

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



2nd November 2022

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Agenda What is Money Laundering?

What is Terrorist Financing?

Creating a Culture of Compliance

Overview of Local AML/CFT framework

Offences and Penalties





What is Money Laundering?

Money laundering is a process by which the illegal nature of criminal proceeds is concealed or disguised in order to give a legitimate appearance. It essentially enables the perpetrators to make seemingly legitimate economic use of their criminal proceeds.

It is facilitated by **disguising the source, changing the form, or moving of funds** to a place where they are less likely to attract attention.

Put simply, money laundering consists in the disguise of illegally obtained funds with the intention of making it appear as if it was obtained legally.





Who are Money Launderers?

1. The common understanding is that money laundering involves organised crime groups following the proceeds from illegal activities;
2. However, money laundering also derives from other situations such as an individual tax evader, corrupt public official or fraudster;
3. 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 offense

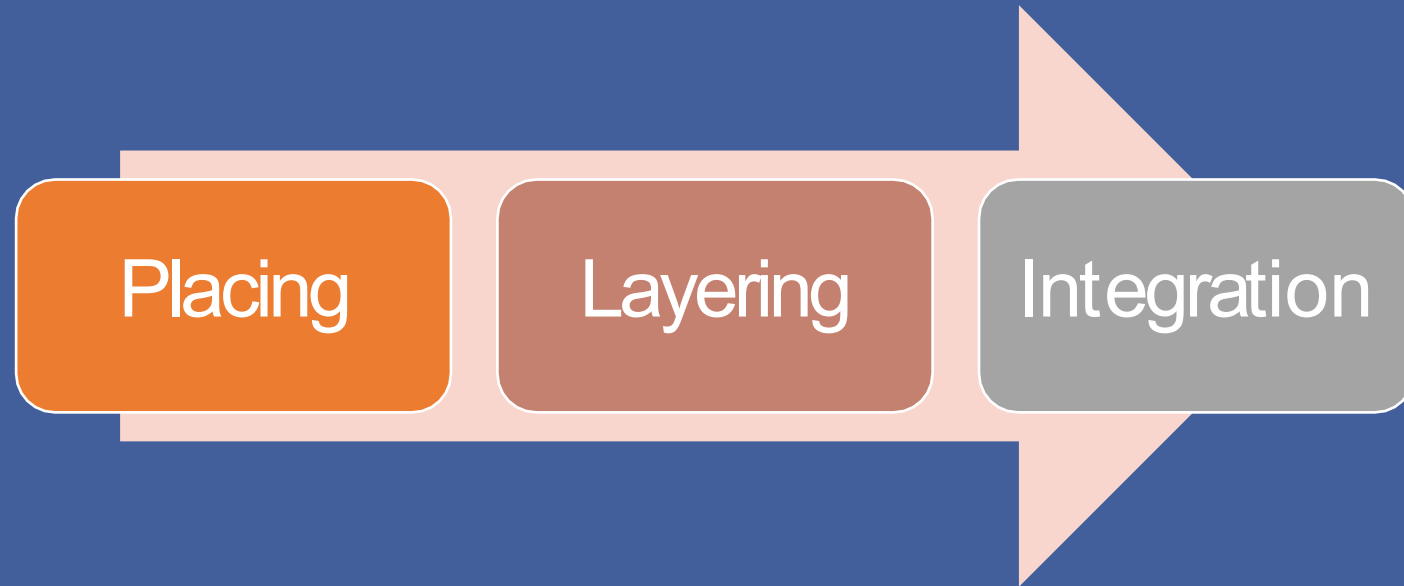


Predicate Offences as per FATF

- ✓ 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





Stage I: 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.
- For example, 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 and therefore, 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;

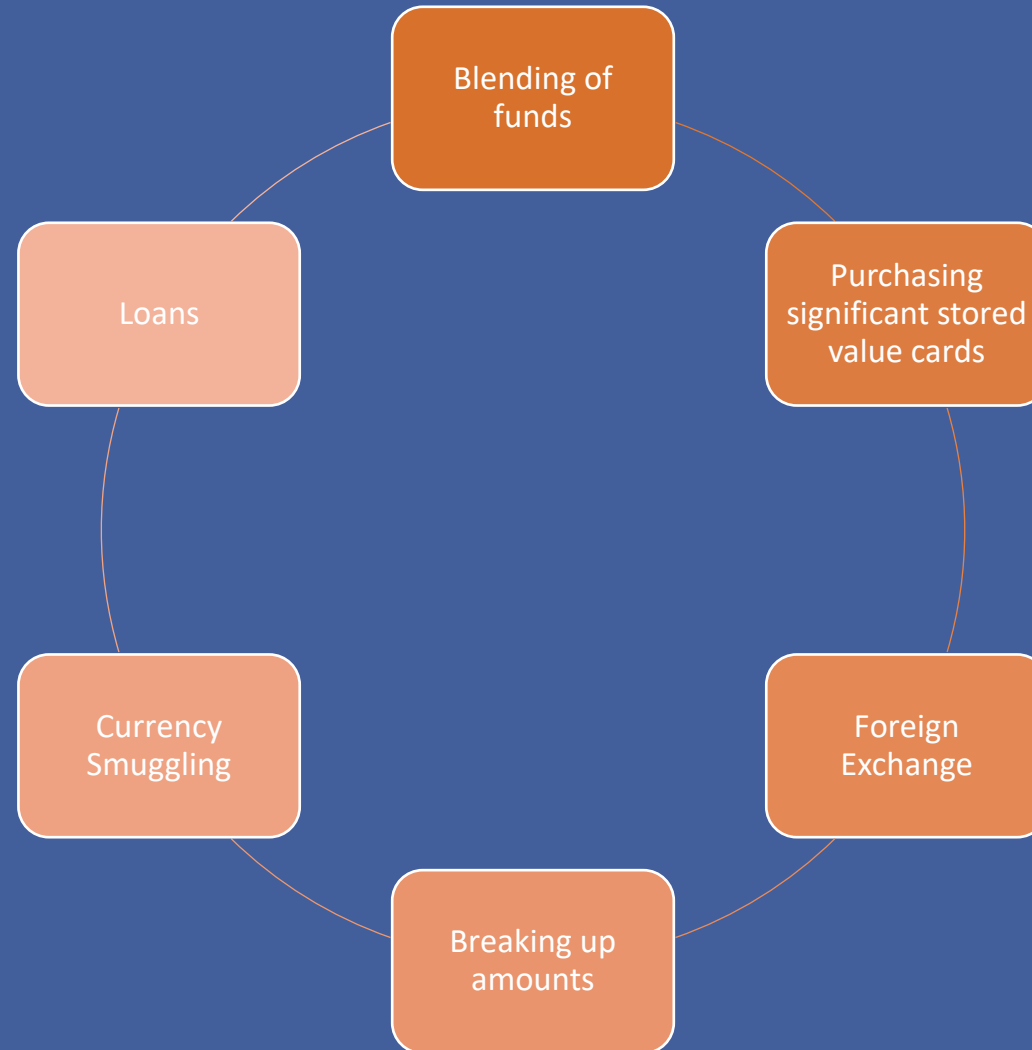
Depositing cash into accounts of third parties such as lawyers, real estate agents

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





Examples of Placement





Intermingling





Stage II: Layering Stage

Layering involves making it hard to detect the money by moving it away from the source by engaging 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 and results in a complex system of transactions designed to hide the source and ownership of the funds.



