



www.21Academy.education

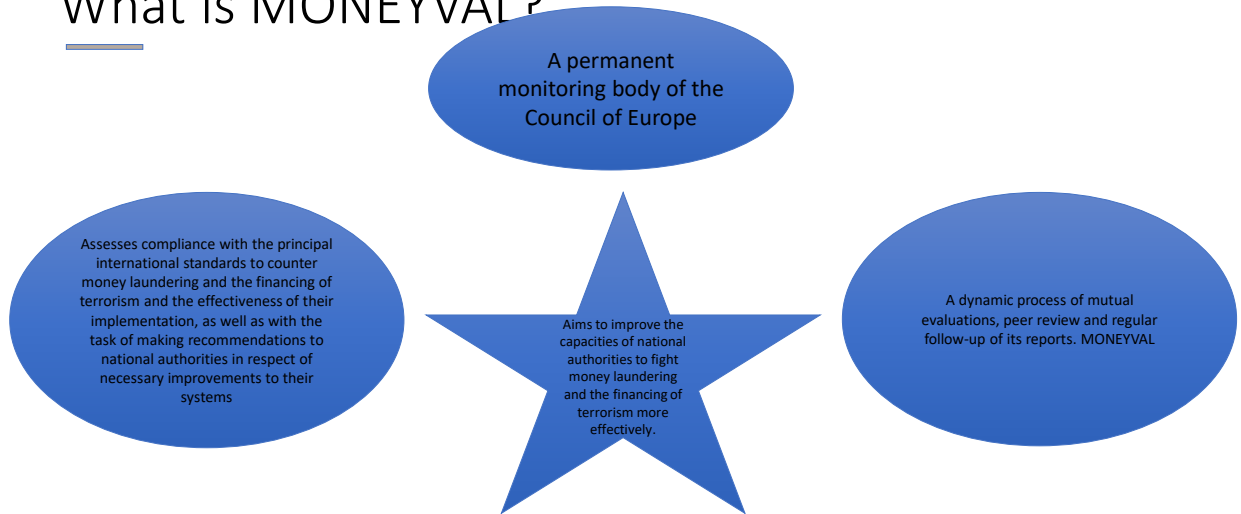
1

COUNCIL OF EUROPE BODIES

2

2

What is MONEYVAL?



3

3

Moneyval findings

- Malta has made significant efforts to understand its ML/FT risks
- Strategic analysis of predicate offences (e.g. tax crimes) and STRs from an ML/FT perspective is lacking at the level of the police and the FIAU
- Limited resources hamper Malta's efforts in fighting ML/FT
- There are shortcomings in the asset-tracing and confiscation regime
- Banks and casinos have demonstrated a good understanding of ML risks but FIs and DNFBPs cannot clearly articulate how ML might occur within their institution or sector
- Confusion on the reporting of sanctions

MONEYVAL decided to apply its enhanced follow-up procedure and invited Malta to report back in December 2020.

4

Moneyval priority actions

- Update statistical data to inform the analysis of ML/FT risks
- Analyse the main predicate offences associated with foreign proceeds of crime
- Conduct a detailed analysis of the threat from local organised crime groups
- Conduct a detailed analysis of the risks arising from the use of legal persons and arrangements
- Analysing the ML/FT implications of corruption, tax evasion and the shadow/cash economy
- Assess the vulnerabilities of the FinTech sector, including virtual assets
- Conduct a more detailed assessment of FT risks
- Beef up resources and expertise at the level of authorities
- Enhance the use of intelligence in financial investigations
- Ensure that subject persons in the legal, dealers and real estate sectors are subject to some form of licensing, registration or other controls and ongoing checks
- Ensure that the ARB becomes fully-operational
- Enhance awareness and understanding of all subject persons of the ML/FT risks in Malta

INTERNATIONAL MEASURES

Financial Action Task Force (FATF)

Money laundering is commonly carried out in an international context and therefore measures should be taken at a national, EU and international level.

