

Introduction to Anti-Money Laundering (AML) & Combatting Funding of Terrorism (CFT) & understanding the impact of non-compliance

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Agenda

- Money Laundering
- Terrorist Financing
- Impact of non-compliance
- Offences and Penalties

Introduction

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What is Money Laundering?

- The process by which the illegal nature of criminal proceeds is concealed or disguised in order to give a legitimate appearance to these illegal proceeds.
- This process enables the perpetrators to make seemingly legitimate economic use of their criminal proceeds.
- This is done by disguising the sources, changing the form, or moving funds to a place where they are less likely to attract attention.

In simpler terms

*money laundering is where **illegally** obtained money is **disguised** to make it look like it was obtained **legally***

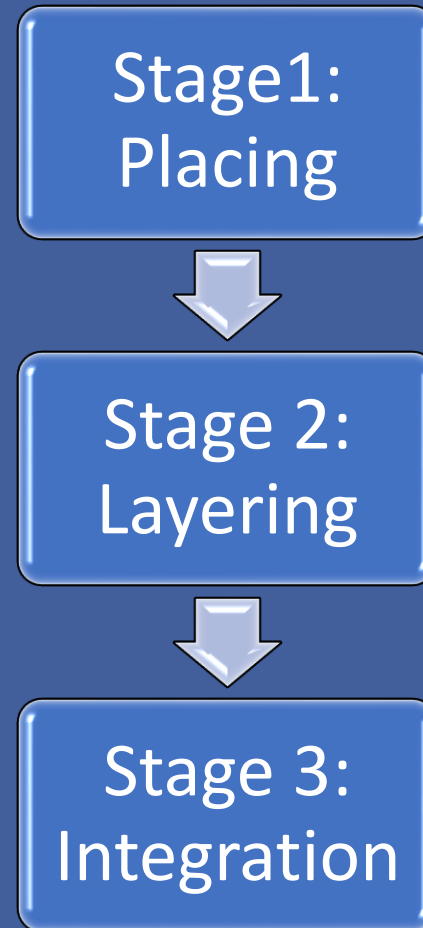
Who are money launderers?

- The common understanding is that money laundering involves organised crime groups following the proceeds from their illegal activities;
- However, money laundering also derives from other situations such as an individual tax evader, corrupt public official or fraudster;
- A person is also a money launderer should they assist in the process of enabling criminals to use the property and conceal its origins and may also be guilty of an offence;

Predicate Offences as per FATF

- terrorism, including terrorism financing
- trafficking in human beings and migrant smuggling
- sexual exploitation, including sexual exploitation of children
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit arms trafficking
- illicit trafficking in stolen and other goods
- corruption and bribery
- fraud
- counterfeiting currency
- counterfeiting and piracy of products.
- environmental crime
- murder, grievous bodily injury
- kidnapping, illegal restraint and hostage taking
- robbery or theft
- smuggling (including in relation to customs and excise duties and taxes)
- tax crimes (related to both direct taxes and indirect taxes)
- extortion
- forgery
- piracy; and
- insider trading and market manipulation.

3 stage process



1. Placing Stage

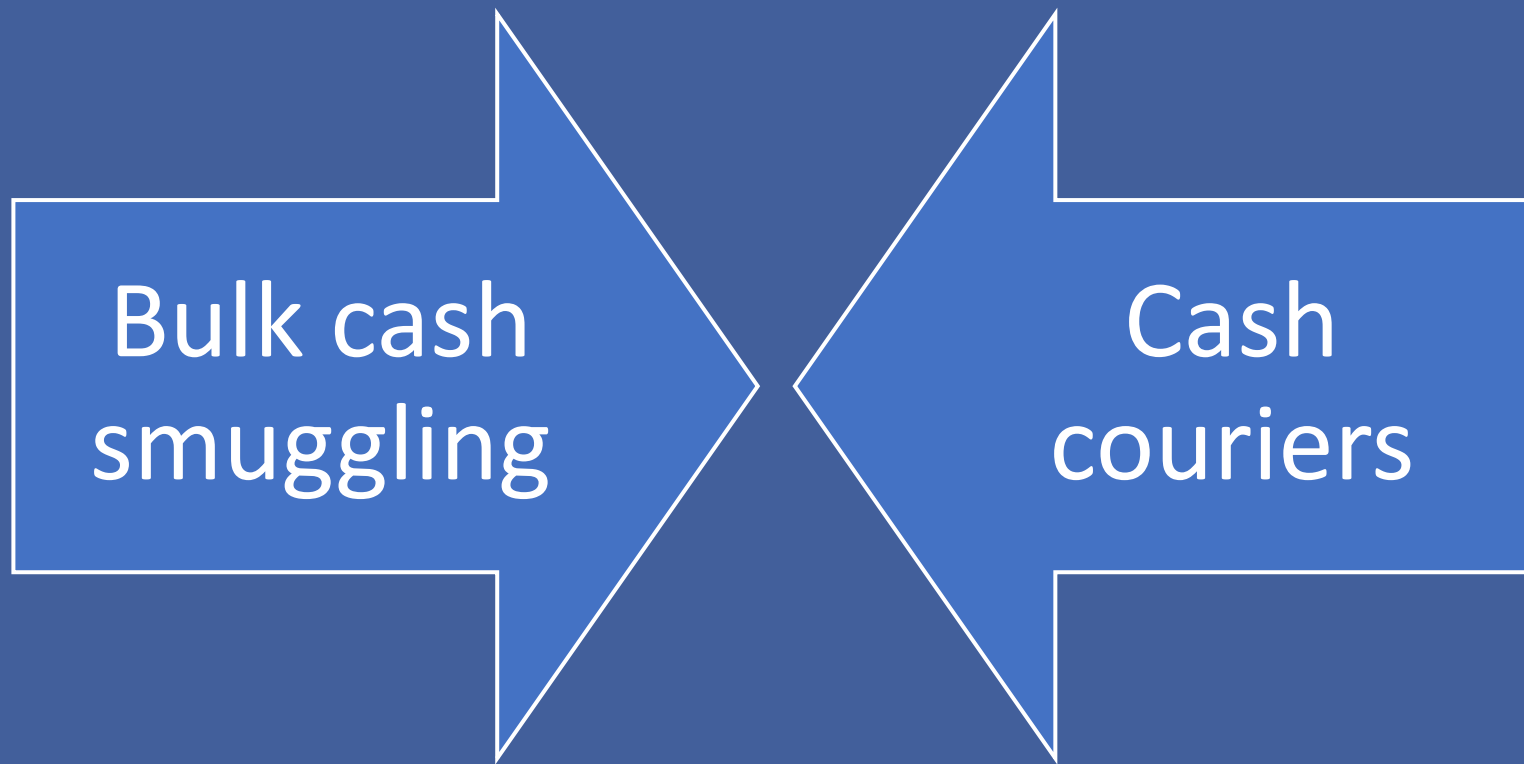
- Placement is the process of moving 'dirty' money into the legitimate economy away from its source. The process of placing, through deposits or other means, unlawful cash proceeds into the financial institutions.
- Cash which is derived from criminal activity is infused into the financial system. The placement makes the funds more liquid since by depositing cash into a bank account the funds can be transferred and manipulated easier. When criminals are in physical possession of cash that can directly link them to predicate criminal conduct, they are at their most vulnerable. Such criminals need to place the cash into the financial system, usually through the use of bank accounts, in order to commence the laundering process.
- This stage entails using laundered proceeds in seemingly normal transactions to create the perception of legitimacy.

