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1

Introduction to Anti-Money Laundering (AML) and Funding of Terrorism and understanding the impact of non- compliance

27 October 2020

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2

Agenda

- Introduction to Money Laundering and Funding of Terrorism
- The Laws and Regulations
- The European Union
- Council of Europe Bodies
- International Measures
- AML Regulatory/Administrative Requirements and Enforcement
- Money laundering: how trusted professionals can help law enforcement
- Questions
- Concluding Remarks

Introduction

What is Money Laundering?

- The process by which the illegal nature of criminal proceeds is concealed or disguised in order to give a legitimate appearance to these illegal proceeds.
- This process enables the perpetrators to make seemingly legitimate economic use of their criminal proceeds.
- This is done by disguising the sources, changing the form, or moving funds to a place where they are less likely to attract attention.

Examples: illegal arms sales, smuggling, bribery, corruption, fraud, insider trading, activities of organised crime (such as drug trafficking) are some criminal activities intended to generate large profits.

In simpler words...

money laundering is where illegally obtained money is disguised to make it look like it was obtained legally

3 Stages for the Process of ML

Stage 1:
Placing

Stage 2:
Layering

Stage 3:
Integration

1. Placing Stage

Placement is the process of moving 'dirty' money into the legitimate economy away from its source. The process of placing, through deposits or other means, unlawful cash proceeds into the financial institutions.

Cash which is derived from criminal activity is infused into the financial system. The placement makes the funds more liquid since by depositing cash into a bank account the funds can be transferred and manipulated easier. When criminals are in physical possession of cash that can directly link them to predicate criminal conduct, they are at their most vulnerable. Such criminals need to place the cash into the financial system, usually through the use of bank accounts, in order to commence the laundering process.

This stage entails using laundered proceeds in seemingly normal transactions to create the perception of legitimacy.

Examples:

- Integrating the funds by investing in luxury goods, real estate, artwork etc.
- Smurfing by sending small amounts of money to bank accounts that are below anti money laundering reporting thresholds
- Currency Exchange
- Placing money into offshore organisations

2. Layering Stage

Layering involves making it hard to detect the money by moving it away from the source. Layering engages in a series of conversions or movements of the funds to distance them from the source. This stage involves the process of separating the proceeds of criminal activity from their origin through the use of different techniques to layer the funds.

This stage results in a complex system of transactions designed to hide the source and ownership of the funds.

Examples:

- Electronically moving funds from one country to another and dividing them into advanced financial options.
- Using multiple banks and accounts
- Having professionals act as intermediaries and transacting through corporations and trusts
- Wire transfers

3. Integration Stage

This stage entails using laundered proceeds in seemingly normal transactions to create the perception of legitimacy. It is the stage whereby criminally derived property that has been placed and layered is returned to the legitimate economic and financial system and is assimilated with all other assets in the system.

This stage involves the integration of 'clean' money into the economy by the laundered making it appear to have been legally earned.

Example:

- Integrating the funds by investing in luxury goods, real estate, artwork etc.

Funding of Terrorism

"Funding of terrorism" means the process of making funds or other assets available to terrorist groups or individual terrorists to support them, even indirectly, in carrying out terrorist activities. (Criminal Code, Articles 328B and 328F)

- Process by which terrorist organisations or individual terrorists are funded in order to be able to carry out acts of terrorism.

Takes place through:

- ❖ Funds deriving from **legitimate sources**
- ❖ Combination of **lawful and unlawful sources**

The ultimate aim is to **obtain resources** to support terrorist operations.

