International
Comparative
Legal Guides

Practical cross-border insights into anti-money laundering law

Anti-Money Laundering 2023

Sixth Edition

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1.1 What is the legal authority to prosecute money laundering at the national level?

The Prevention of Money Laundering Act ("**PMLA**") is the principal law used to prosecute money laundering in Malta.

In addition to the PMLA, there are other laws which also deal with anti-money laundering ("**AML**") legislation. The Prevention of Money Laundering and Funding of Terrorism Regulations ("**PMLFTR**") principally deals with the obligations of persons subject to anti-money laundering/countering the financing of terrorism ("**AML/CFT**") obligations ("**subject persons**"/"**SPs**").

Furthermore, the Proceeds of Crime Act ("**POCA**"), amongst other matters, deals with the identification, tracing, freezing and confiscation of proceeds of crime, including laundered property, income and other benefits derived from such proceeds held by criminal defendants.

1.2 What must be proven by the government to establish money laundering as a criminal offence? What money laundering predicate offences are included? Is tax evasion a predicate offence for money laundering?

For a money laundering offence to be proven, the prosecution must establish the existence of an underlying criminal activity on the basis of circumstantial or other evidence, in order to establish that the property in question is property derived from a criminal activity. Notwithstanding the above, it is not necessary for the prosecution to establish precisely which underlying activity, or for the defendant to be found guilty of the underlying criminal activity.

The prosecution needs to prove both the mental element (*mens rea*) and the factual element (*actus reus*). The mental element refers to the knowledge or suspicion that the property in question was criminal property. On the other hand, the factual element refers to the laundering process, which consists of one or more of the following:

(i) converting or transferring property while knowing or suspecting that such property was derived directly or indirectly from, or was the proceeds of, criminal activity, or from an act or acts of participation in criminal activity, for the purpose 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) concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over or ownership of property, **or** acquiring, possessing, using or retaining without reasonable excuse property while 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; or

(iii) attempting, or acting as an accomplice in, any of the above acts.

In order for a person to be convicted of a money laundering offence, the prosecution needs to prove the mental and factual element beyond reasonable doubt.

SPs may also be convicted of money laundering in cases where they knew or suspected that their clients were laundering the proceeds of a criminal activity and "turned a blind eye" to such circumstances, allowing the person in question to launder the proceeds of crime through the activities of the SP.

Malta has an "all crimes regime". Therefore, any criminal offence may constitute a predicate offence. Tax evasion and all other tax crimes are deemed to be "criminal offences", and therefore a money laundering offence may subsist in case of such crimes.

1.3 Is there extraterritorial jurisdiction for the crime of money laundering? Is money laundering of the proceeds of foreign crimes punishable?

In view of the cross-border element in money laundering offences, the crime of money laundering has some extraterritorial application.

In order for a money laundering offence to subsist, it must be determined that the proceeds being laundered were generated from a criminal activity. A "criminal activity" is defined as "*any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to: (i) a crime or crimes specified in Article 3 (1) (a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; or (ii) one of the offences listed in the Second Schedule to the PMLA*". The Second Schedule does not include a list of offences but rather provides that "any criminal offence" is considered a criminal activity.

Therefore, in cases where the activity generating certain proceeds is considered to be a criminal activity in Malta or in any other jurisdiction, the said proceeds are deemed to be proceeds of crime and therefore a money laundering offence may subsist.

In terms of Article 121C of the Criminal Code, Maltese courts have jurisdiction over money laundering offences even when only part of the action took place in Malta. Therefore, for money laundering offences where part of the offence took place in Malta (i.e. where either the placement, layering or integration is taking part in Malta), the Maltese courts may have jurisdiction over such cases.

1.4 Which government authorities are responsible for investigating and prosecuting money laundering criminal offences?

The Financial Intelligence Analysis Unit ("**FIAU**") is the entity responsible for receiving and analysing reports of transactions or activities suspected to involve money laundering or property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity.

