

Question 1 - Money Laundering: Definition

Money Laundering is criminalised under the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta). In terms of article 2 of the Prevention of Money Laundering Act ("PMLA") Money Laundering is defined as:

- 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;
- 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;
- 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;
- 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;
- attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;
- acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v).

The Prevention of Money Laundering Act also defines the term "criminal activity" (under article 2) as any activity, whenever or wherever carried out, which under the law of Malta or any other law, amounts to a criminal offence. This means that in terms of Maltese law money laundering may subsist from the commission of any criminal offence, which also includes tax evasion, whenever or where committed.

Acts of money laundering are punishable by an imprisonment term of 18 years or a fine not exceeding €2,500,000, or both and this in terms of article 3(1) of the PMLA. It is important to point out that legal persons, as well as officers of legal persons at the time of the commission of the offence, may be found guilty of money laundering. This is provided for under articles 3(2) and 3(4) of the PMLA.

Question 2 – Name, mission statement and powers of the entities responsible for the handling of suspicious transactions reports (STRs) in Malta.

Name and mission statement

The Financial Intelligence Analysis Unit (“the FIAU”) is the sole entity responsible for the handling of STRs in Malta. The FIAU is a government agency set up under article 15 of the PMLA, having its own distinct legal personality and is operationally independent and autonomous.

Article 16(1) set out the general responsibility of the FIAU being the collection, collation, processing, analysis and dissemination of information with a view to combating money laundering and funding of terrorism. The same article also lays down the specific functions of the FIAU, which are the following:

- to receive reports of transactions or activities suspected to involve money laundering or funding of terrorism or property that may have derived directly or indirectly from, or constitute the proceeds of, criminal activity made by any subject person in pursuance of any regulation made under article 12, to supplement such reports with such additional information as may be available to it or as it may demand, to analyse the report together with such additional information and to draw up an analytical report on the result of such analysis;
- to send any analytical report as is referred to in paragraph (a) to the Commissioner of Police for further investigation if having considered the report received under paragraph (a), the Unit also has reasonable grounds to suspect that the transaction or activity is suspicious and could involve money laundering or funding of terrorism or property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity;
- to monitor compliance by subject persons and to cooperate and liaise with supervisory authorities to ensure such compliance;
- to send to the Commissioner of Police together with any analytical report sent in accordance with paragraph (b) or at any time thereafter any information, document, analysis or other material in support of the report;
- to instruct any subject person to take such steps as it may deem appropriate to facilitate any money laundering or funding of terrorism analysis in general or the analysis of any particular report received by the Unit under paragraph (a);
- to gather information on the financial and commercial activities in the country for analytical purposes with a view to detecting areas of activity which may be vulnerable to money laundering or funding of terrorism;
- to compile statistics and records, disseminate information, make recommendations, issue guidelines and advise the Minister on all matters and issues relevant to the prevention, detection, analysis, investigation, prosecution and punishment of money laundering or funding of terrorism offences;

- to promote the training of, and to provide training for, personnel employed with any subject person in respect of any matter, obligation or activity relevant to the prevention of money laundering or funding of terrorism;
- to consult with any person, institution or organization as may be appropriate for the purpose of discharging any of its functions;
- to advise and assist persons, whether physical or legal, to put in place and develop effective measures and programmes for the prevention of money laundering and funding of terrorism;
- upon request or on its own motion, to exchange information with any foreign body, authority or agency which it considers to have functions equivalent or analogous to those mentioned in this subarticle and with any supervisory authority in Malta or with any supervisory authority outside Malta which it deems to have equivalent or analogous functions as a supervisory authority in Malta, subject to such conditions and restrictions as it may determine, including the prior conclusion, if it deems so necessary, of any memorandum of understanding or other agreement, to regulate any such exchange of information, where that information may be relevant to the processing or analysis of information or to investigations regarding financial transactions or activities related to money laundering or the underlying criminal activity, or funding of terrorism and the natural or legal persons involved;
- to report to the Commissioner of Police any activity which it suspects involves money laundering or the underlying criminal activity, or funding of terrorism and of which it may become aware in the course of the discharge of any of its functions.

