

The Money Laundering Reporting Officer (MLRO) obligations and reporting procedures

Agenda

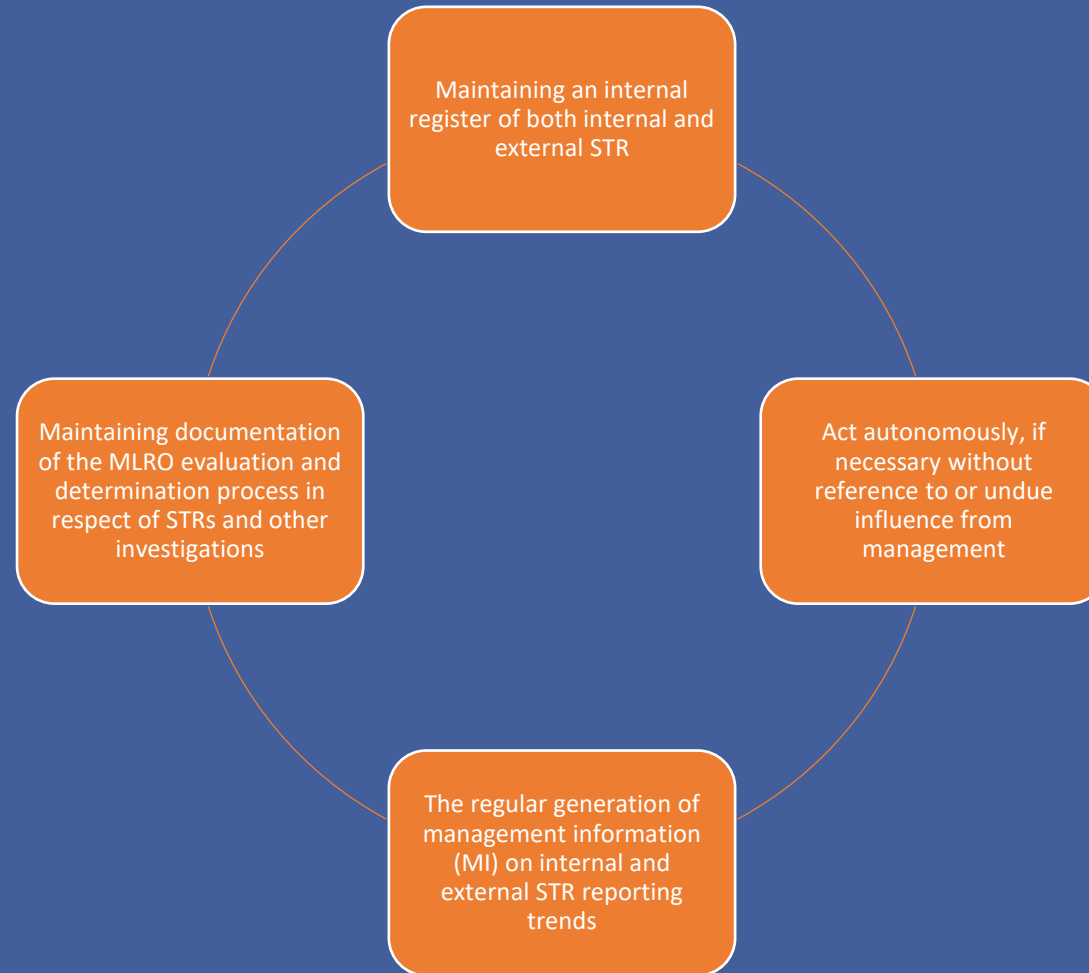
- The Money Laundering Reporting Officer
- Suspicious Transaction Reporting

THE MONEY LAUNDERING REPORTING OFFICER (MLRO)