Criminal use of cash

FATF state that:

- *The use of cash or currency, that is physical banknotes and coins used as a medium of exchange) is attractive to criminals, mainly because of its anonymity and lack of audit trail. Criminals look for as much flexibility as possible and are interested in avoiding detection, cash provides that flexibility, as it is universally accepted and can be used and moved with little or no record keeping.*
- *Many of the major sources of criminal proceeds, particularly narcotics trafficking, generate large amounts of cash.*
- *In cash-intensive economies, illegal money can easily be integrated into the national economy. In such economies, large cash transactions may be very common, as individuals are more likely to conduct transactions in cash and carry a lot of cash around with them.*

Bulk cash smuggling

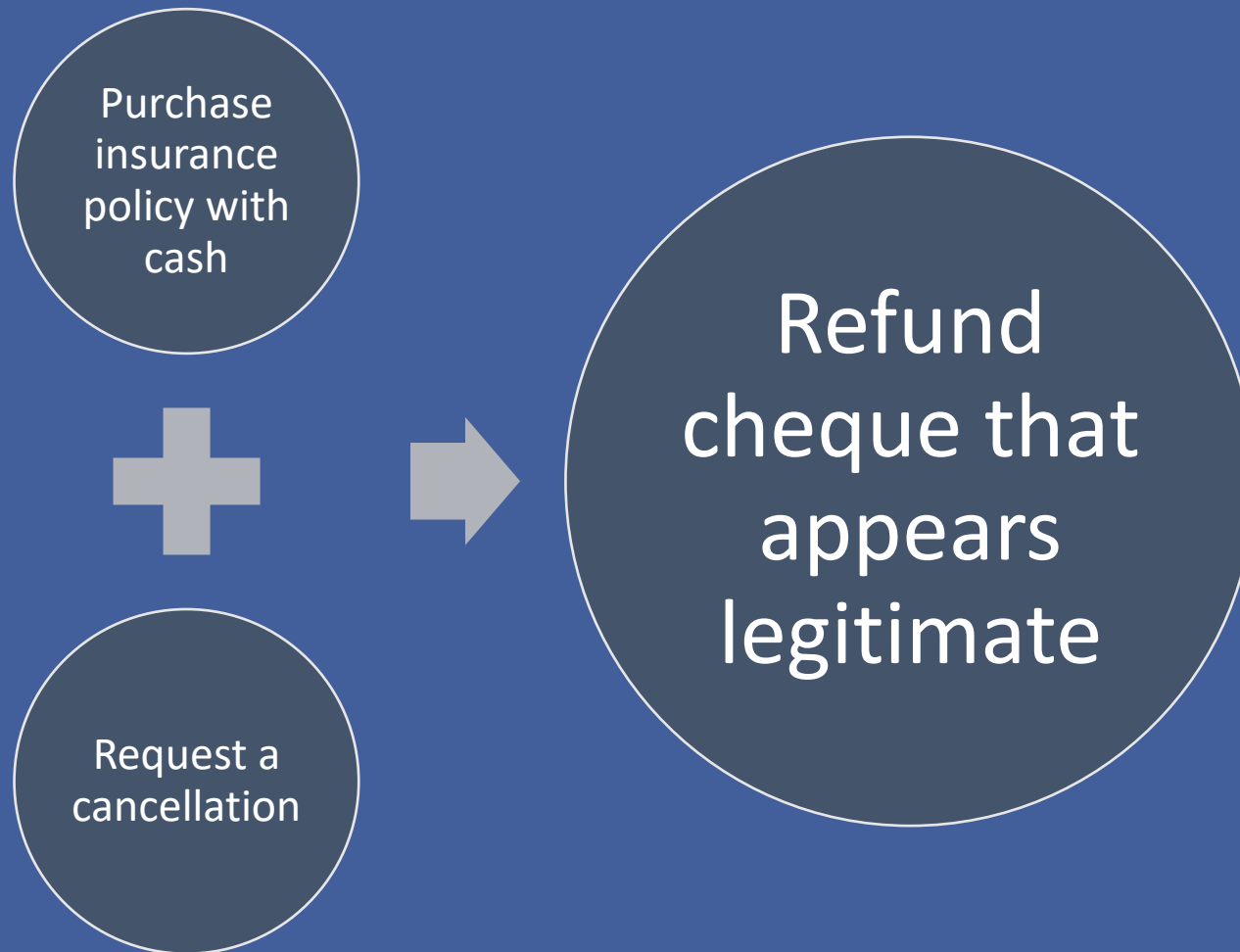


Disguised deposits

Dividing cash transactions into smaller amounts by:

- making several deposits into a single or multiple accounts on successive days;
- making deposits into a number of accounts at different branches of the same bank;
- smurfing;
- using different banks and then consolidating the accounts;
- depositing cash into accounts of third parties such as lawyers, real estate agents; or
- depositing cash with the assistance of corrupt bank staff who themselves manipulate the deposits to make them appear as if they are below the reporting threshold.

