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FROM : **Cyprus Securities and Exchange Commission**

DATE : **24.03.2020**

CIRCULAR NO. : **C367**

SUBJECT : **Application of article 62(2) of the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 (L. 188(I)/2007)**

The Cyprus Securities and Exchange Commission ('CySEC'), with the present circular, which replaces Circular C157, wishes to inform all interested parties of **article 62(2) of Law for the Prevention and Suppression of Money Laundering and Terrorist Financing Law (the 'Law')**, pertaining to the obligation for verification of the identity of customers/beneficial owners.

According to **Article 62(1) and 62(2) of the Law**:

«62. (1) The verification of the identity of the customer and the beneficial owner is performed before the establishment of a business relationship or the carrying out of the transaction.

(2) By derogation from the provisions of subsection (1), the verification of the identity of the customer and the beneficial owner may be completed during the establishment of a business relationship, if this is necessary so as not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing occurring:

Provided that in such a case the customer and beneficial owner identity verification procedures shall be completed as soon as possible after the initial contact.

[...]».

CySEC wishes to draw the attention of interested parties to the following:

(i) According to **article 61(1)(a) and (b) of the Law**, customer identification and customer due diligence procedures include “identifying the customer/beneficial owner” and “verifying the identity of the customer/beneficial owner”.

(ii) The identification of a customer/beneficial owner occurs before the establishment of a business relationship¹ with the said person.

It is noted that the identification procedure includes the following (where appropriate):

- a) Creation of an economic profile for the customer/beneficial owner, and/or
- b) Carrying out a suitability test in accordance to **article 26(2) of the Law regarding the provision of investment services, the exercise of investment activities and the operation of regulated markets (the ‘L. 87(I)/2017’)** and/or
- c) Carrying out an appropriateness test in accordance to **article 26(3) of L. 87(I)/2017**.

(iii) As a general rule, in accordance to **article 62(1) of the Law**, the verification of identity of a customer/beneficial owner, also takes place before the establishment of a business relationship with the said person.

(iv) By way of derogation to the general rule of **article 62(1) of the Law**, in accordance to the **article 62(2) of the Law**, the verification of identity of the customer/beneficial owner of an obliged entity may be completed during the establishment of a business relationship, provided that all the following conditions are met:

- a) if this is necessary so as not to interrupt the normal conduct of business, and
- b) where there is little risk of money laundering or terrorist financing occurring, and
- c) where the verification procedure is completed as soon as possible after the initial contact.

(v) In relation to paragraph (iv) above, CySEC considers that, when commencing the establishment of a business relationship with a customer/beneficial owner whose identity has not been yet verified, the risk may be assessed as little when, as a minimum and among others, all the following conditions are taken into consideration:

- If the verification of the customer/beneficial owner’s identity has not been completed, the cumulative amount of deposited funds of a customer/beneficial owner should not exceed €2,000, irrespective of the number of accounts the customer holds with the

¹ “business relationship” in accordance to article 2 of the Law, means a “a business, professional or commercial relationship between the customer and the obliged entity which is connected with the professional activities of an obliged entity and which is expected by the obliged entity, at the time when the contact is established, to have an element of duration”

obliged entity. The amount of €2,000 does not automatically categorise the business relationship with the customer as low risk. It is noted that the obliged entity should assess each business relationship's risk in accordance with the appropriate procedure as per **the Law and the CySEC's Directive for the Prevention and Suppression of Money Laundering and Terrorist Financing ('CySEC's Directive')**.

- The obliged entity accepts deposits only from a bank account (or through other means that are linked to a bank account e.g. credit card), that is in the name of the customer with which establishes a business relationship.
- The cumulative time in which the verification of the identity of a customer/beneficial owner is completed, must not exceed 15 days from the initial contact.
- It is noted that the 'initial contact' takes place the moment that the customer either accepts the terms and conditions or makes his first deposit, whichever comes first.
- Within the timeframe of 15 days from initial contact, the obliged entity takes all reasonable measures to ensure that the percentage of customers that have not complied with the request to submit verification documents, is considerably low, e.g. the obliged entity issues requests/reminders to the customer/beneficial owner informing them of their obligation to submit the requested documents for the verification of their identity.
- Where the verification of the customer/beneficial owner's identity has not been completed during the designated timeframe of 15 days, the commencement of a business relationship must be terminated on the date of the deadline's expiry and all deposited funds must be returned to the customer/beneficial owner, in the same bank account from which they originated. The procedure for returning the funds must occur immediately, regardless of whether the customer has requested the return of their funds or not.

The returned funds (deposits) include any profits the customer has gained during his transactions and deducting any losses incurred.

- No funds are withheld and no accounts are frozen, save for those cases of suspicion of money laundering, where the obliged entity is under obligation to immediately report their suspicion to MOKAS in the designated procedure stated in the Law and CySEC's Directive.

Obliged entities must warn their customers **appropriately/sufficiently/in due time** of the above procedure, including for example the policy for treating open positions, the procedure for possible return of funds, and receive their explicit consent as to the procedure that is to be followed, before the establishment of the business relationship.

It is noted that obliged entities are under obligation to include in their risk management/money laundering manual, the designated internal practice, the measures, procedures and controls undertaken for the proper and effective implementation and monitoring of compliance with **article 62(2) of the Law**.

No deposits should be accepted by an obliged entity, where the customer/beneficial owner has not provided information as to:

- (i) the full identification of the customer, and
- (ii) the creation of an economic profile, and/or
- (iii) the completion of the suitability test, where applicable, and/or
- (iv) the completion of the appropriateness test, where applicable.

In relation to the verification of customers/beneficial owners' identity, CySEC urges obliged entities to complete the prescribed procedure before the establishment of a business relationship. In those extraordinary cases where the verification of a customer/beneficial owner's identity takes place during the establishment of a business relationship, obliged entities are required to take into consideration, in all cases, as a minimum, the parameters presented herein.

Administrative Service Providers ("ASPs"):

The contents of point (v) above in relation to the specificity of the derogation of **article 62 of the Law** are not applicable in the case of ASPs due to the nature of their activities.

ASPs are obliged to always be in compliance with the provisions of **article 62 of the Law**. In those exceptional cases where an ASP intends to rely on **article 62(2) of the Law** for the completion of customer/beneficial owner verification during the establishment of the business relationship (and not before), the ASP is under a strict obligation to fully justify its actions and to document the said justification as to the reasons why:

- the verification of the customer and the beneficial owner prior to the establishment of the business relationship would disrupt the normal conduct of its business, and
- the risk of money laundering or terrorist financing is little.

Yours sincerely,

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