FATF has introduced several recommendations and modifications to prevent money laundering and funding of terrorism. Its main role is to:

- To set international standards to combat money laundering and terrorist financing
- Assess and monitor compliance with the FATF standards
- Conducts typologies studies of money laundering and terrorist financing methods, trends and techniques
- Respond to new and emerging threats, such as proliferation financing.

7

GREY LIST

Jurisdictions with strategic deficiencies	Jurisdictions no longer subject to monitoring
Albania	Trinidad and Tobago
The Bahamas	
Barbados	
Botswana	
Cambodia	
Ghana	
Iceland	
Jamaica	
Mauritius	
Mongolia	
Myanmar	
Nicaragua	
Pakistan	
Panama	
Syria	
Uganda	
Yemen	
Zimbabwe	

8

8

BLACK LIST

High-risk jurisdictions have significant strategic deficiencies in their regimes to counter ML/FT. The FATF urges those countries which are identified as high-risk to apply enhanced due diligence and in very serious cases to apply counter-measures to protect the international financial system from the ongoing ML/FT risks emanating from the country.

With effect from 21 February 2020, the countries on the black list are the following:

- Democratic People's Republic of Korea (DPRK)
- Iran

9

9

Egmont Group of Financial Intelligence Units

An international network designed to improve interaction among 158 FIUs in the areas of communication, information sharing and training coordination.

The goal of the Egmont Group is to provide a forum for FIUs around the world to improve support to their respective governments in the fight against money laundering, terrorist financing and other financial crimes. This support includes

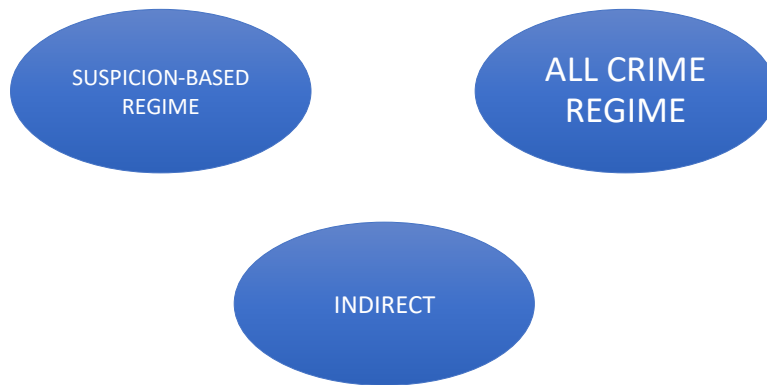
- expanding and systematizing the exchange of financial intelligence information,
- improving expertise and capabilities of personnel employed by such organizations, and
- fostering better and more secure communication among FIUs through the application of technology.

The Egmont Group's secure Internet system, known as the **Egmont Secure Web**, permits members to communicate with one another via secure e-mail, requesting and sharing case information as well as posting and assessing information on typologies, analytical tools and technological developments

10

10

Maltese Law vs EU/International Conventions



11

AML Regulatory/Administrative Requirements and Enforcement

12

12

The FIAU



13

Powers of the FIAU

The FIAU's powers are wide-ranging and include the following:

- Demand information from subject persons which is deemed to be relevant and useful for the purposes of pursuing its functions;
- Impose administrative penalties on subject persons in cases of failure to comply with the PMLFTR;
- Issue a reprimand in writing for failure to comply with the PMLFTR;
- Require closure of branches of subject persons in specific circumstances (in collaboration with the relevant supervisory authority);
- Issue written directives requiring subject persons to do or refrain from doing any act (including, for example, requesting subject persons to terminate business relationships).

14

14

FIAU's Compliance Monitoring Function

- FIAU is responsible for monitoring compliance by subject persons with the obligations set out under the PMLA and PMLFTR.
- The FIAU conducts risk assessments to understand the risk posed by the various sectors, businesses and professions and the various entities and individuals operating within these sectors.
- To fulfil this RBA (risk-based-approach) the FIAU conducts both off-site and onsite monitoring, and subject persons may be required to compile a Risk Evaluation Questionnaire. contains information and data on their activities or business to assist the FIAU in carrying out proper risk assessments
- FIAU may also request the submission of other periodical reports in accordance with the authority granted to it under Regulation 19 of the PMLFTR.