Examples of layering

Layering techniques

Electronically moving funds from one country to another and dividing them into advanced financial options and/or markets

Moving funds from one financial institution to another or within accounts at the same institution

Converting the cash placed into monetary instruments

Reselling high-value goods and prepaid access or stored value products

Investing in real estate and other legitimate businesses

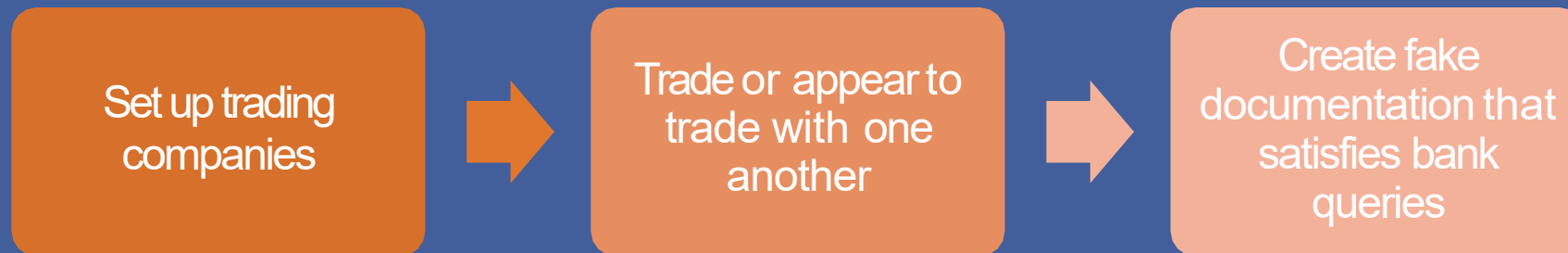
Placing money in stocks, bonds or life insurance products

Using shell companies to obscure the UBOs and assets





Example: Layering through Trading Companies





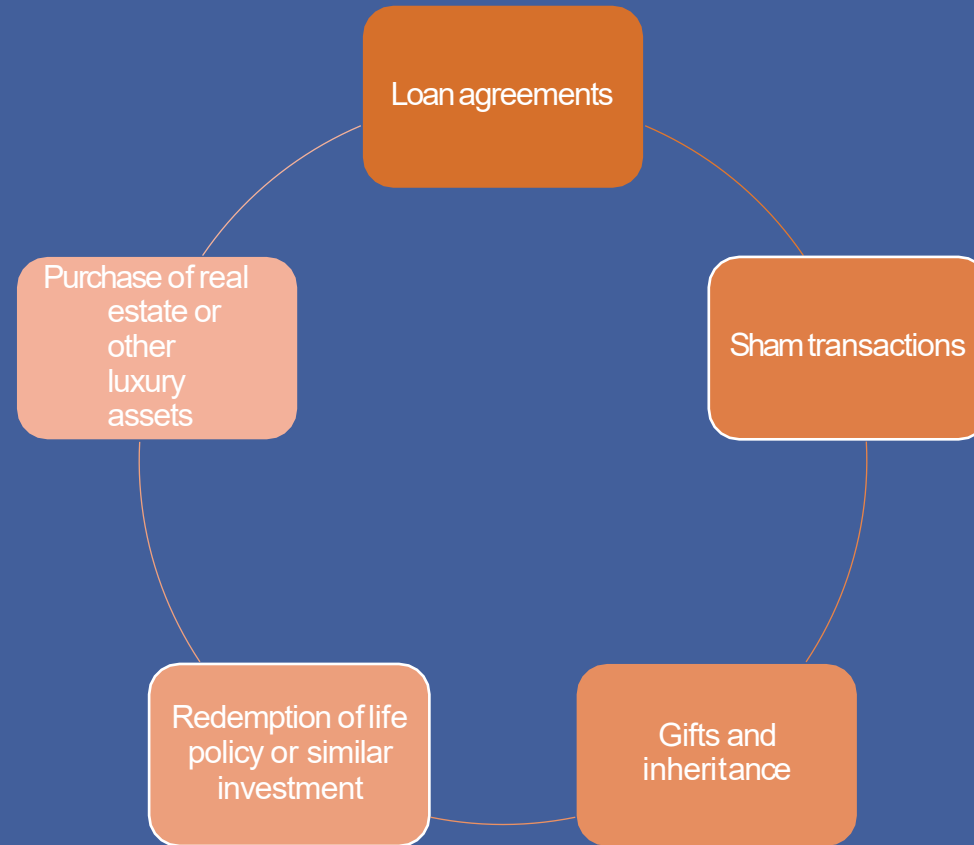
Stage III: Integration

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.

