

## CHAPTER 5 – REPORTING PROCEDURES AND OBLIGATIONS

Subject persons are required to have internal and external reporting procedures in place to report any knowledge or suspicion of ML/FT to the FIAU, and any knowledge or suspicion that funds or property are the proceeds of criminal activity.

Throughout this chapter, whenever reference is made to knowledge, suspicion or reasonable grounds to suspect ML/FT, this will also be deemed to include knowledge, suspicion and reasonable grounds to suspect that funds or property are the proceeds of criminal activity. References to knowledge or suspicion of ML/FT are to be deemed as also including references to reasonable grounds for suspicion, or to an attempt to carry out a transaction or activity related to proceeds of criminal activity or funding of terrorism.

### 5.1 The Money Laundering Reporting Officer

#### 5.1.1 The Role of the MLRO

Regulation 15 of the PMLFTR<sup>1</sup> requires a subject person to appoint one of its officers as the MLRO, whose core functions are to:

- (a) receive reports from the subject person's employees, or through software solutions used to analyse transactions, on information or matters that may give rise to~~of~~ knowledge or suspicion of ML/FT, or that a person may have been, is or may be connected with ML/FT;
- (b) consider these reports to determine whether knowledge or suspicion of ML/FT subsists or whether a person may have been, is or may be connected with ML/FT;
- (c) report knowledge or suspicion of ML/FT or of a person's connection with ML/FT to the FIAU; and
- (d) respond promptly to any request for information made by the FIAU.

In discharging these functions the MLRO may delegate and/or be assisted by other employees falling under his/her supervision. It is expected that subject persons provide their MLROs with the necessary human, technological and any other resources that are required to enable the MLRO and his/her staff to carry out their functions in an effective and efficient manner. Any references throughout this Chapter to actions that are to be undertaken by the MLRO are not to be construed as meaning that such actions shall necessarily be taken by the MLRO himself/herself, as these may be delegated to employees falling under the MLRO's supervision, which is crucial for an effective reporting process. Nonetheless the MLRO shall remain responsible for the carrying out of the core functions outlined above and thus shall ensure that he/she is carrying out appropriate supervision.

---

<sup>1</sup>. Regulation 15(1)(a) of the PMLFTR.

### 5.1.2 Who Can be Appointed as MLRO?

Not any officer of the subject person can be appointed as MLRO. In terms of the PMLFTR, the officer appointed to this position also has to be of sufficient seniority and command:

#### (a) *Officer of a Subject Person*

For the purposes of identifying an individual who can be appointed as MLRO, there must subsist an employment relationship between the officer and the subject person. Alternatively, an executive director, or anyone in an equivalent position in the case of subject persons set up other than as companies, can also be appointed as MLRO.

In addition, the functions of a MLRO may not be:

- outsourced;
- carried out by a non-executive director of the subject person;
- carried out by a person who merely occupies the position of company secretary of the subject person and does not hold any other position within the organisation; or
- carried out by a person who undertakes internal audit functions within the organisation.

Notwithstanding the above, there are situations where the person appointed as the MLRO need not be an officer in employment or an executive director of the subject person. These are:

- (i) in the case of an insurance company managed by a company that is enrolled to act as an insurance manager in terms of the Insurance Intermediaries Act.<sup>2</sup> This company may enter into an arrangement with the insurance manager to have the duties attributable to the MLRO of the insurance company carried out by the MLRO of its manager;
- (ii) in the case of a collective investment scheme that is subject to the PMLFTR and that does not have a physical operational set-up in Malta other than a registered address and a board of directors, does not engage any employees and is not involved in the acceptance and processing of subscriptions and the collection of funds from investors. Here, the duties attributable to the MLRO can be carried out by the administrator's MLRO.

The above outsourcing arrangement may only be entered into when:

- (a) either the administrator is recognised under the Investment Services Act;<sup>3</sup> or
- (b) the administrator is subject to authorisation, licensing or recognition in an EU Member State or in third country other than a non-reputable jurisdiction, is subject to AML/CFT obligations consistent with the PMLFTR, especially in relation to reporting and reporting procedures, and is supervised for compliance with these obligations;
- (iii) in the case of a group comprising two or more subject persons that can avail themselves of the exemptions allowed in terms of Regulation 16(2)(b) and (c). These

---

<sup>2</sup>. Cap. 497 of the Laws of Malta.

<sup>3</sup>. Cap. 370 of the Laws of Malta.

subject persons may designate one of their employees as the group-wide MLRO, with each individual subject person considering whether the appointment of a designated employee is necessary to assist the MLRO to meet his/her functions effectively; and

(iv) in the case of a group comprising two or more subject persons, it is possible for the employee of one subject person to be seconded with another subject person forming part of the same group to act as its MLRO. When the group also includes an entity to which subject persons within the group have delegated fulfilment of their AML/CFT obligations, it is possible for an employee of sufficient seniority and command within that entity to be seconded with a subject person within the group as its MLRO.

Additional exceptions to this principle may be included in sector-specific Implementing Procedures.

The MLRO need not be located in Malta nor does he/she need to be present from where the subject person's operations are being directed or the records kept. It is left to the subject person to determine where the MLRO can be best located so as to fulfil his/her functions effectively. Thus, the MLRO must at all times have access (physically or remotely) not only to all the subject person's records but also to any of the subject person's systems as may be necessary to carry out his/her functions and duties. In addition, the MLRO has to be able to fulfil his/her role as the single point of reference for the FIAU in its interactions with the subject person in an effective, efficient and timely manner, independently of whether this may consist of a request for information, the follow-up to an STR or the exercise of the FIAU's compliance functions.

It is also relevant to point out that, when an employee is acting as the MLRO for two or more subject persons, it has to be ensured that these multiple appointments still allow the MLRO to fulfil his/her functions in an effective manner. Moreover, the person fulfilling MLRO duties has to be mindful of any ensuing conflicts of interest and/or confidentiality obligations. While there is no set number of appointments that one may accept as MLRO, the more appointments one holds and the more complex or voluminous the activities of the subject person concerned, the more difficult it will inevitably become for the MLRO to meet his/her obligations at law in a satisfactory manner.

While there is no restriction or limitation applicable on the employee or officer acting as MLRO from also having additional functions and/or duties within the subject person, it is important that subject persons avoid any situation that may give rise to a conflict of interest and undermine the effectiveness of the MLRO's role.

**(b) *Sufficient Seniority and Command***

The MLRO must occupy a senior position within the institution where effective influence can be exercised on the subject person's AML/CFT measures, policies, controls and procedures and should not be precluded from posing an effective challenge when necessary. Thus, the person occupying this position must be able, where he/she deems it necessary, to communicate directly with the Board of Directors.

The MLRO must also have the authority to act independently in carrying out his/her responsibilities and should have full and unlimited access to all records, data,

documentation and information of the subject person<sup>4</sup> for the purposes of fulfilling his/her responsibilities.

When the subject person is a sole trader or a sole practitioner with no employees or no persons working within his/her practice, the subject person has to carry out the functions of MLRO himself/herself.

### **5.1.3 Appointment and Resignation of the MLRO**

MLROs are to register themselves on the FIAU's Compliance and Supervision Platform for Assessing Risk (CASPAR), which is accessible through [the FIAU's website](#) – When the prior approval of a supervisory authority is required to proceed with the appointment of the MLRO, the MLRO should register only once the relevant supervisory authority has issued the approval. In all cases, the FIAU reviews all new registrations received through CASPAR to ensure that there are no obstacles to proceed with the registration. For detailed guidance on the process for registration and approval of the MLRO through the CASPAR portal, please refer to the dedicated Guidance Note available on [our website](#).