15

15

Off-Site and On-Site Inspection

On-site Inspection:

- Visits to the premises of the subject person
- Determining the extent to which the subject person is implementing AML/CFT obligations in practice
- Meetings and interviews with key officials (such as MLRO)
- Reviews of a number of customer files and records
- Reviews of subject person's policies and procedures, and any automated system that the subject person may be using
- Subject persons normally informed beforehand of an impending onsite examination
 - They are then requested to provide information and documentation to enable the carrying out of the assessment
 - Such documentation include; client lists, as well as policy and procedure documents.
- FIAU may carry out surprise visits too, without any prior notice.

16

16

Off-Site and On-Site Inspection

Off-site Inspection:

- Do not involve visits to subject person's premises
- Desk-review of information received or requested by the FIAU from the subject person
 - Such as AML/CFT procedures or policy documents
 - Risk assessment documentation
 - Ongoing monitoring methodologies
 - Other info – dependant upon the scope/purpose of the review
- Reviews may be carried out to assess:
 - The general implementation of AML/CFT obligations
 - To focus on particular and specific obligations
 - To analyse particular services or products.

17

17

Example of FIAU/MFSA Intervention at a Bank

- In 2017, an on-site examination was carried out on a bank by the FIAU and MFSA following information from the FIAU indicating that the bank was receiving funds of suspicious origin.
- The examination indicated serious and systemic shortcomings in the bank's adherence to AML/CFT obligations.
- Subsequent to the initial on-site examination, and with additional adverse information received from the FIAU Analysis Section, the FIAU Compliance Section decided to carry out a further and more extensive unannounced on-site examination. The second visit was carried out between February and July 2018.
- To this effect the FIAU and MFSA engaged third party experts and initiated a full scope examination which included the extraction of all relevant data that was stored on the banks' systems and servers. The compliance examination confirmed serious and systemic shortcomings in the bank's AML/CFT policies and procedures.
- In addition to the compliance examination process, and in view of the serious concerns, on 5 October 2018 the FIAU issued a Directive to the bank to terminate the business relationship with its main client which was deemed to expose the jurisdiction to significant ML/FT risks.
- The MFSA also imposed a number of restrictions on the bank's licence. The MFSA also appointed a Competent Person to ensure good governance and proper conduct and the implementation of various remedial measures. Subsequently the MFSA directed the Competent Person to initiate a controlled process for the return of customer deposits. On the 13 October 2018 the FIAU issued a compliance report notifying the Bank with the findings of the compliance examination.

18

18

Breaches of AML/CFT Obligations

Potential breaches of AML/CFT obligations at the Compliance Monitoring Committee (an internal organ set up by the FIAU) may be the result of the following:

1. A compliance review carried out by supervision which leads to the identification of potential breaches of AML/CFT obligations as set out in the PMLFTR or the FIAU's implementation procedures;
2. The subject person failed to submit information demanded by the FIAU within the stipulated timeframe as required in terms of Regulation 15(8) of the PMLFTR
3. The subject person failed to submit periodical reports as requested by the FIAU in terms of Regulation 19 of the PMLFTR.

Prior to the CMC deciding upon potential breaches of AML/CFT obligations, subject persons may submit their representations within a stipulated time frame following notification of the potential breach. It is on the basis of the representations as well as on the extent to which a breach is considered to be serious, systematic and repetitive that the CMC will decide the administrative measures to be applied if it is concluded that a breach was committed by the subject person.