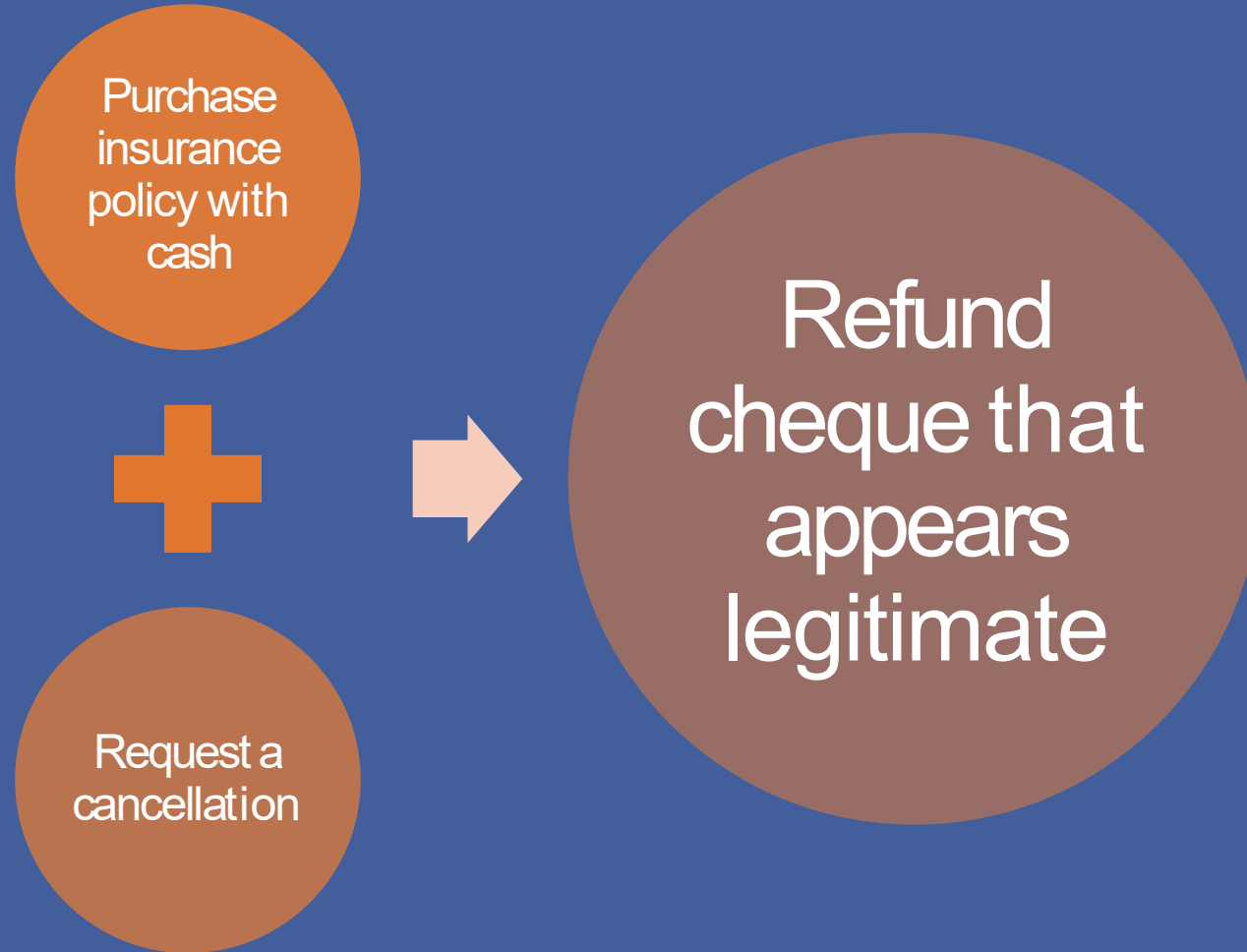


Examples of Integration





Personal Investment Products and Small General Insurance Policies





Asset Purchases





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.
- Since 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 Money Laundering

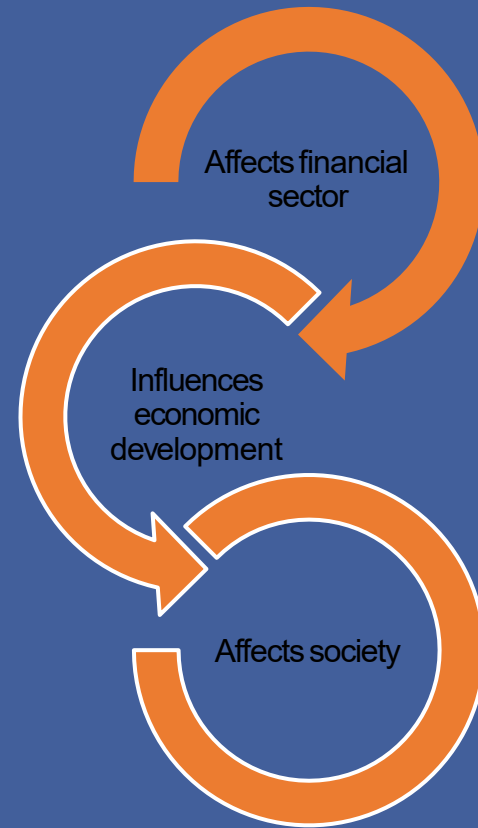
- Mr. Smith is a fraudster.
- Mr. Smith defrauds his employer of EUR70,000, which he diverts to his bank account held with Bank Y.
- He divides the benefit into one payment of EUR10,000 and two payments of EUR30,000
- EUR30,000 is invested into a fund managed by Mr Williams. The second EUR30,000 is used 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





Funding of Terrorism

As per the Criminal Code the “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.

It is a 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 of which is to **obtain resources** to support terrorism operation.