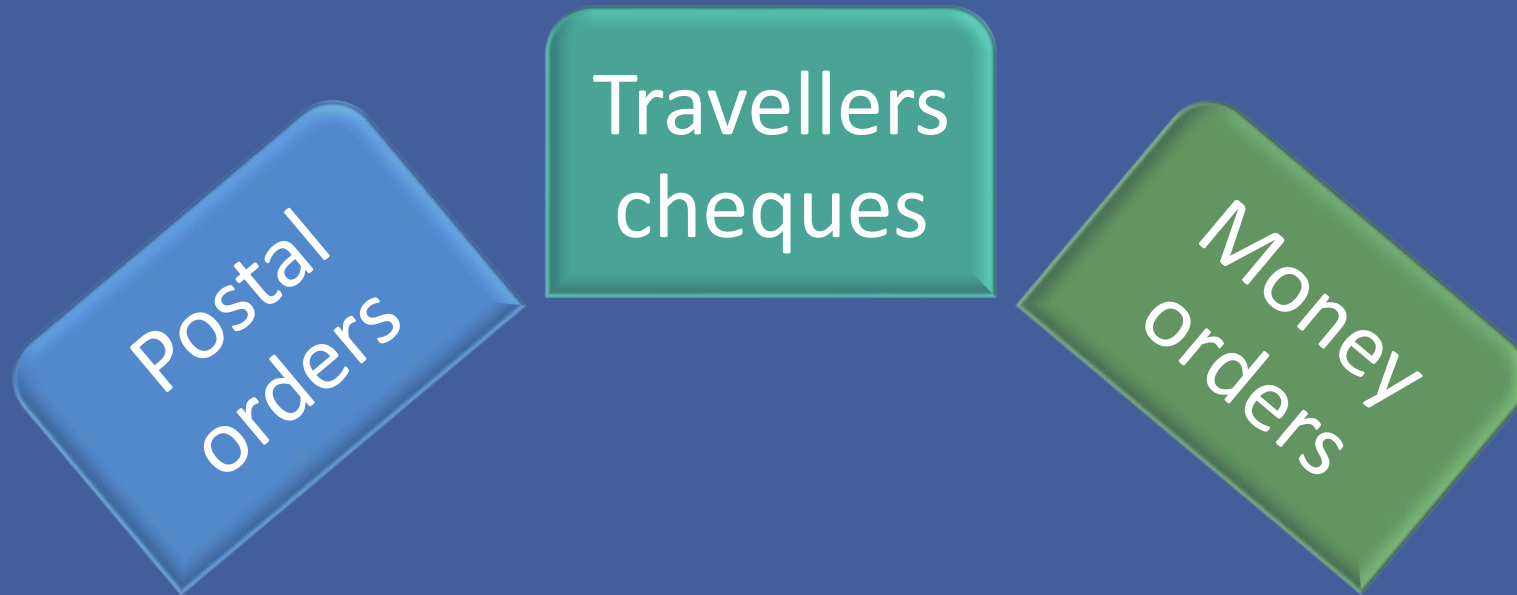
Personal investment products and small general insurance policies



Intermingling



Monetary Instruments



Asset Purchases

Purchase asset



Sell asset



'Legally'
obtained funds

2. Layering Stage

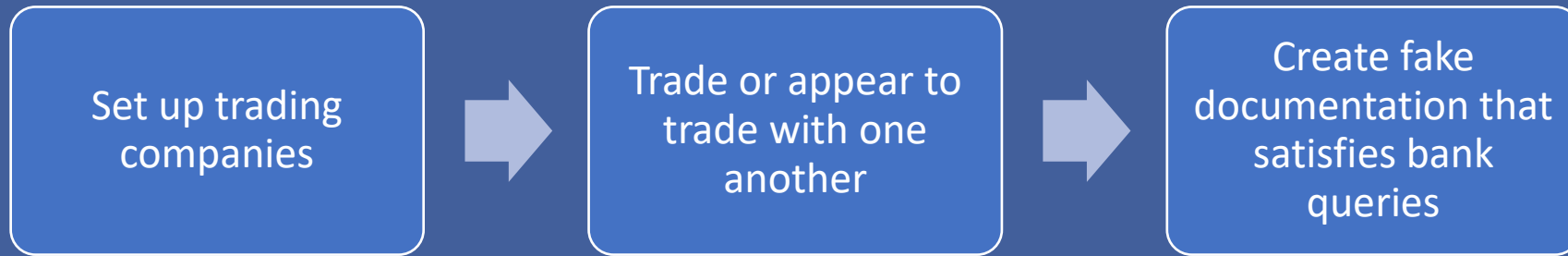
Layering involves making it hard to detect the money by moving it away from the source. Layering engages in a series of conversions or movements of the funds to distance them from the source. This stage involves the process of separating the proceeds of criminal activity from their origin through the use of different techniques to layer the funds.

This stage results in a complex system of transactions designed to hide the source and ownership of the funds.

