International Comparative Legal Guides

Anti-Money Laundering 2020
A practical cross-border insight into anti-money laundering law
Third Edition

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1 The Crime of Money Laundering and Criminal Enforcement

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

Anti-money laundering and the combatting of financial terrorism (‘AML/CFT’) are principally regulated by the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) (‘PMLA’) and its subsidiary legislation, the Prevention of Money Laundering and Funding of Terrorism Regulations (Subsidiary Legislation 373.01 of the Laws of Malta) (‘PMLFTR’), which have effectively transposed the Fourth AML Directive (Directive (EU) 2015/849 (‘4AMLD’) and, through recent amendments, the Fifth AML Directive (Directive (EU) 2018/843) (‘5AMLD’), into Maltese law.

The investigation and prosecution of money laundering and the funding of terrorism (‘ML/FT’) are regulated by Article 3 PMLA, whereby every person charged with an offence shall be tried in the Criminal Court or before the Court of Magistrates as a court of criminal jurisdiction in Malta or Gozo and as directed by the Attorney General (‘AG’). As elaborated upon in question 1.4 hereunder, the Financial Intelligence Analysis Unit (‘FIAU’) does not prosecute ML/FT, but aids in the process of prosecution as a result of its supervisory nature.

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 prosecution to succeed, there must be the conversion or transfer of property with the knowledge or suspicion that such property is derived, whether directly or indirectly, from criminal activity, and this for the purpose of concealing or disguising the origin of the property or assisting those involved in criminal activity. The same applies to the proceeds of said property. The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property with the knowledge or suspicion that such property is derived, directly or indirectly, from criminal activity or from an act of participation in criminal activity also constitute ML. Further to this, the acquisition, possession and use of said property and the retention of said property without a reasonable excuse is likewise an offence. Any attempts at these actions as per Article 41 of the Criminal Code (Chapter 9 of the Laws of Malta) (‘CC’), or complicity in terms of Article 42 CC, are also defined as ML.

Whereas the underlying criminal activity (predicate offence) from which funds originate is an essential element for prosecution, Article 2(2) PMLA specifically states that a person may still be convicted of ML in the absence of a judicial finding of guilt in respect of the underlying criminal activity. Its existence may be established through circumstantial or other evidence without it being necessary for the prosecution to prove or specifically pinpoint the criminal activity. A person can be accused of ML even though the predicate offence has not been established, as long as it can be proved beyond reasonable doubt that the source of such money or property was derived from criminal activity. The offender may be charged separately for the predicate offence.

As of 31 May 2005, and via Legal Notice 176 of 2005, Malta no longer has a restricted list of predicate offences. All criminal offences are predicate offences. Tipping off is also an offence. As a defence, the accused must prove that he did not know or did not suspect that the disclosure was likely to prejudice the investigation. Tax evasion and all related tax crimes are also deemed to be predicate offences.

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

Article 9 PMLA refers to situations which involve proceeds found outside of Malta, and the powers of investigation by Maltese authorities in connection with offences cognisable by courts outside of Malta. Article 10 PMLA deals with an extraterritorial request to the AG for the temporary seizure of all or any of the moneys or property, movable or immovable, or a person charged or accused in proceedings before extraterritorial courts. Conflicts arise in scenarios where the predicate offence is or is not a crime in that relative jurisdiction.

The FIAU also features in the context of cross-border cases. It cooperates with similar foreign, national and supranational bodies, authorities and/or agencies in coordinating and exchanging information and in imposing administrative penalties and/or implementing other measures.

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

The FIAU is the government agency established under the PMLA responsible for collecting, processing, analysing and disseminating information with the scope of preventing ML/FT and ensuring compliance with the relevant laws and regulations. Upon receiving a report or tracking irregular activity, it must forward said report to the Commissioner of Police.
The investigative process is led by the Economic Crimes Unit within the Malta Police Force, more specifically the Money Laundering Unit. It secures evidence and witnesses both internationally and nationally. It is the police who proceed to prosecute in court in conjunction with the AG’s office. The AG directs how a person is to be charged with the relative offence after taking into consideration various factors, including the person’s age and the value of the property allegedly laundered.