Upon determining that there is, at least, reasonable suspicion of money laundering, the FIAU would forward an analytical report to the Commissioner of Police for investigation. The Commissioner of Police may also commence investigations in the absence of an analytical report received from the FIAU.

The Anti-Money Laundering Department within the Malta Police Force would investigate money laundering cases. However, the Office of the Attorney General would ultimately prosecute offences of money laundering.

1.5 Is there corporate criminal liability or only liability for natural persons?

Yes. The PMLA provides for corporate criminal liability in addition to liability for natural persons.

In order for a corporate entity to be found liable for the offence of money laundering, the offence must have been committed for the benefit, in part or in whole, of that body corporate, by an officer of the corporate entity, including those such as a director, manager, secretary or other principal officer of a body corporate, or a person having a power of representation of such a body/having the authority to make decisions on behalf of that body or having authority to exercise control within that body.

1.6 What are the maximum penalties applicable to individuals and legal entities convicted of money laundering?

Article 3(1) of the PMLA provides that the maximum penalty for persons convicted of money laundering is a fine (*multa*) not exceeding EUR 2,500,000, or imprisonment for a period not exceeding 18 years, or both.

Other sanctions which may be imposed on individuals include: temporary or permanent exclusion from access to public funding; temporary or permanent disqualification from the practice of commercial activities; and temporary bans on running for elected roles or public office.

On the other hand, corporates may also be subject to the following additional sanctions: exclusion from entitlement to public benefits or public aid; temporary or permanent exclusion from access to public funding; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; dissolution and winding up; and temporary or permanent closure of establishments which have been used for committing the offence.

The PMLA and the POCA also provides for forfeiture of proceeds or property derived from criminal activity.

1.7 What is the statute of limitations for money laundering crimes?

The money laundering offence is time barred by the lapse of 15 years.

1.8 Is enforcement only at national level? Are there parallel state or provincial criminal offences?

Enforcement is at national level as Malta has no parallel states or provinces.

1.9 Are there related forfeiture/confiscation authorities? What property is subject to confiscation? Under what circumstances can there be confiscation against funds or property if there has been no criminal conviction, i.e., non-criminal confiscation or civil forfeiture?

Forfeiture, confiscation and freezing of assets are dealt with under the PMLA, the Criminal Code and the POCA relating to money laundering. The POCA also provides for non-conviction based confiscation.

The Asset Recovery Bureau is responsible to trace and identify proceeds of crime and any other property subject to confiscation and to take action regarding their confiscation and proper administration and disposal, and to assist other law enforcement and regulatory authorities in the fight against crime.

Property subject to confiscation or forfeiture

The forfeiture and confiscation provisions in the PMLA relate to "proceeds" or "property" which have been derived from a criminal activity. "Proceeds" are defined as "*any economic advantage and any property derived from or obtained, directly or indirectly, through criminal activity and includes any income or other benefit derived from such property*", whilst the term "property" is widely defined as being "*property and assets of every kind, nature and description, whether movable or immovable, whether corporeal or incorporeal, tangible or intangible, legal documents or instruments evidencing title to, or interest in, such property or assets*".

In terms of the POCA, the property subject to confiscation is broader and in addition to the above, also includes "facilitating property, and all property involved in a money laundering offence". "Facilitating property" generally refers to any property used or intended to be used to commit or to facilitate the commission of a relevant offence. On the other hand "property involved in money laundering" includes any "*proceeds of crime that are the subject of the money laundering transaction, any property commingled with the proceeds of crime at the time the money laundering transaction occurs, any property in which the proceeds or crime are invested or for which they are exchanged in the course of the money laundering offence, and any property used to facilitate the money laundering offence*".

Forfeiture and confiscation

In addition to any punishment for the money laundering offence, the courts may order forfeiture of proceeds or of such property the value of which corresponds to the value of such proceeds of crime. Any property or proceeds, whether in Malta or outside of Malta, unless proven to the contrary, is deemed to be derived from the money laundering offence and thus liable to confiscation or forfeiture.