In exceptional circumstances, when the existing MLRO resigns or is dismissed and the new MLRO is pending approval by a supervisory authority, the subject person should inform the FIAU of this and provide the FIAU with the details of the employee who, for the interim period, will be assuming the role of reporting officer and to whom the FIAU can address any requests or queries. This employee may be a previously appointed designated employee.

A subject person must notify the FIAU of the resignation or removal of its MLRO as soon as reasonably practicable on becoming aware of the proposed resignation or removal. The MLRO must also notify the FIAU whether his/her departure was in any way linked to the implementation of the subject person's obligations under the PMLFTR and whether this had any regulatory implications that should be brought to the FIAU's attention. This latter notification is to be made within **15 days** from the date of resignation or removal. As regards the MLRO's account on CASPAR, the CASPAR Guidance Note specifies the process to be followed to deactivate that account.

## **5.2 The Designated Employee**

Given the functions that the MLRO has to carry out, it is imperative that he/she is available at all times. However, it is recognised that this is not always possible and that the volume of internal reports he/she may have to consider may undermine his/her effectiveness. To this end, subject persons are to consider whether there is the need to appoint a designated employee to assist and, whenever necessary, temporarily replace the MLRO when absent.

The main purpose of a designated employee is to deputise for the MLRO. Therefore, each subject person can consider appointing one designated employee for this purpose. However, the FIAU will also consider, on a case-by-case basis, the possibility of allowing a subject person to appoint two or more designated employees, after taking into account the size and nature of the subject

---

<sup>4</sup>. Regulation 15(1)(c) of the PMLFTR.

person and its activities. In any such instance, the subject person has to obtain prior approval from the FIAU.

Employees who only assist the MLRO through the processing of internal reports, collection of information, liaising with other units or sections with the subject persons, etc., are not deemed to be acting as designated employees. Deputising for the MLRO is deemed to involve more onerous obligations and entails that the designated employee can in his/her own right determine that an STR is to be filed in those situations when the MLRO is absent. Thus, any reference to the MLRO in these Implementing Procedures is to be construed as referring also to the designated employee.

The appointment of the designated employee must receive the approval of the MLRO<sup>5</sup> and this appointed person will work under the MLRO's direction. The designated employee must register through the CASPAR portal, at which point the MLRO will be requested to approve the designated employee through the portal. The [CASPAR Guidance Note](#) sets out how this can be done.

### **5.3 The Monitoring Function**

The PMLFTR make reference to a general oversight function, as well as to the possible creation of a day-to-day monitoring function:

#### **(a) Day-to-Day Monitoring Function**

In terms of Regulation 5(5)(c), a subject person has to appoint, where appropriate with regard to the nature and size of its business,<sup>6</sup> an officer at management level whose duties are to include the monitoring of the day-to-day application of the measures, policies, controls and procedures adopted by the subject person to ensure compliance with its AML/CFT obligations.

In carrying out its business, a subject person may employ a considerable number of employees or structure its organisation in multiple units, offices or branches. Moreover, the business being carried out may itself involve a number of different activities. The same AML/CFT controls, policy measures and procedures would have to be applied and ensuring this is done in a uniform albeit flexible manner may prove impossible if there is no one officer charged with this responsibility.

When a subject person considers this function to be necessary, it is left to the subject person to determine whether this function is to be also carried out by the MLRO or whether it would prove to be more effective if it were entrusted to a separate officer. In the latter case, it would be especially important that communication between the two is as good as possible to ensure the effectiveness of the subject person's AML/CFT controls, policies, procedures and measures.

When the subject person opts to outsource its AML/CFT obligations in line with Chapter 6, the monitoring role would involve ensuring that the outsourced service provider is fulfilling its contractual obligations and carrying out the necessary controls, and to

---

<sup>5</sup>. Regulation 15(1)(f) of the PMLFTR.

<sup>6</sup>. Reference can here be made to Section 3.3.2 of the Implementing Procedures, where guidance is being provided on what is meant by the nature and size of one's business.

monitor the implementation of those AML/CFT obligations, if any, that have not been outsourced. In this scenario, the subject person has to decide, based on the volume of oversight work involved, whether a dedicated monitoring function is necessary or whether this role could be equally handled by the MLRO.

Where this function is entrusted to someone other than the MLRO, it has to be carried out by:

- (i) an officer of the subject person; and
- (ii) this officer has to be at management level.

These two requirements are considered to be equivalent to the requirements for the appointment of an MLRO, i.e., an officer of the subject person having sufficient seniority and command, and is therefore to be construed in the same manner, including the restrictions on outsourcing.

The one exception relates to the possibility of having a group-wide monitoring function. In this case, there would be no limitation arising from the non-disclosure requirements set out by Regulation 16 of the PMLFTR and the possibility of a group-wide monitoring function could be availed of independently of the activities carried out by the subject persons comprised therein.

However, subject persons would have to consider whether it may be necessary to appoint employees internally within the group to assist the officer entrusted with the group-wide monitoring function to ensure its effectiveness.

Although the PMLFTR only provide a very generic description of what the duties and responsibilities of any such officer should be, it would be expected that this officer would be responsible for:

- ensuring continued compliance with the requirements of the PMLFTR, the FIAU's Implementing Procedures or other guidance issued by the FIAU;
- day-to-day oversight of the subject person's AML/CFT measures, policies, controls and procedures;
- regular oversight reporting, including reporting of non-compliance, to senior management;
- addressing any FIAU feedback about the subject person's risk management performance or AML/CFT measures, policies, controls and procedures;
- contributing to designing, implementing and maintaining internal AML/CFT compliance manuals, policies, procedures and systems;
- conducting or seeing to periodic internal AML/CFT training for all relevant staff members and employees (refer to Chapter 7 of these Implementing Procedures).

While some of these duties can be delegated to other employees of the subject person, the officer entrusted with the monitoring function retains responsibility for implementing and assessing the ongoing operation of the subject person's AML/CFT measures, policies, controls and procedures.

The appointment, removal or resignation of the officer to whom the day-to-day monitoring function is entrusted has to be notified to the FIAU in writing.

## (b) General Oversight Function

Given that the subject person is ultimately responsible for ensuring compliance with its AML/CFT obligations, the PMLFTR provide that the board of directors or administrators, or any other equivalent body responsible for the management of the subject person, may designate one of its members with responsibility to ensure that the subject person is fulfilling its AML/CFT obligations.

In view of the above, it is important that senior management provides the MLRO and its monitoring function with sufficient resources, including appropriate staff and technological means, to ensure that they are able to carry out their obligations effectively.

## 5.4 Internal Reporting Procedures

The internal reporting procedures of a subject person have to clearly set out the steps to be followed when an employee of the subject person becomes aware of any information or matter that in his opinion gives rise to knowledge or suspicion, or there are grounds to suspect, that a person or a transaction is connected to ML/FT.<sup>7</sup> Internal reporting requirements for employees are Reference to the reporting obligations of an employee is also understood to be also applicable to those individuals officers of a subject person who may not have an employment relationship with the subject person (such as temporary or contract staff) but who are engaged to provide services to the subject person (such as contracted or outsourced third parties) through which they could become aware of information that may give rise to knowledge or suspicion of ML/FT.