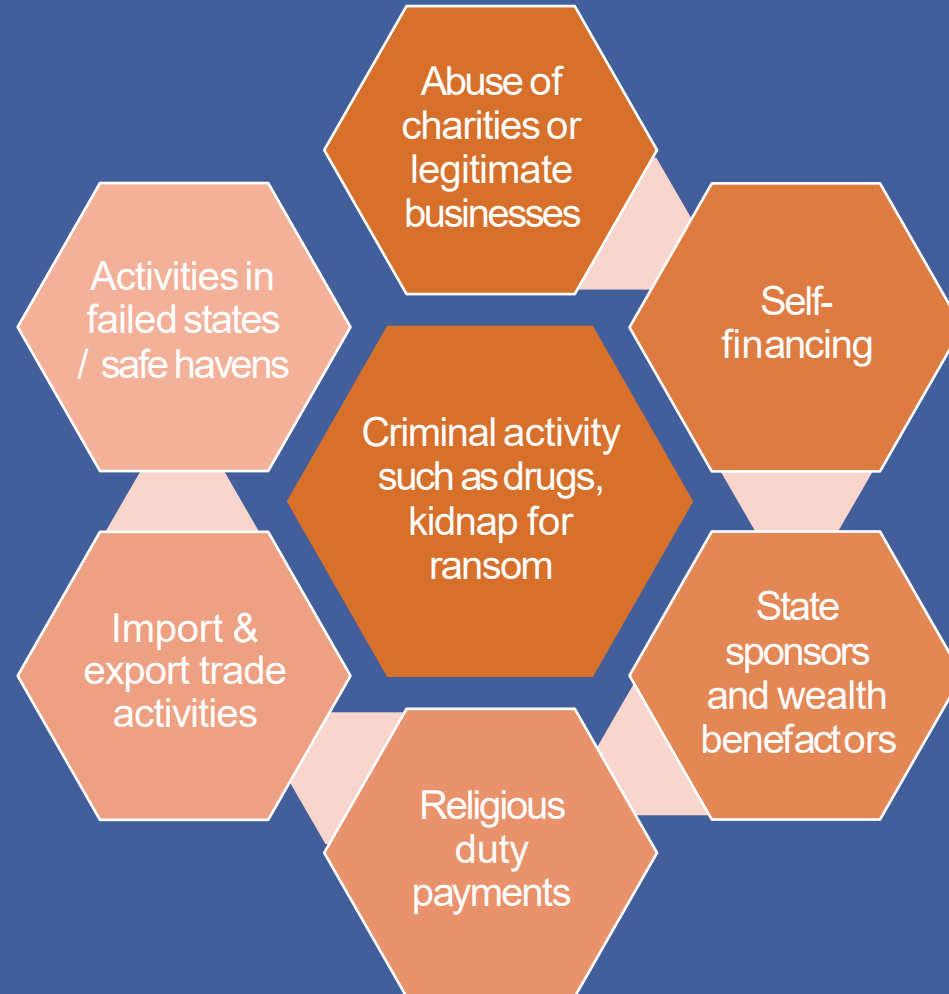


'Reverse' Money Laundering

- 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 Terrorist Funding





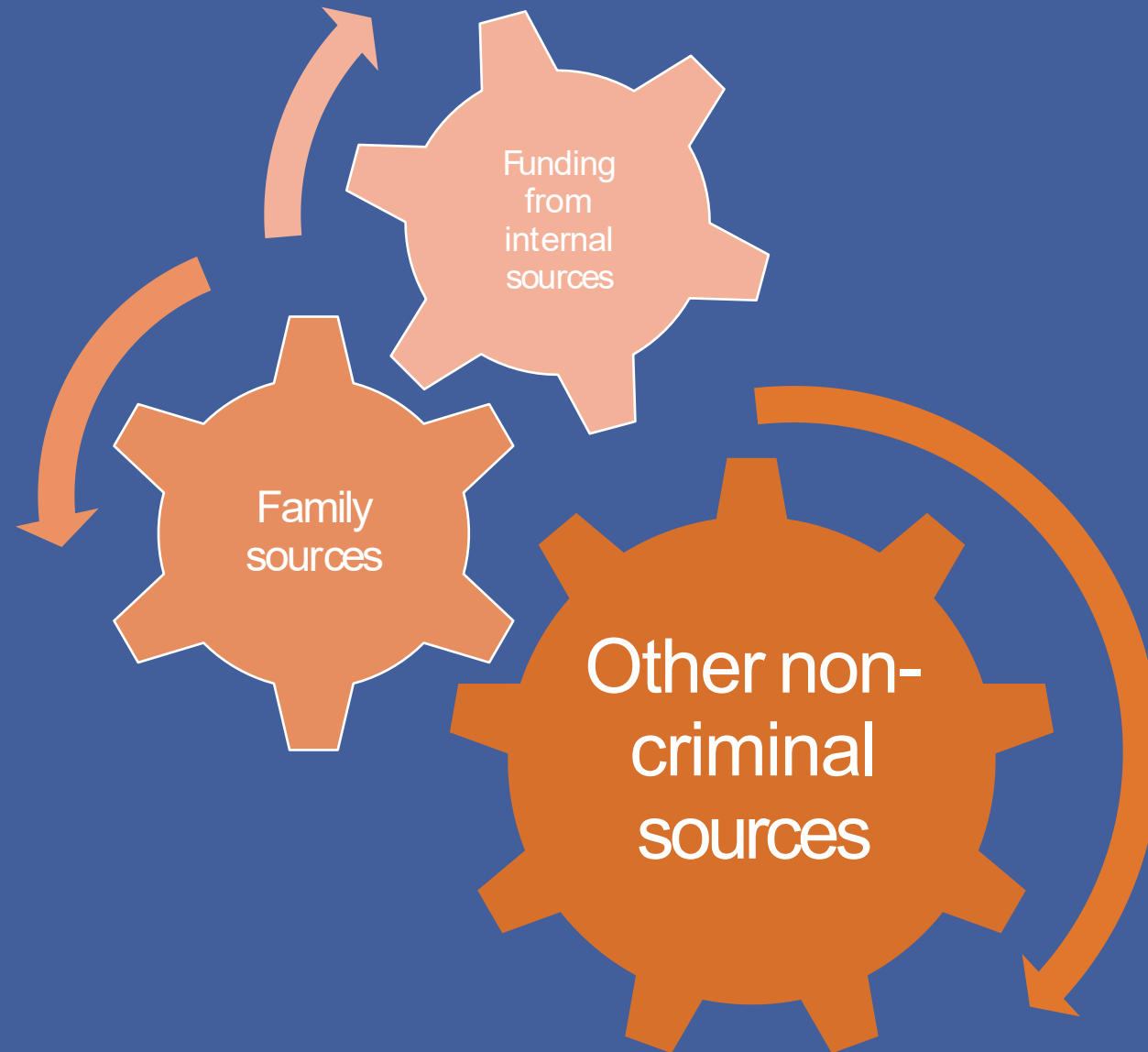
Charities

The FATF sets out three forms of abuse of charities:

- 1. Diversion of Funds Through Fraud
- 2. Bogus or Sham Organisations
- 3. Broad Exploitation