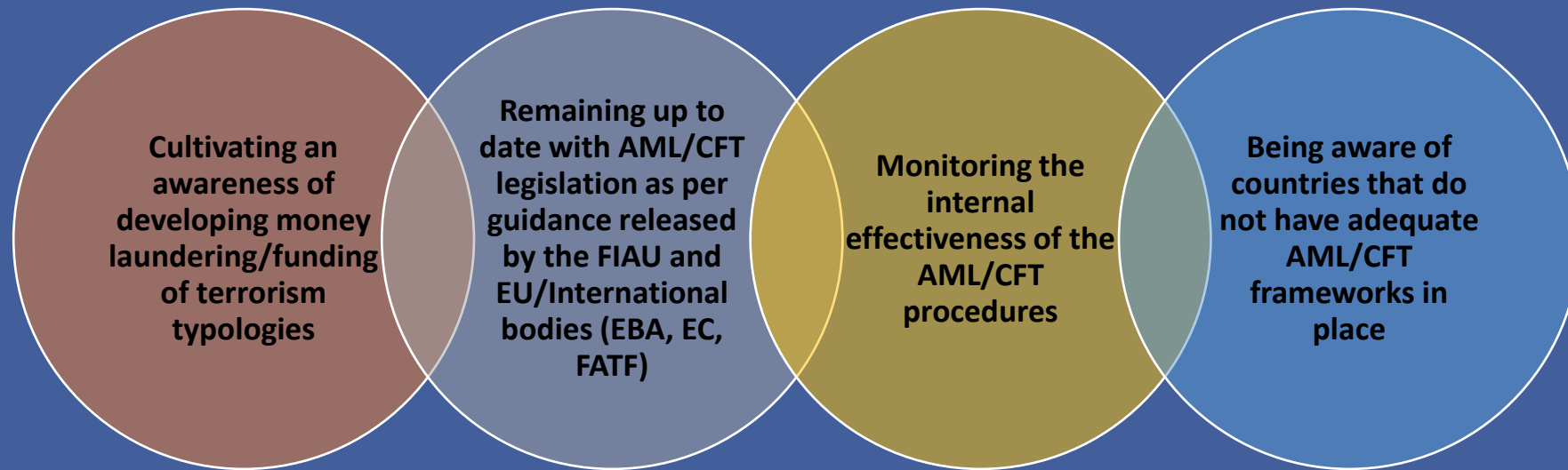
The Role of the MLRO



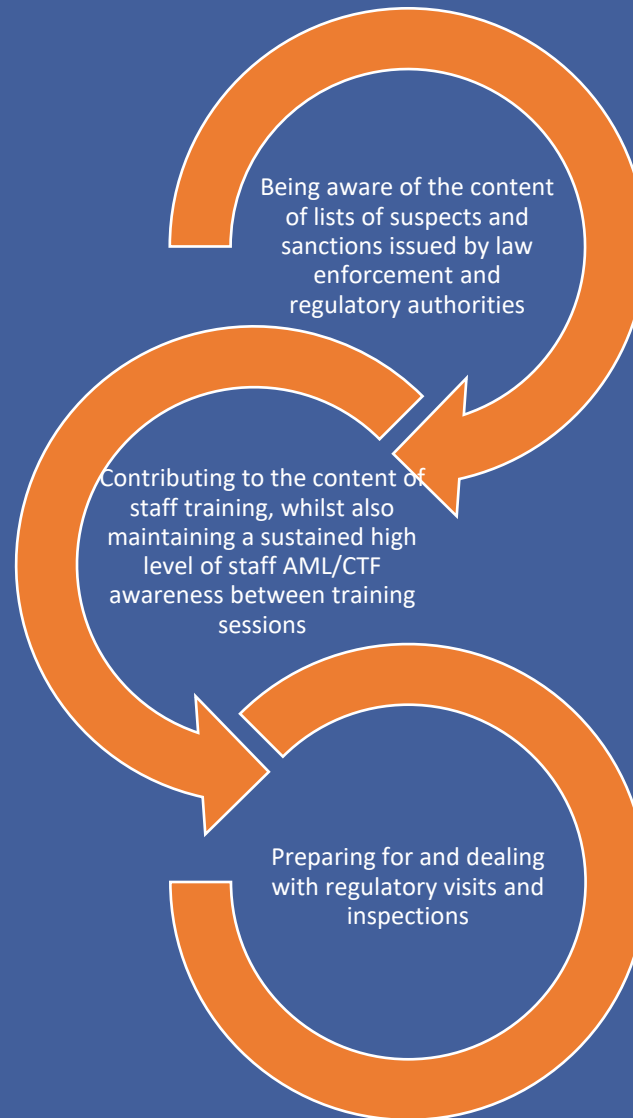
Additional features of the role



Additional features of the role (cont.)



Additional features of the role (cont.)



Key skills & qualities of an effective MLRO

Capability to identify, quantify and manage risk

An intimate knowledge and understanding of the organisations products and services as well as the typical customer profile

The ability to recognise potentially suspicious activity

Absorb and analyse information, usually under pressure

Capacity to recognise if additional information is required before any reporting decisions are made

Excellent verbal and written communication skills

Staff should feel comfortable in approaching and discussing any concerns with the MLRO