Powers of the FIAU

The PMLA allocates various powers to the FIAU to enable it to carry out its functions in an effective and efficient manner. A list and a brief explanation of the most important powers available to the FIAU are listed hereunder.

- **Power to impose sanctions for AML/CFT breaches** – The FIAU is empowered in terms of Regulation 21(3) of the Prevention of Money Laundering and Funding of Terrorism Regulations (“PMLFTR”) to impose administrative sanctions for breaches of anti-money laundering and counter-financing of terrorism obligations, as well as breaches of lawful requirements, orders or directives issued by the FIAU.
- **Publish administrative sanctions** – Article 13A of the PMLA requires the FIAU to publish the administrative sanctions it imposes, when such sanctions equal or exceed €1,500 in value. Publication takes place on the FIAU’s website.
- **Postpone the execution of suspicious transactions** – The FIAU is authorised to delay the execution of suspicious transactions for a maximum period of 3 working days and this in terms of article 28 of the PMLA.
- **Issue monitoring orders** – Article 30B of the PMLA enables the FIAU to request obliged entities to monitor transactions carried out through particular account/s and to transmit information to the FIAU.

- **Issue directives in writing and order the termination of business relationships** – In pursuance of its functions at law the FIAU may issue directives in writing requesting obliged entities to do or to refrain from doing any act, and this in terms of Article 30C of the PMLA. More specifically, by virtue of Regulation 18 of the PMLFTR, the FIAU may order the termination of a business relationship established by an obliged entity.
- **Demand information to pursue its functions** – The FIAU has the authority at law to request the production of information and/or documentation from any person for the purpose of carrying out its analytical function (Article 30 PMLA & Regulation 15(11) PMLFTR) and all its other functions at law (Article 30A PMLA). Such requests for information are by law bound to be replied to by obliged entities within 5 working days (Regulation 15(11) PMLFTR) and in a timely manner or within a timeframe indicated by the FIAU with respect to all other persons. Article 26(2) also empowers the FIAU to compel the production of documents from obliged entities when monitoring their compliance with AML/CFT obligations.

The FIAU's structure and resources

The FIAU consists of a Board of Governors, which sets out the policy to be adopted by the Unit and oversees its implementation, and a Director who oversees the operation of the FIAU. In fulfilling his tasks the Director is assisted by a deputy director and permanent staff members organised in four different sections, these include the analysis section, the compliance section, the legal and international relations section and the administration and IT section. Each section has its own manager. The total staff complement of the FIAU is of 30 employees, with further human resources expected to be recruited shortly.

Interaction with other competent authorities

In pursuance of its analytical functions the FIAU cooperates closely with the Malta Police. Cases in which the FIAU identifies a reasonable suspicion of money laundering or funding of terrorism are passed on to the Malta Police for further investigations. This procedure is set out and regulated by article 31 of the PMLA. For this purpose the FIAU forwards an analytical report which would be compiled following the FIAU's conclusion of its analytical exercise. Moreover the FIAU and the Malta Police cooperate on an ongoing basis through the exchange of information to assist each other in their functions at law. A police liaison officer (who is the FIAU's point of reference within the police force) is appointed to facilitate the cooperation between the two authorities. The FIAU also cooperates with other authorities in carrying its analytical functions, and as mentioned before the FIAU has the power to request the production of information and documents from any government ministry, authority and department.

Being also a supervisory authority for AML/CFT purposes the FIAU interacts and cooperates with various other supervisory authorities. The FIAU currently has memoranda of understanding to regulate cooperation with the Malta Financial Services Authority (which is the prudential supervisor of various financial sector entities) and the Malta Gaming Authority (responsible for the regulation of the gaming sector). A newly set-up AML/CFT Unit within the MFSA carries out AML/CFT on-site compliance visits of financial sector operators on behalf of the FIAU. Currently talks are underway to extend this *modus operandi* between the FIAU and the MGA for a more effective oversight of the gaming sector given the wider range of gaming operators that will be covered with the transposition

of the 4th EU Anti-Money Laundering Directive. Cooperation with other supervisory authorities. Article 27 of the PMLA which regulates the FIAU's cooperation with supervisory authorities authorises the FIAU to request other supervisory authorities to assist it in monitoring obliged entities for AML/CFT purposes.