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

Yes, corporate liability is included. Article 3(2) PMLA states that when an offence is committed by a body or persons, whether corporate or unincorporate, every person who at the time of the commission of the offence had an executive or administrative role shall be guilty of an offence unless he proves that the offence was committed without that person’s knowledge and that he exercised all due diligence to prevent the commission of the crime. Article 3(4) PMLA specifically vests legal representation in the alleged offender, and where said legal representation no longer vests in that person, it shall lie with the replacing persons in his/her stead or other referred persons.

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

Article 3(1) PMLA establishes that the maximum punishment is a fine not exceeding €2,500,000 or imprisonment for a period not exceeding 18 years or both. As for legal entities, there are three punishments: that given to the actual individual within the corporate body; the penalty given to the corporate body; and the subsequent forfeiture of proceeds of the corporate body by the Government.

Furthermore, non-compliance with the ML/FT procedures under the PMLFTR is punishable with administrative sanctions reaching a maximum of €50,000 fine and/or two years’ imprisonment.

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

As the PMLA establishes a maximum penalty of 18 years’ imprisonment for ML offences, the CC states that crimes liable to imprisonment for a term of not less than 20 years are barred by the lapse of 15 years; whereas the PMLFTR awards two years’ imprisonment, and then these crimes are barred by the lapse of five years.

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

Enforcement is at a national level as Malta is an island and has no provinces/states.

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?

The PMLA provides for the confiscation of property. In addition to Article 23 CC, i.e. the forfeiture of the corpus delicti (evidence of the crime), the court shall order the forfeiture of the proceeds in favour of the Government or of such property the value of which corresponds to the value of such proceeds (any economic advantage), and any property in the possession or under the control of any person found guilty and deemed to be derived from the offence of ML. The definition of ‘property’ includes movable or immovable, in or outside of Malta.

Article 4 of the Confiscation Orders (Execution in the European Union) Regulations (Subsidiary Legislation 9.15 of the Laws of Malta) states that the AG is competent to receive confiscation orders issued in the issuing State and to transmit to the executing State his own confiscation orders as issued in Malta by a court of criminal jurisdiction. When the AG receives a request by a judicial authority to be enforced in Malta made by a foreign court, an action is brought. Following legal procedures and a hearing, if enforcement of the order is obtained, then the property is confiscated by the Government. The AG may issue the precautionary acts needed. Confiscation can be an additional punishment to a fine and/or imprisonment, or it can occur via an order made by Malta or to Malta and subsequently enforced through a judgment given by the civil courts. The latter can occur without a criminal conviction and has more of a precautionary nature.

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 responsible for imposing AML/CFT requirements on all ‘subject persons’ and is regulated under Part II PMLA. It has recently also become responsible for the Central Bank Account Registry, a centralised automated mechanism for Malta (which shall be regulated by the relative subsidiary legislation), and is now enabled to supervise the implementation and enforcement of any future legislative provision on cash restrictions. It has published the sector-specific Implementing Procedures Part I and Part II (IPI/IPII) which must be adhered to by subject persons. The IPI/IPII comprise an interpretative tool for the PMLA/PMLFTR while simultaneously assisting subject...
persons in designing systems for the prevention and detection of ML/FT. Measures to be taken include customer due diligence (‘CDD’), mandatory risk procedures and the use of a risk-based approach, diligent recordkeeping and reporting procedures, and the provision of training to employees. For further information, refer to question 3.1.

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

Reference is made to supervisory authorities which are deemed to be agents of the FIAU. The FIAU on request or upon its own motion shall cooperate and exchange information with a supervisory authority when this would assist in AMI and CFT. The Malta Financial Services Authority (‘MFSA’) conducts supervision amongst financial services licence holders and the Malta Gaming Authority does the same amongst licensed gaming operators. The subject person is nonetheless always responsible for providing the information requested.

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

Supervisory bodies are limitedly responsible for compliance and enforcement as they monitor their members passing on information to the FIAU, which then takes enforcement action.

2.4 Are there requirements only at national level?

Currently, the requirements are only at a national level, as Malta is an island and has no states/provinces. These comprise, predominantly, the PMLA, the PMLFTR, the National Coordinating Committee on Combating ML/FT Regulations (Subsidiary Legislation 373.02 of the Laws of Malta) as well as the IPI/IPII.

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

Supervisory bodies aid the FIAU with compliance and monitoring in specific areas and professions. The FIAU then enforces, whilst overall retaining its compliance and monitoring obligations. All of the criteria that would lead to investigations are available on the FIAU website (http://www.fiumalta.org/).