Examples:

- Electronically moving funds from one country to another and dividing them into advanced financial options.
- Using multiple banks and accounts
- Having professionals act as intermediaries and transacting through corporations and trusts
- Wire transfers

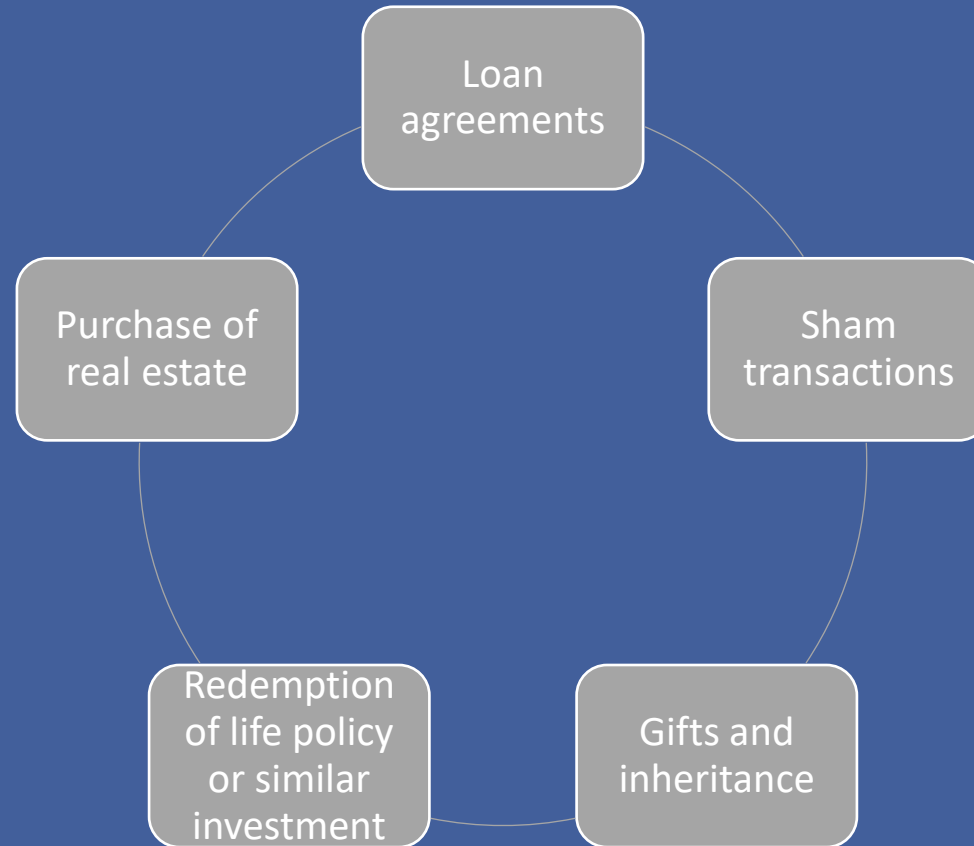
Example: Layering through trading companies



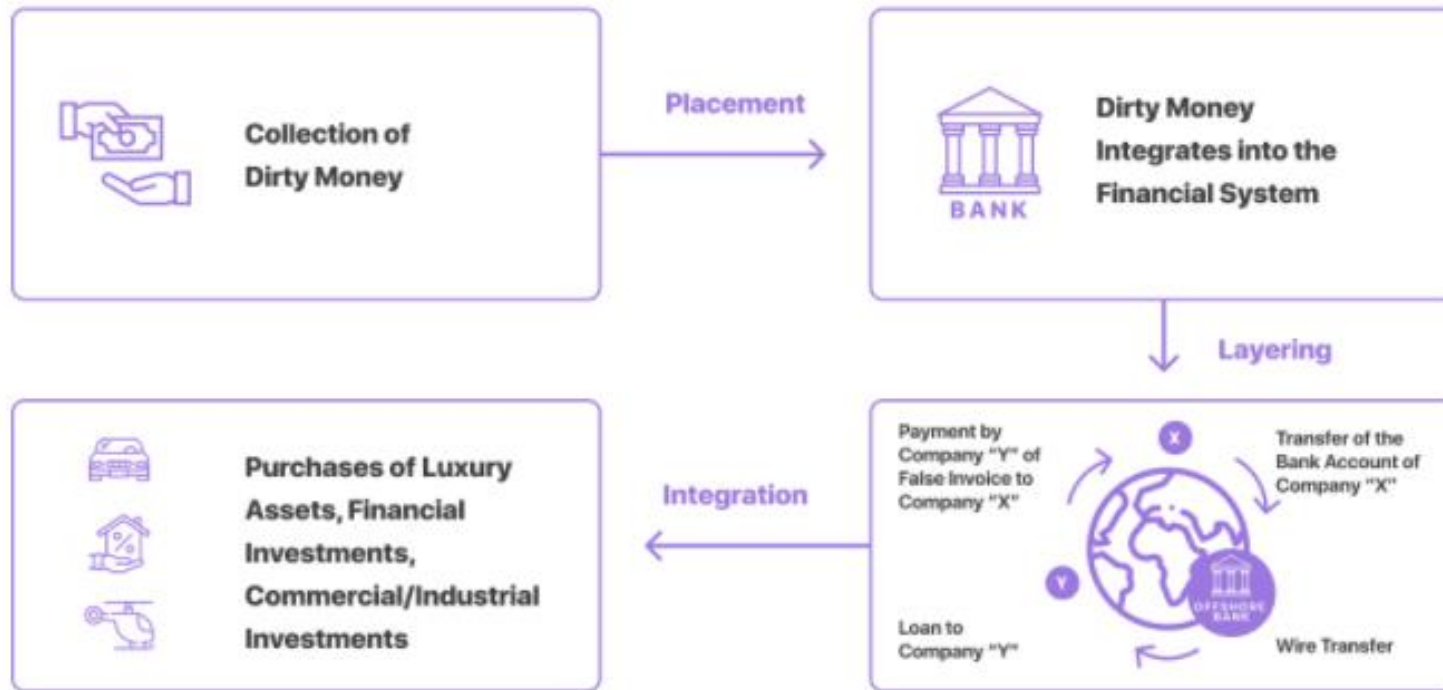
3. Integration

- This stage entails using laundered proceeds in seemingly normal transactions to create the perception of legitimacy. It is the stage whereby criminally derived property that has been placed and layered is returned to the legitimate economic and financial system and is assimilated with all other assets in the system.
- This stage involves the integration of 'clean' money into the economy by the laundered making it appear to have been legally earned.