In addition, property may be forfeited where it is established that the value of the property of the person found guilty of the money laundering offence is disproportionate to his lawful income, and the court (based on specific facts) is fully convinced that the property has been derived from the criminal activity of that person.

Non-conviction based confiscation

Article 43 of the POCA establishes provisions relating to non-conviction based confiscation. The POCA allows for the recovery of property subject to confiscation in situations where it is not necessary or appropriate to recover such property through a non-conviction based confiscation as part of a criminal prosecution. The instances in which such non-conviction based confiscation may take place are limited to the following: (i) where the perpetrator absconds or is not in Malta; (ii) where the perpetrator is dead; or (iii) where the perpetrator dies prior to the conclusion of the criminal proceedings.

Notwithstanding, it is not all property which may be confiscated in terms of Article 43 of the POCA. The type of property which may be subject to confiscation includes, but is not limited to, proceeds which have been generated from terrorism, the funding of terrorism, money laundering, illegal dealing in arms, and any other crime liable in Malta to a punishment of imprisonment of not less than 10 years.

1.10 Have banks or other regulated financial institutions or their directors, officers or employees been convicted of money laundering?

No convictions against banks or other regulated financial institutions or their directors exist to date; however, charges have been issued.

1.11 How are criminal actions resolved or settled if not through the judicial process? Are records of the fact and terms of such settlements public?

Criminal actions are resolved through the courts. As of the time of writing, there are no specific formal settlement procedures.

1.12 Describe anti-money laundering enforcement priorities or areas of particular focus for enforcement.

Over the past several years, there has been a growing exchange of information between the FIAU and law enforcement authorities, thereby increasing the number of investigations. Furthermore, a number of persons have also been charged for money laundering offences. The above trend is in line with Malta's commitment to continue enforcing legislation relating to money laundering and the financing of terrorism ("**ML/FT**"). It is expected that this trend will continue in the coming years.

2.1 What are the legal or administrative authorities for imposing anti-money laundering requirements on financial institutions and other businesses? Please provide the details of such anti-money laundering requirements.

The FIAU is the administrative authority responsible for imposing, and ensuring compliance with, AML requirements *vis-à-vis* financial institutions and designated non-financial businesses and professionals ("**DNFBP**").

The AML requirements are set out in the PMLFTR and are supplemented by the Implementing Procedures Part I published by the FIAU ("**IPs Part I**"), which provide further detail on the implementation of the requirements. In addition, sector-specific guidance would be published as Implementing Procedures Part II ("**IPs Part II**").

SPs are required to implement AML measures in accordance with a risk-based approach, meaning that SPs must assess their ML/FT risk exposure and vary the measures to be applied accordingly.

Such measures, *inter alia*, include undertaking risk assessments, customer due diligence, retention of records, reporting procedures and providing the necessary training.

2.2 Are there any anti-money laundering requirements imposed by self-regulatory organisations or professional associations?

The FIAU is the sole body tasked with imposing standards or AML/CFT requirements on SPs.

However, other supervisory authorities such as the Malta Financial Services Authority ("**MFSA**") and the Malta Gaming Authority ("**MGA**") respectively supervise financial services licence holders and gaming operators, and may issue guidance in this regard.

2.3 Are self-regulatory organisations or professional associations responsible for anti-money laundering compliance and enforcement against their members?

In Malta, there are no self-regulatory organisations or professional associations which oversee their members' compliance with the applicable AML requirements. All SPs fall under the oversight of the FIAU. The final decision to take enforcement action remains with the FIAU. Notwithstanding, the MFSA and the MGA, as agents of the FIAU, are bodies which are authorised to ensure that their licensees remain compliant with their AML obligations. Shortcomings identified by the respective supervisory authority would be reported to the FIAU for further actioning.

2.4 Are there requirements only at national level?

Given that Malta is an island with no states or provinces, the requirements only apply at national level.

