

# Implementing Procedures

And Guidance on Prevention of  
Money Laundering and Financing  
of Terrorism

# Legal Basis

- Prevention of Money Laundering Act – Cap 373
- Enacted on the 23 September 1994
- Included a power to make regulations in Articles 12 and 13

# Legal Basis

In particular Article 12 provided that:

- **12. (1)** The Minister may make rules or regulations generally for the better carrying out of the provisions of this Act and in particular may by such rules or regulations provide for the regulation and control of banks, credit and other financial institutions to provide *inter alia* for procedures and systems for training, identification, record-keeping, internal reporting and reporting to supervisory authorities for the prevention of money laundering and funding of terrorism.
- (2) The Minister may by regulations extend the provisions of this Act in whole or in part and of any regulations made there under to categories of undertakings and to professions which engage in activities which, in the opinion of the Minister, are particularly likely to be used for money laundering purposes or funding of terrorism.
- Sub-Article (3) provides for offences and penalties

# The Regulations

- The Prevention of Money Laundering and Funding of Terrorism Regulations (S.L 373.01) are the regulations currently in force on the subject
- They superseded the Prevention of Money Laundering and Funding of Terrorism Regulations, 2003

# Regulation 17

- **17.** (1) The Financial Intelligence Analysis Unit, with the concurrence of the relevant supervisory authority, may issue procedures and guidance as may be required for the carrying into effect of the provisions of these regulations, and which shall be binding on persons carrying out relevant financial business or relevant activity.

# Enforcement

- The enforcement of the Implementing Procedures is through a system of Administrative Penalties of between EUR 250 and EUR 2,500
- Penalties may also be imposed on a cumulative daily basis until compliance is achieved but in this case the penalties are subject to a limit of EUR 12,500

# FIAU Procedures

- Administrative Penalties are imposed directly by the FIAU without recourse to Court procedures
- However under the general principles of law the 'principles of natural justice' and the duty to act fairly apply to such procedures

# Judicial Review

- The decisions of the FIAU are in accordance with Article 469A of the Code of Organisation and Civil Procedure, subject to judicial review.

# Consultative Document

17th August 2010: FIAU issued a consultative document containing the draft Procedures and Guidance implementing the provisions of the PMLFTR.

Consultation Period: ended on 29th October 2010.

# Consultative Process

The principal consultations took place with:

- Regulatory Bodies such as the MFSA and the LGA.
- Representative Bodies from the sector such as the Malta Bankers Association, the Institute of Financial Service Practitioners, the Malta Insurance Association and others.

# Publication

- The Implementing Procedures were issued on the 20<sup>th</sup> May 2011
- Practitioners have until the 30<sup>th</sup> September 2011 to bring their procedures into line with the new Implementing Procedures

# Content

- The Implementing Procedures ultimately reflect important international obligations.
- Two important UN Conventions:
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and
- The United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention).

# Council of Europe

- The local legal framework on Money Laundering and financing of Terrorism also reflects the Council of Europe Warsaw Convention on 'Laundering, Search, Seizure and Confiscation on the Proceeds of Crime and on the Financing of Terrorism' (CETS 198) which followed the 1990 COE Money Laundering Convention (ETS 141)
- Malta signed the new Convention in 2005 and ratified in 2008

# FATF

- The Financial Action Task Force on Money Laundering was established by the G-7 Meeting held in Paris in 1989
- It has issued and constantly updated a series of recommendations which are also reflected in the PMLA, the PMLFT, and in the Implementing Procedures

# Other Organisations

- Other organisations active in the field of anti-money laundering and financing of Terrorism are the European Union, the World Bank and the International Monetary Fund.
- Egmont Group brings together financial intelligence units which meet its requirements in a world wide network.

# Main Obligations

- Criminalisation of Money Laundering
- Institution of Provisional Measures and Confiscation
- Customer Due Diligence and Proper Record Keeping
- CDD may also be subject to a Risk-Based approach
- Internal controls, compliance management procedures and screening procedures

# Obligations (Contd.)

- Training of Employees
- Auditing of control systems
- Mutual Legal Assistance

# The Seminar

- Customer Due Diligence
- Risk Management
- Reporting Obligations
- The MLRO Perspective