Examples of integration



A Typical Money Laundering Scheme



Limitations of the three stage process

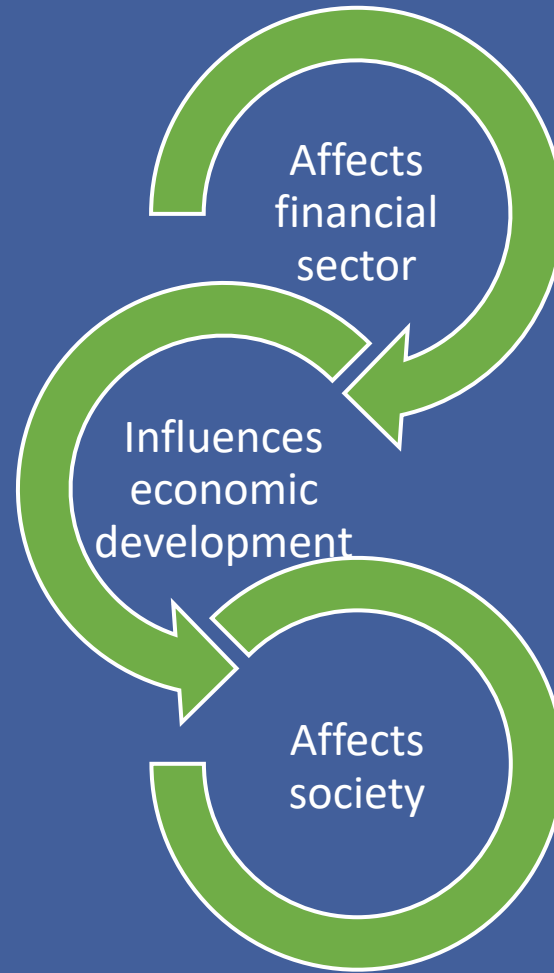
- The three-stage interpretation of money laundering has its roots in a time when money laundering was a crime that could be committed only in relation to the proceeds of drug trafficking, which generates large volumes of cash that needs to be cleaned.
- Because the three-stage analysis was emphasised heavily in early money laundering guidance, a common and dangerous misconception has grown up that you are not money laundering unless you participate in all three stages of the process. This is not true. Any involvement in dealing with criminal property at any stage may suffice.
- All that is required is for a person to contribute to the process by dealing in some way with their own or another person's direct or indirect benefit from crime. Money laundering as an activity occurs whenever there is any form of arrangement involving the proceeds of crime. The importance of understanding this cannot be overstated.

Example: How several parties contribute to ML

- Mr. Smith is a fraudster.
- Mr. Smith defrauds his employer of EUR70,000, which he diverts to his bank account held with Bank Y.
- He divides the benefit into one payment of EUR10,000 and two payments of EUR30,000
- EUR30,000 is invested into a fund managed by Mr Williams. The second EUR30,000 is used to bolster an existing portfolio of equities that are managed on a discretionary basis by Mr Johnson.
- The remaining EUR10,000 is wire transferred to an account held with a branch of Bank Z in a remote jurisdiction, which he collects in person and uses for paying bills while on holiday.

Have the mentioned parties laundered the proceeds?

The implications of money laundering



Terrorist Financing (TF)

Funding of Terrorism

As per the Criminal Code “Funding of terrorism” means the process of making funds or other assets available to terrorist groups or individual terrorist to support them, even indirectly, in carrying out terrorist activities.

- Process by which terrorist organisations or individual terrorists are funded in order to be able to carry out acts of terrorism.

Takes place through:

- ❖ Funds deriving from **legitimate sources**; and
- ❖ Combination of **lawful and unlawful sources**.

The ultimate aim is to **obtain resources** to support terrorist operations.

Example: Funding of Terrorism

- One of the ways in which terrorists obtain funds is through **non-funding organisations**:
 - ❖ A domestic company was established with very broad commercial purposes.
 - ❖ Numerous small deposits were made to the company's account by the individual who had signing authority on the account.
 - ❖ These deposits originated from donations which were intended for the NPO.
 - ❖ Shortly after receipt the funds transferred to foreign-based companies
 - ❖ An investigation by the national FIU revealed that the individual with signing authority on the company's account was also a directing official of an NPO.
 - ❖ Law enforcement information indicated that the NPO was known to have ties to a terrorist group.
 - ❖ A second directing official of the NPO, who was also a manager of the company, also had ties to the terrorist group.
 - ❖ The investigation concluded that the domestic company was a front company being used as a conduit to transfer funds on behalf of the NPO linked to a foreign terrorist group.

