

SUBSIDIARY LEGISLATION 373.04**USE OF CASH (RESTRICTION) REGULATIONS**

9th March, 2021

LEGAL NOTICE 81 of 2021 as amended by Legal Notice 421 of 2021.

1. (1) The title of these regulations is the Use of Cash (Restriction) Regulations. Citation and scope.

(2) The objective of these regulations is to introduce a restriction on the use of cash for certain payments and transactions with a view to combating money laundering and other criminal activity.

2. (1) All words and phrases not defined within these regulations shall have the same meaning as prescribed in the Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations. Interpretation and application.
Cap. 373.
S.L. 373.01

(2) In these regulations, unless the context otherwise requires:

"the Act" means the Prevention of Money Laundering Act;

"antique" means a work of art or an object of a geological, paleontological, archaeological, or antiquarian importance and which is at least one hundred years old;

"cash" means legal tender currency notes and coins;

"immovable property" means and includes all things, rights and actions which are immovable by their nature or by reason of the object to which they refer in accordance with articles 308 and 310 of the Civil Code; Cap. 16.

"jewellery" means personal ornaments made in whole or in part, or covered with gold, silver, platinum or other precious metals and, or, set with diamonds, precious stones or pearls, and wrist watches;

"linked transaction" means two or more transactions which are performed by the same parties, having the same or similar linked purpose or purposes, and which are carried out within a period of six (6) months;

"motor-vehicle" means any self-propelled road vehicle which is normally used for carrying persons or goods on the road, whether such vehicle has been previously owned or not;

"payment account" shall have the same meaning assigned to it under the Financial Institutions Act; Cap. 376.

"precious metal" means gold, platinum, palladium and silver in the pure state and their alloys;

"precious stone" means a substance with gem quality and market-recognised beauty, rarity, and value, and includes diamond, sapphire, ruby and emerald;

"sea-craft" means any ship, boat, pleasure yacht and any other form of sea-craft by whatever name called, used in navigation;

"the Unit" means the Financial Intelligence Analysis Unit as established under article 15 of the Act;

"trader" shall have the same meaning assigned to it under the Commercial Code.

Cap. 13.

Offence.

3. (1) It shall not be lawful for any person to make or receive a payment or otherwise carry out a transaction in cash amounting to, or exceeding, ten thousand euro (€10,000) or its equivalent in any other currency, whether in one transaction or in several linked transactions, in respect of the purchase or sale of:

- (a) antiques;
- (b) immovable property;
- (c) jewellery, precious metals, precious stones and pearls;
- (d) motor-vehicles;
- (e) sea-craft; and
- (f) works of art.

(2) Any person who contravenes the provisions of sub-regulation (1) shall be guilty of an offence and liable, on conviction, to a fine (*multa*) of not less than forty *per centum* (40%) of the sum paid, received, or otherwise transacted in cash in excess of nine thousand nine hundred ninety nine euro and ninety nine cents (€9,999.99), or its equivalent in any other currency:

Provided that where the person so found guilty is the director, manager, or any other officer exercising executive functions in a company or other undertaking, or body of persons, the said person shall, for the purpose of this regulation, be deemed to be vested with the legal representation of the same company or other undertaking, or body of persons, which shall accordingly be liable *in solidum* with the person found guilty for the payment of the said fine (*multa*).

(3) The fine (*multa*) referred to in sub-regulation (1) shall be

considered as a civil debt owed and payable to the Unit in respect of which the Unit shall have an executive title.

4. (1) The Court of Magistrates, in its criminal jurisdiction, shall be the competent court to take cognisance of offences against these regulations. Offence to be tried by the Court of Magistrates.

(2) Notwithstanding the provisions of the Criminal Code, the Attorney General shall have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of Magistrates in respect of criminal proceedings under these regulations. Cap. 9.

(3) In any criminal proceedings under these regulations, any officer of the Unit may, notwithstanding the provisions of any other law, produce evidence in Court:

Provided that the said officer may state the facts constituting the offence before giving evidence.

(4) Notwithstanding the provisions of the Criminal Code, criminal proceedings for an offence against these regulations shall be barred by prescription by the lapse of five (5) years. Cap. 9.

5. (1) Without prejudice to any other liability, whether criminal or civil, and to any related proceedings under any other law, a person who acts in contravention of regulation 3(1) may, as an alternative to criminal proceedings, and with the consent of the Attorney General, prior to being charged in court, agree to the payment of an administrative penalty to be imposed by the Unit as follows: Administrative settlement. Amended by: L.N. 421 of 2021.

(a) where the sum paid, received, or otherwise transacted in cash amounts to not more than fifty thousand euro (€50,000), an administrative penalty of ten *per centum* (10%) of the sum paid, received, or otherwise transacted in cash in excess of nine thousand nine hundred ninety nine euro and ninety-nine cents (€9,999.99), or its equivalent in any other currency, shall be imposed:

Provided that such administrative penalty shall not be less than one thousand euro (€1,000); and

(b) where the sum paid, received or otherwise transacted in cash amounts to more than fifty thousand euro (€50,000) but does not exceed one hundred thousand euro (€100,000), an administrative penalty of twenty-five *per centum* (25%) of the sum paid, received, or otherwise transacted in cash in excess of nine thousand nine hundred ninety nine euro and ninety-nine cents (€9,999.99), or its equivalent in any other currency, shall be imposed.