The internal reporting procedures should clearly state that, when an employee becomes aware of has any such information or matter, he/she shall treat the case with the utmost urgency and shall is to report the matter to the MLRO without delay. The FIAU expects such a report to be made by not later than the next working day. Therefore, it is crucial that all employees are informed of the identity of the appointed MLRO (and of the designated employee, where applicable) to whom the report has to be made, and of the procedure to follow and the information that has to be made available with the report. The internal reporting procedures should also include information on the procedures employees of the subject person are to follow when the MLRO is absent from duties.

Internal reports are to be submitted in writing (manually or in electronic format), preferably using a standard template, together with all relevant information and documentation available to the employee to assist the MLRO in making a determination as to how best to proceed. The report should include details on the customer and/or the transaction/activity that is the subject of concern and as full a statement as possible of the information or matter that gave rise to the employee's concern~~who is the subject of concern and as full a statement as possible of the information giving rise to the knowledge or suspicion.~~

Reporting lines should be kept as short as possible, ideally allowing an employee to report directly to the MLRO to ensure speed, confidentiality and quick access to the MLRO. ~~However, it~~ is acknowledged that an employee may wish to discuss the circumstances surrounding a particular

---

<sup>7</sup>. Refer to Section 5.5 for an explanation of these concepts.

customer or transaction with his/her immediate superior prior to determine whether to submit an internal report. In such cases any discussions with immediate superiors are to be given immediate priority, and the FIAU expects any eventual internal report to be raised with the MLRO within the next working day from when the employee becomes aware of the information or matter that have rise to his/her suspicion~~in larger organisations this may not always be possible and may even prove to be counter productive. In these cases, it is acceptable for the internal reporting procedures to provide for intermediate filtering stages.~~

~~Thus, it is possible that a subject person's internal reporting procedures provide for an employee to discuss the circumstances surrounding a particular customer or transaction with his/her immediate superior prior to determine whether to submit an internal report. Another option would be to have a specialised team who is to consider reports made by employees and forward to the MLRO only those that do contain the basis of knowledge or suspicion of ML/FT.~~

Subject persons could also~~The same applies with regard to the use of software solutions to identify transactions or patterns of transactions that are unusual or exceed a given threshold as part of a subject person's ongoing monitoring systems. The reports generated by any such software solution need not be transmitted automatically to the MLRO for his/her consideration but~~and may be further ~~filtered~~considered and analysed. Such consideration and analysis shall be given priority and~~, and only~~ those transactions found to have an indication of knowledge or suspicion of ML/FT ~~forwarded shall then be reported~~ to the MLRO without delay. The FIAU expects such reports to be raised with the MLRO by not later than the next working day from when the identified transactions are found to have an indication of knowledge or suspicion~~for his/her consideration.~~

However, when extending reporting lines in this manner, including situations where the subject person has outsourced ongoing monitoring to a third party, it is important that:

- (a) the MLRO understands and is in agreement with the filtering criteria used and analytical methodology applied to identify those reports that he/she is to receive. When reviews are carried out on the effectiveness of the procedures adopted by the subject person, these are to be made available to the MLRO with sufficient information to allow him/her to raise any concerns he/she may have in relation to these procedures and ensure these are considered and, if necessary, properly addressed.
- (b) when a decision is taken not to proceed with submitting an internal report to the MLRO, a written record has to be kept of the circumstances of the case and of the reasons why it was decided not to file an internal report. These records are to be made available to the MLRO and, if applicable, to the officer entrusted with the monitoring function and to the subject person's internal audit function. An internal audit function may be carried out by an employee or officer of the subject person but may also involve an audit or review carried out by an external consultant. These records may provide important information on the effectiveness of a subject person's internal procedures and their review can lead to the eventual improvement of one's internal reporting procedures.
- (c) when a decision is taken not to forward a report to the MLRO, the employee who made the report has to be informed of the decision. If the employee still considers that the report should be escalated to the MLRO, the internal procedures should be such as to still enable the employee to submit the report directly to the MLRO.



It is possible that additional internal reports may have to be made following the submission of an initial report since the employee may notice further related transactions or activities that give rise to knowledge or suspicion of ML/FT. These too need to be reported to the MLRO.

The MLRO must consider, with the utmost urgency and without unreasonable delay, every internal report he/she receives to determine/decide whether ~~or not the information contained in the report:~~

- (a) the information contained in the report does give rise to a knowledge or suspicion of ML/FT in which case the MLRO should proceed to submit a STR to the FIAU in a prompt manner as explained under Section 5.5; or
- (b) ~~whether~~ additional information is necessary to reach this determination.

~~In the latter circumstances~~ Where additional information is deemed necessary, the MLRO must collect and consider ~~without delay~~ any additional information and/or documentation he/she deems relevant to make this determination, which may include:

- (a) previous transactions, transaction patterns and volumes, previous patterns of instructions, the duration of the business relationship and CDD information;
- (b) where applicable, other connected accounts and the existence of other relationships, including where the person suspected of ML/FT:
  - (1) is a settlor, donor, contributor, protector, trustee or beneficiary of a trust, foundation, trust account or other trust or fiduciary relationship with the subject person; or
  - (2) is a beneficial owner, director, shareholder or legal representative of a legal entity or other legal arrangement having a business relationship with the subject person; or
  - (3) holds a power of attorney or has any fiduciary arrangements related to a business relationship with the subject person; and
- (c) other information or documents that are reasonably accessible through public sources, or that may be obtained from the customer or person subject of that internal report.

The consideration of internal reports and the collection and consideration of any additional information and/or documentation by the MLRO has to take place without unreasonable delay. While it is not possible to give a clear definition of what constitutes an unreasonable delay, as this may vary from one case to another, subject persons should be guided by the following expectations:

- (a) MLROs are not expected to carry out investigative or analytical work. Their role is that of determining whether there is knowledge or suspicion of ML/FT which ought to be flagged to the FIAU for analysis;
- (b) The highest priority should be given to those cases which might be related to FT;
- (c) Priority should also be given to cases of ML involving substantial amount of funds (especially if the funds in question are still within the control of the subject person), pending transactions, or cases involving PEPs;
- (d) MLROs should be supported by adequate human and technical resources to be able to make such assessments as expeditiously as possible;
- (e) Where the MLRO identifies the need to obtain information from the customer or any person or other external sources, the request should be made immediately and followed

up regularly. The lack of cooperation, including non-response, by a customer could be seen as a further indicator of suspicion;

(f) Information that is already held by the subject person (e.g. previous transactional history or information on connected accounts) should be obtained without delay; and

(g) There shouldn't be any unnecessary delays in making the necessary considerations and determinations.

Failure by the MLRO to diligently consider all relevant material available to the subject person may lead to vital information being overlooked and the knowledge or suspicion not being identified and subsequently disclosed to the FIAU. In view of this requirement, the MLRO should be granted unrestricted access to all relevant documentation and information.