'Reverse' Money Laundering

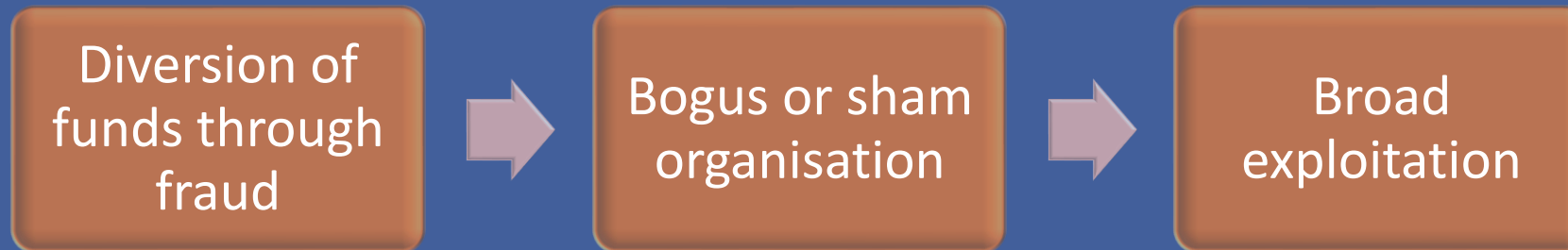
- Concealment of the criminal destination of clean property is, in effect, traditional laundering of dirty money in reverse.
- For example, funding is obtained from legal activities in comparison to money laundering, where money is generated from criminal procedures and made legitimate.
- This is also sometimes referred to as '**black washing**'

Sources of TF

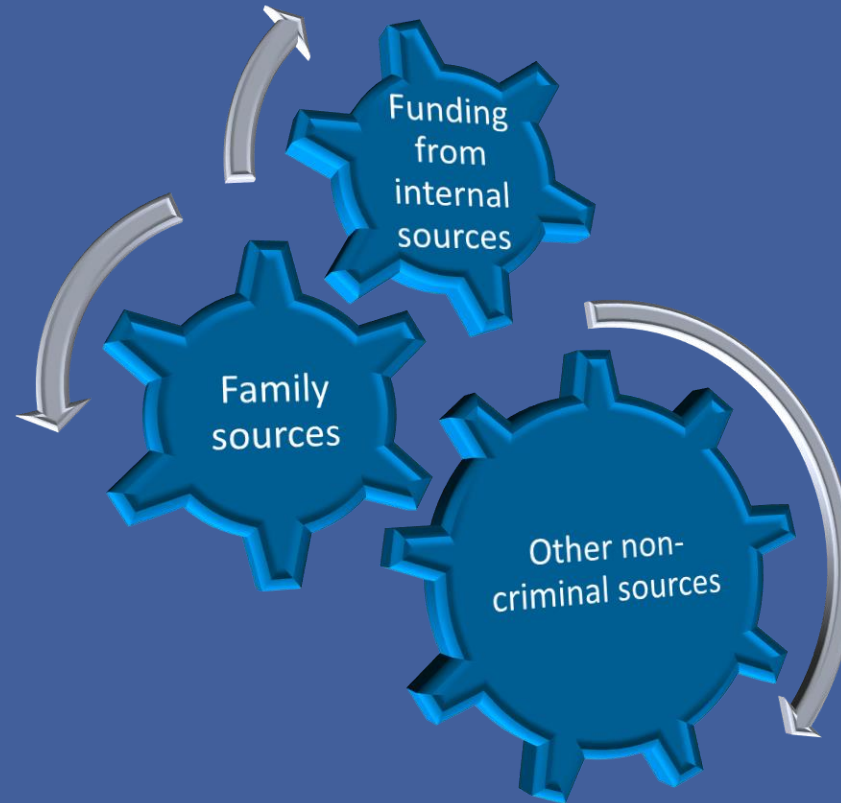


Charities

The FATF sets out three forms of abuse of charities:



Self-funding



Raising funds from criminal proceeds

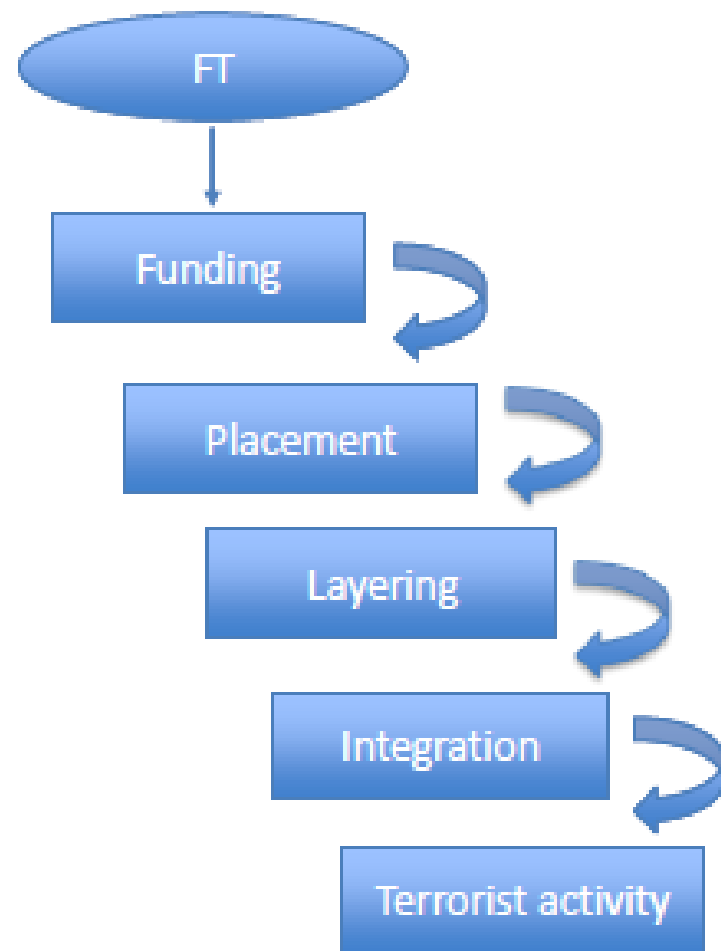
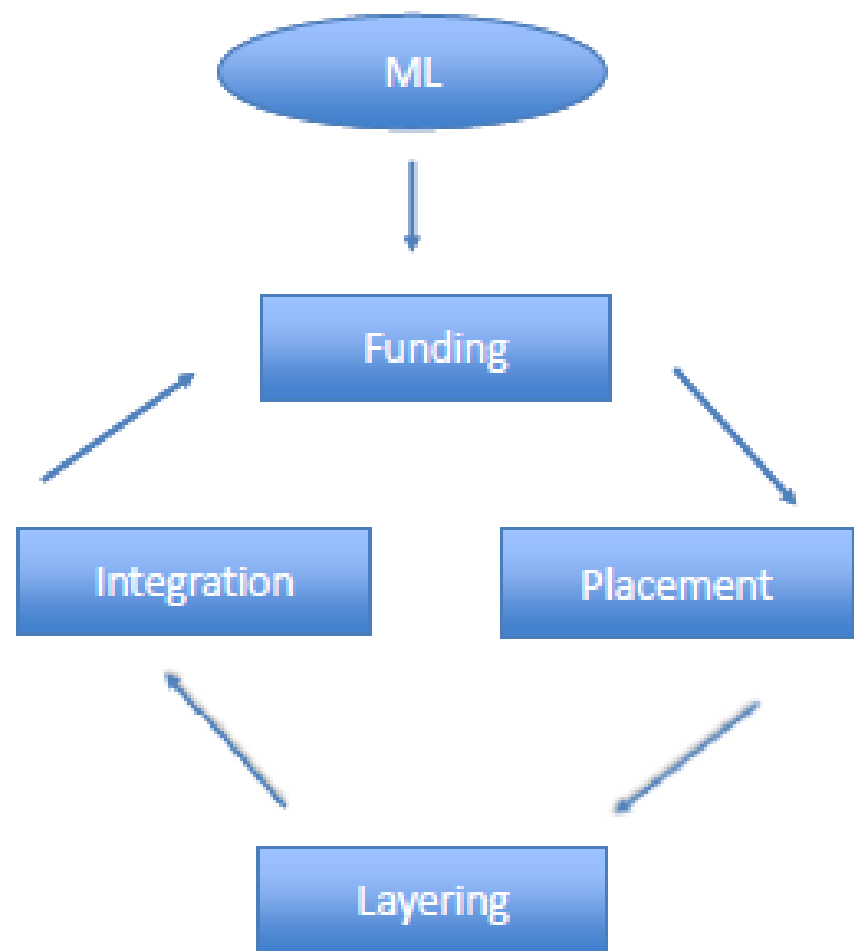


