

Cyprus

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Anti-Money Laundering: International Law and Practice.
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1 Introduction

The principal anti-money laundering legislation in Cyprus is the *Prevention and Suppression of Money Laundering Activities Law Number 61(I) of 1996 (the Law)*. The Law has been amended in order to keep abreast of international best practice and fully conforms with all *EU* directives on the prevention of the use of the financial system for the purpose of money laundering,¹ with the Council of Europe's 1990 Convention on *Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* and with the revised *40 Recommendations* of the Financial Action Task Force (*FATF*).

2 Overview of the Law

The main purpose of the Law is to prevent the laundering of proceeds of serious criminal offences, including terrorist financing and related activities, and to provide for their confiscation. The Law makes money laundering or assisting in it a crime and establishes a Unit for Combating Money Laundering; (*MOKAS*) which is responsible for receiving and analysing **suspicious transaction** reports and for money laundering investigations. The Law is comprehensive in its coverage, extending not only to **banks**, but also to other financial services businesses, **insurance companies, lawyers, accountants**, real estate agents and dealers in precious metals and stones. Such organizations carrying out 'relevant financial business' (see Section 4 below) are required to take adequate steps to prevent their services being misused for money laundering. They must put in place procedures for **customer identification**, record keeping and internal reporting. They must ensure that their employees are aware of their obligations under the Law and provide adequate **training** to help them identify potential money laundering transactions. They are also required to appoint an appropriate person as Money Laundering Compliance Officer (*MLCO*) to act as a central reference point and as a liaison with *MOKAS*.

The Law contains provisions for the confiscation of assets of persons convicted of a **predicate offence** and for restraining the assets of such persons and of persons reasonably suspected of involvement in money-laundering offences.

3 Offences

3.1 Predicate offences

Predicate offences are defined as all criminal offences punishable with imprisonment exceeding one year from which proceeds in any form were generated that may become the subject of a money laundering offence. It is immaterial whether the **predicate offence** is subject to the jurisdiction of courts in Cyprus.

The *Ratification Law of the United Nations Convention for Suppression of the Financing of Terrorism*, enacted in 2001 based on the *UN Model Law*,² makes terrorist financing a

¹ Directive 91/308/EEC as amended by Directive 2001/97/EC
www.europa.eu.int/eurlex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32005L0060:EN:NOT.

Directive 2005/60/EC

www.europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF.

² www.imolin.org/imolin/tfbill03.html.

criminal offence punishable with 15 years imprisonment or a fine of C£1 million (approximately US\$2 074 000) or both and specifically provides that terrorist financing and related activities constitute **predicate offences** for the purposes of the anti-money laundering legislation.

3.2 Money laundering offences

Section 4 of the Law provides that every person who knows or ought to have known that any kind of property is proceeds from a predicate offence is guilty of an **offence** if he does any of the following:

- Converts, **transfers** or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a **predicate offence** to evade the legal consequences of his actions.
- Conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property.
- Acquires, possesses or uses such property.
- Participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above.
- Provides information with respect to investigations that are being performed for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a **predicate offence** to retain the proceeds or the control of the proceeds from the commission of the said **offence**.

On conviction, a person knowingly committing such an **offence** is subject to imprisonment for up to 14 years, a fine or both. A person who did not know that the property was proceeds from a **predicate offence**, but ought to have known, is subject to imprisonment for up to 5 years or a fine, or both.

3.2.1 Failure to report

Any person who, in the course of his trade, profession, business or employment, acquires knowledge or reasonable suspicion that another person is engaged in money laundering is required to **report** his knowledge or suspicion as soon as reasonably practical. Failure to do so is punishable by imprisonment for up to 5 years or a fine of up to C£3000 (approximately US\$6200) or both.

3.2.2 'Tipping-off'

It is also an **offence**, punishable with imprisonment for up to 5 years, for any person to prejudice the investigation of **money laundering offences** by making a disclosure, either to the person who is the subject of a suspicion or to a third party, knowing or suspecting that the authorities are carrying out such an investigation.

