

**Order EHA/2444/2007 of 31 July, which develops the Regulation of Law 19/1993 of 28 December, on certain measures to prevent money laundering, approved by Royal Decree 925/1995 of 9 June, with regard to the external expert's report on internal control and reporting procedures and bodies established to prevent money laundering**

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The reform introduced by Law 19/2003, of 4 July, on the legal regime of capital movements and foreign economic transactions and certain measures to prevent money laundering, extended the list of obligations imposed by Law 19/1993 of 28 December on certain measures to prevent money laundering, introducing in article 3.7 the requirement that the procedures and bodies for internal control and reporting of obliged subjects should undergo an annual review by an external expert.

Subsequently, Royal Decree 54/2005 of 21 January, amending the Regulations of Law 19/1993, approved by Royal Decree 925/1995, addresses this obligation, noting the new section 7 added to article 11 whereby the examination results are recorded in a confidential written report describing the existing internal control measures, assessing their operational efficiency and proposing, where appropriate, any corrections or improvements. Also, depending on the different regime governing all the legislation on money laundering prevention depending on the sector of activity concerned, the Regulation relaxes this requirement for subjects under a special regime, allowing, with certain reserves, that the external inspection be held every three years.

Based on these considerations, this Order aims to detail the scope and content of that obligation, specifying a mandatory structure for the written report, and specifying the minimum aspects without which the obligation that internal control and reporting

procedures and bodies must be reviewed by an external expert cannot be deemed fulfilled.

This Order is issued pursuant to the legal empowerment contained in the first final provision of Royal Decree 925/1995 of 9 June, whereby the Minister of Economy and Finance, after complying with the formalities required by law, shall establish the necessary provisions for the development of the Regulation of Law 19/1993 of 28 December. Pursuant to the provisions of Article 13.2 (e) of Law 19/1993 of 28 December, the Commission for the Prevention of Money Laundering and Monetary Offences issued a mandatory opinion at its meeting on 18 July 2006.

Based on the foregoing, I stipulate as follows:

## **Article 1. Approval of the report format.**

1. Under this Order the report format adopted is that contained in the Annex, to which the report issued by the external expert must conform, in accordance with article 11.7 of the Regulations of Law 19/1993 of 28 December, on certain measures to prevent money laundering.

## **Article 2. Contents of the report.**

The report will describe in detail the existing internal control measures, assessing their operational efficiency and proposing, where appropriate, any corrections or improvements.

## **Article 3. Completion of the report model.**

1. The report model contained in Annex includes the minimum information to be filled in. Where any section or subsection does not apply, this shall be specified in the report, stating the reasons.

2. The report must include any other issue concerning the procedures and bodies for internal control and reporting based on the specific circumstances of the obligated party, considered relevant for the prevention of money laundering.

## **Article 4. Operational efficiency assessment.**

1. The operational efficiency assessment must at least address:

a. The suitability of the internal control measures associated with the money laundering risk management processes.

b. The rationale for its theoretical design.

c. Its practical operation.

2. In making the assessment in each case applicable, specific aspects under verification must be detailed, as well as the tests performed, the results and findings or incidents arising during verification.

3. When performing substantive tests, by selecting specific items, the reasons for the size and characteristics of the selected sample should be explained, indicating where appropriate:

- a. The number of agencies or branches that are affected.
- b. The customer types selected.
- c. The types of products chosen.
- d. The dates of the contracts or the start of the business relationship.
- e. The percentage of contracts and business relationships revised with regard to the existing total number.

4. When performing procedure tests and test method is statistical sampling, the followed should be specified:

- a. The population on which the sample is performed, ensuring that it is accurate and complete.
- b. The selected sample size and the method used for selection.
- c. The design of the sample, depending on the objectives of the test and the attributes of the population from which the sample is taken and the tolerable error rate expected for this population.
- d. The confidence level used indicating whether stratification is or not carried out, the reasons therefore and the possible extrapolation thereof.
- e. The analysis of the detected errors based on sample results, indicating the causes, possible effects on the objectives of the specific sample, and possible extrapolation.

#### **Article 5. Report dates.**

1. Without prejudice to the second paragraph of article 11.7 of the Regulations of Law 19/1993, of 28 December, the reference date of the report may not exceed one calendar year from the reference date of the previous report.

2. The report will describe the entity's status at the reference date which does not need to coincide with the close of the accounting year.

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3. The report should be issued as soon as possible without in any case exceeding two months from the reference date of the report.

## **Article 6. Recipients of the reports.**

1. The report shall be confidential and shall be available to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences during the six years following its completion.

2. The major deficiencies noted and the proposed corrections or improvements shall be reported to the Board of Directors or, where appropriate, to the management board or main management body of the entity, within three months from the date of issuance of the report.

## **Single final provision. Entry into force.**

This Order shall enter into force three months after its publication in the Official Gazette.

**ANNEX.**  
**EXTERNAL INSPECTION OF THE INTERNAL CONTROL AND REPORTING  
PROCEDURES AND BODIES ESTABLISHED TO PREVENT MONEY  
LAUNDERING.**

General report information:

A. Identification of the obligated subject expressly indicating tax identification number and, where appropriate, the subsidiaries included in the group subject to the report.