Self Funding





Raising Funds from Criminal Activity

Raising Funds from Criminal Activity

Drug trafficking

Extortion

Credit card and cheque fraud

Counterfeit goods

Smuggling

Robbery

Kidnap for ransom



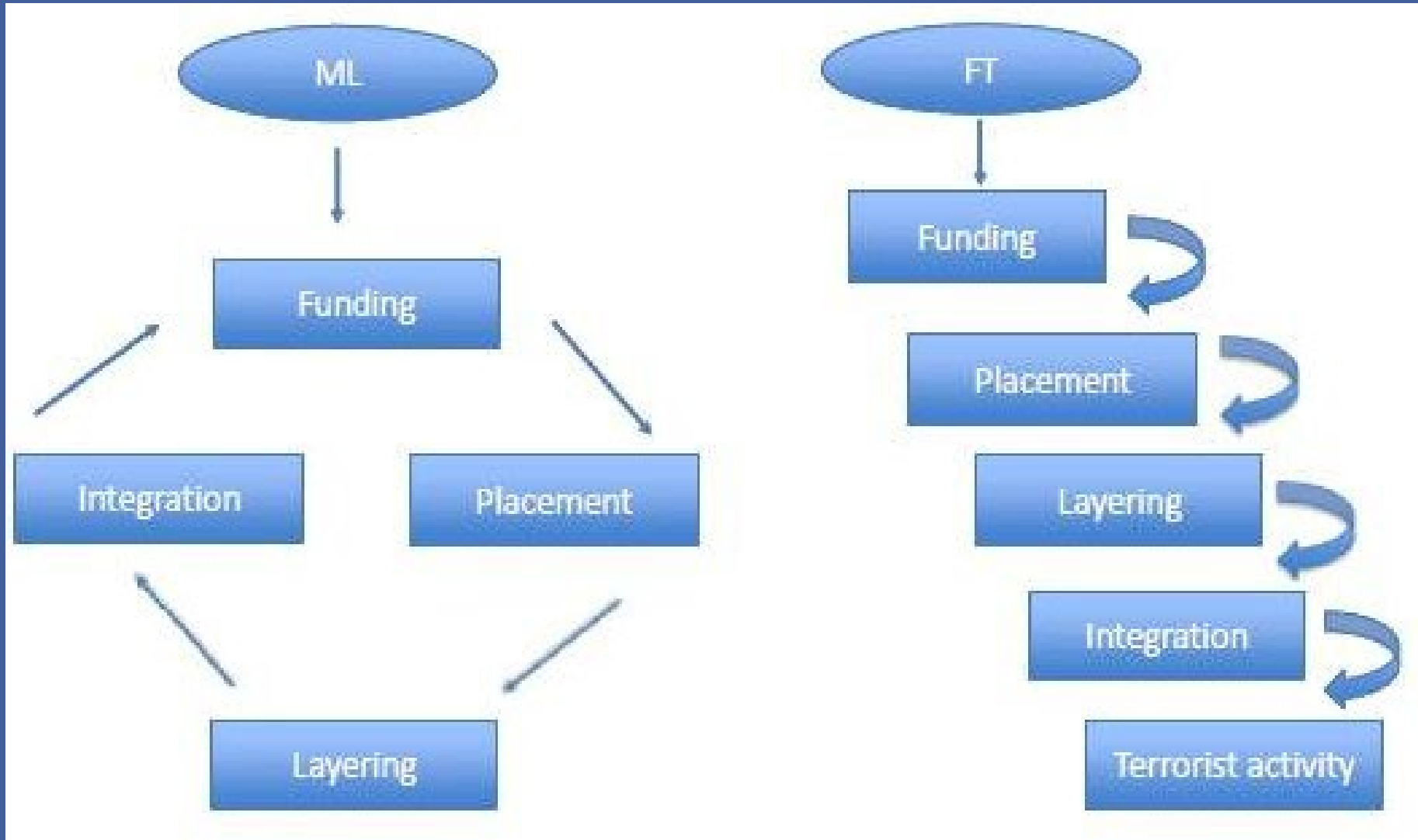
Costs of Attacks

Attack	Date	Estimated Cost
9/11 attacks	11/09/2001	\$500,000
Twin truck bombings of USembassies in Kenya and Tanzania	07/08/1998	\$10,000
Bombing of USSCole 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.





Creating a culture of compliance

- Over the past few years we have been reading more and more about “creating a culture of compliance” and “doing the right thing.” At the same time, anti-money laundering (AML) regulation is becoming increasingly tougher by the hour and the day-to-day of any professional working in compliance is becoming an even bigger challenge.
- So, how does one cope with all the changes? How can AML professionals prove to regulators that a “reasonable steps defense program” is in place and that all necessary steps were taken to protect the organization against ML/FT and to prevent a regulatory breach?
- There is no set formula to follow, but it all depends on each organization and its senior management to take steps tailor-made to that particular industry, organization and specific responsibilities. Regulators will seek to determine whether senior managers, the board of directors, and in effect, the organization’s employees, behave with integrity, understand their business areas and relevant risks and comply with the law

Be proactive and preventive rather than reactive



Key components of compliance culture

- Tone from the top
- Leadership Engagement
- Balancing Risk and Reward
- Alignment of risks and resources
- Training, Communication and Awareness
- Independent Audit
- Keeping up-to-date with regulatory developments



Tone from the top culture

- Setting the tone for a strong AML culture comes from the top – with C-suite leaders promoting a positive and consistent message. This starts with a clear risk appetite statement to set the expectations for the organisation and its commitment to AML.
- Setting the tone starts with setting an institution's risk appetite. In the AML/CFT context, the risk appetite sets the parameters and boundary conditions with respect to the activities the business can engage in. An AML culture is expressed through a combination of policy, tolerances and behaviours. A positive and consistent message from senior management ensures that AML/CFT compliance is not simply a box-ticking exercise, but an effort to protect the market and institution against regulatory and criminal risks.
- Ultimate responsibility lies with your leadership team – so they must understand the money laundering and terrorist financing risks, and ensure robust structures for compliance. Board members also play a key role, by asking the right questions of management.



Leadership Engagement

- The senior management of a financial institution is ultimately responsible for compliance with AML/CFT obligations. The leadership team, including senior executives and members of the board, should understand their responsibilities to make informed decisions that include consideration of ML/TF risk and compliance.
- Senior management are responsible for establishing appropriate governance structures to maintain visibility of the state of compliance. This includes not only the outputs of compliance testing but also the inputs (to be confident that the nature, scale and scope of the activities are adequate). Board members play an important role, by asking the right questions of senior management and giving their view on what is or is not working. Leadership engagement helps an organisation understand their real-world risks, and continually challenge their view and approach. This is critical given that ML/TF risks are not static, and organised crime groups adapt their methods to circumvent existing controls.



Balancing risk & reward

- In pursuing markets or clients, risk personnel should be at the table to balance the business case against risk appetite tolerances. Employee incentives at all levels should reward behaviour that supports a positive AML culture.
- **ENSURE THAT COMPLIANCE IS NOT COMPROMISED BY REVENUE INTERESTS**
- Those involved in overseas regulatory sanctions are often businesses pursuing particularly 'lucrative' markets or clients. For market pursuits, risk personnel should be at the table to balance the business case in line with risk appetite tolerances, and providing challenge where appropriate. An effective organisational governance structure takes AML/CFT considerations into account in all decision-making processes.
- Financial institutions should consider whether incentives reward unacceptable risk-taking or compliance breaches – and if they do, remove them. Compliance teams should have sufficient authority and autonomy to implement the AML/CFT controls and procedures



Alignment of risk and resources

- This is a cornerstone of the standard risk-based approach to AML/CFT efforts worldwide. A good AML compliance program is based on a risk-based approach; a great one directs its compliance investments exactly where they are needed. At the individual institution level, a starting point for determining the risks is a thorough assessment of its business, its compliance infrastructure, and where it might lack controls. Just as an oceangoing ship must prioritize fixing a hull leak, for example, financial institutions must align their resources to where they are most urgently needed. Proper alignment of risks and resources—skills, staff, time and capital—is the foundation that enables an institution to build a great compliance program.
- It's essential to allocate sufficient resources to AML/CFT compliance – including technological resources, process management, and expert personnel. Resourcing should be regularly reviewed against your organisation's size, complexity and exposure to risk.