4 Relevant activities

Recognizing that certain business activities are susceptible to misuse for money laundering purposes the Law places stringent requirements on organizations offering them. The list of

‘relevant financial and other business’ is comprehensive, encompassing not only banking activities and high-value cash transactions, but also consultancy services, as follows:

- Deposit taking.
- Lending (including personal credits, mortgage credits, factoring, financial or commercial transactions including forfeiting (receivables discounting)).
- Finance leasing, including hire purchase financing.
- Money transmission services.
- Issuing and administering means of payment such as credit cards, travellers’ cheques and bankers’ drafts).
- Guarantees and commitments.
- Trading for own or customer’s account in:
 - money market instruments such as cheques, bills or certificates of deposit;
 - foreign exchange;
 - financial futures and options;
 - exchange and interest rate instruments;
 - transferable instruments.
- Underwriting or participating in share issues.
- Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues including the areas of mergers and acquisitions of business.
- Money broking.
- Investment business, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. In this context the term ‘investment’ includes long-term **insurance** contracts, whether linked long term or not.
- Safe custody services.
- Custody and trustee services in relation to stocks.
- **Insurance** policies taken in the General Insurance Sector by a **company** registered in Cyprus either as a resident or an overseas **company**, but which carries on **insurance** business exclusively outside Cyprus.
- Exercise of professional activities by auditors, external **accountants** and tax advisors, including transactions for the account of their customers in the context of carrying on relevant financial business.
- Exercise of professional activities on behalf of independent **lawyers**, with the exception of privileged information, when they participate, whether:
 - by assisting in the planning or execution of transactions for their clients concerning the:
 - buying and selling of real property or business entities;
 - managing of client money, securities or other assets;

- opening or management of bank, savings or securities accounts;
- organization of contributions necessary for the creation, operation or management of **companies**;
- creation, operation or management of trusts, **companies** or similar structures;
- or by acting on behalf and for the account of their clients in any financial or real estate transaction.
- Investment services described in Parts I and II of Annex One of the *Investment Firms Laws of 2002 to 2003* provided in connection with:
 - transferable securities and units in collective investment undertakings;
 - money-market instruments;
 - financial-futures contracts including equivalent cash-settled instruments;
 - forward interest-rate agreements;
 - interest-rate, **currency** and equity swaps;
 - options to acquire or dispose of the above including equivalent cash-settled instruments. This category includes in particular **currency** and interest rate swaps.
- Transactions in real estate by real estate agents by virtue of the provisions of the Real Estate Agents Laws currently in force.
- Dealings in precious metals and stones whenever payment is made for cash and in an amount of £15 000 or more.

As casinos are illegal in the Republic of Cyprus and only limited-stake gambling on sporting events is allowed, the Law does not encompass gambling.

5 Anti-money laundering procedures

5.1 Overview

The Law requires all persons engaged in **relevant activities** to establish and maintain policies and procedures to guard against their business being used for money laundering. They must implement **customer identification** and record keeping procedures, appoint compliance officers and ensure that their employees receive adequate **training** concerning anti-money laundering responsibilities and procedures. The aim is to facilitate the identification of **suspicious transactions** through the strict implementation of ‘know your customer’ procedures and to provide an audit trail for law enforcement agencies by ensuring adequate records are available.

It is illegal for any person, in the course of relevant financial and other business, to form a business relationship or carry out a one-off transaction with or for another, unless adequate procedures are in place for:

- Identifying customers and maintaining records in relation to their identity and their transactions.

- Identifying **suspicious transactions** by means of appropriate internal control, communication and detailed examination.
- Making employees aware of the organization's procedures to prevent money laundering and of their responsibilities under the Law and **training** them to recognize and deal with **suspicious transactions**.
- Reporting **suspicious transactions** to a competent person such as an *MLCO*.

5.2 'Know your customer' principles

Organizations carrying on financial business must maintain 'know your customer' procedures in accordance with Sections 62 to 65 of the Law. The identity of all customers must be verified, apart from relevant domestic organizations themselves subject to the Law and **banks** and credit institutions incorporated in countries whose anti-money laundering procedures are, in the opinion of the Central Bank of Cyprus (*CBC*), at least on a par with those applying in Cyprus. Identification must take place before any business relationship is established or any 'one-off' transaction is executed.