Possessing the confidence to make and substantiate decisions

Being able to take decisive decisions

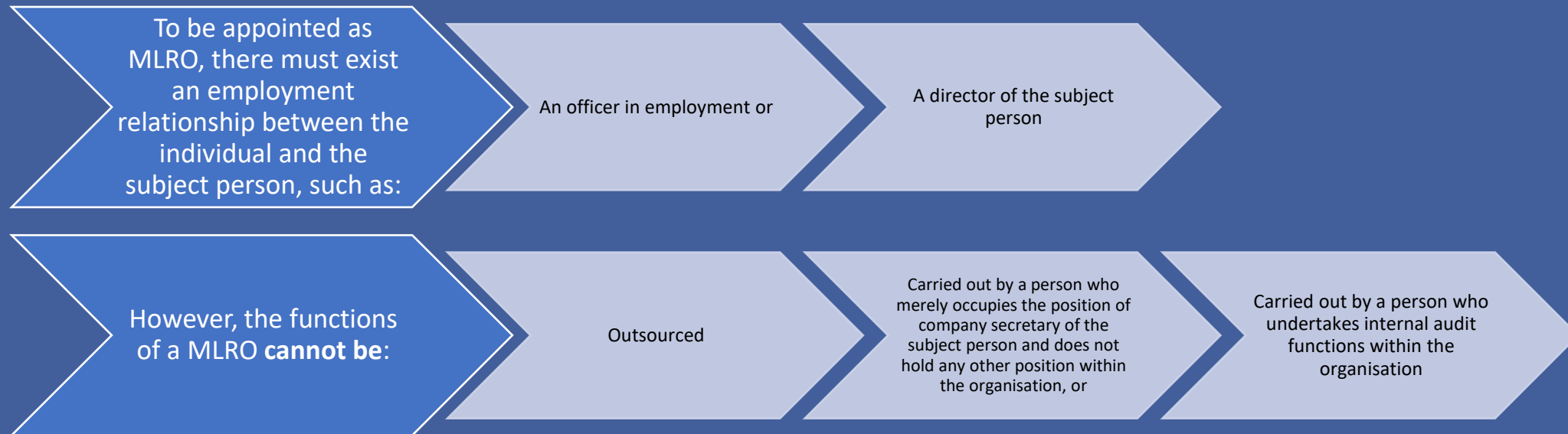
Appointment of MLRO

Who can be appointed as MLRO?

Officer of a
Subject Person

Sufficient
Seniority and
Command

Officer of a Subject Person



Officer as a Subject Person

There are also situations where the person appointed as MLRO need not be an officer in employment or a director, such as:

- i. an insurance company managed by a company that is enrolled to act as an insurance manager
 - Here, a 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. 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.

Officer as a Subject Person (cont.)

iii. a group comprising two or more subject persons or other persons undertaking activities equivalent to relevant activity or relevant financial business that can avail themselves of the exemptions allowed in terms of Regulation 16(2)(b) and (c).

- Here, 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. a group comprising two or more subject persons, or other persons undertaking activities equivalent to relevant activity or relevant financial business, 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.

MLRO located abroad - considerations

The MLRO need not be located in Malta nor does he/she need to be present where the subject person's operations are being directed or the records kept. He subject person is free to determine where the MLRO can be best located so as to fulfil his/her functions effectively.

Irrespective of location, the MLRO must:

- Have access, whether physically or remote, to all the subject person's records systems as may be necessary to carry out his/her functions and duties, and
- 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. This would include ensuring that the MLRO makes himself accessible for any FIAU meetings and/or interviews that the FIAU would like to carry out.

MLRO have multiple appointments

- It is possible for an employee to act as the MLRO for two or more subject persons, provided that in the case of such multiple appointments, the MLRO is still able to fulfil his/her functions effectively. **Time commitment is key to ensure as much.**
- In this regard, the MLRO has to be mindful of any ensuing conflicts of interests and/or confidentiality obligations. While there is no set number of appointments that one may accept, 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.
- A subject person intending to appoint an MLRO who already acts as such for another subject person, must assess whether sufficient time will be dedicated to the subject person, which assessment should be reviewed from time to time so as ensure that the MLRO is actually managing to dedicate sufficient time to fulfil all of the functions associated with the said role.

Independence & Autonomy

The role of the MLRO is characterised by independence and autonomy owing to the sensitive functions to be exercised thereby as well as the nature of the information to which the MLRO is privy (generally obtained from the reports and requests for information received from the FIAU)

Thus, it would be unacceptable if the MLRO were to be subject to duress, undue influence and superfluous checks and requirements, specifically to:

- i. To disclose information regarding the cases being handled by the MLRO or concerning particular requests for information received from the FIAU, or
- ii. To determine the outcome of aforesaid cases in a particular manner or the manner in which the said requests are to be replied to.

Independence & Autonomy (cont.)

- While there are no restrictions on the internal circulation of information related to reports and requests for information, the sensitive and confidential nature of this information demands that it be disclosed exclusively on a need-to-know basis.
- However, the sharing of information with the subject person or, to the extent that is allowed by law, within a group context is to be encouraged.

However, this does not necessarily entail that all and sundry should be in the know. By way of example, when reporting to the Board of Directors the use of **statistical data** may be sufficient to provide the said body with an overview of the work done by the MLRO whereas within a group context the expectation would be that any information is shared between MLROs.

Dedication MLRO function?

While having a dedicated MLRO function is ideal, it is recognised that this may not always be possible and situations will arise where the officer or employee acting as MLRO will also have additional functions and/or duties within the subject person.

In these latter circumstances, the subject person is to assess whether such an arrangement may somehow negatively impact the independence and impartiality required from the MLRO and therefore **undermine the effectiveness** with which the MLRO is to carry out the duties and responsibilities associated with the said role. In particular, regard has to be had as to whether such an arrangement will:

Give rise to
conflicts of
interests

Impact time
commitment

Conflicts of interest

- ✓ Situations which would give rise to such a conflict include scenarios where other functions assigned to the MLRO are remunerated depending upon whether particular targets are met (e.g. onboarding of new customers, generation of fees and commissions etc.).
- ✓ Particular involvements in developing new business opportunities may also at times give rise to a conflict of interest. A similar conflict of interest arises where the MLRO, though an employee or officer of the subject person, also results to be a beneficial owner of the subject person concerned.
- ✓ While any such conflict of interest is to be avoided, it is recognised that exceptional cases may present themselves where the ability to do so will be limited and too onerous. In these circumstances, the subject person has to implement measures which counterbalance any dilution in the MLRO's independence and impartiality (e.g. through external review of its AML/CFT controls, policies, measures and procedures).

Impact Time Commitment

Having the MLRO carrying out additional functions will also give rise to questions as to whether the MLRO is actually in a position to dedicate sufficient time to his role as MLRO, especially when not provided with additional human resources and technological means to mitigate the time he has to dedicate to the other roles or functions he has to carry out for the subject person.