2.5 Which government agencies/competent authorities are responsible for examination for compliance and enforcement of anti-money laundering requirements? Are the criteria for examination publicly available?

The FIAU is responsible for ensuring that SPs comply with their obligations. However, in certain instances, the MFSA or the MGA would undertake the compliance examination on behalf of the FIAU.

2.6 Is there a government Financial Intelligence Unit ("FIU") responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements?

The FIAU is the government agency responsible for analysing information reported by SPs in Malta.

2.7 What is the applicable statute of limitations for competent authorities to bring enforcement actions?

There is no specific statute of limitations in respect of enforcement action on SPs. The FIAU may impose penalties on SPs, irrespective of when the relevant shortcoming took place.

2.8 What are the maximum penalties for failure to comply with the regulatory/administrative anti-money laundering requirements and what failures are subject to the penalty provisions?

The maximum penalty for persons undertaking a relevant activity (see question 3.1 for a definition of the term) is EUR 1,000,000, or the equivalent of twice the value of the benefit derived from the contravention in question, where this value can be quantified.

Where the SP carries out a relevant financial business act (see question 3.1 for a definition of the term), the maximum penalty is EUR 5,000,000 and, where such amount is deemed not to be effective and dissuasive in the view of the serious, systemic and repeated nature of the contraventions committed, an administrative penalty of not more than 10% of the total annual turnover (on a consolidated basis, where applicable), according to the latest available approved annual financial statements, may be imposed.

2.9 What other types of sanction can be imposed on individuals and legal entities besides monetary fines and penalties?

Other non-monetary sanctions include: the issuance of reprimands in writing; the issuance of a remediation plan or follow-up directive; issuing notifications to other supervisory authorities or bodies; and the termination of a particular business relationship. The FIAU may also impose other measures such as the undertaking of an internal audit. Depending on the seriousness of the breaches, the relevant regulators (i.e. the MFSA or the MGA) may impose other measures as they deem fit.

2.10 Are the penalties only administrative/civil? Are violations of anti-money laundering obligations also subject to criminal sanctions?

Most violations are of an administrative nature. However, the Civil Court, First Hall (in its Constitutional Jurisdiction) has recently determined that penalties imposed by the FIAU are deemed to be of a criminal nature. As at the time of writing, this judgment is under appeal.

Further to the above, there are certain violations which, by their very nature, are of a criminal nature and attract criminal sanctions. Criminal sanctions may be imposed for any of the following offences: money laundering; the disclosure of an investigation or a disclosure which is likely to prejudice an investigation; a disclosure which prejudices an attachment order or connected investigation; acting in contravention of a freezing order; and, providing a false declaration, representation or production of false documentation.

2.11 What is the process for assessment and collection of sanctions and appeal of administrative decisions? a) Are all resolutions of penalty actions by competent authorities public? b) Have financial institutions challenged penalty assessments in judicial or administrative proceedings?

When the FIAU becomes aware of potential breaches, a written notification is sent to the SP identifying the potential breach(es). The SP is given the opportunity to submit written representations, following which the Compliance Monitoring Committee ("**CMC**") within the FIAU will determine whether the breach(es) subsists and which administrative measures to impose (if any).

The final outcome is notified to the SP through a letter, which sets out the reason(s) for the decision and instructions *vis-à-vis* payment (if and when necessary).

SPs have 20 calendar days to settle the penalty. Alternatively, penalties exceeding EUR 5,000 may be appealed within 20 calendar days.

Subject to very limited exceptions, administrative measures are published on the FIAU website. The type and extent of information published will depend on the amount of the penalty. Penalties below EUR 50,000 are published on an anonymous basis.

The application for appeal must be filed in the Court of Appeal (Inferior Jurisdiction). The appeal is held behind closed doors and the judgment will not be published. The FIAU is bound to update its publication on its website based on the status of the appeal and the outcome thereof.

The right to appeal a penalty issued by the FIAU has been availed by a number of financial institutions and DNFBPs in Malta.