B. Reference date of the report.

C. Issuance and reference dates of the previous external expert report, with express reference to its authorship and overall findings.

D. Summary of key internal control measures implemented by the subject under obligation, of the operational efficiency assessment and proposals for corrections or improvements.

E. For subjects under a special regime, specify whether they choose to conduct the external review annually or every three years.

F. Id of the external expert, tax identification number, and detailed description of their academic and professional career.

Signature and date of issuance of the report.

0. General information of the subject under obligation

a. Basic details, including name or company name, tax identification number, address and corporate purpose and registration in official registries.

i. description;

b. Information about the activity and characteristics of the obligated subject that is considered relevant from the standpoint of money laundering prevention, specifying, where appropriate, risk factors noted.

i. description;

c. Number of agents, mediators or other representatives marketing products of the obligated subject or through which it operates, indicating their geographical distribution and the scope of activity.

i. description;

d. Group in which the obligated subject is classified.

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i. description;

e. List of subsidiaries, if any, indicating for each one:

1. Corporate purpose.

2. Share.

i. description.

1. Internal regulations

a. List of internal rules and procedures for the prevention of money laundering, expressly stating that the approving body, scope, distribution scheme among employees, and dates of adoption, entry into force, the last revision, and communication to the Executive Service.

i. Description;

ii . Operational efficiency assessment;

iii . Deficiencies found; suggested corrections or improvements.

2. Internal control and reporting bodies.

a. Representative to the Executive Service of the subject under obligation, with express reference to the subject's name, tax identification number, position, date of appointment and functions. Compliance with the applicable requirements.

Substitution scheme.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

b. Internal control and reporting bodies, expressly indicating their composition, hierarchical position, functional dependency, positions of its members, tax identification number of each of them, functions, constitution, frequency of meetings, preparation and preservation of records.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

c. If any, person or operating unit dedicated to the prevention of money laundering, with specific reference to the tax identification number, functions, functional dependency , procedures, degree of dedication to these tasks and composition in case of a unit.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

d. Administration bodies of the obligated subject, indicating the tax number, functions, powers and responsibilities in the prevention of money laundering.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

### 3. Identifying and knowing customers

a. Customer identification procedures, with express reference to the internal standard involved and contents thereof.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

b. Knowledge of customer procedures, with express reference to the internal standard involved, content, forms for customer identification and knowledge, and measures for the updating of the existing information.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

c. Procedures to verify the activities declared by customers, with express reference to the internal standard involved, its content, and specification of the documents to be requested for activity verification.

i. description;

ii. Operational efficiency assessment;

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iii. Deficiencies found; suggested corrections or improvements.

d. Existing procedures to find out the end beneficiaries of relationships with customers acting for others and the shareholding and control structure of legal persons expressly indicating the internal standard involved and its contents.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

e. Exceptions to the identification obligation with express reference to the internal standard involved and its contents.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

f. Existing customer acceptance policy, expressly indicating the internal standard involved, its contents, customer stratification based on the level of risk, and additional precautions established for customers involving a higher than average risk.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

g. Additional measures of customer identification and knowledge established in the more sensitive business and activity areas, with express reference to the internal standard involved and its contents.

Among others, express reference is made to the following areas:

1.) Private banking.

2) Correspondent banking.

3) Virtual or remote activities carried out via telephone, electronic or telematic means.

4) Exchange and transfer management activities.

5) Other high-risk products or customers, such as politically exposed persons (PEPs), high-risk geographic areas, or other considered as such by the subject under obligation.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

h. In the case of transfers of funds sent or received, verification measures of the existence of payer identification data and, where appropriate, that of the person on whose behalf the payer acts, both in the transfer and messages related to it through the payment chain, with express reference to the internal standard involved and its contents.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

#### 4. Storage of documents on customers and transactions

a. Measures established to keep the documents relating to the identification and knowledge of customers, with a clear indication of the storage period.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

b. Measures established to keep the documentation pertaining to transactions, with express indication of the storage period.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

#### 5. Detection of operations which may be related to money laundering

a. List of transactions likely to be particularly linked to money laundering in the different business areas of the obligated subject. Dissemination procedure.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

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b. Operation, where appropriate, of the software application, with specific reference to the persons responsible and the user manual explaining the operation of the application, indicating at least:

1.) Alert Systems and risk thresholds defined.

2) Behaviour profiling systems.

3) Reports available for further analysis.