Any decision taken to amalgamate the role of MLRO with other functions within the subject person and/or any determination that there exist exceptional circumstances that do not allow its MLRO to be free from conflict of interest is to be justified on the basis of:

- i. the (prospective) nature and size of the subject person's business, activities and structures (the financial and human resources available to the subject person; the volume and value of transactions processed or activity carried out; the (prospective) number of customers; its internal structures and overall network for the provision of the services and products it offers; its geographical presence etc.);
- ii. the ML/FT risk presented by any such business and activities; and
- iii. the inability of the subject person to apply any of the exceptions provided for previously

Factors influencing MLRO's choice

The decision as to who should be appointed as MLRO within an organisation should be taken in the following three stages;



Other factors include:

- Size and nature of the organisation
- Scope of the role as defined by the FIAU
- The organisation's products and services
- The seriousness with which the organisation regards its AML/CFT obligations
- The person's ability to operate at a senior level and have the respect of the firm's senior staff as that of regulatory authorities.
- Whether the individual can be trusted not to under report or over report

Knowledge, Skills and Expertise

- When selecting an individual to act as MLRO, the subject person needs to understand the individual's expertise, experience, skills and qualifications in the area to allow it to decide whether the individual will be an effective element within its AML/CFT framework. The sector and industry within which the subject person is active and its particular business model need to be considered as well.
- A professional qualification as a lawyer, auditor or accountant cannot per se be considered enough as this does not necessarily translate into a proper appreciation of ML/FT risks, trends and typologies nor will prior approval of another supervisory authority (e.g. MFSA) mean that the MLRO's activity and effectiveness cannot be questioned and assessed by the FIAU.
- The FIAU questions and considers whether the MLRO is fit for purpose based on what it sees during its supervisory activity and based on the MLRO's track record with the FIAU's Intelligence Section. It is on this basis that the FIAU may conclude that the MLRO does not in reality possess the necessary skills to fulfil the functions associated with the role and that therefore they cannot be considered as possessing the necessary seniority and command. This can translate, amongst others, into actions aimed at having the MLRO replaced.

Training opportunities for MLROs

- Tying in with the need to choose someone with the right qualifications, skills and experience, is the complimentary need for the subject person to ensure that its MLRO is provided with training opportunities. This will allow the said MLRO to keep up with developments in AML/CFT and in the area of the subject person's activities in so far as this may be relevant to the MLRO's duties and functions.
- Not only do legal and regulatory requirements change but the introduction of new products, services and technologies will most likely provide new opportunities to all those who are ill-intentioned to abuse the subject person for their own illicit ends.

Sufficient Seniority and Command

MLRO:

- must occupy a senior position within the institution
- must be able to communicate directly with the Board of Directors
- must have the authority to act independently in carrying out his/her responsibilities + full access to all records, data, documentation and information of the subject person for the purposes of fulfilling his/her responsibilities
- must be accountable
- free from undue influence

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 must carry out the functions of MLRO himself/herself.

Case study: the need for an MLRO to be of seniority

- An MLRO (an associate director) of a bank branch in Malta, receives an internal STR from an employee, in relation to an account held by a high-net worth individual. Large deposits are held and managed by the bank.
- The basis of the STR compiled revealed that the customer made a couple of high value transactions towards a country the has known AML/CTF deficiencies.
- Upon reaching out the relationship manager (RM) a sufficient explanation was not given. Instead, the RM stated that these payments were genuine.
- Not being satisfied with this response, the employee who submitted the STR decided to carry out further investigation. It was then identified that the jurisdiction is known to harbour terrorists.
- The basis of the STR was in fact that the customer might be involved in some sort of terrorist-financing.

Case study: the need for an MLRO to be of seniority

- The MLRO then decides to speak to the RM, who reiterates there is no rational explanation for the transfers.
- The RM, who happens to be the local managing director of the bank, explained that such questions to customers will make them opt for banking alternatives. He also stated we should refrain from interfering in customer's activities.
- From this example we learn that the given the superiority the managing director holds, the MLRO is now hesitating to do the right thing and file an external STR to the FIAU.
- The harsh reality is that MLROs sometimes find themselves in such situations and taking the necessary actions may not go down well with some colleagues.

Therefore, the autonomy to make such decisions in good faith, without constraints or undue commercial influence, ordinarily requires the MLRO to have sufficient seniority.



Personal Liability under the PMLFTR

Personal liability of the MLRO is intended to:

- Ensure that there is an effective deterrent to those who would otherwise take on the role of MLRO without sufficiently considering what this entails.
- Further encourage MLROs to keep abreast of any developments which may impact the obligations associated with the role and those of the subject person they work for in that role.
- Ensure MLROs dedicate the necessary time and attention to fulfilling their obligations with the necessary level of skill and care.
- Hold MLROs accountable for **serious** AML/CFT contraventions in cases where, through an act or omission, has caused or contributed to AML/CFT breaches by a subject person.