The decision to file or not to file an STR must always be the MLRO's/designated employee's own, and should not be subject to the direction or approval of other parties within the subject person. This is not to say that ~~in-reaching~~ a determination on whether an internal report gives rise to knowledge or suspicion of ML/FT, shall always be made by the MLRO or the designated employee and may not be delegated by the MLRO to other employees under his/her supervision, or that the MLRO cannot seek assistance, including from internal staff of the subject person or external advisors. Where the MLRO seeks the assistance of other internal members of staff or external advisors, due consideration ought to be given to the sensitivity and confidentiality of information that may be disclosed and the non-disclosure obligations that subject persons have to adhere to ~~the MLRO cannot seek assistance, including from external advisors. However, this has to be done discreetly, in a manner that does not disclose any information that may lead to the identification of the subject of the STR and any surrounding legal or natural persons, and restricted specifically to the matter requiring input from advisors, taking into consideration the non-disclosure obligations that subject persons have to adhere to.~~

If the MLRO, after having obtained and considered the additional information necessary to reach his/her determination, concludes, for justifiable reasons, that an internal report does not give rise to knowledge or suspicion of ML/FT, the MLRO need not file a report with or otherwise inform the FIAU.<sup>8</sup> In this case, the MLRO must keep a written record (manually or in electronic format) of the internal report received, the assessment carried out, the outcome and the reasons why the report was not submitted to the FIAU. On request by the FIAU or the relevant supervisory authority acting on behalf of the FIAU, the MLRO must make this information available.

## 5.5 External Reporting Procedures

After considering the internal report and all the necessary documentation, when the MLRO or the designated employee determines that the subject person:

- (a) knows;
- (b) suspects; or
- (c) has reasonable grounds to suspect that:
  - a transaction, including attempted transactions, may be related to ML/FT; or
  - a person may have been, is or may be connected with ML/FT; or

---

<sup>8</sup>. Regulation 15 (6) of the PMLFTR.

- ML/FT has been, is being or may be committed or attempted,

the MLRO must file an STR with the FIAU as set out hereunder.<sup>9</sup> In so doing, the MLRO is not to disclose the name of the employee who made the internal report to the FIAU.

It should also be kept in mind that a transaction may not be suspicious at the time, but suspicions may arise later, in which case the obligation to file an STR still arises.

Any disclosures should be made to the FIAU promptly, meaning that a suspicious transaction report should be submitted on the same day when knowledge or suspicion of ML/FT is considered to subsist by the MLRO. This notwithstanding, the FIAU recognises that in certain more complex cases the compilation and submission of the STR within the same day when the knowledge or suspicion of ML/FT would prove challenging in view of the extensive volume and/or complexity of information / documentation that may need to be provided. In such instances the MLRO shall ensure that the STR is submitted within the shortest time possible. The reporting of suspicious transactions shall be treated as a priority by subject persons, and thus shall ensure that the MLRO is provided with the necessary human and IT tools to carry out his tasks appropriately. Undue delays in the submission of STRs occasioned by lack of resources are not acceptable.

Moreover, the subject person and MLRO are not only expected to ensure that their ongoing monitoring and internal/external reporting processes are conducted in an expeditious and effective manner as required under Section 5.4, but that the analysis of internal reports is carried out with the necessary due diligence, keeping in mind that subject persons would be in breach of their reporting obligations where they are in possession of information that constitutes even a reasonable ground to suspect ML/FT, and which is not brought to the attention of the FIAU..

Timing is an aspect that should be clearly considered by subject persons when drawing up their internal reporting procedures, especially if they include intermediate filtering levels.

STRs are to be submitted to the FIAU in electronic format as may be indicated by the FIAU from time to time using such templates as may be provided. Guidance on STR reporting is also provided on the FIAU's website. In exceptional cases, when subject persons do not have access to IT systems to submit STRs online, manual submissions are also accepted. In completing this report MLROs should seek to provide as much detail as possible together with the relevant identification and other supporting documentation.

**It is important to keep in mind that subject persons must file STRs only with the FIAU and with no other supervisory authority.**

The PMLFTR require the MLRO to report to the FIAU when he/she has **knowledge, suspicion** or **reasonable grounds** to suspect ML/FT or that funds (regardless of the amount involved) are the proceeds of criminal activity. Subject persons are required to report also attempted transactions that are deemed suspicious but which never materialise, as by way of example the subject person would have desisted from servicing or on-boarding the customer in question. The same obligation to file an STR applies to a sole trader or sole practitioner with no employees or no persons working within his/her practice, who has a similar knowledge, suspicion or reasonable grounds of suspicion.

---

<sup>9</sup>. Regulation 15(3) of the PMLFTR.

A brief explanation of these three concepts is provided below:

**(i) Knowledge**

Being an objective criterion, the existence of knowledge of ML/FT is not difficult to ascertain since a person either knows something or does not. If for any reason the MLRO, or any other employee of the subject person, is aware or is in possession of information that indicates that any of the above activities may have taken place, are taking place or will be taking place, the MLRO should immediately proceed with filing an STR with the FIAU.

**(ii) Suspicion**

Suspicion of ML/FT is more subjective than knowledge and, in order to determine its existence, the MLRO must rely on objective criteria, which differ depending on the circumstances.

For instance, an unemployed customer of a bank depositing considerable amounts of money into his bank account should raise the bank's suspicion.

In this case the objective element is the fact that the person is unemployed and, although the bank does not have any concrete evidence that the money derives from an illegal activity, there are objective indications pointing to such a possibility.

Another objective element on which suspicion may be based, which is specifically referred to in the PMLFTR,<sup>10</sup> is the situation when the subject person is unable to complete CDD due, for instance, to the unwillingness of the applicant for business to provide the required documentation or information. In this case, the PMLFTR require the subject person to consider filing a report with the FIAU.

Certain pronouncements by the courts in the United Kingdom may be of assistance in determining what constitutes 'suspicion' for the purposes of the PMLFTR and the degree of suspicion that is required for an STR to be filed:

***"A degree of satisfaction and not necessarily amounting to belief but at least extending beyond speculation as to whether an event has occurred or not".***

***"Although the creation of suspicion requires a lesser factual basis than the creation of a belief, it must nonetheless be built upon some foundation."***

In *R v Da Silva* [2006] 4 All ER 900, the UK Court of Appeal stated:

***"It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is 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'."***

---

<sup>10</sup>. Regulation 8(5) of the PMLFTR.

Furthermore, in *Shah & Another v HSBC Private Bank (UK) Limited* [2012] EWHC 1283 (QB), the UK High Court held that “[t]o be a suspicion rather than a mere feeling of unease it must be thought to be based on possible facts, but the sufficiency of those possible facts as a grounding for the suspicion is irrelevant...”

The Court in this case further stated that:

***“Parliament intended suspicion as a subjective fact to be sufficient (1) to expose a person to criminal liability for money laundering and (2) to trigger disclosures to the authorities. Parliament did not require, in addition, that the suspicion be based upon ‘reasonable’ or ‘rational’ grounds. There are good practical reasons for this. 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’.”***

A transaction that appears *unusual* is not necessarily *suspicious*. Even customers with a stable and predictable transactions profile will have periodic transactions that are unusual for them. Many customers will, for perfectly good reasons, have an erratic pattern of transactions or account activity. So, the unusual is, in the first instance, only a basis for further enquiry that may in turn require judgment as to whether it is suspicious.

### (iii) Reasonable Grounds to Suspect

The requirement to file an STR goes beyond “suspicion” and also includes the obligation to report when “reasonable grounds to suspect” exist. This implies that a further obligation to report arises where, on the basis of objective facts or circumstances, a reasonable person would have inferred knowledge or formed the suspicion that ML/FT existed or that funds were the proceeds of criminal activity.