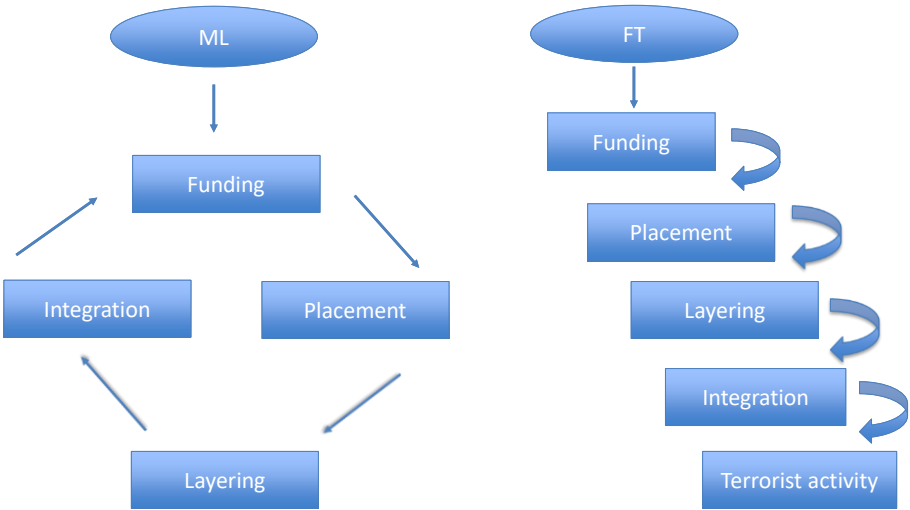
Example: Funding of Terrorism

One of the ways in which terrorists obtain funds is through **non-funding organisations**:

- ❖ A domestic company was established with very broad commercial purposes.
- ❖ Numerous small deposits were made to the company's account by the individual who had signing authority on the account.
- ❖ These deposits originated from donations which were intended for the NPO.
- ❖ Shortly after receipt the funds transferred to foreign-based companies
- ❖ An investigation by the national FIU revealed that the individual with signing authority on the company's account was also a directing official of an NPO.
- ❖ Law enforcement information indicated that the NPO was known to have ties to a terrorist group.
- ❖ A second directing official of the NPO, who was also a manager of the company, also had ties to the terrorist group.
- ❖ The investigation concluded that the domestic company was a front company being used as a conduit to transfer funds on behalf of the NPO linked to a foreign terrorist group.

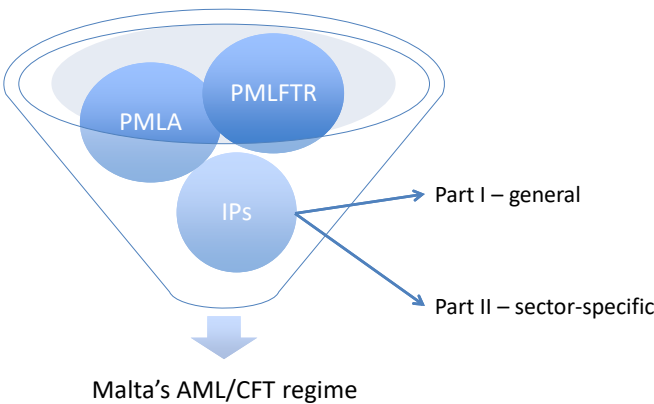
MONEY LAUNDERING	FUNDING OF TERRORISM
Funds obtained illicitly	Funds may be licit or illicit
Motivation is profit-seeking	Motivation is ideological
Transactions of larger value	Transactions of smaller value
Circular life circle	Linear life circle