Personal Liability - Triggers

Two elements need to be present:

There has to be a breach
by a subject person of its
AML/CFT obligations

The MLRO must have
contributed to or caused
the said breach wilfully
or through gross
negligence

Personal Liability - Conditions

Main instances where the FIAU would consider the imposition of administrative penalties provided the relevant conditions are satisfied or otherwise

The MLRO repeatedly and systematically fails to reply, or replies late, to requests for information received from the FIAU despite the fact that the subject person provided the MLRO with the necessary resources to comply with this obligation and granted the MLRO access to data, information and documentation in line with the requirements of the Implementing Procedures – Part I.

The MLRO does not bring to the attention of the subject person's senior management that additional resources are required for the functions associated with the said role to be carried out and executed in a correct and efficient manner.

The MLRO does not bring to the attention of the subject person's senior management blatant issues with respect to its AML/CFT programme, including issues with its resources, policies, procedures, measures and controls which are significantly undermining the subject person's ability to effectively mitigate ML/FT risks and detect unusual and suspicious transactions, notwithstanding that he has knowledge of the same.

The MLRO does not take action to implement remedial actions related to aspects of the functions associated with the role, which were expressly entrusted to him and for which resources were duly provided by the subject person.

Personal Liability – Administrative Penalties



Minimum =
EUR 1,000

Maximum =
EUR 250,000

Appointment and Resignation of MLRO

Appointment: 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.

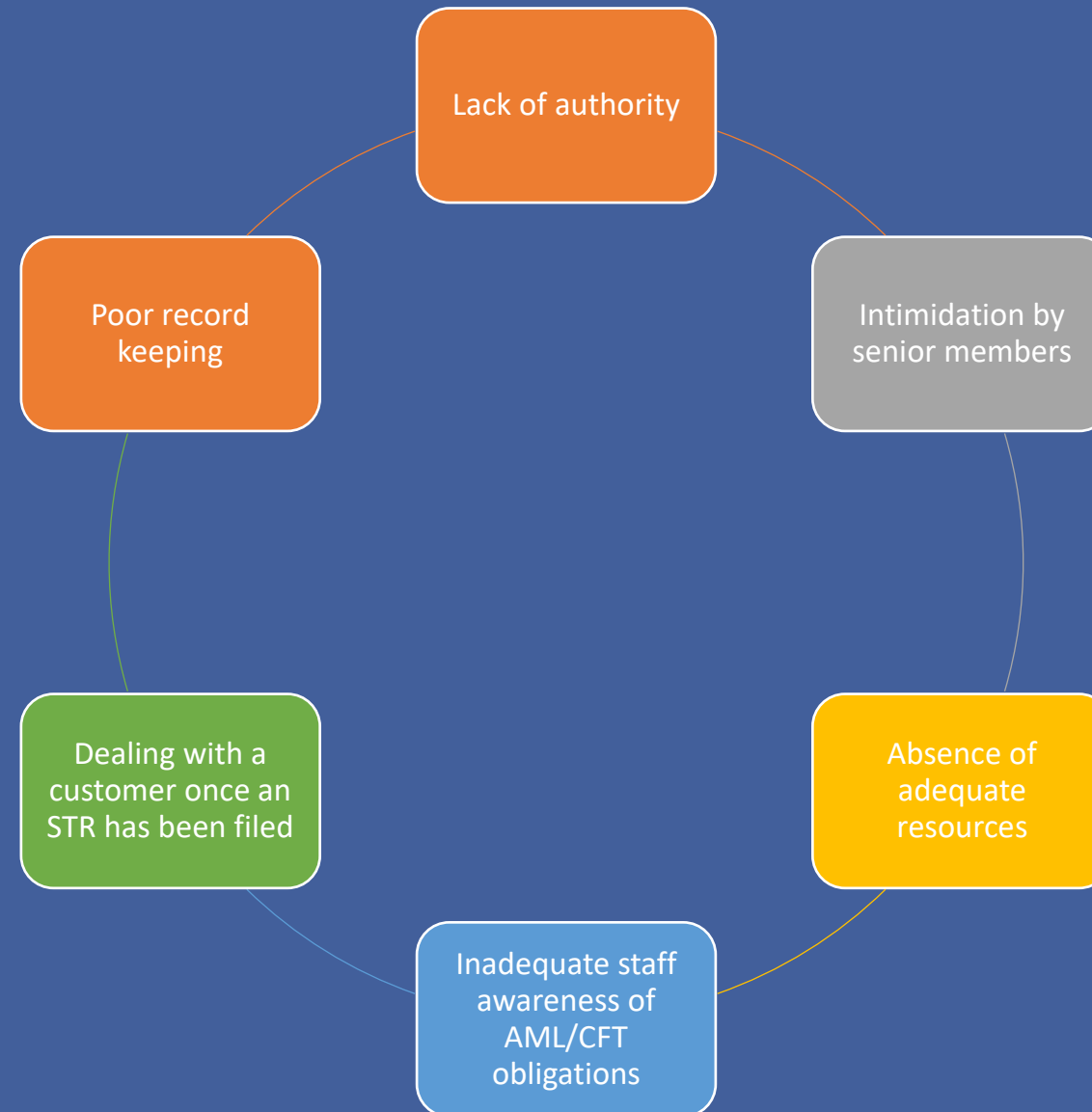
In all cases, the FIAU reviews all new registrations received through CASPAR to ensure that there are no obstacles to proceed with the registration.

