

REPORTING OBLIGATIONS AND PROCEDURES

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- When does the obligation to report arise?
- What procedures do subject persons need to have in place?
- Within what time frames should a report be made?
- How and by whom should a report be filed?
- What actions follow the filing of a report?
- Other reporting obligations under the Implementing Procedures

- **Regulation 15(6)** – Subject persons **shall** disclose information
- **Regulation 15(9)** – Supervisory authorities **shall** disclose information

FATF Recommendations
13 & 26
Third ML Directive
Articles 20 - 27

- Prevention of ML/FT
- Protection of the financial sector

These considerations have been deemed to be sufficiently crucial to warrant an exception to the duty of professional secrecy

Subject Persons

Internal Reporting Procedures

- Appointment of MLRO/designated employee
- Internal reporting lines
- Steps to be taken by employees
- Review by MLRO of relevant material

External Reporting Procedures

- Disclosure to the FIAU
- Additional information to the FIAU
- Knowledge, suspicion or reasonable grounds to suspect
- Postponement of transactions
- Monitoring orders

Appointment as MLRO of a person who is –

(1) An officer of the subject person

- an official in employment
- an executive director
- resident in Malta

Functions of the MLRO cannot be –

- outsourced
- carried out by a non-executive director
- carried out by a company secretary (whose only role within that subject person is that of company secretary)
- internal auditor

Appointment as MLRO of a person who is –

(2) Sufficient seniority and command

- effective influence
- direct reporting line to Board
- independence
- access to records, documents and information

Duties of MLRO –

- (a) to receive reports of knowledge or suspicion of ML/FT
- (b) to consider such reports to determine whether a suspicion of ML/FT subsists
- (c) to report knowledge or suspicion of ML/FT to the FIAU
- (d) to respond promptly to any request for information made by the FIAU

Duties of “designated employee” –

- (a) to assist the MLRO in AML/CFT duties
- (b) to work under the direction of the MLRO
- (c) to assist the MLRO to consider internal reports

The steps to be taken within an organisation where knowledge or suspicion of ML/FT arises –

- direct reporting by employee to MLRO
- internal reporting to be made in writing
- short reporting lines
- maintenance of records related to internal reports
- consideration by MLRO and decision as to whether a report to the FIAU should be made

After considering the internal report and all the necessary documentation, where the MLRO **knows, suspects, or has reasonable grounds to suspect** that –

- a transaction may be related to ML/FT; or
- a person may have been, is, or may be connected with ML/FT; or
- ML/FT has been, is being, or may be committed or attempted,

the MLRO shall file a report with the FIAU.

■ KNOWLEDGE

■ SUSPICION

“... a possibility which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice. But the statute does not require the suspicion to be ‘clear’ or ‘firmly grounded and targeted on specific facts’” –

R v Da Silva [2006]

“Parliament intended suspicion as a subjective fact to be sufficient ... to trigger disclosures to the authorities. Parliament did not require, in addition, that the suspicion be based upon ‘reasonable’ or ‘rational’ grounds ... unlike law enforcement agencies, banks have neither the responsibility nor the expertise to investigate criminal activity to satisfy themselves that the grounds for their suspicion are well founded, reasonable or rational.” –

Shah v HSBC Private Bank (UK) Ltd [2010]

■ REASONABLE GROUNDS TO SUSPECT

New clients and one-off transactions –

- Client refuses or appears reluctant to provide information
- Inconsistencies in information provided by client
- Request that transaction is rushed with promises of providing information later
- An unusually large cash transaction
- Unwillingness to provide source of funds
- Explanation for business and/or amount involved is not credible
- Series of transactions structured just below regulatory threshold
- Transactions or activities having no apparent purpose or which make no obvious financial sense, or which seem to involve unnecessary complexity
- Unnecessary routing of funds through third parties
- Unrealistic wealth compared to client profile

Existing clients –

- Transaction is different from the normal business of the client
- Size or frequency of activity or transaction is not consistent with the normal activities of the client
- Pattern of transactions has changed since the business relationship was established
- Money transfers to high-risk jurisdictions without reasonable explanation (not consistent with client's usual foreign business dealings)
- Sudden increases in the frequency or value of transactions of a particular customer without reasonable explanation
- Movement of funds that give rise to a loss or lower rate of return without any visible compensating benefit

- Report to be made not later than five working days from when the suspicion first arose
- Standard format for STRs
- Report should contain all details, information and supporting documentation
- STRs should only be filed with the FIAU and should not be copied to any other person

- Administrative penalty imposed by the FIAU without recourse to a court hearing of not less than €250 and not more than €2,500. Penalty may also be imposed on a daily cumulative basis until compliance provided that the accumulated penalty does not exceed €12,500
- Other serious consequences

Once a report is made

FIAU

- Analysis of STR
- Request for additional information
- Possible issue of a monitoring order

Subject Person

- Decision as to whether to maintain the business relationship
- Classification of a customer as high risk
- Increased monitoring
- Possible discussions with FIAU
- Possible request for a delay of execution of a transaction
- Request for feedback

- **Article 29 and Regulation 15(7)** – refrain from carrying out a transaction until a report is made. Where impossible – report to be made immediately after transaction.
- **Article 28** – delay the execution of a transaction for 24 hours.
- **Article 30B** – monitoring orders.

- Disclosure to the person under investigation or to a third party – prohibited
- The law provides for certain permissible disclosures

The Dilemma – “To report or not to report”

A BALANCING ACT

Painstakingly scrupulous = defensive reporting

VS

Liberal and highly tolerant = failure to report

Annual Compliance Report containing –

- information on internal reports and reports to the FIAU
- an overview of policies and procedures
- findings of internal compliance assessments
- information related to training

... to be completed by MLRO and approved by senior management

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