19

19

Identified Breaches: Enforcing Administrative Measures

Identified breaches of AML/CFT obligations may result in the Compliance Monitoring Committee to enforce administrative measures (may impose more than one). Administrative measures include:

Administrative Penalty

A pecuniary fine is applied as a result of the AML/CFT obligation contravened by the subject person. It is imperative to note that, in case a pecuniary fine exceeding €5,000 is imposed, subject persons are granted a 20-days deadline from notification of the administrative penalty to file an appeal with the Court of Appeal (Inferior Jurisdiction) in terms of Article 13A of the PMLA. Furthermore, in terms of Article 13C of the PMLA and FIAU's policies and procedures on the 'Publication of AML/CFT Penalties', administrative penalties exceeding €50,000 are subject to publication within five working days from the date of notification of the administrative penalty to the subject person.

Remediation or follow-up directive

The imposition of this measure binds the subject person to develop and implement a corrective action plan within a specified deadline to remediate the AML/CFT breaches identified by the FIAU as part of a supervisory review or by the subject person as part of its own assessment. Such a measure will usually result in a follow-up examination or a supervisory meeting by the Enforcement Team to assess the effectiveness of the corrective action plan in remediating the AML/CFT shortcomings.

Notification or recommendation to other supervisory authorities or bodies

In cases where the subject person who breached AML/CFT obligations falls within the remit of other authorities responsible for the authorisation, licensing, registration or regulation of that subject person, the CMC requests that any breaches identified and any administrative measures taken are notified to the other supervisory authorities. In addition, the CMC may also recommend that these authorities take any necessary action in line with its legal framework.

20

20

Termination of particular business relationships

The FIAU has the power to request subject persons to terminate a business relationship that exposes the subject person to an extreme level of ML/FT risk that cannot be mitigated by the subject person in any other manner.

Written reprimand

A written reprimand may be imposed for minor contraventions of AML/CFT obligations and is intended to communicate to the subject person that, although a breach is not particularly concerning, it is nonetheless not acceptable and should not be repeated. Written reprimands are taken into consideration by the FIAU when assessing any future cases of non-compliance.

Other measures

The AML/CFT findings presented to the CMC, as well as the circumstances relevant to the case, may lead to the CMC deciding to impose other measures. These may include, but not limited to, a directive for the subject person to carry out an internal audit and to provide a copy of the audit report to the FIAU, or a directive to keep the FIAU informed within strict time frames on any action or activity being undertaken by the subject person.

21

21

FIAU and The Malta Police Force

FIAU	Malta Police Force
Responsible for the receipt and analysis of suspicious transaction reports (STR) and other information relevant to ML, associate predicate offences and FT. It is also responsible for the dissemination of the results of its analyses and for cooperating and exchanging information with counterpart FIUs, LEAs, as well as other competent authorities.	The only law enforcement authority in Malta tasked with the investigation and prosecution of criminal offences including ML and FT. It is vested with the necessary powers to carry out searches, seizures and arrests, request documentation and records, take witness statements and seize and obtain evidence. The Malta Police is also responsible for cooperating and exchanging information with foreign law enforcement authorities to assist them in the investigation of criminal offences.
The FIAU is considered to be an important source of financial intelligence for the Police in Malta for pursuing investigations and prosecutions of ML, associated predicate offences and FT.	The Police (as the competent authority for investigation of ML, associated predicate offences and FT) have a wide access to all necessary data, including powers to use Anti-money laundering and counter-terrorist financing measures in Malta – 2019 compulsory measures. The Police also obtain information directly from subject persons. There are no confidentiality provisions which restrict the ability of the Police to obtain information.
The FIAU is considered to be an important source of financial intelligence for the Police in Malta for pursuing investigations and prosecutions of ML, associated predicate offences and FT. In some instances, the Police also use the FIAU channels to obtain information from foreign FIUs or subject persons. The Police seek assistance from the FIAU in relation to both financial investigations initiated on the basis of FIAU disseminations and independently, at their own initiative	The Malta Police have the responsibility to investigate ML and associated predicate offences. Within the Police, the Economic Crimes and AML Squad is responsible for investigating criminal offences of a financial nature. A designated AMLU is tasked with the investigation of ML offences. ML investigations can also be carried out by other sections of the Malta Police, such as the Drug Squad (in conjunction with the investigation of drug-related offences). The AMLU is generally tasked with the investigations of more complex ML cases, while less complex ones would usually be of the remit of the unit investigating the predicate offence.