While the Law does not explicitly state what constitutes adequate evidence of identity, the *CBC* guidance note sets out the key principles and requirements as follows:

- Accounts must be in the full name of the holder. **Banks** may not open or maintain secret, anonymous or numbered accounts or accounts in fictitious names. Failure or refusal to provide satisfactory identification evidence is grounds for suspicion that the customer may be engaged in money laundering. The relevant organization should not carry out any business for the customer and should consider making a suspicion report to *MOKAS*.
- A risk-based approach should be adopted. The extent and number of checks required to establish a customer's identity will depend on the perceived risk according to the type of service, product or account sought by the customer and the projected turnover of the account.
- Organizations should obtain satisfactory evidence that they are dealing with a real person, whether natural or legal, and obtain sufficient evidence of identity to establish that the prospective customer is who he claims to be.
- Adequate steps should be taken to identify the **beneficial owner** of funds and, in the case of legal persons, to ascertain the ownership and control structure of the customer.

Prior to doing any business, adequate information must be obtained in the following areas in order to construct the customer's business profile:

- The purpose and reason for opening an account or requesting services.
- The anticipated level and nature of the activity to be undertaken.
- The projected turnover of the account or size of transaction, the origin of the funds and the destination of outgoing payments.
- The customer's sources of wealth or income.
- The nature and scale of his business or professional activities.

When a bank becomes aware or has any reason to believe that a prospective customer has been refused a bank account or other services by another bank in Cyprus or abroad, then the bank should treat that customer as a high-risk customer and apply enhanced due diligence measures. Appropriate senior management approval should be obtained for opening the account or providing the service and transactions passing through the account should be subject to especially close scrutiny.

The identity of all parties to a joint account or transaction must be satisfactorily verified. It is not sufficient to identify only a representative.

The best identification documents possible (i.e. documentation from reputable sources that is the most difficult to obtain illicitly) should be obtained. Reference numbers and other relevant details should be recorded and copies should be kept on file. Wherever possible, original documents must be examined. Copy documents may only be relied upon if they bear original certification from a notary, a certifying officer, a lawyer, an embassy or other appropriate authority, whose credentials must, in case of doubt, be verified.

5.3 Identification in practice

5.3.1 Natural persons, present in person

Relevant organizations should hold a personal interview with any prospective customer and obtain all identification details at the time. For natural persons verification of name should be by reference to a document bearing a photograph. Under the *Banking (Amendment) (No3) Law of 2004 (Law 231(I) of 2004)* banks are required to use an official identity card or passport submitted by the real owner of the account as proof of identity and this will normally be the standard for all organizations. To safeguard against forgery, secondary evidence of identity should also be obtained.

Separate verification of the customer's permanent address should be carried out, by a home visit, by sight of a recent original utility bill, local authority tax bill, or bank statement or by checking the telephone directory.

5.3.2 Non-residents

For non-residents of Cyprus passports or national identity cards should always be examined and copies made. In the event of any doubt, checks should be made with an embassy or consulate of the country of issue in Cyprus or with a professional intermediary or a reputable credit or financial institution in the prospective customer's country of residence. This procedure will also identify potential customers from countries designated by *FATF* as 'non-cooperative' or subject to United Nations or *EU* sanctions.

5.3.3 Natural persons, not available for personal interview

The same **customer identification** and due diligence procedures should be undertaken in respect of prospective customers who do not present themselves for a personal interview. In addition one or more of the following supplemental measures must be undertaken:

- examination of additional documentary evidence;
- additional verification or certification of the documents supplied;
- obtaining confirmatory certification from an institution or organization operating in another *EU* member state;

- requiring the first payment in the context of the business relationship or series of one-off transactions to be made through an account in the customer's name with a credit institution operating in an *EU* member state.