3.1 What financial institutions and non-financial businesses and professions are subject to anti-money laundering requirements? Describe any differences in the anti-money laundering requirements that each of them are subject to.

A SP is defined as any natural or legal person carrying out either a "relevant financial business" or a "relevant activity".

The term "relevant financial business" refers to the following: credit; financial; payment and e-money institutions; long-term insurance businesses; insurance or tied insurance intermediaries when their activities relate to long term insurance business; investment service providers; fund administrators; collective investment schemes; activities relating to retirement schemes; regulated market; central securities depositary; safe custody services; activities of a VFA service provider, VFA agent or VFA issuer; and any of the above activities carried on through a branch in Malta.

On the other hand, "relevant activity" encompasses: auditors; external accountants and tax advisors; legal professionals and notaries (in relation to specific activities); trust and company service providers; nominee and fiduciary companies; casino and gaming licensees; persons trading in goods where payments are in cash in an amount equal to EUR 10,000 or more; persons trading in or intermediating the sale of works of art where the value amounts to EUR 10,000 or more; and free ports when storing works of art, or intermediaries, where the value of which amounts to EUR 10,000.

While there are different categories of SPs, AML/CFT requirements are largely the same. SPs are required to undertake risk assessments, risk-based customer due diligence and maintain and implement policies and procedures for record keeping, training, and reporting suspicious activity.

Therefore, the manner in which the obligations are to be implemented will largely depend on the size and nature of the business of the SP in question.

3.2 Describe the types of payments or money transmission activities that are subject to anti-money laundering requirements, including any exceptions.

Credit institutions authorised in terms of the Banking Act, and Financial Institutions authorised in terms of the Financial Institutions Act, are required to comply with the AML requirements. Financial Institutions include payment service providers and money brokers.

3.3 To what extent have anti-money laundering requirements been applied to the cryptocurrency industry? Describe the types of cryptocurrency-related businesses and activities that are subject to those requirements.

The AML/CFT obligations imposed in terms of the PMLA, the PMLFTR and the IPs Part I apply to the following entities:

(i) VFA service providers authorised in terms of the Virtual Financial Assets Act ("**VFAA**");
(ii) Issuers of Virtual Financial Assets when the offer is made to the public in or from Malta in terms of the VFAA; and
(iii) any activity of a VFA agent carried out by a person or institution registered under the VFAA. Such persons are principally responsible to apply for a VFA licence or register a whitepaper in respect of an initial coin offering with the MFSA on behalf of their clients.

In February 2020, the FIAU also issued sector-specific IPs (IPs Part II applicable to persons operating within the VFA sector) to further assist the above SPs in ensuring compliance with their AML/CFT obligations at law.

3.4 To what extent do anti-money laundering requirements apply to non-fungible tokens ("NFTs")?

Whether the NFT is subject to AML requirements would need to be determined on a case-by-case basis. The determination is to be made based on the characteristics of the NFT. In cases where the NFT falls within the definition of a Virtual Financial Asset as defined in the VFAA, the NFT would be subject to AML requirements. SPs are advised to seek legal advice in order to determine whether the respective NFT qualifies as a VFA or otherwise.

3.5 Are certain financial institutions or designated businesses required to maintain compliance programmes? What are the required elements of the programmes?

Regulation 5(5) of the PMLFTR requires SPs to establish and implement, in a manner which is proportionate to the nature and size of its business, various measures, controls, policies and procedures which address the ML/FT risks identified through the results of its business risk assessment.

SPs are required to maintain the following procedures: customer due diligence; record keeping; reporting; risk management measures including customer acceptance policies; customer risk assessment procedures; internal controls; compliance management; communications; employee screening; training; and awareness. On a proportionality basis, SPs are also required to implement an independent audit function to test the internal measures, policies, controls and procedures.

In addition, Regulation 5(5)(f) imposes an obligation on every SP to monitor and, where appropriate, enhance the measures, policies, controls and procedures adopted to better achieve their intended purpose.

3.6 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?

