

**PMLFT Regulations
A Practitioner's Perspective**

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“..... the most noticeable trend is the continuing increase in the use by money launderers of non financial institutions and non financial businesses. This is believed to reflect the increased level of compliance by banks with anti-money laundering measures.... Money launderers continue to receive the assistance of professional facilitators, who assist in a wide range of manners to mask the origin and ownership of tainted funds.” FATF, 1996

The Regulations are applicable to independent legal professional carrying out “**relevant activity**”.

Independent legal professionals when they participate,

By acting on behalf of and for their client in any financial or real estate transaction

Independent legal professionals when they

assist in the planning or execution of transactions for their clients concerning the –

Buying and selling of real property or business entities;

Managing client money, securities or other assets;

Opening or management of bank, savings or securities accounts;

Organization of contributions creation or management of trusts, companies or similar structures;

Creation, operation or management of trusts, companies or similar structures or when acting as a trust or company services provider.

“Independent Legal Professionals”

In house legal advisors excluded.

In the case of a body or association of persons, corporate or unincorporate responsibility rests on every person who is a director, manager, secretary or other similar officer

Unless he proves that offence was committed without his knowledge **and**
He exercised all due diligence to prevent the commission of the offence.

Where does one draw the line between
“relevant activity” and “*irrelevant*” activity ?

Distinguish between ;

acting in “*prima persona*” and lending
assistance

Transactional work/litigation work

Structuring a transaction and advising thereon

Acting as a special mandatory

Having funds transit through your clients account

Acting as a special mandatory on an account opened in the name of your client would.

“Mere Provision of legal advice does not qualify as “participating in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction.” UK Law Society Guidance Rules.

Risk Manage your practice

The more intense your involvement in the client's transaction, the higher your exposure to risk.

The higher the risk the more intense the due diligence

Avoid the "I am executing client's instructions" mindset.

Is there merit in a Chinese wall between the “relevant activity” and the rest of the legal practice.

One stark reminder

The Prevention of Money Laundering Act applies to all lawyers, not only those carrying out “Relevant activity”

What duties do the Regulations impose?

Customer Due Diligence and establishing internal control policies & procedures

Record Keeping

Internal Reporting

(External) Reporting

Employee Instruction and Ongoing Training

Prima facie, simple enough but in truth fairly complex

A Court shall consider any relevant guidance or procedures issued by FIAU

FIAU Guidance Notes

Chamber of Advocate Guidance Notes

What is Customer Due Diligence ?

- Identification and Verification of the applicant for business;
- Identification and Verification of beneficial ownership;
- Obtaining information on the purpose and intended nature of the business relationship in order to establish the business and risk profile of the customer;
- Conducting ongoing monitoring
- Establishment of effective customer acceptance policies

Unsuccessful completion of identification, verification or establishment of customer risk profile:

Do not establish business relationship

Do not carry out occasional transaction

Consider STR

Exception when lawyer is

Ascertaining Legal position

Performing responsibilities of defending or representing client in or concerning judicial procedures including advice on instituting or avoiding legal procedures.

Ordres des barreaux francophones et germanophones and Others vs Conseil des Ministres Case C-305/05

Three Rivers District Council and others v Governor and Company of the Bank of England [2004] UKHL 48.

At what point in time is Customer Due Diligence to be carried out ?

Reg 7 (5), in cases 1-4, CDD should be carried out to when contact is first made

Request by foreign correspondent firm for advice on a “no names basis” .

Participating in a conference call or meeting to discuss Maltese law implications of a structure or product.

Can I/Should I regard the correspondent as my “client”

What is the extent of Customer Due Diligence that should be carried out ?

Risk based approach to Customer Due Diligence.

depending on :

The type of customer
Business relationship
Product or transaction

Customer Type

Resident or non resident clients

Non face to face Clients

PEP's

Clients from countries that are “non reputable jurisdictions”

Complex opaque ownership structures

Product/Transaction Type

High value transactions

Complicated/Complex transactions [Also
Vide Reg 15 (1)]

Cross border Transactions

Transactions related to higher risk activities
such as gambling for example

Simplified Due Diligence

Vide Reg 10

Formerly “Exemption”

Maintain evidence that the client or product is eligible for SDD

Ongoing Monitoring

Scrutiny of transactions to ensure that they are consistent with customer's risk profile, including, where necessary source of funds

Keep info up to date.

Does it apply for "Ad hoc" transactional work

Retainer engagement ?

Company Secretary ?

Introductions by foreign law firms or other subject persons ?

You may rely **BUT** you remain responsible.

Not everyone qualifies as an introducer
“relevant financial business” or (Some) “relevant activity”;

lawyers, auditors, trustees, fiduciaries;

Situated in a Member State or in a reputable jurisdiction;

Subject to authorisation or mandatory professional registration.

Reliance implications.

Information on client/BO
Purpose and intended nature
is to be available immediately

Copies of other relevant documentation
available on request

You may not rely on anyone for ongoing
monitoring

What punishment does non-compliance with the Regulations attract?

Fine not exceeding EUR50,000 and/or imprisonment for a term not exceeding two years.

Defence: took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

Useful Websites for further reading:

www.moneylaundering.com

www.vortexcentrum.com/VCL05.htm

www.oecd.org

www.ncis.gov.uk

www.lawsociety.org.uk

www.fiumalta.org