5.3.4 Partnerships, charities, unincorporated businesses and clubs

In the case of partnerships and other unincorporated businesses whose partners or owners have not been verified in the context of existing business relationships, the identity of the **beneficial owners** and authorized signatories should be verified in the same way as for natural persons. The original or copy certificate of registration should be obtained, together with evidence of the address and activities of the business. The constitution and registration documents of clubs, societies and charities should be examined in order to establish their legitimacy and the identity of all authorized signatories must be verified. For charities, the relevant government department should be contacted to confirm the details supplied at the interview. The capacity of authorized representatives to contract or sign on behalf of the partnership, club or charity should be confirmed by reference to the appropriate documentation.

5.3.5 Corporate bodies

Because of the difficulties of identifying beneficial ownership, **companies** are particularly likely to be used as vehicles for money laundering, particularly when associated with a legitimate trading **company**. Before a business relationship is established, a **company** search and other commercial enquiries should be undertaken in order to confirm that the **company** exists and that it has not been, or is not being, dissolved, struck off or wound-up. Further checks should be made in the event of changes in the **company's** structure or ownership or in the event of a change in the transactions undertaken.

The following should be verified as a minimum:

- The registered number.
- The registered name and any trading names used.
- The registered address and any separate principal trading addresses.
- The identity of the directors.
- The identity of all persons authorized to transact business on the **company's** behalf with the organization.
- In the case of private and non-listed public **companies**, the identity of sufficient shareholders to account for 75% of the share capital. Where the registered shareholders act as nominees, the identity of sufficient principal ultimate **beneficial owners** (persons with direct or indirect interests of 5% or more in the **company's** share capital) must be verified to account for 75% of the share capital.
- The **company's** business profile.

Originals or adequately certified copies of the documents evidencing this information should be examined and copies made. In addition board minutes should be examined to confirm that the persons purporting to act on behalf of the **company** are duly authorized. The identity of all the individuals concerned should be established as outlined above. Where corporate bodies play a role in the management or shareholding of a prospective customer or client, the procedures must

trace back through the various corporate strata until they reach the individuals concerned. Where a material shareholding is held by a trust, the identity of the trustees, settlor and beneficiaries of the trust must be established.

Given the safeguards that exist before **companies** are admitted to listing and the practical difficulties of individually identifying a large group of shareholders, shareholder identity need not be verified in the case of **companies** listed on a recognized stock exchange.

Attention should also be given to identifying the individuals who control the **company's** business and assets, such as persons who have the power to manage funds, accounts or investments without requiring authorization and who would be in a position to override internal procedures.

5.3.6 Trusts (including occupational pension schemes) and nominees

Where a bank is asked to open an account, or a professional is asked to act, for trustees or nominees, the identity of the trustees, the settlor and the beneficiaries should be verified. Particular care is necessary when the trustees or nominees operate accounts in countries with strict banking secrecy or where the trust is constituted in a jurisdiction without robust anti-money laundering measures.

Lawyers receiving funds on behalf of a trust are required to identify the source of the funds, to ensure that they fully understand the nature of the transaction and that payments are made only in accordance with the terms of the trust and with proper written authorization.

In the case of occupational pension schemes the identity of the principal employer and the trustees should be verified, but it is not generally necessary to verify the identity of individual scheme members.

5.3.7 Non-face-to-face customers

The Law prescribes special measures for identifying customers who are not physically present for identification purposes. For such customers, the relevant organization must either:

- obtain from the customer additional documentary evidence; or
- take supplementary measures to verify or certify the documents supplied; or
- obtain confirmation of identity by an institution or organization operating in a member state of the *EU*; or
- require that the first payment of the transaction or series of transactions is carried out through an account in the customer's name with a credit institution operating in an *EU* member state.

In cases where the major shareholder of a **company** is a trust set up in Cyprus or abroad, the identity of the trustees, settlor and beneficiaries of the trust must be established.

5.4 High-risk business

The Law and the guidelines prescribe special precautions for persons or entities categorized as high risk including:

- **Politically exposed persons**, i.e. those holding public office and their close relatives and associates, particularly in countries with a high degree of corruption.
- **Companies** issuing bearer shares.
- Client accounts opened by **accountants** or solicitors for individual clients.

