where a Regulated Entity fails to comply with its obligations under the Law and Directive.

Yours sincerely

Demetra Kalogerou
Chairman of the Cyprus Securities and Exchange Commission