~~It should also be kept in mind that a transaction may not be suspicious at the time, but suspicions may arise later, in which case the obligation to file an STR still arises.~~

~~Any disclosures should be made to the FIAU as soon as is reasonably practicable, but **not later than five (5) working days** from when the knowledge or suspicion of ML/FT first arises or from the existence of reasonable grounds to suspect ML/FT.~~

~~The five (5) working days, which are referred to in Regulation 15(3) of the PMLFTR, shall be deemed to start to run in accordance with the provisions of the following paragraphs:~~

- ~~(a) in cases where, subsequent to the receipt of an internal report, the MLRO determines, on the basis of additional information and/or documentation other than what is contained in the internal report received by the MLRO, that there is knowledge or suspicion of ML/FT, the five (5) working day period shall start to run from when such a determination is made by the MLRO;~~
- ~~(b) notwithstanding the provisions of paragraph (a), when the subject person is in possession of information that constitutes a reasonable ground to suspect ML/FT, the five (5) working days shall start to run from when the subject person came into possession of or became aware of that information, independently of when that information was brought to the attention of the MLRO.~~

~~Timing is an aspect that should be clearly considered by subject persons when drawing up their internal reporting procedures, especially if they include intermediate filtering levels.~~

~~STRs are to be submitted to the FIAU through the FIAU website using the template provided. Guidance on STR reporting is also provided on the FIAU's website. In exceptional cases, when subject persons do not have access to IT systems to submit STRs online, manual submissions are also accepted. In completing this report MLROs should seek to provide as much detail as possible together with the relevant identification and other supporting documentation.~~

~~For the avoidance of any doubt, in those circumstances when the STR is not filed electronically but submitted to the FIAU in paper format, the physical act of submitting an STR need not be undertaken by the MLRO himself/herself; his/her responsibility is that of making a reasoned determination as to whether an STR must be submitted or otherwise. Therefore, the submission itself may be done by any employee of the subject person who is acting under the responsibility of, or answers to, the MLRO.~~

~~It is important to keep in mind that subject persons must file STRs only with the FIAU and with no other supervisory authority.~~

## 5.6 Actions After Reporting

On receipt of an STR, the FIAU sends an acknowledgement to the subject person and the process of assessing the STR is then initiated by the FIAU's Analysis Section.

In the course of the analysis of the STR, the FIAU may require further information and, in terms of the PMLFTR, it can request this information from the subject person filing the STR or any other subject person.<sup>11</sup> When the FIAU makes a request for information to a subject person, that subject person has to comply with the request as soon as is reasonably practicable but not later than **five (5) working days** from when the demand is first made,<sup>12</sup> unless the subject person makes representations justifying why the requested information cannot be submitted within this period of time.

The FIAU can, at its discretion and after having considered these representations, extend the time limit as is reasonably necessary to obtain the information. The subject person shall then submit the information requested within the extended time limit. Subject persons should make a request under this provision with caution and only when absolutely necessary since its frequent use could hinder the FIAU in conducting its duties.

It should be noted that, in terms of the proviso to Regulation 15(8) of the PMLFTR, the FIAU may, following the submission of an STR or when it deems necessary, demand that the information be submitted within a shorter period of time.

If once an STR is filed the subject person decides to maintain the business relationship with the customer who is the subject of the STR, the subject person should:

---

<sup>11</sup>. Regulation 15(8) of the PMLFTR.

<sup>12</sup>. *Ibid.*

- (a) classify the customer as a **high-risk customer**; and
- (b) remain vigilant and monitor the activities of that customer to a larger extent.

It is to be noted that in such circumstances subject persons should not automatically report to the FIAU every transaction carried out by that customer after the STR has been filed. Subject persons should analyse the circumstances of the case and where necessary consider passing on additional information to the FIAU.

For instance, if a customer who has been the subject of an STR receives his monthly salary into the same account through which a suspicious transaction was deemed to have been carried out, the subject person would not be expected to report this transaction. However, if a transaction similar to the transaction that was reported to the FIAU were to be carried out, this transaction is likely to give rise to a further suspicion and would therefore need to be reported.

Additionally, before taking any decision related to a customer and services provided thereto, which may have an impact on the analysis or any future investigation, it would be advisable to hold discussions with the FIAU prior to carrying out these transactions to ensure that the steps taken by the subject person do not hinder the analysis or the investigation. This may involve the return of funds to the customer or the termination of the business relationship.

Subject persons filing an STR with the FIAU may request feedback from the FIAU on the progress of the analysis of the STR. The FIAU may also, on its own initiative, provide feedback to subject persons making an STR. When giving feedback, the FIAU will provide the reporting subject person with the information it considers to be of interest to the subject person to enable that subject person to regulate its affairs and to assist it to carry out its duties under the PMLA and the PMLFTR. Subject persons must treat feedback information with utmost confidentiality.

### **5.7 The obligation to refrain from carrying out a transaction that appears to be suspicious**

In accordance with Regulation 15(4) of the PMLFTR, when subject persons know or suspect that a transaction that is still to be carried out is or may be related to proceeds of criminal activity or the funding of terrorism, the subject person, on informing the FIAU thereof in terms of Section 5.5 above, must, in terms of Article 28 of the PMLA, refrain from carrying out the transaction. In these cases, subject persons must provide the FIAU with all the information related to the transaction. Therefore, subject persons are required to delay the transaction to allow the FIAU time to consider whether or not to oppose the execution of the transaction.

This notwithstanding, Regulation 15(5) states that, when it is not possible for subject persons to refrain from carrying out a transaction that is known or suspected to be related to ML/FT prior to informing the FIAU, subject persons must carry out the transaction and inform the FIAU immediately after the transaction is affected.

However, it is important to note that the impossibility to do so must be due either to the nature of the transaction (e.g., the system used to process the transaction does not allow at any point human interference, such as automated clearing or settlement systems) or because refraining from executing the transaction is likely to frustrate efforts to investigate or pursue the beneficiaries of the suspected criminal activity.

This obligation is mirrored in Article 29 of the PMLA, which states that when the subject person is unable to inform the FIAU before the transaction is executed, either because it is not possible to delay executing the transaction due to its nature or because delay in executing the transaction could prevent the prosecution of the individuals benefiting from the suspected ML/FT, subject persons must carry out the transaction and then inform the FIAU immediately afterwards, giving the reasons why the FIAU was not so informed before the transaction was executed.

In these two provisions, besides the failure to inform the FIAU because of the likelihood of frustrating investigation and prosecution efforts, the law states that it is only in cases when it is not possible to refrain from executing the transaction that the subject person may carry out the transaction and this impossibility must arise from the nature of the transaction itself.

### **5.8 Delaying the Execution of a Suspicious Transaction**

Under Article 28 of the PMLA, the FIAU itself may oppose the execution of a transaction that it knows or suspects to be related to ML/FT. This power may be exercised by the FIAU when it becomes aware of a prospective transaction that may be linked to ML/FT through:

- (a) information provided by a subject person;
- (b) information provided by a foreign FIU; or
- (c) any other information in its possession.

When the FIAU considers it necessary to oppose the execution of a suspicious transaction, a notification of this opposition is to be made to the subject person concerned by any written means. In those cases when the FIAU opposes the execution of the transaction following the receipt of information from a subject person, the notification of opposition must be made to the subject person by not later than one (1) working day following the day on which the information was received by the FIAU.

Within this one (1) working day, the subject person is prohibited from carrying out the relevant transaction. If, after the passage of one (1) working day, following notification to the FIAU, the subject person has not received notification from the FIAU to suspend that transaction, the subject person can proceed with executing the transaction.