It is also worth mentioning the Joint Committee for the Prevention of Money Laundering and Funding of Terrorism, which is an *ad-hoc* committee chaired by the FIAU. This Committee, which meets four times a year, brings together the various domestic competent authorities involved in the fight against money laundering and funding of terrorism as well as representatives of obliged entities subject to AML/CFT obligations. The Committee serves as a platform for the discussion of various issues of AML/CFT relevance. The competent authorities, apart from the FIAU, represented on this Committee include the Malta Police, the Attorney General's Office, the Malta Financial Services Authority, the Malta Gaming Authority and Customs.

Question 3 – Statistics on the FIAU’s activities

Statistics on suspicious transaction reports (STRs)

In 2015 the FIAU received a total of 281 STRs. More detailed statistics and distribution of reports per sector can be found on the FIAU’s Annual Report which is published on a yearly basis. A link to the 2015 Annual Report is being provided:

(<http://www.fiumalta.org/library/PDF/annualreports/AnnualReport2015.pdf>)

So far in 2016 the total number of STRs received amount to 493.

AML/CFT On-site Visits Statistics

In 2015 the FIAU and the MFSa carried out 71 on-site AML/CFT compliance visits on financial sector operators and non-financial businesses and professions. Figures are being presented in the hereunder table. Further detailed information can be found on the FIAU’s 2015 Annual Report.

On-site Compliance Visit Statistics: 2015

	MFSa	FIAU
Financial Institutions	24	28
DNFBPs		19
Total	24	47

Given that the Enforcement Unit within the MFSa, which is responsible for the conduct of on-site compliance visits, started operating as of January 2016, it is not possible to further sub-divide the visits carried out by the said authority in the course of 2015 between Financial Institutions and DNFBPs.

On-site Compliance Visit Statistics: 2016

	MFSa	FIAU	Total
Accountants/Auditors		17	17
Legal Professionals		12	12
Company Service Providers	7	2	9
Credit Institutions	2		2
Financial Institutions	4		4
Fund Administrators	1		1
Fund Manager	1		1
Insurance Broker	1		1
Investment Service Providers	6	1	7
Notaries		15	15
Real Estate Agents		13	13
Retirement Scheme Administrator			
Tied Insurance Intermediaries	6		6
Trustees & Fiduciaries	6		6
Total	34	60	94

It is to be noted that a number of entities subject of on-site visits carried out in 2016 also carry out additional activities. Thus, an investment services provider also carries out the activity of a credit institution, 9 of the accountants/auditors also provide tax advisory services, 9 of the legal professionals visited also act as company service providers as do sixteen of the accountants/auditors visited.

Statistics - Administrative Sanctions

Infringements of AML/CFT obligations that are identified during these on-site compliance examinations as well as off-site monitoring and other information obtained from supervisory authorities are subject to administrative sanctions which are imposed by the FIAU.

During the year 2015 the FIAU imposed a total of 56 administrative penalties and 20 reprimands in writing. The total figure for penalties levied in 2015 amounted to €160,100. The figure includes two aggregate penalties of €40,900 and €40,100 imposed separately on two investment services companies for breaches of their customer due diligence obligations. Other administrative sanctions (including both administrative penalties and reprimands) were imposed on trustees and fiduciaries, advocates, accountants and auditors, notaries, insurance brokers, credit institutions, company service providers and providers of investment services.