Applicable laws and regulation do not impose particular or additional reporting and record keeping requirements solely based on the size of the transaction.

However, SPs are required to, *inter alia*, detect transactions which are unusually large. In such instances, SPs are required to assess the legitimacy of the transaction and the source of funds. A reporting obligation to the FIAU arises only where the SP is not satisfied with the explanations provided, or explanations do not make legal, business or economic sense, or there are doubts on the veracity of the information and/or documentation gathered, and such facts give rise to knowledge, suspicion or reasonable grounds for suspicion of ML/FT.

3.7 Are there any requirements to report routinely transactions other than large cash transactions? If so, please describe the types of transactions, where reports should be filed and at what thresholds, and any exceptions.

SPs are generally not required to report transactions to the FIAU as a matter of routine, or at a particular frequency.

3.8 Are there cross-border transactions reporting requirements? Who is subject to the requirements and what must be reported under what circumstances?

The local AML/CFT regime does not impose particular cross-border reporting requirements on SPs.

3.9 Describe the customer identification and due diligence requirements for financial institutions and other businesses subject to the anti-money laundering requirements. Are there any special or enhanced due diligence requirements for certain types of customers?

Customer Due Diligence ("**CDD**") measures principally consist of identifying and verifying the customer, and where applicable the beneficial owners ("**BOs**"), understanding the ownership and control structure, and obtaining sufficient information to understand the purpose and intended nature of the business relationship (including the source of wealth, expected source of funds and anticipated level of business). In cases of business relationships, SPs are also required to undertake ongoing monitoring (including transaction monitoring).

In cases of corporate or other legal arrangements, CDD measures are also required to ascertain the legal status of the customer, obtain confirmation that the BO information has been filed with the competent authority, identify directors, verify authorised signatories and obtain evidence of authorisation.

The extent of CDD measures depends on the ML/FT risk posed by the customer. Therefore, SPs may generally apply Simplified Due Diligence ("**SDD**") in respect of a customer posing a low risk, but are required to apply Enhance Due Diligence ("**EDD**") measures in respect of customers in the circumstances noted in Regulation 11 of the PMLFTR.

EDD measures are to be applied in the following instances: (i) the FIAU determines that an activity or service poses a high risk of ML/FT; (ii) a customer poses high risk of ML/FT; (iii) a customer/BO is a politically exposed person ("**PEP**"); (iv) a customer is linked to non-reputable jurisdictions; (v) complex, unusually large

transactions, or transactions conducted in an unusual pattern with no apparent economic or lawful purpose; and (vi) correspondent banking relationships with institutions outside of the EEA.

The type of EDD measures depends on the circumstances. Whilst certain EDD measures are mandated by law (such as in the case of PEPs), in other cases the SP is to determine the type of EDD measures on a case-by-case basis based on the risks identified as part of the customer risk assessment.

3.10 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to the prohibition?

SPs carrying out a relevant financial business are prohibited from entering into, or continuing, correspondent relationships with a "shell institution". "Shell institutions" are defined as institutions carrying out activities equivalent to relevant financial business, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is not affiliated with a regulated financial group.

The PMLFTR also require such SPs to take appropriate measures not to enter into, or continue, a correspondent relationship with a respondent institution that is known to permit shell institutions to use its accounts.

3.11 What is the criteria for reporting suspicious activity?

SPs are required to report instances where they know, suspect or have reasonable grounds to suspect that funds, regardless of the amount, are the proceeds of criminal activity or are related to the funding of terrorism, or that a person may have been, is or may be connected with ML/FT. Attempts to undertake a transaction related to ML/FT are also subject to disclosures to the FIAU.

The disclosures to the FIAU are to be made by the money laundering reporting officer ("**MLRO**"). Disclosures shall be made promptly (i.e. on the same day as when the MLRO determines that there is knowledge or suspicion of ML/FT). However, in cases where the matter is very complex, reports need not be submitted on the same day, as long as the report is filed within the shortest timeframe possible.