When the FIAU suspends the execution of the transaction, the suspension is effective for a period of one (1) working day, following the day of notification of the opposition by the FIAU. The FIAU may, however, authorise the execution of the transaction before the expiration of this period by any written means.

In terms of Article 28(3) of the PMLA, the FIAU may, if it considers necessary, extend the period of suspension by a further one (1) working day. When the FIAU decides to extend the period of suspension, it should notify the subject person in writing before the previous one (1) working day suspension period expires. In practice, therefore, in terms of Article 28, a transaction may be delayed by a maximum of three (3) working days, following the day the subject person notifies the FIAU. The diagram below provides a timeline of a postponement order's issue and application.

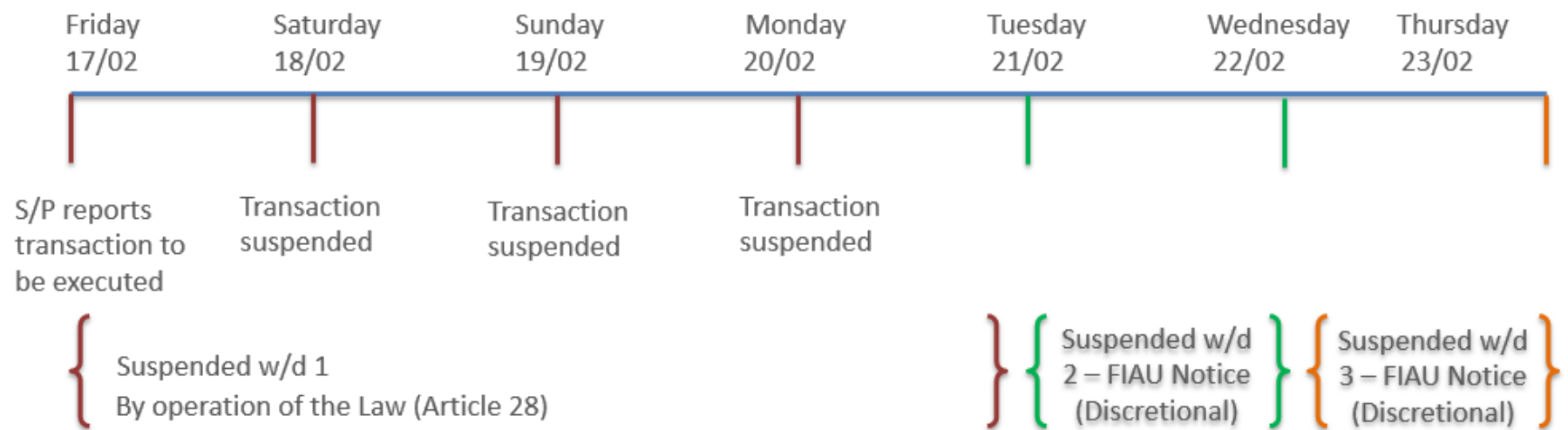
Subject persons may only proceed with the execution of a transaction that has been opposed by the FIAU once the respective suspension period expires. This obligation not to execute a



transaction opposed by the FIAU prevails over any legal or contractual obligation to which the subject person may be subject.

**Figure 6 - Postponement Order Timeline**

■ **Postponement Order Time-Line**



On the lapse of the 1<sup>st</sup> w/d the subject person may proceed unless FIAU postpones the transaction or if an attachment order is issued

Subject persons should also be aware that an attachment order issued by the competent Court may be served on the subject person while a transaction is suspended by the FIAU. In these cases, the subject person would be bound by the attachment order and thus would not be able to execute the transaction even after the expiry of the suspension period in terms of Article 28 of the PMLA.

When the FIAU does not oppose the execution of a transaction reported by a subject person or the respective suspension period lapses without there being any other legal impediment to the execution of the transaction, it is left to the discretion of the subject person whether to proceed or otherwise with the execution of that transaction and Article 28 does not require the FIAU to authorise the execution of the relevant transaction.

## **5.9 Monitoring Orders**

In terms of Article 30B of the PMLA, the FIAU may demand that a subject person monitor transactions or banking operations suspected of being related to ML/FT. This power may be exercised by the FIAU when it:

- (a) receives an STR; or
- (b) when from information in its possession the FIAU suspects that:
  - a subject person/s may have been used for any transaction/s suspected to involve ML/FT; or
  - property is being held by a subject person that may have derived directly or indirectly from, or constitutes the proceeds of criminal activity or from an act or acts of participation in criminal activity.

A monitoring order can only be made for a specified period of time. Throughout its duration, the subject person is required to monitor the transactions or, in the case of banks, banking operations:

- (a) carried out through one or more accounts in the name of any natural or legal person suspected of an ML/FT offence; or
- (b) carried out through one or more accounts suspected to have been used in the commission of an ML/FT offence; or
- (c) which could provide information about an ML/FT offence or the circumstances thereof.

The FIAU may issue this monitoring order before, during or after the commission of the ML/FT offence referred to above. Subject persons are required to communicate to the FIAU the information resulting from the monitoring and the FIAU may use that information to carry out its analysis and reporting functions.

## **5.10 Professional Privilege**

By virtue of Regulation 15(9), auditors, accountants, tax advisors, notaries and members of the legal profession are exempt from the duty to report suspicious transactions to the FIAU in accordance with

the provisions of Regulation 15(3) and the duty to inform the FIAU prior to carrying out a transaction that is known or suspected to be related to ML/FT in accordance with Regulation 15(4), if this information is received or obtained in the course of ascertaining their client's legal position or performing their responsibility of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether this information is received or obtained before, during or after these proceedings.

This principle was upheld in a judgment by the European Court of Justice in ***Ordre des barreaux francophones and germanophones & Others vs Conseil des Ministres C-305/05, (ECJ Grand Chamber) 26 June 2007***. The court held the following:

***“The reporting obligations apply to lawyers only insofar as they advise a client in the preparation or execution of certain transactions – essentially those of a financial nature or concerning real estate – or when they act on behalf of and for a client in any financial or real estate transaction. As a rule, the nature of such activities is such that they generally take place in a context with no link to judicial proceedings and, consequently, those activities fall outside the scope of the right to a fair trial.***

***“Moreover, as soon as lawyers acting in connection with a financial or real estate transaction are called on for assistance in defending a client or in representing such a client before the courts, or for advice as to the manner of instituting or avoiding judicial proceedings, those lawyers are exempt from the reporting obligations, regardless of whether the information has been received or obtained before, during or after the proceedings. An exemption of that kind safeguards the right of the client to a fair trial.”***

Although the judgment only related to lawyers, Regulation 15(9) extends the same principle to other legal professions, notaries, auditors, accountants and tax advisors. This principle ensures that the trust placed by the client in the professional is not breached when these professionals are called on to ascertain a client's legal position, to defend a client or represent that client before the courts, or for advice on the manner of instituting or avoiding judicial proceedings.

Moreover, when the subject persons mentioned in this section are seeking to dissuade a client from engaging in an illegal activity, they will not be in breach of their confidentiality obligations and any such disclosure will not constitute tipping off.<sup>13</sup> Nevertheless, in any other circumstances when the professional privilege referred to under this section does not apply, the professional is under an obligation to file an STR with the FIAU, ensuring also that all non-disclosure obligations under the PMLFTR and these Implementing Procedures are adhered to.