Administrative Penalties: 2016

Sector	Administrative Penalties	Amount	Reason for breach
Credit Institutions	4	€ 77,650	a) failure to carry out ongoing monitoring to ensure consistency with the customer profile and to establish source of funds of a PEP; b) failure to obtain sufficient supporting information and documentation to establish the source of the funds; c) failure to gather sufficient information on the source of wealth and the source of funds of the transaction; d) failure to submit a Suspicious Transaction Report; e) applicants for business or the beneficial owners were not adequately identified and/or verified; f) failure to apply an Enhanced Due Diligence measure as laid out by Regulation 11(2); g) failure to ensure that all data, information and documentation on the beneficial owners are kept up to date; h) failure to establish a Customer Acceptance Policy;
Financial Institutions	1	€ 5,500	a) failure to reply to a request for information; b) replied late to a request for information; c) failure to submit the Annual Compliance Report.

Accountants & Auditors	16	€ 4,000	failure to submit the Annual Compliance Report
Notaries	10	€ 3,250	a) failure to submit the Annual Compliance Report b) failure to retain a copy of the customer due diligence documents c) failure to establish a Customer Acceptance Policy
Company Service Providers	12	€ 3,000	failure to submit the Annual Compliance Report
Trustees & Fiduciaries	5	€ 2,875	failure to submit the Annual Compliance Report
Real Estate Agents	7	€ 1,750	failure to submit the Annual Compliance Report
Collective Investment Schemes - PIF	4	€ 1,000	failure to submit the Annual Compliance Report
Legal Firms	1	€ 1,000	failure to submit a Suspicious Transaction Report
Insurance Brokers	1	€ 250	failure to submit the Annual Compliance Report
Investment Services - Category 1A	1	€ 250	failure to submit the Annual Compliance Report
Various subject persons*	106	€ 26,500	failure to submit the Annual Compliance Report
	168	€ 127,025	
* A further 106 Administrative Penalties have been issued in 2016 in relation to non-submission of ACR2016, amounting to €26,500. These penalties are still not segregated by Sector since internal data processing exercises are still ongoing.			

The Revenue Departments

- (a) The Income Tax Acts provide for a number of instances (as per attached list in Annex A) where a tax related default is considered a criminal offence and the Commissioner for Revenue may request the Commissioner of Police to take action against an individual who is in breach of the Acts;
- (b) Within the Inland Revenue Department and the VAT Department it is the Tax Compliance Unit which handles tax-related investigations. Tax related crimes are prosecuted by the Police. There is no particular organisation which deals specifically with tax-related crime. However, the Police Department has an Economics Crimes Unit which deals with financial crime;
- (c) Police officers prosecute charges on tax crimes and the penalty regime is listed in the attached document (Annex A). Individuals who are prosecuted are mainly those who collect monies on behalf of the Government of Malta and fail to submit such proceeds to the Inland Revenue Department or the Value Added Tax Department. Individuals employing other persons and directors of companies (which act as employers) have been found guilty of committing a crime against the Revenue Acts both at the level of the courts of first instance (the Court of Magistrates) and at the level of the courts of second instance (The Court of Criminal Appeal). Problems have been encountered as a result of some Constitutional Court decisions whereby it was decided that additional taxes imposed for late filing and non-payment of taxes were, because of their severity, to be considered to be punitive in nature and therefore, in the nature of criminal penalties. It was held at Constitutional Court level that In circumstances

where such penalties were imposed by the tax authorities, the Commissioner of Police was precluded from initiating criminal prosecution because of the *ne bis in idem* principle as the imposition of high additional taxes (penalties) was considered to constitute a criminal punishment (irrespective of whether such fine had been paid or otherwise at the time of prosecution);

Since 2010 the Commissioner of Police, on behalf of the Commissioner for Revenue, has prosecuted 4042 employers who failed to submit documents and payments after deducting tax from the wages of their employees. To date 291 judgements were delivered. During 2016 the VAT Department prosecuted against 392 persons who held a VAT number but failed to submit their returns / returns including payment and 163 judgements were delivered. Criminal proceedings by the VAT Department have been carried out since 1995;

With reference to the Panama Papers, at the moment, the Tax Compliance Unit are investigating 29 cases and another 20 cases are at pre-audit stage.

The Inland Revenue Department has no information with reference to the Bahama Leaks.