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 Malta’s designated government FIU agency.

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

Refer to question 1.7 for the applicable statute of limitations. For details regarding the FIAU, refer to the information contained in the above questions.

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 FIAU can in these cases act without the need for a court hearing and judgment. Under the PMLFTR, administrative failures are:
- non-compliance with procedures to prevent ML/FT, such as:
  - failing to maintain/apply procedures for CDD, record-keeping and reporting; and
  - 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 declaration/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; and
- non-compliance with the IP, guidance and directives issued by the FIAU in terms of the PMLA and PMLFTR.

Administrative penalties may not exceed €50,000. There are a number of fines awarded in addition to imprisonment under the PMLA and these do not exceed €11,646.87.

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

The PMLFTR provides for reprimands in writing. It can also give one-time fixed penalties and/or penalties on a daily cumulative basis. The minimum daily penalty levied is of €250.

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

Apart from the PMLA, the PMLFTR provide for criminal sanctions, such as:
- non-compliance with procedures (Regulation 4(5));
- a false declaration/false representation by an applicant for business (Regulation 7(10)); and
- tipping off (Regulation 16(1)).

The first two categories above are subject to a fine not exceeding €50,000, whereas the third category is subject to a fine not exceeding €115,000, with each category being alternatively subject to imprisonment for a term not exceeding two years, or to both the relevant fine and imprisonment. A disqualification order can also be imposed on company officials for a specified period set by the courts, which may be a minimum of one year and a maximum of 15 years.

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 a sanction is imposed by the FIAU under the PMLFTR, the
subject person is informed of the potential breach detected and the possibility of an administrative sanction. Representations by the person are requested, following which an internal evaluation is made by the Compliance Monitoring Committee. Should fault be found, reasons shall be given. Said sanction must be paid within 14 days. Instead of sanctions, warnings in writing may also be issued as well as in the course of its compliance/monitoring function. If a person feels aggrieved and the sanction exceeds €5,000, an appeal may be lodged both on points of fact and law. The appeal shall lie to the Court of Appeal (Inferior Jurisdiction) and, following recent amendments on the basis of MONEYVAL’s recommendations, the appeal shall be held within three months from the date of filing and a final judgment must be given by the Court within six months of the date of the hearing – and such in default of any agreement by both parties that permits further delay, or exceptional circumstances.

In terms of the revised Article 13C, amending the PMLA via Act 1 of 2020, the FIAU is to publish all administrative penalties and other measures it imposes in terms of the PMLFTR as provided for in the said provision and in accordance with policies and procedures established by the Board of Governors of the FIAU. Both administrative penalties as well as administrative measures are subject to publication. However, the quantum of the administrative penalty as well as the circumstances in which other administrative measures are imposed will determine the information to be published. The threshold of publication has increased from that of €10,000 to €50,000. Further policies and procedures regarding publications have also been promulgated.

3 Anti-Money Laundering Requirements for Financial Institutions and Other Designated Businesses

3.1 What financial institutions and other businesses are subject to anti-money laundering requirements? Describe which professional activities are subject to such requirements and the obligations of the financial institutions and other businesses.

As mentioned further above, AML/CFT requirements are applicable to ‘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’ includes, when acting in the exercise of their professional activities: auditors; external accounts; tax advisors; real estate agents; in the context of particular transactions, such as when they assist clients with the opening of bank accounts or the creation of companies, independent legal professionals, including lawyers; fiduciary and company service providers; licensed gaming operators; and, where the transaction in question involves payment in cash of €10,000 or more, persons engaged in the trading of goods. Notably, Legal Notice 26 of 2020 has recently amended Regulation 2 PMLFTR to include, within the relevant activity category, the provision of intermediation services in relation to property letting by real estate agents where the monthly rent amounts to €10,000 or more.

In turn, ‘relevant financial business’ covers: activities carried out by the credit institutions; payment institutions and 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 (Chapter 370 of the Laws of Malta); service providers licensed under the Retirement Pensions Act (Chapter 514 of the Laws of Malta); safe custody service providers; regulated markets and the Central Securities Depository; virtual financial assets (‘VFA’) agents and licence holders within the meaning of the Virtual Financial Assets Act (Chapter 590 of the Laws of Malta) (‘VFAA’) and issuers of virtual financial assets; and any other associated activity. Any of the above relevant financial business activities carried out by branches established in Malta will also be subject to AML/CFT requirements.