Cost of Attacks

Attack	Date	Estimated Cost
9/11 attacks	11/09/2001	\$500,000
Twin truck bombings of US embassies in Kenya and Tanzania	07/08/1998	\$10,000
Bombing of USS Cole in Yemen	12/10/2000	\$5,000 - \$10,000
World Trade Centre Bombings	26/02/1993	\$18,000
Suicide and car bombings in Bali	12/10/2002	\$74,000

Differences between ML & FT

MONEY LAUNDERING	FUNDING OF TERRORISM
Funds obtained illicitly	Funds may be licit or illicit
Motivation is profit-seeking	Motivation is ideological
Transactions of larger value	Transactions of smaller value
Circular life circle	Linear life circle



The Taliban's takeover of Afghanistan

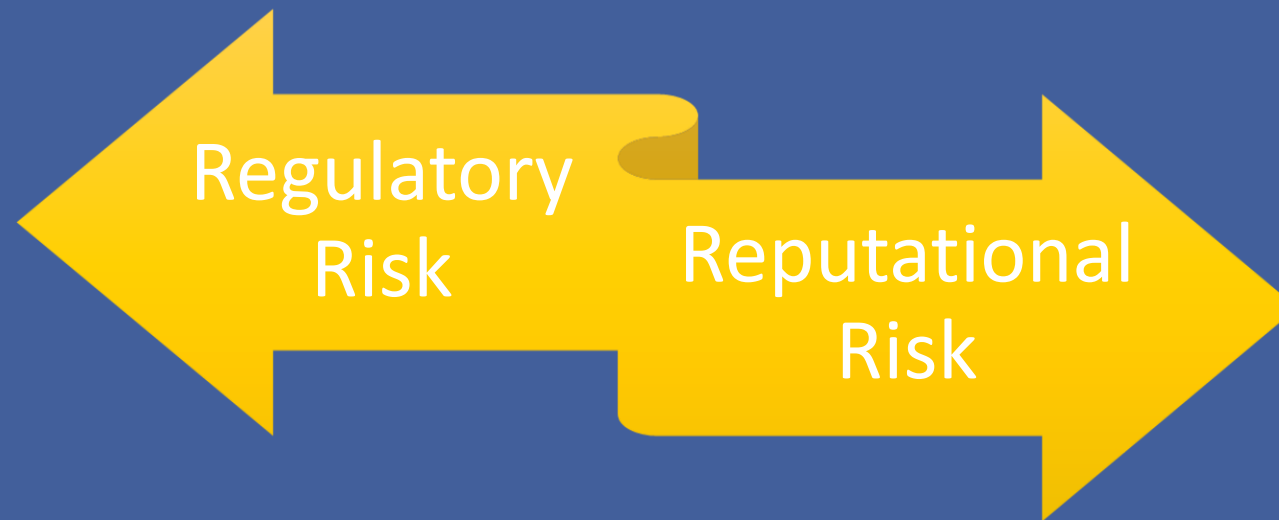
Islamic State in Khorasan (ISIS-K) funding

- ISIS-K primarily raises funds through local donations, taxation, extortion, and some financial support from ISIS-core. According to a 2021 Treasury Department report, ISIS core was possibly providing some funds to ISIS-K.
- The 2021 Treasury Department assessment represents a change from a 2019 State Department Counterterrorism Bureau report that stated, ISIS-K receives some funding for ISIS. Additional funds come from illicit criminal commerce, taxes, and extortion on the local population and businesses.
- A September 2020 Wall Street Journal article identified ISIS affiliates generating income through illicit tobacco markets in Afghanistan and Pakistan.