13



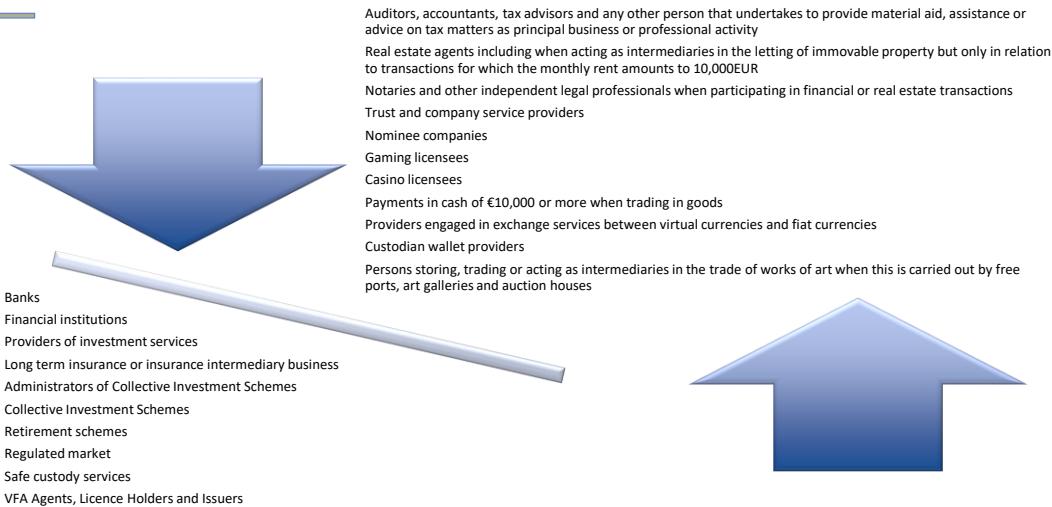
14

The local AML/CFT Framework



15

To whom does this framework apply?



16

THE LAW AND REGULATIONS

17

Understanding Money Laundering under the PMLA

The definition provides an exhaustive list of acts that constitute money laundering under Maltese law, namely:

- i. the **conversion or transfer of property** knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
- ii. the **concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property**, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iii. the **acquisition, possession or use of property** knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iv. **retention without reasonable excuse of property** knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- v. **attempting** any of the matters or activities defined above;
- vi. **acting as an accomplice** in respect of any of the matters or activities above

18

Article 2(2) PMLA

(a) A person may be convicted of a money laundering offence under this Act even in the **absence of a judicial finding of guilt** in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity.

(b) **A person can be separately charged** and convicted of both a money laundering offence under this Act and of an underlying criminal activity from which the property or the proceeds, in respect of which he is charged with money laundering, derived.

(c) For the purposes of this sub-article, "**underlying criminal activity**" refers to the criminal activity from which the property or other proceeds, which are involved in a money laundering offence under this Act have been directly or indirectly derived.

Question

Medical cannabis is legal in Malta but a lawyer may be assisting an overseas client in, say, Canada where both medical cannabis and cannabis for recreational use is legal - what happens there? Would not part of the wealth of the customer be derived from an activity (production of cannabis for recreational use) that is a crime in Malta?

Answer

- ✓ Conduct would constitute a predicate offence had it occurred domestically.
- ✓ If something that is a criminal activity had been carried out in Malta, regardless if it is legal in another country, this is something the FIAU looks into as well as the Malta Police Force.
- ✓ In this example, this would result in a criminal activity since ultimately you are receiving funds from a situation which derives from a criminal activity in Malta, even though it does not constitute as a criminal activity in another country.

21

Article 3 – Investigation and Prosecution of Offences

Is there liability for natural persons
and corporate
criminal liability too?