Resignation: Subject person must notify the FIAU of the resignation/removal of MLRO

MLRO must notify FIAU if departure was linked implementation of the subject person's obligations under PMLFTR or any regulatory implication that the FIAU should be aware of

MLRO's account is to be deactivated from CASPAR

Common problems that MLROs encounter

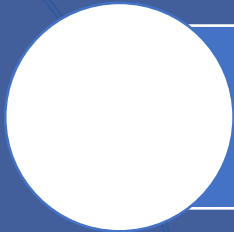


Example: Watchovia Bank

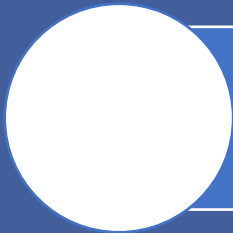
- In March 2010, Watchovia Bank, settled the biggest action to that the date brought under the US Bank Secrecy Act. It paid federal authorities \$110 million in forfeiture for allowing transactions later proved to be connected to drug smuggling, and incurred a \$50 million fine for failing to monitor cash used to ship 22 tons of cocaine.
- A shocking detail that emerged from the case was the fact that a London-based MLRO, flagged the transactions back in 2006. However, he was scolded by management for submitting STRs.
- The MLRO was intimidated by senior management instead of being praised.
- Some of the most harmful problems encountered by MLROs originate from the territorial mindset of CRMs, or directors who are mainly driven by monetary incentives and their roles to generate and retain valuable customer relationships.



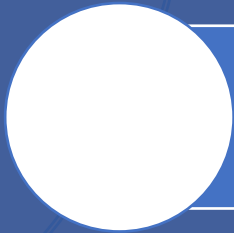
Difficulties that arise from CRMs need to service customers



Obstruction in the sharing of CDD and business information needed by the MLRO to properly evaluate internal STRs



Appeals to management by CRMs, which may impede the MLROs probing into customer affairs



A feeling of defensiveness resulting from a realisation by the CRM that they too should have formulated a suspicion about the customer

What can the MLRO do?

There may be circumstances wherein employees are pressured by managers not to ask questions or raise concerns. Therefore, it is important that AML/CFT compliance teams and MLROs are perceived as approachable, accessible and readily available, to encourage intimidating employees to disclose any fears and concerns despite any contrary management pressure. Should any employee experience such pressure, the following is encouraged:

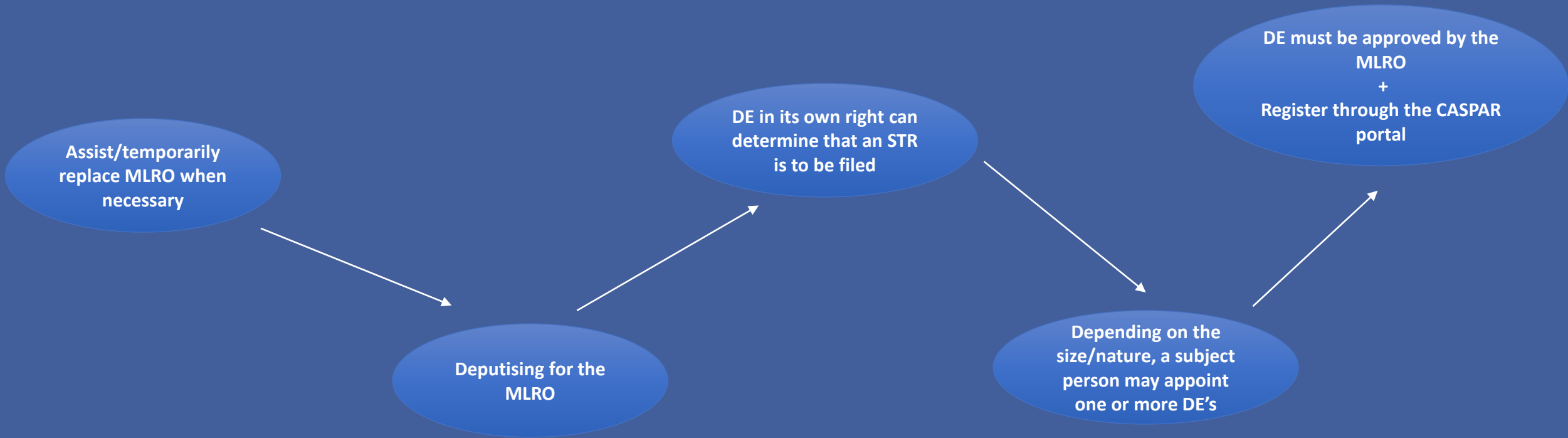
Employees, being encouraged throughout employment to speak up, report such pressure directly and confidentially to the MLRO.

The MLRO considers why a manager has behaved in the way and consider whether collusion exists between the manager and potential money launderers.