Training, communication and awareness

- It's important that staff understand both the 'what' and the 'why' of compliance, especially regarding the activities they undertake. Communicating the real value of their work (case studies can be helpful here) will lead to enhanced compliance.
- In a growing and dynamic business such as financial services, one-and-done is not a hallmark of strong compliance programs. "Set it and forget it" is an approach that is doomed to fail—likely sooner rather than later.
- Institutions must be able to keep their people up to date with changing regulations and trends in financial crimes.
- Create a combination of on-demand resources and structured learning programs, tailored to an organization's unique culture, is a valuable way to make certain that all employees are on the same page in ensuring compliance.
- The best AML compliance programs utilize continuous, consistent training to ensure success.

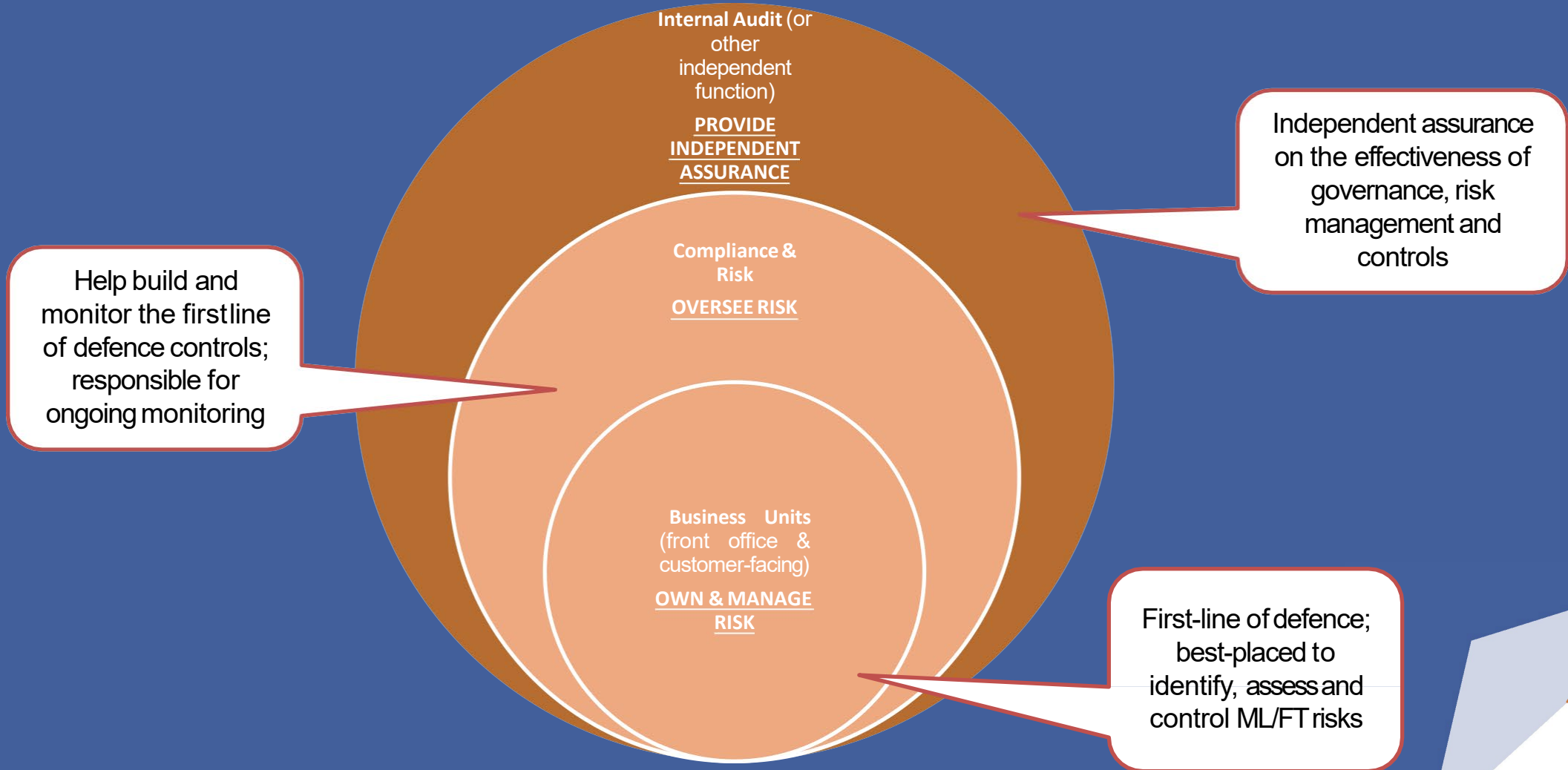


Independent Audit / Testing and Validation

- Putting your AML/CFT compliance program into motion is not enough. The program must be monitored and evaluated. Institutions should assess their AML/CFT programs regularly to ensure their effectiveness and to look for new risk factors.
- Companies with great AML compliance programs invest in testing and validation to make sure their programs and systems work. Continuing investment is needed when companies adopt new tools and upgrade technologies. In addition to the benefits of ongoing training with experts in the field of AML/CFT, testing of existing systems delivers peace of mind and can ensure that a company's people, processes and technologies are functioning together in an optimal way.
- The audit must be by an independent third-party, and individuals conducting the audit should report directly to the board of directors or to a designated board committee composed primarily or completely of outside directors