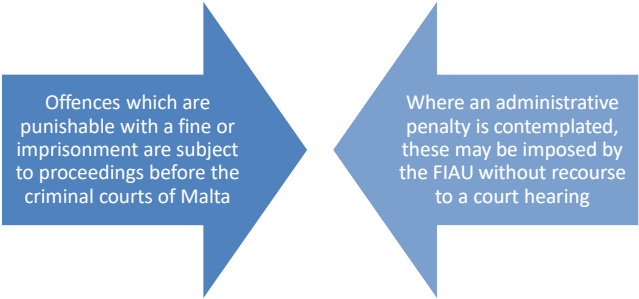
YES



Article 3(2) PMLA

22

Offences



23

Offences under the PMLA

PMLA Reference	Offence	Penalty
Article 3(1) – money laundering offence	<p>Any person committing any act of money laundering</p> <p><i>Where an offence is committed by a legal person, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that it was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence</i></p> <p><i>Where an offence is committed by an officer of the legal person or by a person having a power of representation or having such other similar authority and the offence was committed for the benefit, in part or in whole, of that legal person, the said person shall be deemed to be vested with the legal representation of the same company which shall be also liable to the punishment</i></p>	<p>Fine not exceeding €2,500,000, imprisonment not exceeding 18 years, or both</p> <p>Forfeiture in favour of the Government of Malta of the proceeds of crime (or a value equivalent thereto)</p>
Articles 4(2)/4(6A) – disclosure of an investigation / attachment order	Any person disclosing that an investigation/attachment order has been made or applied for	Fine not exceeding €11,646.87, imprisonment not exceeding 12 months, or both
Articles 4(5)/4(10) – contravention of an investigation / attachment order	Any person acting in contravention of an investigation/attachment order	Fine not exceeding €11,646.87, imprisonment not exceeding 12 months, or both
Article 6 – contravention of a freezing order	Any person acting in contravention of a freezing order	Fine not exceeding €11,646.87, imprisonment not exceeding 12 months, or both

24

Offences under the Criminal Code

Criminal Code Reference	Offence	Penalty
Articles 328B – terrorist groups	Any person who promotes, constitutes, organises, directs, finances, supplies information or materials to, a terrorist group knowing that such participation or involvement will contribute towards the criminal activities of the terrorist group shall be guilty of an offence	Imprisonment not exceeding 8 years (30 years if the participation or involvement consists in directing the terrorist group)
Articles 328F to 328I – funding of terrorism	Any person who somehow participates in the funding of terrorism, including by use and possession of property for the purpose of terrorism, entering into funding arrangements, and/or facilitating retention and control of terrorist property	Fine not exceeding €11,646.86, imprisonment not exceeding 4 years, or both

25

Offences/Breaches under the PMLFTR

Offence/Breach	Penalty
Failure to comply with any lawful requirement, order or directive issued by the FIAU	Administrative penalty of not less than €1,000 and not more than €46,500 for every separate contravention
Contraventions of PMLFTR or of any provisions or guidance issued by the FIAU	Minor contraventions: administrative penalty of not less than €250 or a reprimand in writing Serious, repeated or systemic contraventions: <ul style="list-style-type: none">• In case of a subject person carrying out a relevant activity – an administrative penalty of not more than €1,000,000 or, where the benefit derived from that contravention can be quantified, not more than twice the amount of the benefit so derived• In the case of a subject person carrying out a relevant financial business, an administrative penalty of not more than €5,000,000 or not more than 10% of the total annual turnover according to the latest available approved annual financial statements. Provided that, where the subject person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated accounts, the relevant total annual turnover shall be the total annual turnover resulting from the latest available consolidated accounts approved by the ultimate parent undertaking.
Tipping off	Fine not exceeding €115,000 and/or imprisonment not exceeding 2 years
False declaration or false representation or the production of false documentation for the purposes of CDD checks	Fine not exceeding €50,000 and/or imprisonment not exceeding 2 years

26

Maximum Penalties for ML

PMLA

- Fine of max. €2,500,000, or
- Imprisonment of max. 18 years, or
- Both

Criminal Code

Imprisonment for a term of not less than 20 years, barred by the lapse of 15 years