## **5.11 Prohibited and Permissible Disclosures**

---

<sup>13</sup>. Regulation 16(3) of the PMLFTR.

Regulation 16(1) prohibits a subject person, as well as any official or employee of a subject person, from disclosing to the person concerned or to a third party that:

- (a) an STR has been made to the FIAU;
- (b) the FIAU demanded information within the context of an ML/FT analysis;
- (c) information has been or may be transmitted to the FIAU within the context of an ML/FT analysis; and
- (d) an ML/FT analysis or investigation has been, is being carried out or may be carried out by the FIAU or by a law enforcement agency, respectively.

The term ‘third party’ includes any person who does not constitute part of the subject person and is thus considered to be an external person to the subject person. This would include any person to whom the subject person may have outsourced any of its functions, processes, etc.

Although this prohibition does not extend to the disclosure of the above defined information within the subject person, it is recommended that subject persons adopt a careful stance when circulating this information internally to avoid risks of leakages and disclosures, which would place subject persons in breach of Regulation 16(1).

Breach of the above constitutes a criminal offence termed as “tipping off” and, given the potential prejudice that any disclosure of the above mentioned information may have on an analysis or investigation, it arises even though no prejudice may actually result or the person disclosing the information did not know or suspect that the disclosure was likely to prejudice the analysis or investigation. Therefore, for this offence to subsist it is sufficient that the disclosure be made, irrespective of the effect that such a disclosure has or is likely to have. The punishments applicable for the offence of tipping off are laid out in more detail in Section 8.3.6.

A subject person must, however, still retain the necessary contact with a customer and should enquire, in a tactful manner, on the background to one or more transactions or to activity that appears to be inconsistent with the customer’s normal pattern of activity, or in adverse media coverage that the subject person may have become aware of. This is prudent practice and forms an integral part of CDD measures. Such enquiries would not in themselves give rise to tipping off.

Although the PMLFTR outline the prohibition of disclosure for subject persons, there are certain circumstances established by the PMLFTR when disclosures made will not constitute an offence in terms of the PMLFTR.<sup>14</sup> Such circumstances include disclosures:

- (a) to the supervisory authority relevant to that subject person or to law enforcement agencies in accordance with applicable law;
- (b) between a subject person and another person who:
  - (1) undertakes activities equivalent to relevant financial business;
  - (2) is situated in an EU Member State or third country; and
  - (3) forms part of the same group of companies and applies group-wide policies and procedures as provided for in Regulation 6;

---

<sup>14</sup>. Regulation 16(2) of the PMLFTR.

- (c) between a subject person who undertakes activities under paragraphs (a) or (c) of the definition of 'relevant activity' in terms of Regulation 2 of the PMLFTR and another person who:
  - (1) undertakes equivalent activities in a Member State or a third country imposing requirements similar to those laid down in the PMLFTR; and
  - (2) performs his professional activities, whether as employee or not within the same legal person or within a larger structure to which the subject person belongs, and which shares common ownership, management or compliance control;
- (d) between a subject person who undertakes relevant financial business or activities under paragraphs (a) or (c) of the definition of 'relevant activity' in terms of Regulation 2 of the PMLFTR and another person:
  - (1) from the same professional category situated in an EU Member State or a third country imposing requirements similar to those laid down in the PMLFTR; and
  - (2) in cases related to the same customer and the same transaction; and
  - (3) when these persons are subject to obligations of professional secrecy and personal data protection;
- (e) disclosures by a subject person to a competent court, tribunal or other judicial authority in or outside Malta in the course of proceedings instituted against the subject person for or as a consequence of the failure or the delay in carrying out a transaction, including disclosures made in any written pleadings or submissions.  
 These disclosures would be permissible and would not constitute a breach of Regulation 16(1) of the PMLFTR only if both of the following conditions are met:
  - (1) the disclosure is made after the lapse of the one (1) working day period of suspension as stipulated in Article 28(1) of the PMLA; and
  - (2) where applicable, the disclosure is made after the lapse of any period of time during which the execution of the transaction is opposed by the FIAU in terms of Article 28 of the PMLA;
- (f) disclosures by a subject person to a supervisory authority or professional body exercising supervision or regulatory oversight over the subject person making the disclosure, that the subject person delayed from carrying out a transaction in terms of Article 28(1) of the PMLA.  
 Such a disclosure would be permissible and would not constitute a breach of Regulation 16(1) of the PMLFTR only if both of the following conditions are met:
  - (1) the disclosure is made on the lapse of the one (1) working day period of suspension, as stipulated in Article 28(1) of the PMLA; and
  - (2) where applicable, the disclosure is made after the lapse of any period of time during which the execution of the transaction is opposed by the FIAU in terms of Article 28 of the PMLA; and
- (g) disclosures by an individual in the course of proceedings instituted under Regulation 15A, including any disclosures made in any written pleadings or submissions.

Subject persons forming part of a group have to bear in mind the obligations arising from Regulation 6 of the PMLFTR in relation to the sharing within the group of any STR filed with the FIAU and on the application of group-wide policies. These group-wide policies are to include policies and procedures

on data protection, and are to regulate the sharing of information within that group, even when the subsidiaries or branches are established outside the EEA.

This would include policies and procedures regulating the sharing of information, including information on STRs, to reflect the obligations arising from Regulation 6 and Regulation 16 of the PMLFTR. When the laws of a third country do not allow a subsidiary or a branch to adhere to the group policies and procedures, including on sharing information, the subject person is expected not to share information with these subsidiaries and branches, and refer the matter to the FIAU, as provided for under Regulation 6(4) of the PMLFTR.

Furthermore, any *bona fide* communication or disclosure made by a subject person or by an employee or director of this subject person, in fulfilment of any requirement envisaged under the PMLFTR, does not constitute a breach of the duty of professional secrecy, or any other restriction (whether imposed by statute or otherwise) and this person will not be subject to liability of any kind.<sup>15</sup>

### 5.12 Reports for Compliance Purposes

Article 16(1)(c) of the PMLA charges the FIAU with the responsibility of monitoring compliance by subject persons of their AML/CFT obligations. This responsibility is further elaborated under Article 26 of the PMLA, which empowers the FIAU to carry out this responsibility on a risk-sensitive basis. To be able to do so, the FIAU has to collect data, information or documentation from subject persons.

Regulation 19 of the PMLFTR empowers the FIAU to require periodical reports from subject persons on the internal policies and procedures they maintain and apply, as well as any other information the FIAU deems necessary for the fulfilment of its supervisory functions.

On the basis of the information gathered from these reports, the FIAU can get a clear picture of **where** the risk is, **what** the risk is and **how** best to manage that risk. These reports assist the FIAU to fulfil another essential function, which is the compilation of statistics and records to coherently plan its compliance reviews, as well as gauge the effectiveness of the AML/CFT regime in Malta. This function emanates from Article 16(1)(g) of the PMLA and is reflected in Regulation 14(2) of the PMLFTR.

Reports required from subject persons may take the form of a questionnaire having both closed-ended and open-ended questions. They will usually require the completion of general details on the subject persons, as well as other information that may, *inter alia*, include:

- (a) information and data relating to the risk exposure of the subject person;
- (b) information and data relating to the AML/CFT preventive and mitigating measures adopted by the subject person to tackle the identified risk exposure; and
- (c) statistical data in relation to the subject person's business.