(2) The administrative settlement referred to in sub-regulation (1) shall not be concluded unless the agreement entered into with the Unit is accompanied by the payment to the Unit of the administrative penalty or the provision of sufficient security for its payment.

(3) Upon payment of the administrative penalty, the offender's criminal liability under these regulations, in relation to the offence in respect of which the settlement has been entered into, shall be extinguished.

(4) An administrative settlement as stipulated in sub-regulation (1) shall not be entered into by:

(a) any person who pays, receives or otherwise transacts in cash, where the sum of such payment, receipt or transaction exceeds one hundred thousand euro (€100,000); or

(b) any person who has been either found guilty of contravening the provisions of regulation 3, or has entered into an administrative settlement in terms of sub-regulation (1), unless three (3) years have elapsed from the date of such judgement or settlement agreement.

Validity of
payment or
transaction.

6. A payment made or received, or a transaction carried out, in contravention of regulation 3(1) shall not affect the legal validity of the payment or transaction, and of the contractual obligation in respect of which the payment or transaction was carried out, and all parties to the payment or transaction shall be bound by their contractual obligations notwithstanding such contravention.

Information on
immovable
property
transactions.
Amended by:
L.N. 421 of 2021.

7. Parties to a deed of purchase or sale of immovable property amounting to ten thousand euro (€10,000) or more, or its equivalent in any other currency, shall provide to the notary drawing up the deed the following information, which the notary shall have an obligation to collect:

(a) the name, address, the type and number of any official identification document issued by a government authority used to verify the identity of an individual, or any official registration number used to identify a body corporate, as may be applicable, of the buyer, seller, and any agents thereof;

(b) where payment is made in whole or in part through the transfer of funds from a payment account, the payment account IBAN;

(c) where payment is made in whole or in part by means of a credit or other payment card, the card number and the issuing institution;

(d) where payment is made in whole or in part by means of cheque, bank draft or similar instrument, the number of such cheque, bank draft or similar instrument and the name of the credit or financial institution on which it is drawn; and

(e) where payment is made in whole or in part through other methods or means, including payments in kind, the methods or means of payment and the exact amount so paid.

8. Any person who knowingly makes a false declaration, or a false representation, or who produces false or incomplete information or documentation for the purposes of these regulations shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not more than twenty-five thousand euro (€25,000).

False declaration, representation or documentation.

9. (1) The documentation, data or information referred to in regulation 7 shall be kept by the notary for a period of five (5) years commencing on such date when the transaction is carried out, or in the case of linked transactions, on the date on which the last transaction was carried out.

Record keeping procedures.
Amended by:
L.N. 421 of 2021.

(2) Notaries shall ensure that, upon request, all records maintained in accordance with this regulation are made available without undue delay to the Unit.

(3) The retention of personal data shall no longer be deemed necessary for the purposes of these regulations beyond the period established in terms of sub-regulation (1).

(4) The provisions of this regulation shall be without prejudice to the right of any other authority in terms of any applicable law to access the documentation, data and information described in regulation 7.

10. (1) The Unit shall have the function to monitor and to ensure compliance with these regulations.

Monitoring of compliance.

(2) In carrying out its function under sub-regulation (1), the Unit may:

(a) authorise any of its officers, employees, or agents to require any trader or notary subject to these regulations, to provide him or her with the information or documentation as may be required in order to monitor compliance with the provisions of these regulations and to answer any questions as the Unit may reasonably require for the performance of its function under sub-regulation (1); and

(b) carry out on-site examinations on any trader and notary subject to these regulations, with the aim of monitoring compliance and ensuring adherence with the provisions of

these regulations.

Cooperation with
other authorities.

11. (1) Notwithstanding any other provisions in the law, in the exercise of its functions under these regulations, the Unit may request the assistance of, and shall cooperate and exchange information with other national authorities and Government departments as may be necessary, including with the Police, the Attorney General, and the Commissioner for Revenue, for the purpose of monitoring and ensuring compliance with these regulations and in any investigation or prosecution of any person who has acted in contravention of the provisions of regulation 3(1).

(2) The Unit may, when it imposes an administrative penalty or issue a written warning to any trader or notary in terms of these regulations, or where any trader has been found to be contravening the provisions of regulation 3(1), inform the relevant authority, body or committee responsible for the authorisation, licensing, registration or regulation of the trader or notary concerned, providing any relevant information and details on the case in question which the Unit considers necessary:

Provided that, when the Unit deems appropriate, it may also recommend to any relevant authority, body or committee responsible for the authorisation, licensing, registration, or regulation of the trader or notary concerned, to take any further action within its powers and remit as deemed suitable and appropriate by the said authority, body, or committee.

Binding
procedures.
Amended by:
L.N. 421 of 2021.

12. The Unit may issue procedures and instructions, including templates, as may be required for the carrying into effect of these regulations, and which shall be binding on all traders and notaries subject to these regulations.

Administrative
penalties.
Added by:
L.N. 421 of 2021.

13. (1) Any trader or notary who fails to comply with any lawful requirement in accordance with these regulations, or with any procedures and instructions issued by the Unit in accordance with regulation 12, shall be liable to an administrative penalty of not more than five thousand euro (€5,000) which shall be imposed by the Unit without recourse to a court hearing, in accordance with policies and procedures established by the Board of Governors referred to in the Act.

(2) Notwithstanding the provisions of sub-regulation (1), the Unit may, where circumstances so warrant, issue a warning in writing instead of an administrative penalty.