PMLFTR

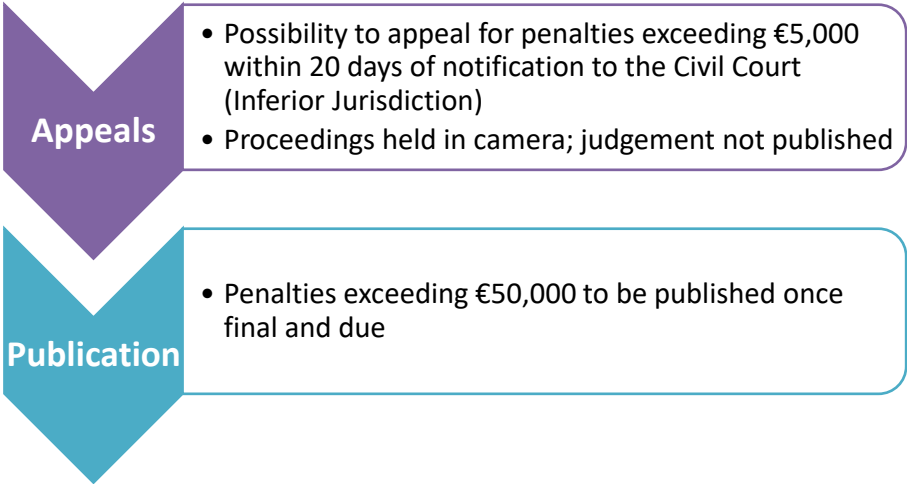
Fine of max. €50,000
Imprisonment of max. 2 years.

27

Case Study

28

Appeals and publication



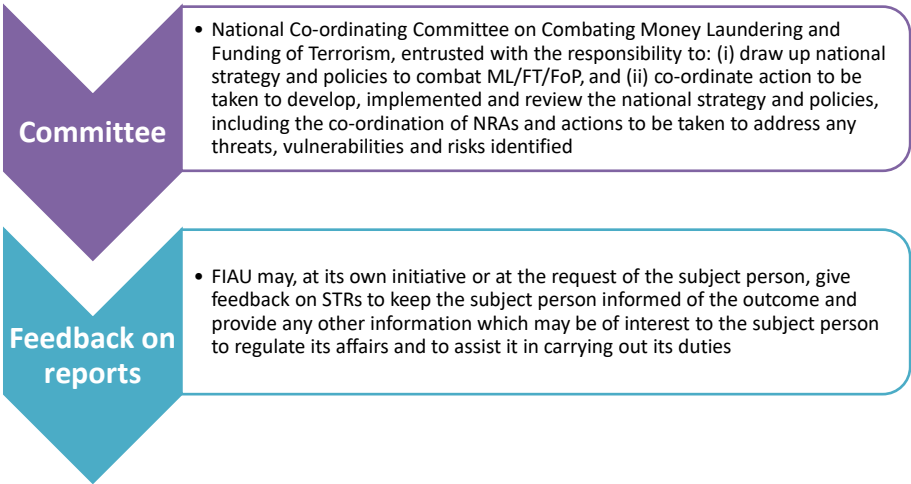
29

Confiscation of Property and Proceeds



30

Other PMLA provisions



EUROPEAN UNION MEASURES

The Fourth and Fifth AMLD



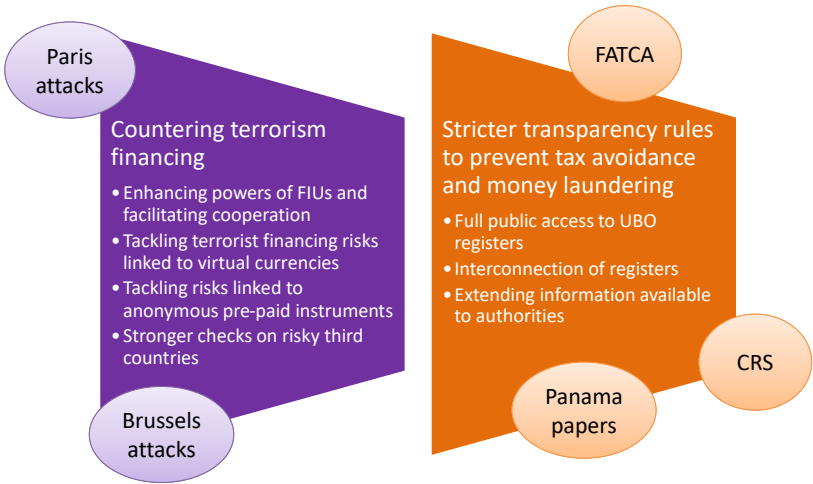
In 2015, the EU adopted a modernised regulatory framework encompassing:

- Directive (EU) 2015/849 on preventing the use of the financial system for money laundering or terrorist financing (**4th AMLD**);
- Regulation (EU) 2015/847 on information on the payer accompanying transfers of funds – makes fund transfers more transparent, thereby helping law enforcement authorities to track down terrorists and criminals.
 - Both take into account the 2012 recommendations of the FATF, and
 - go beyond and impose tighter control on a number of aspects.