22

22

<p>The FIAU provides assistance promptly upon request. Financial intelligence provided by the FIAU to the Police cannot be used as evidence in performing investigations. Data provided by the FIAU is gathered by the Police via its own channels.</p>	<p>The decision to investigate and to prosecute lies with the Police, who will present their case before the Court of Magistrates, while the AGO will represent the prosecution before the Criminal Court. The AGO has no power to initiate investigations or prosecutions, but may act as a consul to the Commissioner of Police and provide advice of a non-binding nature.</p> <p>The AGO further plays an important role in the determination of the competent court, i.e. whether the case is heard by the Court of Magistrates or the Criminal Court. It is also solely responsible for the role of the prosecution in appeal cases. In relation to tax crimes, it should be noted that the Police do not have the power to prosecute (although they can initiate investigations). Such prosecutions require the authorisation of the CFR.</p>
<p>The case analysis conducted by the FIAU (before it is sent to the Police) takes in average 7-12 months. In urgent cases (e.g. FT-related cases) case analysis is conducted in shorter timeframes. Potential ML cases are mainly identified following the receipt of an analytical report of the FIAU to the police, during the investigation of a predicate offence, upon complaint or on the basis of information received from a foreign authority.</p>	<p>The discretion to investigate and prosecute ML offences and related predicate offences lies with the Police, bound by the principle of legality. An initial suspicion would be sufficient to commence an investigation for ML, which could also be triggered by reports from third parties or media reports.</p>

23

23

Number of Investigations and Prosecutions

Year	FIAU reports to Police	Investigations by Police based on a FIAU report	Prosecutions ML based on a FIAU report	Investigations ML without FIAU report	Prosecutions ML without FIAU report	Total Prosecutions ML
2014	27	23	1	4	4	4
2015	18	20	0	4	4	4
2016	39	38	1	4	4	5
2017	34	24	2	4	4	6
2018	45	41	0	10	1	1

24

24

Subject Persons

The FIAU is responsible for imposing AML/CFT requirements on all 'subject persons', which are defined in Regulation 2 PMLFTR as "any legal or natural person carrying out either relevant financial business or relevant activity"

RELEVANT ACTIVITY	RELEVANT FINANCIAL BUSINESS
<p>This includes subject persons when acting in the exercise of their professional activities, such as:</p> <ul style="list-style-type: none"> - Auditors - External accountants - Tax advisors - Real estate agents <p>As well as, acting in the context of certain transactions, such as:</p> <ul style="list-style-type: none"> - Assisting clients with opening bank accounts or the creation of companies - Independent legal professionals (lawyers, fiduciary/company service providers) - licensed gaming operators - Where the transaction involves a payment in cash of €10,000 or more - Persons engaged in trading of goods. <p>In light of recent amendments Regulation 2 PMLFTR also includes the provision of intermediation services in relation to property letting by real estate agents where the monthly rent amounts to €10,000 or more, within the relevant activity category.</p>	<p>This includes activities carried out by the credit institutions, such as:</p> <ul style="list-style-type: none"> - Payment institutions - Electronic money institutions - Insurance undertakings and intermediaries - Recognised, licensed or notified collective investment schemes and fund administrators - Service providers licensed under the Investment Services Act - Service providers licensed under the Retirement Pension Act - Safe custody service providers - Regulated markets - Virtual financial assets agents and licence holders within the meaning of the Virtual Financial Assets Act + issuers of virtual financial assets