The requirements, as principally deriving from the PMLA/ PMLFTR, IPII/IPIII, render it incumbent upon subject persons – including financial institutions – to implement robust AML/CFT systems and policies and procedures, including record-keeping, reporting processes and internal controls. Subject persons are compelled to provide information to the relevant authorities on request. In addition, subject persons are required to submit a sector-specific annual Risk Evaluation Questionnaire to the FIAU regarding their set-up, risk assessment, and preventative measures.

3.2 To what extent have anti-money laundering requirements been applied to the cryptocurrency industry?

AML/CFT requirements are to be likewise applied to VFA agents, licence holders under the VFAA and issuers of VFA. Earlier this year, the FIAU published sector-specific IPII applicable to the VFA industry. The said IPII’s applicability, however, also extends to persons who may not be licensed as VFA service providers in terms of the VFAA, but who may be handling VFAs in the course of carrying out relevant financial business or activity, such as, for instance, a custodian or a collective investment scheme. The VFA IPII also contains an annex which indicatively outlines various VFA sector ‘red flags’ and case studies which are intended to assist the relevant subject persons in further understanding what they are required to look out for when formulating their internal AML/CFT policies and procedures.

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

Yes. Regulation 5(5) PMLFTR imposes the requirement on subject persons – including financial institutions – to, in a manner that is appropriate to the size and nature of the business, have effective AML/CFT systems and policies and procedures, as well as internal controls, in place. Subject persons are required to implement compliance management processes, employee screening policies and training programmes, as well as adopt sufficient reporting mechanisms. Where proportionate, an independent audit function should be set up to test these internal controls.

In addition, subject persons must appoint a Money Laundering Reporting Officer (‘MLRO’) who will assist in the coordination of its AML/CFT framework. The MLRO will be responsible for the oversight of the subject person’s AML/CFT compliance. Businesses are required to detail their compliance programmes in an internal AML/CFT procedures manual.
3.4 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?

There are no fixed ‘thresholds’ vis-à-vis large transactions. Subject persons faced with sizable transactions are bound to comply with general AML/CFT recordkeeping and reporting requirements as set out, predominantly, in Regulations 13 and 15 PMLFTR.

That said, however, Regulation 11(9), as further supplemented by the IPI, particularly Chapter 3 [The Risk-Based Approach] and 4 [Customer Due Diligence] thereof, stipulates that subject persons are to pay special attention to ‘complex’ and ‘unusually large’ transactions which ‘are conducted in an unusual pattern’ and ‘have no apparent economic or lawful purpose’. The findings, which should be recorded by the subject person, should not automatically be reported to the FIAU or the relevant supervisory authority, but instead made available on request.

3.5 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.

No, there are currently no routine-based reporting requirements.

The obligation to report arises in the context of suspicious activity. Such reporting is to be carried out with due regard to the requirements in Regulation 15(5) PMLFTR. This states that, where a subject person knows, suspects or has reasonable grounds to suspect that funds are the proceeds of crime or are related to FT, or that a person may have been, is, or may be connected with ML/FT, that subject person is to report the same to the FIAU via a Suspicious Transaction Report (‘STR’). An STR is to be made as soon as is reasonably practicable, but no later than five working days from when the knowledge or suspicion first arose. STRs should be submitted to the FIAU in accordance with the guidance provided on the FIAU website.

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

There are no specific reporting requirements regarding cross-border transactions. Subject persons are, however, required to inform the FIAU of any business relationships or transactions with persons from ‘non-reputable jurisdictions’ – as defined in Regulation 2 PMLFTR – if there is an international call for countermeasures (i.e. FATF Category 1/Commission Delegated Regulation identifying high-risk third countries with strategic deficiencies Category III). In this scenario, and following the new Regulation 11(11) PMLFTR, as introduced by Legal Notice 26 of 2020, the FIAU or the relevant supervisory authority must adopt any one or more of the listed measures which include, inter alia, the prohibition of pursuing the relevant activity or relevant financial activity in Malta or the non-reputable jurisdiction in question.

In the absence of an international call for countermeasures, and when dealing with non-reputable jurisdictions, subject persons shall adopt stricter due diligence measures as outlined in Regulation 11(10) PMLFTR.

In addition, reference must be made to the obligation to submit STRs as outlined in question 3.5 above.