Banks wishing to open correspondent accounts for **banks** operating in certain jurisdictions must obtain the prior written approval of the **CBC**.

Transactions involving non-cooperative countries and territories must be carefully monitored and reported to **MOKAS** if there is any doubt about their legitimacy.

5.5 Record keeping

Section 66 of the Law requires organizations carrying out relevant financial business to retain records concerning **customer identification** and details of transactions for use as evidence in any possible investigation into money laundering. The retention period is five years from the completion of the relevant business or, if an investigation is undertaken by **MOKAS**, until **MOKAS** confirms that the case has been closed.

To avoid creating an excessive volume of records, retention may be in electronic or other form as long as it allows all relevant information to be retrieved without delay.

5.6 Vulnerable transactions

5.6.1 Electronic transfers of funds

Recognizing the efficacy of electronic funds **transfers** in moving substantial sums quickly across borders, the **CBC** requires all outgoing electronic **transfers** by **banks** in excess of US\$1000 to show the name, the account or reference number and address of the originator. For smaller outgoing **transfers** this information need not be included in the transfer but it should be retained and made available to the intermediary or beneficiary bank upon request.

Banks receiving incoming funds **transfers** in excess of US\$1000 are required to ensure that the above information in respect of the originator is included in the transfer, and should not execute the transaction without it. The Law protects **banks** from possible claims from their customers for non-execution or delay in applying incoming funds to the credit of their accounts in such an event.

5.6.2 Cash deposits in foreign currency

Banks may not accept cash deposits in foreign **currency** notes in excess of US\$100 000 or equivalent per calendar year from any person or group of connected persons unless they have the prior written approval of the **CBC**. Cash deposits below the threshold that form part of a series of linked deposits whose aggregate amount is in excess of US\$100 000 require similar approval. To obtain permission, the **MLCO** of the bank concerned must provide full details of the customer and his activities and explain the nature of the transaction and source of the funds. The **MLCO** must also confirm that the bank has fully applied the prescribed **customer identification** and due diligence procedures and that the funds involved are not suspected to be associated with illicit activities, including terrorist finance.

5.7 The Money Laundering Compliance Officer

Organizations are required to institute adequate internal monitoring and reporting procedures including the appointment of an **MLCO** of appropriate experience and stature to discharge the duties of the post and command the necessary authority.

The *MLCO*'s duties will include, as a minimum:

- Receiving information from employees regarding activities or transactions suspected to be connected with money laundering.
- Validating and evaluating any information received. Evaluations must be adequately documented and appropriate records must be retained to provide an audit trail.
- Reporting to *MOKAS* in the event that the employee's initial suspicions are justified.
- Liaising with *MOKAS* throughout any investigation and providing relevant information requested by *MOKAS*.
- Providing advice and guidance to other employees on money laundering issues and raising awareness of money laundering issues and procedures.
- Determining employees' **training** needs in relation to money laundering issues and ensuring that adequate **training** is available.

The *CBC* guidelines include standard forms for the initial report, for the *MLCO*'s evaluation and for the report to *MOKAS*.

The *MLCO* bears primary responsibility for compliance with the requirements of the Law and any guidance issued by the relevant supervisory body, and is therefore required to keep abreast of developments regarding money laundering issues and to ensure that the organization's procedures are robust, up to date and observed in practice.

The *MLCO*'s decisions are subject to review by the appropriate supervisory body and he is required to discharge his duties carefully and thoroughly, exercising sound judgement with integrity and in good faith.

In addition to their day to day duties *MLCO*s are required to compile an annual report on their activities and their organization's compliance with its obligations under the Law and any related guidance. The annual report should be prepared within two months of the end of each calendar year and submitted to the relevant supervisory body, as well as to senior management of the organization, who are expected to take appropriate action to deal with any shortcomings.

5.8 Identifying and reporting suspicious transactions or activities

Section 27 of the Law requires that any knowledge or suspicion of money laundering should be promptly reported to a police officer or *MOKAS* and provides the relevant organization protection from any claim for breach of any duty of confidence. The protection extends only to the initial disclosure of the suspicion or belief that funds derive from money laundering, and to the information on which it is based. The Cyprus Bar Association's guidance to members recommends that follow-up disclosures should be made only under a court order. It should also be noted that advocates are not bound to disclose privileged information.