Financial Conduct Authority (FCA) on developments in Afghanistan

- The FCA has released a reminder aimed at financial firms to guard against financial crime arising from risks linked to Afghanistan.
- In particular the FCA has emphasized on the following points:
 - ✓ Risk assessments;
 - ✓ Customer due diligence;
 - ✓ Enhanced due diligence;
 - ✓ Transaction monitoring;
- Although not listed as a high-risk country, firms are recommended to apply risk sensitive EDD measures where there is a high-risk of ML/FT.

The Impact of Non-Compliance



Offences & Penalties

Offences

Offences which are punishable with a fine or imprisonment are subject to proceedings before the criminal courts of Malta

Where an administrative penalty is contemplated, these may be imposed by the FIAU without recourse to a court hearing

Offences under the PMLA

PMLA Reference	Offence	Penalty
Article 3(1) – money laundering offence	<p>Any person committing any act of money laundering</p> <p><i>Where an offence is committed by a legal person, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that it was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence</i></p> <p><i>Where an offence is committed by an officer of the legal person or by a person having a power of representation or having such other similar authority and the offence was committed for the benefit, in part or in whole, of that legal person, the said person shall be deemed to be vested with the legal representation of the same company which shall be also liable to the punishment</i></p>	<p>Fine not exceeding €2,500,000, imprisonment not exceeding 18 years, or both</p> <p>Forfeiture in favour of the Government of Malta of the proceeds of crime (or a value equivalent thereto)</p>
Articles 4(2)/4(6A) – disclosure of an investigation / attachment order	Any person disclosing that an investigation/attachment order has been made or applied for	Fine not exceeding €11,646.86, imprisonment not exceeding 12 months, or both
Articles 4(5)/4(10) – contravention of an investigation / attachment order	Any person acting in contravention of an investigation/attachment order	Fine not exceeding €11,646.86, imprisonment not exceeding 12 months, or both
Article 6 – contravention of a freezing order	Any person acting in contravention of a freezing order	Fine not exceeding €11,646.86, imprisonment not exceeding 12 months, or both

Offences under the Criminal Code

Criminal Code Reference	Offence	Penalty
Articles 328B – terrorist groups	Any person who promotes, constitutes, organises, directs, finances, supplies information or materials to, a terrorist group knowing that such participation or involvement will contribute towards the criminal activities of the terrorist group shall be guilty of an offence	Imprisonment not exceeding 8 years (30 years if the participation or involvement consists in directing the terrorist group)
Articles 328F to 328I – funding of terrorism	Any person who somehow participates in the funding of terrorism, including by use and possession of property for the purpose of terrorism, entering into funding arrangements, and/or facilitating retention and control of terrorist property	Fine not exceeding €11,646.86, imprisonment not exceeding 4 years, or both

Offences/Breaches under the PMLFTR

Reason for penalty	Level of penalty
Failure to comply with any lawful requirement, order or directive issued by the FIAU under the PMLFTR/PMLA	€1,000 – €46,500 in respect of every separate failure
Contravention of any provision of the PMLFTR or of any procedures or guidance (incl. IPs)	€1,000 – €46,500 in respect of every separate contravention
Minor contraventions or where circumstances warrant	<ul style="list-style-type: none"> • Penalty below the minimum established above but not less than €250 or • Reprimand in writing
Serious, repeated or systematic contraventions	<ul style="list-style-type: none"> • Relevant activity: not more than €1,000,000 or not more than twice the amount of the benefit so derived; or • Relevant financial business: not more than €5,000,000 or not more than 10% of the total annual turnover
Penalties on individuals who through an act or omission, whether intentional or due to gross negligence, including through the lack of proper oversight of subordinates, caused or contributed to the contravention	<ul style="list-style-type: none"> • €1,000 – €250,000 • Suspension or prohibition from exercising functions
The above penalties are without prejudice to any other actions which the FIAU may take, e.g. remediation & follow up directives.	

Offences/Breaches under the Use of Cash (Restriction) Regulations

Reason for penalty	Penalty
Making or receiving a payment or otherwise carry out a transaction in cash amounting to, or exceeding, ten thousand euro (€10,000)	<p>Fine of not less than 40% of the sum paid, received, or otherwise transacted</p> <p>FIAU may recommend to any relevant authority, body or committee responsible for authorisation, licensing, registration, or regulation of the trader concerned</p> <p>Company may also liable together with the individual found guilty – should the person be a director, manager or officer who exercise executive functions within a company</p>
False declaration/representation or producing false/incomplete information or documentation	Fine of not more than €25,000
Failure to abide by procedures and instructions issued by the FIAU	Fine of not more €5,000

Trends in FIAU penalties

Penalties are unpredictable

Follow-up directives and action plans

Pecuniary penalties on the increase

Importance of documentation

Opportunity to appeal

Publication and reputational risks

Maximum Penalties for ML

PMLA

- Fine of max. €2,500,000 or
- Imprisonment of max. 18 years, or
 - Both

Criminal Code

- Imprisonment for a term of not less than 20 years, barred by the lapse of 15 years

PMLFTR

- Fine of max. €50,000
- Imprisonment of max. 2 years

Appeals and publication

Appeals

- Possibility to appeal for penalties exceeding €5,000 within 20 days of notification to the Civil Court (Inferior Jurisdiction)
- Proceedings held in camera; judgement not published

Publication

- Penalties exceeding €50 ,000 to be published once final and due

Confiscation of Property and Proceeds



Other PMLA provisions

Committee

- National Co ordinating Committee on Combating Money Laundering and Funding of Terrorism, entrusted with the responsibility to: (i) draw up national strategy and policies to combat ML/FT/ FoP , and (ii) co ordinate action to be taken to develop, implemented and review the national strategy and policies, including the co ordination of NRAs and actions to be taken to address any threats, vulnerabilities and risks identified

Feedback of reports

- FIAU may, at its own initiative or at the request of the subject person, give feedback on STRs to keep the subject person informed of the outcome and provide any other information which may be of interest to the subject person to regulate its affairs and to assist it in carrying out its duties

Any questions?



Thank you

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