Full investigation into the motives behind such pressure, even where there is no collusion

Disciplinary action taken as needed

Designated Employee



Reporting Procedures

Subject persons must have in place documented reporting procedures that provide for:

The appointment of one of the subject person's officers with sufficient seniority and command as the MLRO

The consideration of internal reports by the MLRO

Reasonable access for the MLRO or another designated employee to information held by the subject person which may be of assistance for the purposes of considering the report

The approval by the MLRO of any employee designated by the subject person who shall work under the MLRO's direction

Notifying the FIAU and the relevant supervisory authority of the details of the appointed MLRO and any subsequent changes thereto and the appointment of a designated employee, if any

A procedure whereby the MLRO or another designated employee submits a report to the FIAU

THE MONITORING FUNCTION

Monitoring Functions

1. Day-to-day monitoring function

- Optional – depending on the nature, scale and complexity
- Appoint an officer at management level to monitor the day-to-day application of policies, procedures and controls
- Can be carried out by the MLRO or another officer at management level

Delegation of MLRO task to an officer of subject person/management level

- 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).

Monitoring Functions

2. General oversight function

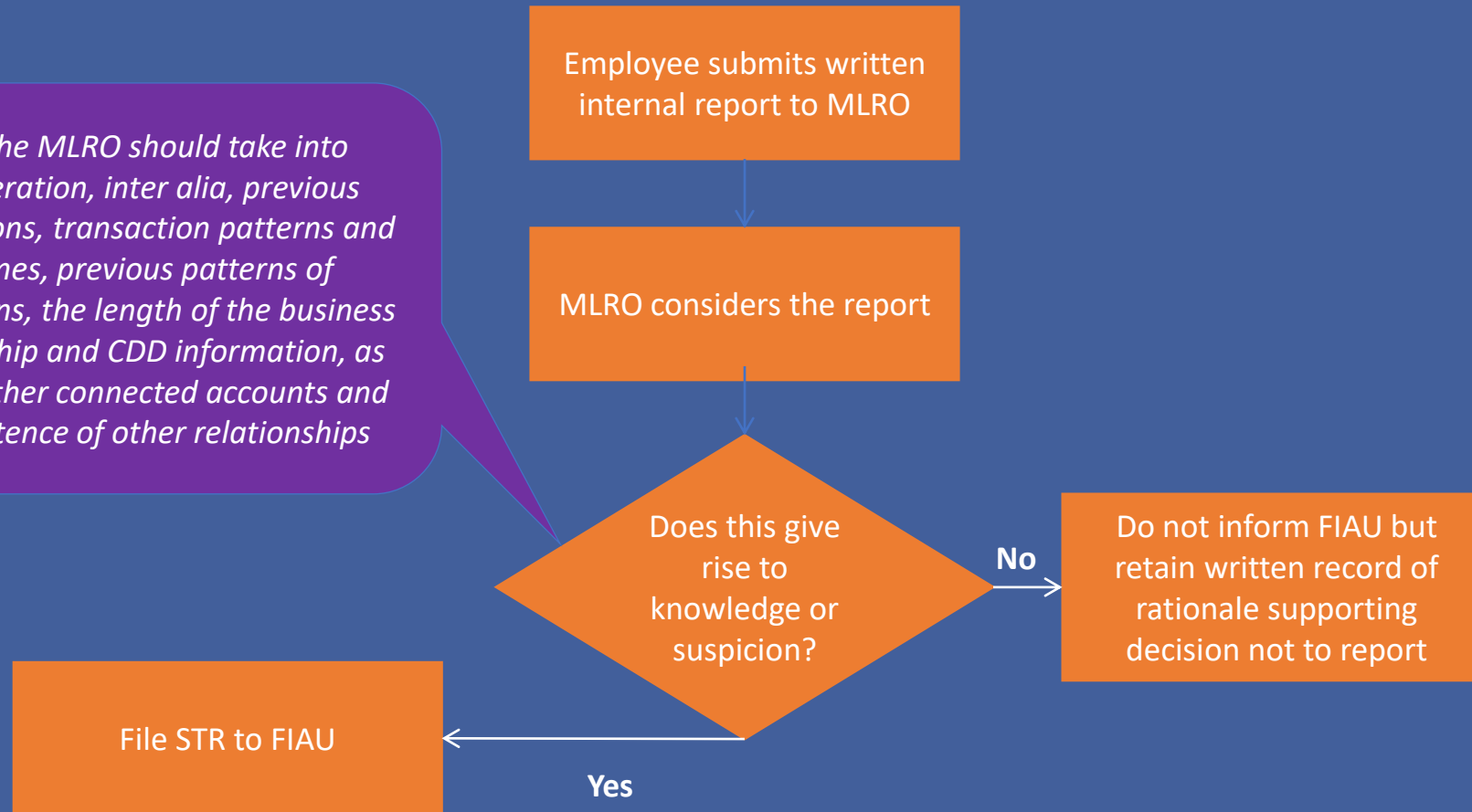
- The board of directors or equivalent is ultimately responsible for ensuring compliance with AML/CFT obligations
- Designate one of its members to ensure such compliance

In order for the MLRO and its monitoring functions to operate successfully, senior management are responsible to offer the necessary resources.