4) Access to other applications of the entity containing relevant information from the standpoint of money laundering prevention.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

c. Internal procedure of reporting suspicious transactions by staff and managers to internal control body: internal form and communication channels, recording and monitoring systems, feedback to staff and management on the outcome of the reporting.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

6. Analysis of transactions likely to be related with money laundering

a. Persons or departments in charge, number of operations analysed in the reporting period and analysis frequency.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

b. Procedure of analysis of transactions likely to be associated with money laundering: stages, requests for additional information, reports.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

c. Procedures whereby the internal control and reporting body decides when an operation shows signs worthy of being reported to the Executive Service as suspicious. Documentary registration of the decisions taken and grounds thereof. Monitoring compliance with the decisions. Percentage of transactions reported over the total number analysed.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements

7. Reporting operations likely to be related to money laundering

a. Procedure for reporting suspicious transactions to the Executive Service, indicating the standard involved, content, form, method of communication, and terms.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

b. Abstaining from the execution of transactions, expressly indicating the procedure to follow, people responsible for decision-making and employee communication procedure on how to proceed.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

c. Procedures and measures implemented to ensure that it is not disclosed to the customer or third parties that information has been reported to the Executive Service or that an operation is being analysed as potentially linked to money laundering.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

d. Where appropriate, telematic communication of operations.

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i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

8. Compulsory monthly declaration of operations

a. Measures established to identify operations that should be reported and the limits set.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

b. Measures for the detection of any possible fractionation of transactions.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

c. Procedure for exempting customers from the mandatory monthly declaration indicating the internal standards involved, bodies or persons with authority to approve the exceptions, criteria, exemption terms and written records of exempt customers and grounds thereof.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

d. Procedure for preparing the mandatory monthly statement indicating the persons or departments responsible for its implementation and computer resources used, if any.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

e. Measures established for carrying out the semi-annual negative declaration if there are no operations to be reported.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

f. Procedures established to analyse whether any of the transactions reported in the mandatory monthly declaration presents evidence or certainty of being related to money laundering.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

g. Procedures established by the obligated subjects listed in Article 2.1. of Law 19/1993 of 28 December on certain measures to prevent money laundering, to report on a monthly basis to the Executive Service any transactions involving movements of means of payment subject to mandatory reporting.

Communication, where appropriate, of the obligated subject's refusal to submit or display the declaration.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

h. Where appropriate, measures established by credit institutions to check and process the S-1 forms in the cases statutorily provided and to remit the appropriate information to the Executive Service.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

9. Fulfilment of executive service requirements or those of other authorities

a. Procedure established to attend to information requests from the Executive Service or other authorities in the prevention of money laundering. Persons in charge and means used.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements

## 10. Training

a. List of courses taken since the last review by external expert, expressly indicating their contents, if done in person or remotely, date, duration, number of attendees, percentage represented with regard to the total number of employees, as well as the system to assess the knowledge acquired.

i. description;

b. Training policy in the prevention of money laundering, expressly stating the course syllabus, materials, content, duration, target employees and profile of the trainers.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements

## 11. Subsidiaries and branches

a. Control measures established by the obligated subject regarding compliance with regulations and internal procedures for the prevention of money laundering its Spanish subsidiaries.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

b. Subsidiaries abroad performing an activity that would determine in Spain the status of obligated subject, indicating for each of them at least:

1.) Corporate purpose

2) Country and domicile.

3.) Share.

4) Report of external experts, internal or external auditors. Date and main conclusions of the latest report provided it is not contrary to the law of the State of establishment.

5) Agency that controls their compliance with governing legislation for the prevention of money laundering.

6) Information on subsidiary activity and characteristics deemed relevant from the perspective of prevention of money laundering, specifying, where appropriate, risk factors noted.

i. description;

c. Overseas branches, indicating for each one at least:

1) Country and domicile

2) Report of external experts, internal or external auditors. Date and main conclusions of the latest report provided it is not contrary to the law of the State of establishment.

3) Agency that controls their compliance with governing legislation for the prevention of money laundering.

4) Information on branch activity and characteristics deemed relevant from the perspective of prevention of money laundering, specifying, where appropriate, risk factors noted.

i. description;

d. Procedures and policies to prevent money laundering of foreign subsidiaries and branches with regard to those required by Spanish legislation.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

e. Measures established by the obligated subject to ensure that their branches and subsidiaries abroad have established adequate internal procedures to forestall and prevent operations related to money laundering and procedures established in the event that local laws or regulations were to prevent or invalidate the former.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

12. Agents and other mediators

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a. Procedures manuals applicable to agents, mediators and other representatives, noting the specific features with regard to the general internal rules described in section 1, expressly stating the scope, form of distribution between agents, mediators and other representatives, and dates of approval, entry into force and last update.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

b. Measures to control the performance of agents, mediators and other representatives and their compliance with money laundering prevention legislation.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

c. Training policy for agents, mediators and other representatives in the terms provided in section 10.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

d. Summary of aspects regarding the prevention of money laundering included in contractual clauses contained in agency or mediation contracts.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

### 13. Internal verification

a. Internal auditing regarding the bodies responsible for preventing money laundering, with express reference to those in charge, content, timing, if done in person or remotely, and audited entities.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

b. For obligated subjects under the special regime opting for the external inspection every three years, a description of the main findings of the latest annual internal report assessing the operational effectiveness of its procedures and bodies for internal control and communication.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

14. Other relevant issues not included in the preceding sections.

i. description;

ii. Operational efficiency assessment;

iii. Deficiencies found; suggested corrections or improvements.

Madrid, 31 July 2007.-The Second Vice President and Minister of Economy and Finance, Pedro Solbes Mira.