3.12 What mechanisms exist or are under discussion to facilitate information sharing 1) between and among financial institutions and businesses subject to anti-money laundering controls, and/or 2) between government authorities and financial institutions and businesses subject to anti-money laundering controls (public-private information exchange) to assist with identifying and reporting suspicious activity?

The below are some of the key private-public partnerships which exist:

(a) Guidance and Outreach – A dedicated team responsible for providing guidance on an ongoing basis through publication of guidance notes, seminars, webinars, conferences or by responding to specific queries of SPs.

(b) AML/CFT Joint Committee – A committee bringing together over 30 representatives of SPs and competent authorities. Through such committee, the FIAU updates participants on ongoing work, planned projects and legislative developments, and encourages discussion on common concerns and suggestions in the joint fight against ML/FT.

(c) AML/CFT Consultants Forum – A forum serving as an informal meeting space between select AML/CFT consultancy services, and FIAU representatives. Discussions on issues relating to the day-to-day implementation of obligations are held and consultations may also be discussed in this forum.

(d) AML/CFT Clinics – An outreach initiative to assist Maltese credit institutions in meeting their AML/CFT obligations. Anonymised practical scenarios are presented and discussed in these clinics.

(e) FINREP – The FINREP platform allows banks and FIAU representatives to discuss and identify new ML/FT trends and typologies, and to carry out joint analysis projects with a view to proactively identifying suspicious transactions or activity.

3.13 Is adequate, current, and accurate information about the beneficial ownership and control of legal entities maintained and available to government authorities? Who is responsible for maintaining the information? Is the information available to assist financial institutions with their anti-money laundering customer due diligence responsibilities as well as to government authorities?

The Malta Business Registry maintains the register of BOs of all legal entities established in Malta.

Following the recent landmark judgment of the Court of Justice of the European Union ("**CJEU**") on 22nd November 2022, the register of BOs is not publicly accessible. However, SPs may register with the Malta Business Registry ("**MBR**") to have access to the information set out in the register of BOs maintained by the MBR.

3.14 Is it a requirement that accurate information about originators and beneficiaries be included in payment orders for a funds transfer? Should such information also be included in payment instructions to other financial institutions? Describe any other payment transparency requirements for funds transfers, including any differences depending on role and domestic versus cross-border transactions.

The EU Wire Transfer Regulation (EU) 2015/847 is directly applicable in Malta. The EU Wire Transfer Regulation specifies the type of information which is required to accompany fund transfers.

Payment service providers shall ensure that certain information on the originator and the beneficiary needs to accompany any fund transfers. In case the payment service providers within the payment chain are all within the EU, minimal information on the originator and the beneficiary is to be transferred.

3.15 Is ownership of legal entities in the form of bearer shares permitted?

No. Maltese companies cannot be established with bearer shares.

3.16 Are there specific anti-money laundering requirements applied to non-financial institution businesses, e.g., currency reporting?

Persons undertaking a relevant activity (referred to in question 3.1) are required to comply with the rules as set out in the PMFLTR and the IPs Part I.

Having said that, the FIAU also publishes sector-specific IPs targeted at particular SPs which would also be applicable to the SPs operating in such industry.

At the time of writing, the FIAU have issued sector-specific implementing procedures in relation to entities operating within the remote gaming sector, land-based casinos, company service providers, and accountants and auditors.

3.17 Are there anti-money laundering requirements applicable to certain business sectors, such as persons engaged in international trade or persons in certain geographic areas such as free trade zones?

Refer to the response in question 3.16.

3.18 Are there government initiatives or discussions underway regarding how to modernise the current anti-money laundering regime in the interest of making it more risk-based and effective, including by taking advantage of new technology, and lessening the compliance burden on financial institutions and other businesses subject to anti-money laundering controls?

Stakeholders are in regular communication with government authorities with a view to bettering the effectiveness of the local AML/CFT regime, including by addressing mismatches between the legal and regulatory framework as drafted on paper, and the effective implementation and application of the risk-based approach.