It is envisaged that employees encountering **suspicious transactions** or circumstances will report them to the *MLCO* in the first instance. After due enquiry, consideration and consultation the *MLCO* will, if appropriate, report to *MOKAS*.

Having made a disclosure report, the *MLCO* should liaise closely with *MOKAS* in order to avoid any inadvertent action being taken which might hamper the investigation. For example, if the

relevant organization decides to terminate its relationship with the customer, care should be taken not to alert the customer that a disclosure report has been made.

After making the disclosure, relevant organizations are expected to follow any instructions given by *MOKAS*, particularly as to whether or not to execute or suspend a transaction. No liability for breach of any contractual or other obligation attaches to a bank that, on instructions from *MOKAS*, refrains from or delays executing a customer's order.

In addition to ad hoc reporting to *MOKAS*, all **banks** in Cyprus are required to submit a monthly report to the *CBC* of cash deposits in excess of US\$10 000 equivalent and incoming and outgoing funds **transfers** in excess of US\$500 000 equivalent.

5.9 Educating and training employees

Section 58 of the Law obliges relevant organizations to provide their employees with adequate **training** in the recognition and handling of transactions suspected to be linked to money laundering and to make their employees aware of the money laundering legislation and the organization's policies and procedures. A continuous programme of **training**, tailored to the specific needs of individual groups such as new joiners, customer-facing staff and compliance staff, should be provided. Regular refresher **training** should be provided to ensure that staff are reminded of their responsibilities and kept up to date. An administrative fine of up to C£3000 (approximately US\$6200) may be imposed for failure to comply.

6 Confiscation and restraint of assets

Before sentencing any person found guilty of a **predicate offence** the court is obliged to consider whether the accused acquired any proceeds from the **offence** and, if so, the court may make a **confiscation order**. The **confiscation order** covers all the realizable property of the accused, including any gifts or transfers at an undervalue made by the accused.

If criminal proceedings are pending against a person in respect of a **predicate offence** or if *MOKAS* has information that creates a reasonable suspicion that a person may be charged with committing a money-laundering offence, then the court, on the application of the Attorney-General, may make an order freezing the realizable property of the accused.

A receiver may be appointed under either type of order with powers to identify, trace, get in and realize the realizable property.

7 Conclusion

As a major offshore financial centre at the crossroads of Europe, Asia and Africa, Cyprus recognizes the risk that criminals may seek to exploit its services for illicit purposes and has put in place robust measures to safeguard against such activity. The anti-money laundering measures taken in Cyprus have been repeatedly evaluated in the last few years by international bodies including the Council of Europe, the *FATF* and the International Monetary Fund. All evaluation reports have commented favourably on the measures adopted by Cyprus and have concluded that they meet, and in many areas surpass, both international best practice and the standards adopted by larger countries.

Addresses

Central Bank of Cyprus

Supervision of International Banks,
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80 Kennedy Avenue
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Unit for Combating Money Laundering (*MOKAS*)

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Abbreviations

CBC
FATF
MLCO
MOKAS (in Greek ΜΟΚΑΣ)

Central Bank of Cyprus
Financial Action Task Force of the OECD
Money Laundering Compliance Officer
Unit for Combating Money Laundering

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- Council of the Bar Association of Cyprus*: Money Laundering: Guidance Notes for Lawyers.

Nick Verardi is a Partner and Joint Head of the Commercial department of Dickinson Cruickshank, Advocates. Nick advises a number of local and international companies including financial institutions on a wide range of matters including all regulatory aspects, insurance (captive and life), corporate restructuring, including mergers and acquisitions and management buy-outs; asset financing; e-commerce; directors duties; and shareholders rights. Nick qualified as a Manx advocate in 1994 and has been a Notary Public since 1999. He is also a member of the International Bar Association and a (non-practising) solicitor of the Supreme Court of England and Wales. Nick is also a council member of the Isle of Man Chamber of Commerce.

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