Whenever the FIAU requests subject persons to compile and transmit a report, the FIAU will provide subject persons with specific instructions and details on the procedure to follow, including:

---

<sup>15</sup>. Regulation 15(10) of the PMLFTR.

- (a) instructions on how the report is to be compiled;
- (b) instructions on how and in what manner the report is to be transmitted to the FIAU;
- (c) the time frames/deadlines within which the report is to be submitted to the FIAU;
- (d) any applicable administrative fees (including late submission fees, if and where applicable) in relation to the submission of the compliance report; and
- (e) appropriate intimation notice/s warning subject persons of the consequences for non-observance of the instructions and information provided in the Explanatory Note.

The FIAU emphasises that the information gathered through these reports is intended to drive its risk-based supervision and that these reports are not in themselves an exercise to determine compliance by individual subject persons. In this regard, subject persons should ensure that the information provided is accurate and reflects the subject person's position and his/her business.

### **5.13 Reporting under Regulation (EU) 2015/847**

Subject persons that are payment service providers have additional reporting obligations in terms of Regulation (EU) 2015/847. This Regulation obliges payment service providers that are acting either as a payee's payment service provider or as an intermediary payment service provider to notify the FIAU about payment service providers that repeatedly fail to include information required in terms of this Regulation with the transfer of funds.

This reporting obligation is explained in more detail in the Guidance Note issued by the FIAU, entitled *Guidance Note on Information Accompanying Fund Transfers*. Any reporting under this section should be done using the form attached to this Guidance Note, which is to be submitted electronically on the following e-mail address, [compliance@fiumalta.org](mailto:compliance@fiumalta.org). Reporting should take place without undue delay, and no later than three months after identifying the repeatedly failing payment service provider.

### **5.14 The Protection of the Whistleblower Act**

The FIAU has been designated one of the authorities that, in terms of the Protection of the Whistleblower Act,<sup>16</sup> is to receive external disclosures of improper practices from the private sector. In the case of the FIAU, the external disclosures must relate to improper practices linked to the PMLA or the PMLFTR. These may include disclosures relative to actions:

- (a) whereby a person has failed, is failing or is likely to fail to comply with any AML/CFT obligation arising from the PMLA, the PMLFTR, the FIAU Implementing Procedures and any other binding procedures issued by the FIAU; or
- (b) which are tantamount to a money laundering or funding of terrorism offence, whether this has been committed, is being committed or is likely to be committed.

---

<sup>16</sup>. Cap. 527 of the Laws of Malta.



Employees who makes any such disclosure are afforded the protection of the law against any discriminatory action that the employer may take against them. It should be noted that the identity of the employee making the external disclosure is protected and can only be disclosed in exceptional circumstances when it is necessary to take action on the external disclosure and only if the person's prior consent is obtained. Any employee can make an external disclosure, including employees of subject persons.

However, it is important to note that:

(+) (a) \_\_\_\_\_ employees making a disclosure will only be able to benefit from the safeguards provided by the Protection of the Whistleblowing Act if the relevant disclosure is made in good faith without any expectations of personal gain and reasonably believing that the information provided is true; and

(+) (b) \_\_\_\_\_ an external disclosure may be received by the FIAU only once the improper practice has been reported through any internal whistleblowing procedures maintained by the employer, and no action was taken by the employer to redress that disclosure. When determinate conditions subsist, the employee may proceed with disclosing the improper practice externally to the FIAU even without attempting to make an internal disclosure. This is only possible when the employee has reasonable grounds to believe that:

- i. \_\_\_\_\_ the head of the organisation is or may be involved in the improper practice; or
- ii. \_\_\_\_\_ immediate reference to the FIAU is justified by the urgency of the matter to which the disclosure relates or some other exceptional circumstance; or
- iii. \_\_\_\_\_ at the time he/she makes the disclosure, he/she will be subjected to occupational detriment if he/she makes an internal disclosure; or
- iv. \_\_\_\_\_ it is likely that evidence relating to the improper practice will be concealed or destroyed if he/she makes an internal disclosure.

In the case of subject persons' employees, prior to making an internal disclosure in terms of the Protection of the Whistleblower Act, they should consider whether the information they are seeking to disclose should be reported internally to the MLRO by making use of the internal reporting procedures maintained by the subject person to report knowledge or suspicion of ML/FT.

External disclosures should ideally be submitted to the FIAU in writing and marked as strictly confidential. Submissions may be sent either via e-mail on [whistleblowing@fiumalta.org](mailto:whistleblowing@fiumalta.org) or in writing, addressed to the FIAU's Whistleblowing Reports Unit. On receipt of an external disclosure, the Whistleblowing Reports Unit will carry out a first review of the report to determine whether:

(+) (a) \_\_\_\_\_ all the conditions for an external disclosure to be made are met. This Unit is allowed forty-five (45) days from receipt of the external disclosure within which to make this determination and inform the employee on its conclusions. When the Whistleblowing Reports Unit concludes that an internal disclosure should have been filed, it will desist from considering any further the alleged improper practice and will direct the employee to disclose the improper practice internally; and

(+) (b) \_\_\_\_\_ another authority referred to under the Protection of the Whistleblower Act or the Malta Police would be better placed to investigate the alleged improper practice disclosed by the employee. When it so concludes, the Whistleblowing Reports Unit will transmit the

relevant information to that authority or to the police, and notify the employee in writing of the action taken. This has to be done within thirty (30) days from receipt of the external disclosure. At no point will the employee's identity be disclosed, and he/she will still be entitled to the protection offered by the Protection of the Whistleblower Act.

Any external disclosures that are deemed by the Whistleblowing Reports Unit to fall within its remit will be thoroughly investigated to determine whether there is any *prima facie* evidence of wrongdoing. To this end the Whistleblowing Reports Unit may request the employee to attend meetings, request any witnesses indicated in the external disclosure to give statements, collect additional information on the organisation or individuals involved in the alleged improper practice and carry out any other checks that it may deem necessary.

Information disclosed to the Whistleblowing Reports Unit may be shared with other sections of the FIAU when these other sections request information in the course of conducting their own functions. Any information shared will not include any details of the employee's identity.

The employee will be duly informed of the investigation's outcome and of any action taken when this may be warranted. Given the potential different nature of the improper practices that may be disclosed to it, the Whistleblowing Reports Unit is not in a position to set a determinate timeframe within which it will conclude its investigation. However, it will strive to do so within a reasonable time.

Action may include forwarding the information received to other sections within the FIAU for further analysis or action or, when the improper practice is considered to amount to a crime or contravention, referring the matter to the Malta Police. Any information so forwarded will not include any details on the employee's identity.

An employee may opt to make an anonymous disclosure. While the Whistleblowing Reports Unit will take into consideration even these disclosures, employees who make anonymous disclosure do not benefit from the protection provided for in the Protection of the Whistleblower Act.

### **5.15 Protection from Detrimental Action**

Regulation 15A of the PMLFTR seeks to protect anyone who either submits an internal report or otherwise files an STR with the FIAU. Not only is the identity of any such individual to be kept confidential by anyone who may be aware of the same, but the PMLFTR also provide the said individual with remedies at law should any detrimental action, as defined in Regulation 15A(13), be taken against him/her for complying with his/her obligations at law.

These remedies at law are exercisable even when no detrimental action has been taken but the individual concerned believes that any such action is likely to be taken against him/her due to having disclosed information either internally or to the FIAU. It is important to note that, due to their sensitivity, any proceedings undertaken in the context of Regulation 15A are to take place *in camera*.