3.7 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?

Subject persons – including financial institutions – are to establish due diligence procedures for identifying and verifying the identity of a prospective customer. A customer may be a legal or natural person who: (i) seeks to form, or has formed, a business relationship with a subject person; or (ii) seeks to carry out an occasional transaction with a subject person.

CDD measures shall, however, only be applied in the context of occasional transactions when these involve: (i) a transaction of €15,000 or more; (ii) a money transfer or remittance within the meaning of the EU Funds Transfer Regulation (Regulation (EU) 2015/847) (the ‘Funds Transfer Regulation’) amounting to €1,000 or more; and (iii) a transaction of €2,000 or more in the context of licensed gaming operators. The incorporation of companies and/or the provision of tax advice by subject persons shall also be considered to constitute ‘occasional transactions’, thereby necessitating CDD.

In the context of business relationships, and following the verification of a prospective customer’s details, which verification is carried out by the subject person by – as the case may be – viewing official documentation issued by independent sources, such as a government authority, the subject person will need to obtain details on the purpose and intended nature of said relationship. The information the subject person may need to collect in these circumstances includes: data of the customer’s business or employment; the source and origin of funds the customer will be using in the business relationship; and the expected level and nature of the activity to be undertaken through the relationship. This information must be kept up to date, thereby enabling a business to amend its customer risk assessment if circumstances change, and, if necessary, carry out further CDD.

In higher-risk situations, subject persons must apply enhanced due diligence, namely: (i) where the customer has not been physically present for identification purposes; (ii) when transacting with politically exposed persons, or ‘PEPs’, such as Heads of State and Members of Parliament; (iii) in a cross-border correspondent banking relationship scenario; (iv) where the business relationship or a transaction is connected to a ‘high-risk’ jurisdiction (as acknowledged by the EU); and, generally (v) any situation where there may be a greater risk of ML/FT. Enhanced due diligence may necessitate: (i) obtaining additional information to establish the customer’s identity; (ii) applying supplementary measures to check the documentation supplied; and (iii) taking adequate steps to establish the source of wealth and funds involved.

Chapters 3 and 4 IPI provide further in-depth guidelines mirroring the above customer due diligence and ongoing monitoring obligations incumbent upon subject persons.

3.8 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?

In terms of Regulation 11(4) PMLFTR, subject persons carrying out relevant financial business are prohibited from entering or continuing correspondent relationships with shell institutions. Moreover, they are required to take appropriate measures to ensure that they do not enter into or continue correspondent relationships with respondent institutions which are known to permit their accounts to be used by shell institutions.
Regulation 2 PMLFTR defines a ‘shell institution’ as an institution 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.

3.9 What is the criteria for reporting suspicious activity?

Refer to question 3.5.

3.10 Does the government maintain current and adequate information about legal entities and their management and ownership, i.e., corporate registries to assist financial institutions with their anti-money laundering customer due diligence responsibilities, including obtaining current beneficial ownership information about legal entity customers?

Maltese companies, partnerships, foundations, trusts and associations must identify and maintain a register of their ultimate beneficial owner(s) (‘UBO/s’) as well as provide this information to, respectively: (i) the Registrar of Companies, in the case of companies and partnerships; (ii) the MFSA, in the case of trusts; and (iii) the Registrar for Legal Persons in the case of associations and foundations, that each maintain UBO registers. This information will be made available to the FIAU.

3.11 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?

Payment service providers (‘PSPs’) are subject to the PMLFTR, which, in turn, mandate that any such entities adhere with the provisions of the Funds Transfer Regulation. Full information of the payer and payee – namely name, address and payment account number – must accompany all wire transfers, barring some exceptions. For example, if the PSPs of the originator and the beneficiary are both EU-based, the transfer need only be accompanied by the account number.

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

No. Ownership of shares is evidenced by their entry into a company’s share register and by the issue of share certificates.

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

Generally, the PMLA/PMLFTR apply in a like manner to all the persons listed in question 3.1, which include certain non-financial institution businesses.