25

25

Cooperation with other Supervisory authorities

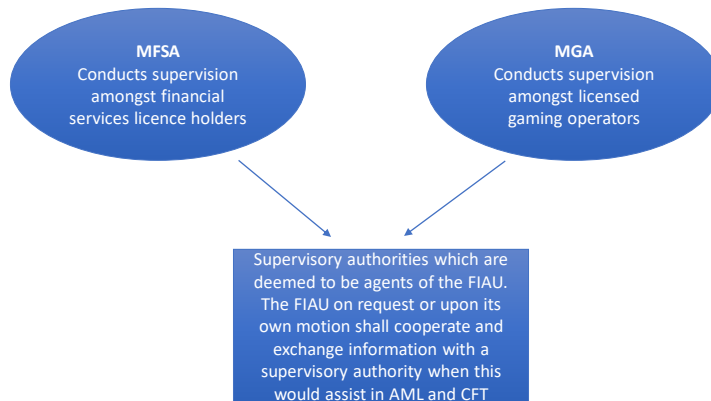
The FIAU is empowered to cooperate with supervisory and regulatory authorities to ensure that the financial sector or any other sector is not misused for criminal purposes and to safeguard its integrity This is usually done by:

- sharing of information with authorities empowered to issue licenses
- authorisations to assist these authorities in their due diligence and fit and properness tests carried out to grant licenses or authorisations
- carry out joint supervisory actions with foreign counterparts on obliged entities that have branches, majority owned subsidiaries or other physical establishments in Malta
- subject persons that have branches, majority owned subsidiaries or other physical establishments in foreign jurisdictions.

26

26

Self-Regulatory Organisations or Professional Associations



27

27

National Co-Ordinating Committee (NCC)

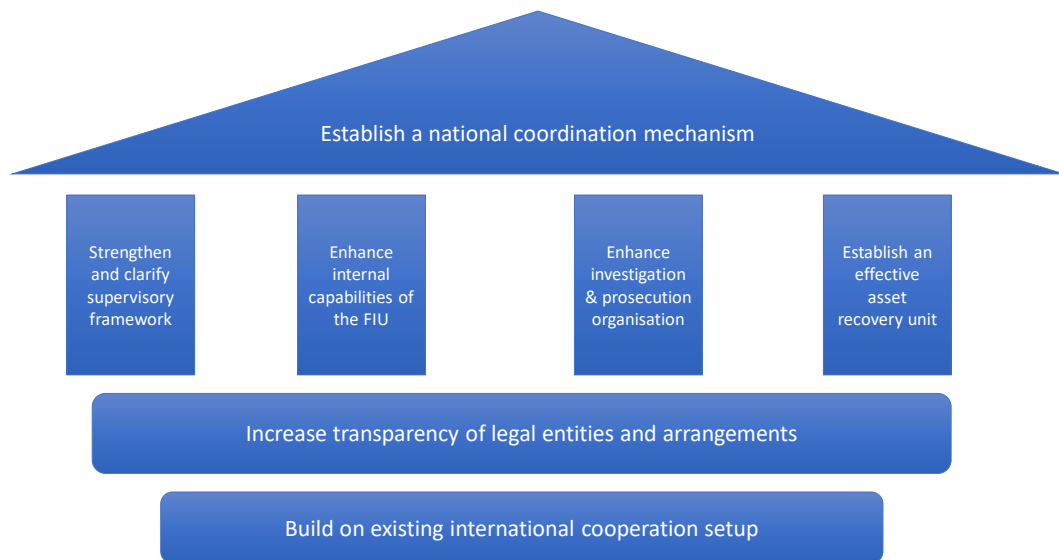
The NCC was established on 13 April 2018 by virtue of the NCC on ML and FT Regulations. It is chaired by the Permanent Secretary of the ministry for Finance and is composed of policy makers (representatives from the Ministries for Finance, Home Affairs and Justice), Supervisors (FIAU, MFSA, MGA), the Malta Police, the Office of the Attorney General and various other competent authorities. The NCC is the body responsible for defining, overseeing and co-ordinating the implementation of the **national AML/CFT** strategy.

The main objectives of the NCC are:

- ❖ To ensure full transparency on Malta's AML/CFT risks;
- ❖ Comprehensive, coordinated and communicated strategy for managing the risks;
- ❖ Effective execution of and follow-through on decisions made; and
- ❖ Effective ongoing cooperation and intelligence sharing among stakeholders.