In an effort to streamline its processes and ensure better efficiency and stability, the FIAU aims to continue upgrading its core information technology systems available to SPs (namely, CASPAR, goAML and CBAR).

Notwithstanding the above, it is expected that the local legislative regime may change in view of the new single rulebook which, at the time of writing, was being discussed at the European Parliament level. The proposed single rulebook will necessitate changes to the PMLFTR, the IPs Part I and Part II.

4.1 If not outlined above, what additional anti-money laundering measures are proposed or under consideration?

In accordance with its 2023–2026 Strategy document, the FIAU will, amongst others, focus on strengthening the FIAU's compliance monitoring and enforcement functions. In particular, the FIAU shall aim to:

(i) provide effective guidance on the implementation of AML/CFT obligations, and disseminate information on ML/FT risks, trends, and typologies;
(ii) promote the proportionate application of AML/CFT obligations;
(iii) step up the enforcement of cash restrictions;
(iv) ensure that administrative measures imposed are proportionate and applied consistently; and
(v) strengthen cooperation with all local and foreign competent authorities.

Furthermore, the FIAU is currently in the process of drafting sector-specific guidance for (i) banks and financial institutions, and (ii) investment service providers and funds.

4.2 Are there any significant ways in which the anti-money laundering regime of your country fails to meet the recommendations of the Financial Action Task Force ("FATF")? What are the impediments to compliance?

Following the latest Enhanced Follow-Up Report on Malta (2021), Malta has been deemed to be compliant with all FATF recommendations (Fully Compliant – 12, Largely Compliant – 28, Partially Compliant – 0, Non-Compliant – 0). From an effectiveness perspective, in 2021, Malta still had to make sufficient progress in order to convince the FATF that it meets the standards expected in relation to Immediate Outcome 5 (Legal Persons and Arrangements) and 6 (Financial Intelligence). Sufficient progress was duly registered in mid-2022 and Malta was removed from the FATF grey list in August 2022.

4.3 Has your country's anti-money laundering regime been subject to evaluation by an outside organisation, such as the FATF, regional FATFs, Council of Europe (Moneyval) or IMF? If so, when was the last review?

The latest MONEYVAL Mutual Evaluation Report was published in 2019. In 2021, Malta was put on the grey list and subjected to the enhanced follow-up procedure. Eventually, following further assessments by MONEYVAL and the FATF, Malta was removed from the grey list in August 2022. The latest Enhanced Follow-Up Report on Malta is available on the Council of Europe website (https://rm.coe.int/moneyval-2021-7-fur-malta/1680a29c70).

4.4 Please provide information on how to obtain relevant anti-money laundering laws, regulations, administrative decrees and guidance from the Internet. Are the materials publicly available in English?

All legislation is available in English through the website of the Ministry for Justice (https://legislation.mt/Legislation).

The Implementing Procedures published by the FIAU, guidance, circulars, consultations, administrative penalties and other pertinent information on AML/CFT matters are accessible through the FIAU website (https://fiaumalta.org/).

Given that the appeal proceedings are confidential, judgments relating to appeals filed by SPs are not publicly accessible.

Mario Zerafa is a Senior Associate within Ganado Advocates' investment services and funds team. Mario specialises in anti-financial crime related matters within the financial services sector, concentrating particularly on AML/CFT, anti-bribery and corruption, sanctions and whistleblowing laws. Mario advises clients on governance issues as well as on the establishment of an anti-financial crime framework in line with Maltese laws and regulations. Mario regularly represents clients before the MFSA, the FIAU and the Sanctions Monitoring Board in Malta. Mario acts as examiner and lecturer at the University of Malta. He also lectures at a number of academic institutions on investment services and anti-financial crime related subjects.

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Over the past decades, Ganado Advocates has contributed directly towards creating and enhancing Malta's hard-won reputation as a reliable and effective international centre for financial and maritime services. Today, the firm continues to provide high standards of legal and regulatory advisory services to support and enhance Malta's offering.

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