There are some exceptions, such as the privilege applicable to various professionals, including lawyers, which in turn are exempt from the duty to report suspicious transactions to the FIAU in accordance with Regulation 15(9) PMLFTR in certain instances. Some additional requirements are imposed on PSPs, which must comply with the Funds Transfer Regulation (refer to question 3.11 above). In addition, gaming operators must comply with the IPPI for the Remote Gaming Sector (which are currently being revised, but which remain applicable until the date of their revision) and/or Land-Based Casinos, as may be the case, while the sector-specific IPPI applicable to the VFA industry regulate the various stakeholders participating, in some manner, in services governed by the VFAA (refer to question 3.2 above). It is also noteworthy that the IPPI for the Banking Sector have recently been repealed, and are expected to be replaced with a new set of banking-specific IPPI which will find their applicability to credit institutions.

3.14 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?

Aside from the business activities listed in question 3.1 above, there are no AML requirements applicable to other specific business sectors.

In terms of the IPI, customer risk and geographical risk are two of the factors that must be considered as part of a subject person’s ML/FT risk assessment.

4 General

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

On 17 July 2019, the FIAU published a revised version of the IPPI reflecting the legislative amendments which took place between December 2017 and January 2018 to the PMLA/PMLFTR following the transposition of 4AML D.

As stated in question 3.2, the VFA IPPI were issued earlier this year. The issuance of public consultations regarding sector-specific IPPI for corporate service providers, the Banking Sector, the Insurance Sector, trustees and fiduciaries, as well as the revised Remote Gaming Sector IPPI, is expected in due course.

On 14 October 2019, the FIAU published a consultation document laying down the proposed amendments to the PMLFTR with the aim of transposing the 5AML D. The amendments were adopted in February 2020 with slight variations from the consultation document. With these latest amendments, the 5AML D has been definitively transposed into local legislation.

In addition, the MFSA launched its Vision 2021 in January 2019, which comprises a comprehensive strategy designed to clamp down on ML/FT in the financial services sector.

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 MONEYVAL’s Fifth Round of Evaluation on-site visit in November 2018, the Mutual Evaluation Report adopted during MONEYVAL’s 58th Plenary Meeting in July 2019 observed that since its last review, Malta has indeed taken steps to improve its AML/CFT framework, but that the jurisdiction should strengthen its efforts to engage in more effective implementation – and enforcement – of the applicable rules. The Report found Malta to be ‘Compliant’ with 10 FATF Recommendations, ‘Largely Compliant’ with 21, and ‘Partially Compliant’ with nine. MONEYVAL has invited Malta to report back in December 2021.
Pursuant to MONEYVAL’s Report, the Venice Commission’s December 2018 opinion on Malta’s constitutional arrangements, separation of powers and the independence of the judiciary and law enforcement, as well as the transposition of the 5AMLD, the PMLA and the PMLFTR were amended earlier this year to enhance the FIAU’s functions and powers. With the objective of strengthening the FIAU’s independence and effectiveness, its Director shall now be appointed after a public call for applications, whereas the Attorney General has been removed from the its Board of Governors. Enhanced measures have also been introduced addressing business relationships and transactions involving non-reputable jurisdictions.

The latest evaluation was carried out by MONEYVAL following the Fifth Round of Evaluation on-site visit to Malta in November 2018. For further information regarding the recommendations published in MONEYVAL’s Evaluation Report, please access the Council of Europe website (https://www.coe.int/en/web/moneyval/jurisdictions/malta).

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

Yes, all sources are available in English.

Reference is made to the website of the Ministry for Justice, Culture and Local Government (https://legislation.mt/), where local legislation and regulations, including AML/CFT rules and regulations, may be accessed. In addition, the FIAU website enlists further information such as the IPI/IPH, additional guidance, FATF statements and MONEYVAL evaluations. The MFSA website (https://www.mfsa.com.mt/) also comprises substantial information on AML/CFT, including circulars and public consultations affecting the financial sector.
Dr. Emma Grech is a practising lawyer, having graduated as Doctor of Laws from the University of Malta in 2015 after submitting her thesis, entitled ‘Regulating the Future? The Legal Implications of Social Games’. Thereafter, she embarked on an LL.M. in Banking and Finance Law at the University of London. Emma joined City Legal in January 2018 and was made Partner in June 2019. Her main areas of practice at the firm are corporate finance and re-structuring, gambling and betting, anti-money laundering and data protection regulation. She advises on the legal and regulatory aspects of each of these areas, as well as the implications thereof on clients’ business models. She frequently assists in a range of local and cross-border transactions involving her areas of specialisation. Emma also occupies the role of company secretary in various companies, including listed entities.

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