In 2018, Directive (EU) 2018/843 (**5th AMLD**) was introduced which amended the 4th AMLD and brought substantial improvement to better equip the Union to prevent the financial system from being used for ML and FT activities by:

- ❖ Enhancing transparency
- ❖ Enhancing the powers of the EU Financial Intelligence Units
- ❖ Limiting the anonymity related to virtual currencies and wallet providers
- ❖ Broadening the criteria for the assessment of high-risk third countries
- ❖ Setting up central bank account registries or retrieval systems in all Member States
- ❖ Improving the cooperation strengthening of information between anti-money laundering supervisors

Why revise MLD4?



Changes

- The beneficial ownership registers for legal entities, such as companies, will be public;
- The access to data on the beneficial owner of trusts will be accessible without any restrictions to competent authorities, Financial Intelligence Units, obliged entities, and other persons who can demonstrate a legitimate interest;
- The beneficial ownership regime will be extended to a wider range of trusts and trust-like arrangements (the regime currently only includes express trusts);
- Where a customer is subject to registration of beneficial ownership information, the subject person must collect proof of registration or an excerpt from the register;
- Member States will have the possibility to allow the anonymous use of electronic money products only in two situations: (i) when customers use their prepaid instrument (such as prepaid cards) directly in the shop for a maximum transaction amount of €150; and (ii) when customers carry out an online transaction with a prepaid card below €50;

Changes (cont.)

- Member States will be permitted to require firms to ensure the first payment from clients comes from an account with an institution subject to EU/equivalent AML rules;
- Member States will have to issue and keep up to date a list of exact functions they consider to be prominent public functions;
- The scope of the rules will be extended such that they will also apply to:
 - entities which provide services that are in charge of holding, storing and transferring virtual currencies;
 - persons who provide similar kinds of services to those provided by auditors, external accountants and tax advisors already subject to the 4AMLD;
 - persons trading in works of art;
- The Commission will list jurisdictions presenting strategic deficiencies in their AML/CFT regimes and such list will also include third-countries with low transparency on beneficial ownership information, no appropriate and dissuasive sanctions or which do not cooperate nor exchange information;
- Member States will be required to set up centralised bank account registers or retrieval systems to identify holders of bank and payment accounts.

Transposition

10 January 2020

37

What does the future looks like? 6MLD

Definition of money laundering	Convictions	Sanctions
<ul style="list-style-type: none">• Harmonised list of 22 predicate offences• In scope: tax crimes, cybercrime, self-laundering• Out of scope: environmental crimes• Aiding, abetting and attempting to commit an offence of money laundering will also be illegal	<ul style="list-style-type: none">• It will not be necessary for there to be a criminal conviction for the underlying predicate offence nor will its perpetrator have to be identified in order to secure a conviction• For predicate offences committed in another Member State or third country, the offence must be illegal in both the home State and the other jurisdiction	<ul style="list-style-type: none">• Imprisonment for at least five years for serious offences• Ban from employment in the public sector and from standing for an elected public office• Criminal liability to entities and corporate offence for failing to properly supervise any of the individuals who can accrue criminal liability to the entity• Convicted entities to be debarred from obtaining public contracts, prohibited from claiming public benefits / aids, temporary or permanent bad from conducting business, compulsory winding up, and/or temporary or permanent closure of business units through which offence was committed

38

Transposition

3 December 2020

39



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40