Three Lines of Defence in AML



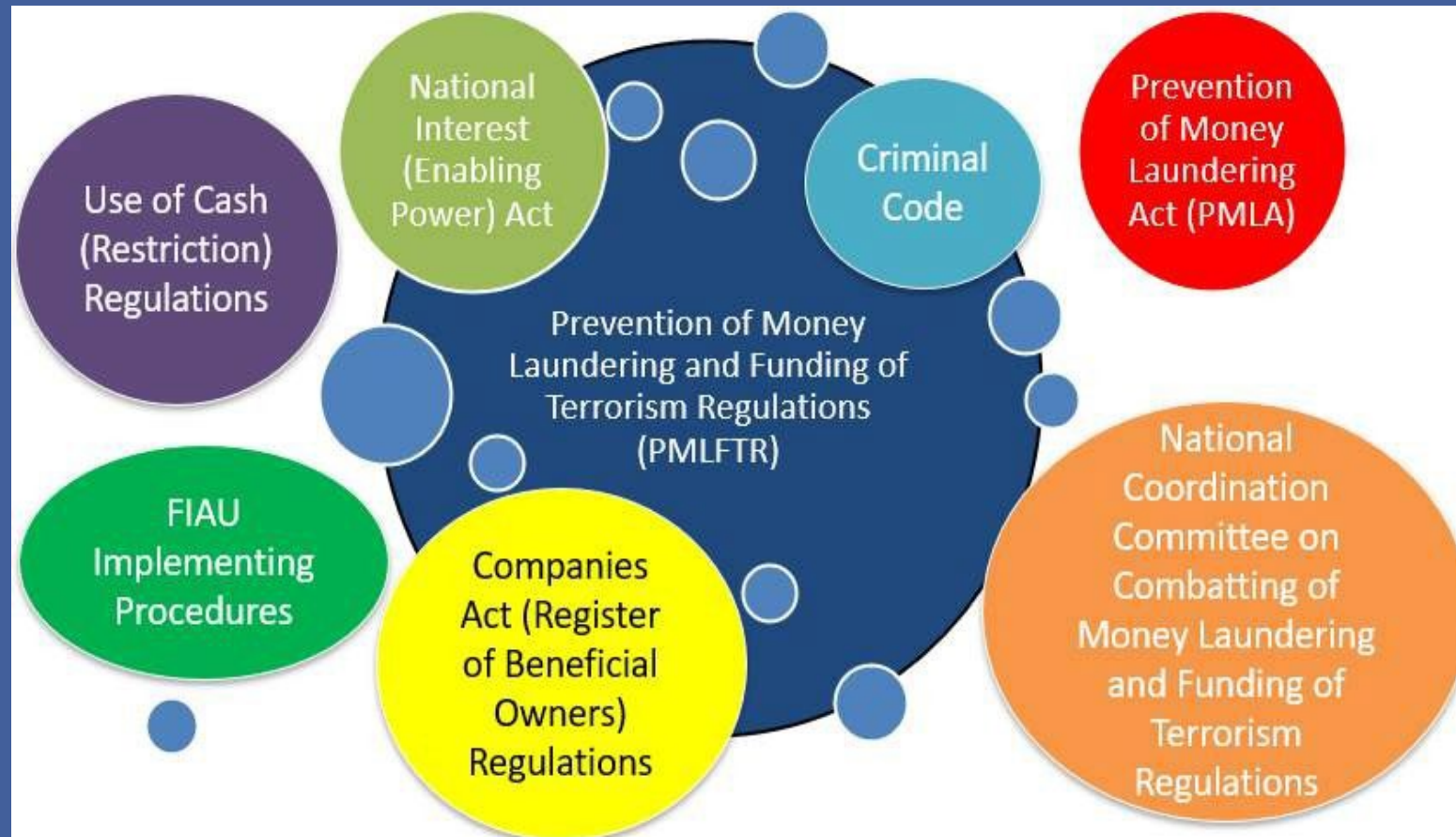


Awareness of Regulatory Developments



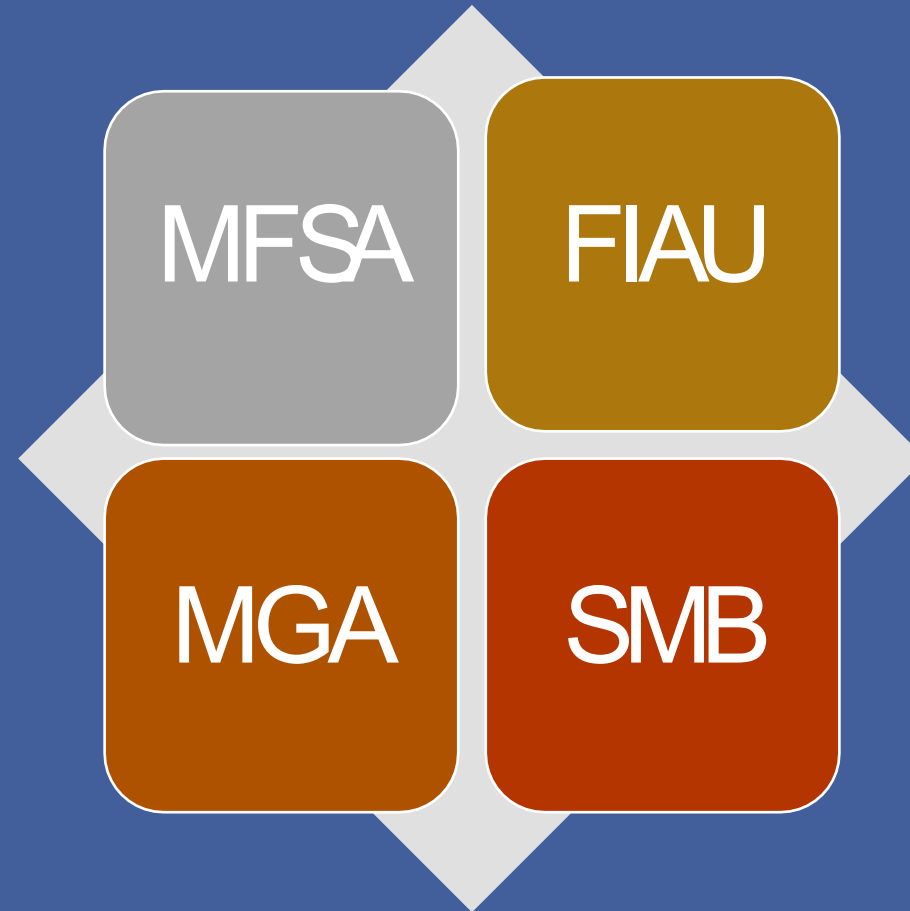


Local AML/CFT Statutory Framework



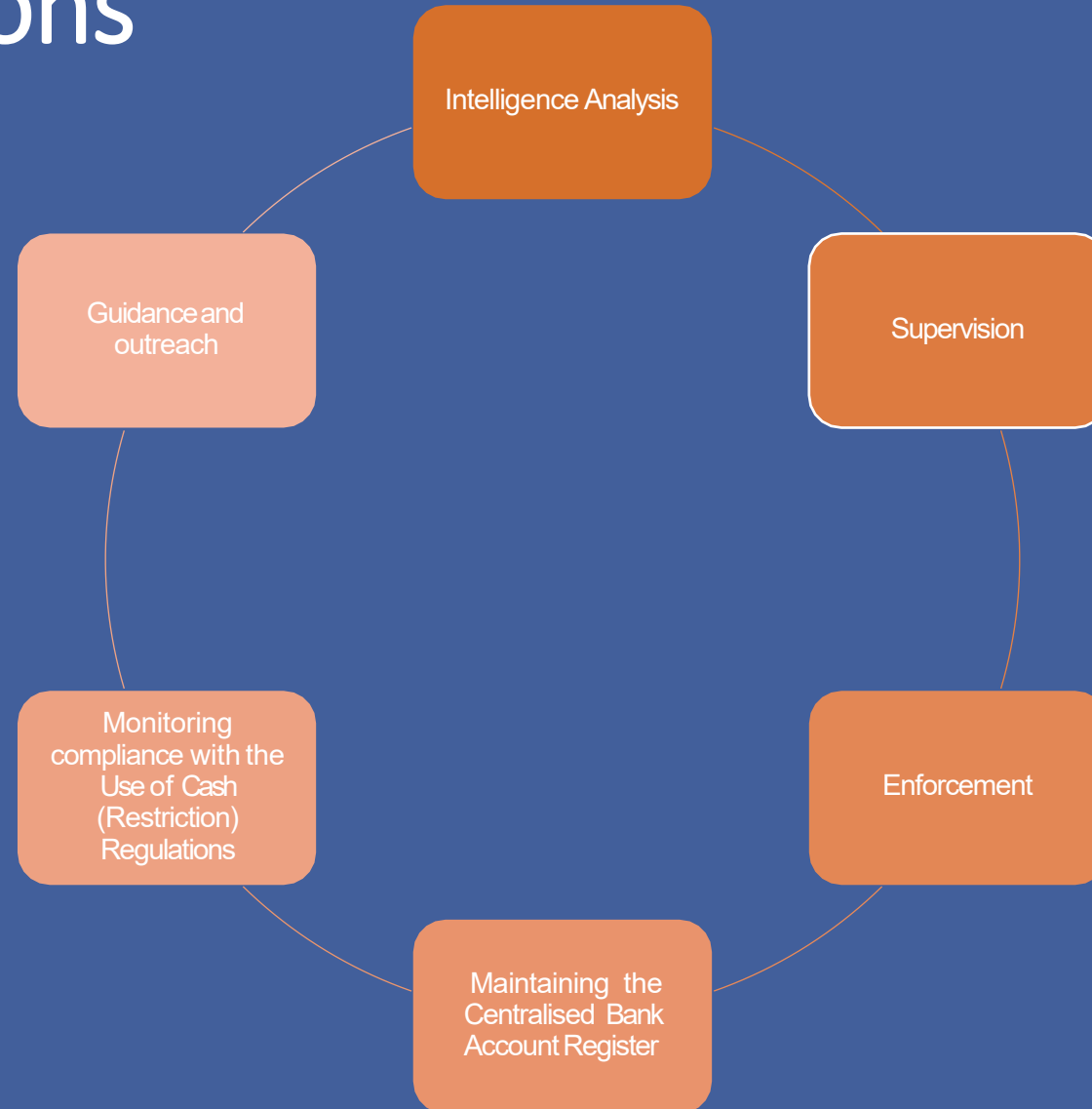


Local Supervisory Authorities





FIAU Functions



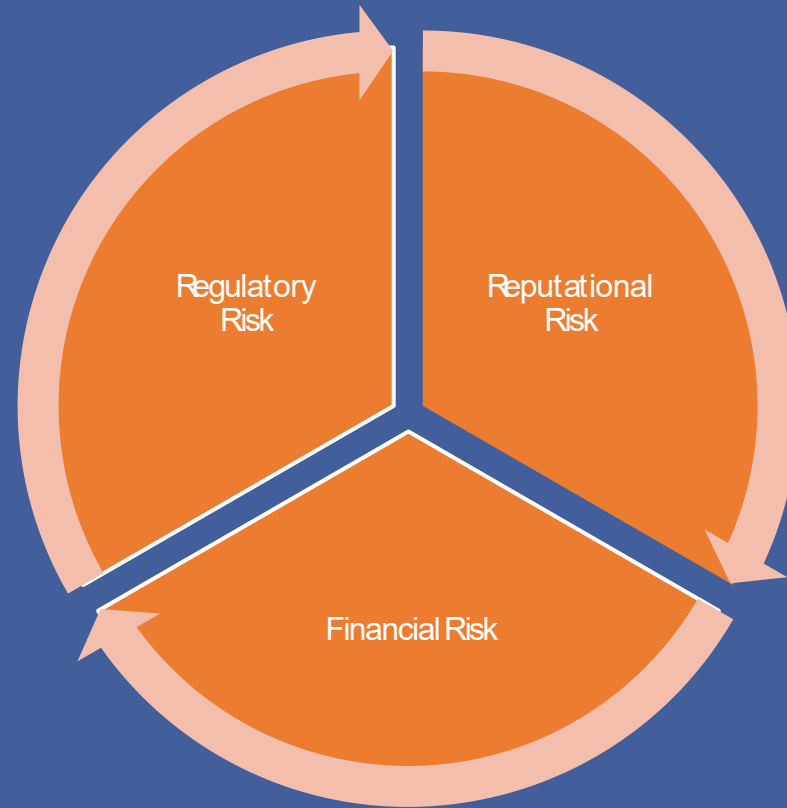


Overview of key AML/CFT obligations under local legislation





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	Any person committing any act of money laundering	Fine not exceeding €2,500,000, imprisonment not exceeding 18 years, or both
	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	Forfeiture in favour of the Government of Malta of the proceeds of crime (or a value equivalent thereto)
	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	
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
<p>Making or receiving a payment or otherwise carry out a transaction in cash amounting to, or exceeding, ten thousand euro (€10,000)</p>	<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>
<p>False declaration/representation or producing false/incomplete information or documentation</p>	<p>Fine of not more than €25,000</p>
<p>Failure to abide by procedures and instructions issued by the FIAU</p>	<p>Fine of not more €5,000</p>



10 points to keep in mind about Money Launderers

- ☞ They are looking to exploit non-regulated sectors.
- ☞ Cash-intensive businesses are a perfect tool for criminals to launder illegally derived funds
- ☞ They are the first to take advantages of any technological developments.
- ☞ They do their homework on how and where to move their funds.
- ☞ They look for products and services that allow them to remain anonymous.
- ☞ They love complex products and services and use them to make it difficult, in some cases impossible to identify the real person who benefits from the funds (i.e. shell companies)
- ☞ Often, money launderers and other criminals offer money laundering services to other criminals.
- ☞ They are targeting inexperienced people or people with great financial needs and employ them as money mules. Often money mules don't know they are moving the proceeds of a crime.
- ☞ They often employ the best talent (lawyers, accountants, IT etc) to help them identify gaps in national regulations and advise them on how to move their funds without getting caught.
- ☞ Criminals and professional money launderers are always one step ahead of regulations.



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