28

28



29

29

Non- Compliance with AML Requirements

The FIAU has the authority to act without the need for a court hearing or judgment for failure to comply with the regulatory/administrative AML requirements, such administrative failures include:

➤ Non-compliance with procedures to prevent ML/FT, namely:

- ❖ Failing to maintain/apply procedures for CDD, recordkeeping and reporting
- ❖ Failing to establish internal control, risk assessment, risk management, compliance management and communications
- ❖ Commission of an offence under the PMLFTR by corporate/unincorporated bodies and other associations of persons
- ❖ False declarations/false representation by an applicant for business
- ❖ Failure to carry out CDD (Certain exemptions are applicable to electronic money businesses)
- ❖ Failure to carry out reporting procedures and obligations
- ❖ Tipping-off
- ❖ Non-compliance with the IP, guidance and directives issued by the FIAU in terms of the PMLA and PMLFTR

30

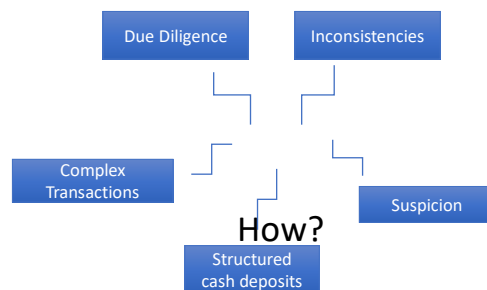
30

Money laundering: how trusted professionals can help law enforcement

31

Financial, legal and other professionals

Trusted professionals can help stop criminals in furthering their illegal activities and it is in their interest to do so.



32

32

Measures for effective AML/CFT systems

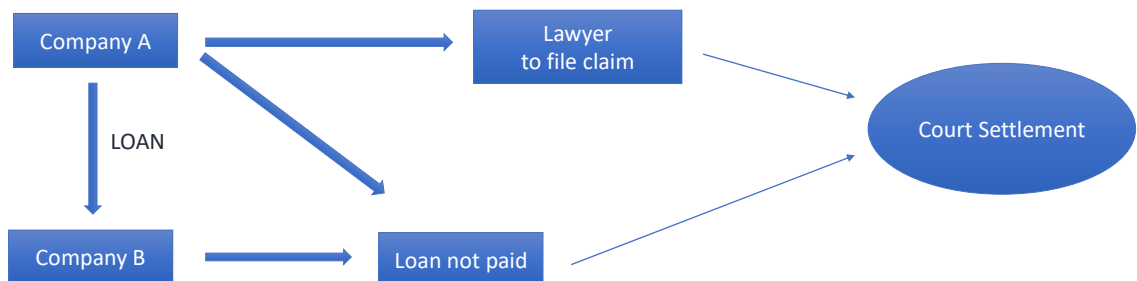
Regulation 5(5) PMLFTR imposes the requirement on subject persons (including financial institutions) to have effective policies and procedures, as well as internal controls in place, namely:

- To implement compliance management processes
- Employee screening policies
- Training programmes
- Sufficient reporting mechanisms
- Appoint a MLRO (Money Laundering Reporting Officers) to assist in the coordination of its AML/CFT framework.

33

33

Use of legal practitioners to recover fictitious debts to launder funds through court proceedings:



34

34

The Purpose of AML/CFT Measures

- Determining the extent of ML/FT risks that you may be prone to or exposed
- Prevent and combat proceeds or crime/terrorism
- Identify and verify who is our customer
- Ongoing monitoring

KNOW WHO YOU ARE DEALING WITH

35

35

Case Study

A Brazilian judge established a trust in the Caribbean Islands, and the actual settler of trust was a shell company in another Caribbean Island. Both the trust and the company had a nominal value of 1 dollar but were able to purchase a million-dollar apartment in Miami.

36

36

QUESTIONS



37

37

Thank you for your attention



38

38



www.21Academy.education