Suspicious Transaction Reporting (STR)

Internal reporting procedures

Here the MLRO should take into consideration, inter alia, previous transactions, transaction patterns and volumes, previous patterns of instructions, the length of the business relationship and CDD information, as well as other connected accounts and the existence of other relationships



External reporting

Knowledge

- Objective criterion, i.e. the existence of knowledge of ML/FT
- Where the MLRO, or any other employee of the subject person, is aware or is in possession of information that indicates that any ML/FT activities may have taken place, are taking place, or will be taking place, the MLRO should immediately proceed with filing a report with the FIAU

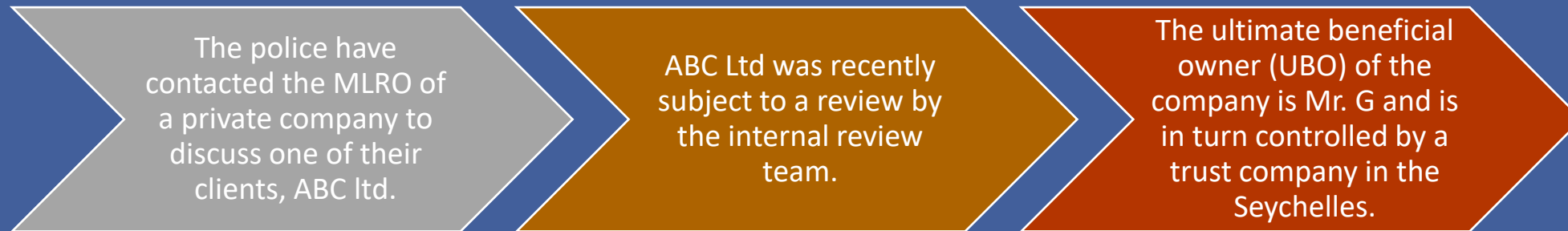
Suspicion

- More subjective but must at least extend beyond speculation and be based on some foundation
- MLRO should attempt to supplement this with objective criteria, e.g. mismatch between quantum of transaction and salary of customer, or unwillingness of customer to provide requested due diligence information

Reasonable grounds to suspect

- Goes beyond mere suspicion
- On the basis of objective facts, the subject person ought to have suspected that ML/FT existed, even though a suspicion was not formed

Example: Solicitor fails to review money laundering risk after police warning



Following a call with the police, the MLRO examines the file in detail and discovers the following facts.

1. Mr. G is a former Spanish general counsel to an African country.
2. His mother is a current member of the Spanish parliament.
3. Incorporate in 1996, ABC Ltd is a bearer share company, of which such shares are held by Mr. G and not the trust company.
4. ABC Ltd owns shares in a large publicly owner company that produces military equipment.
5. In 1999, ABC Ltd entered into an agreement with a French company for the procurement of contracts for the supply of electricity generators in Africa.
6. It is not clear whether ABC Ltd had the necessary expertise to be able to discharge its obligations under the agreement.
7. The same year 'commissions' were received in the account of ABC Ltd, and were then transferred to third-party accounts in Switzerland

Outcomes

- The police become aware of this and start criminal proceedings against Mrs A. Mrs A resigns from her position as senior partner of the firm. She is subsequently convicted for facilitating money laundering.
- It emerges that the bank director who had referred Mr Z to Mrs A has also been convicted of money laundering. However, unlike Mrs A, the director had been actively involved in Mr Z's criminal activities and had profited personally from their dealings together.
- The red flag in this case was that the client was suspected of having criminal associations

STRs filing timeframe

- 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.
- 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.

Actions after reporting

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:

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

The frequency of reviews and monitoring ultimately depends on the level of risk a customer poses. For example, a politically exposed person (PEP) should be subject to regular enhanced due diligence (EDD) reviews.

Obligation to refrain from carrying out a suspicious transactions

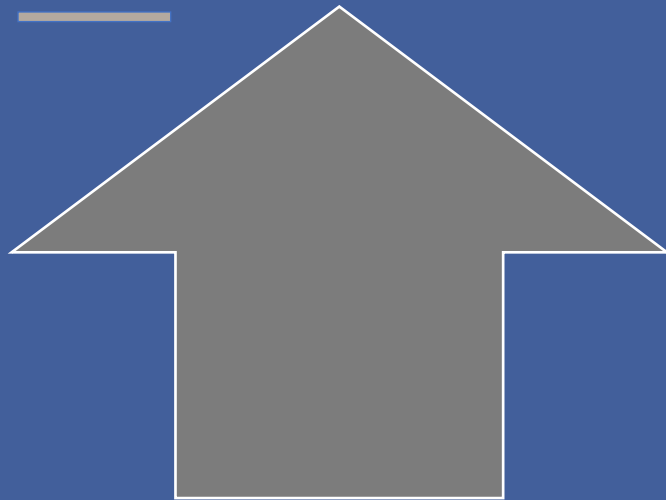
- Where an STR is filed, subject persons are required to delay the transaction known or suspected to be related to ML/FT to allow the FIAU time to consider whether or not to oppose the execution of the transaction.
- Where this is **not possible**, subject persons must carry out the transaction and inform the FIAU immediately after the transaction is affected, provided that in any such case, the impossibility to delay the transaction is owing to:
 - 1. 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*
 - 2. the fact that refraining from executing the transaction is likely to frustrate efforts to investigate or pursue the beneficiaries of the suspected criminal activity.*

Obligation to refrain from carrying out a suspicious transactions

- 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 1 working day following the day on which the information was received by the FIAU.
- Within this 1 working day, the subject person is prohibited from carrying out the relevant transaction. If, after the passage of 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 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 practice, therefore, a transaction may be delayed by a maximum of 3 working days, following the day the subject person notifies the FIAU.

Permissible and prohibited disclosures

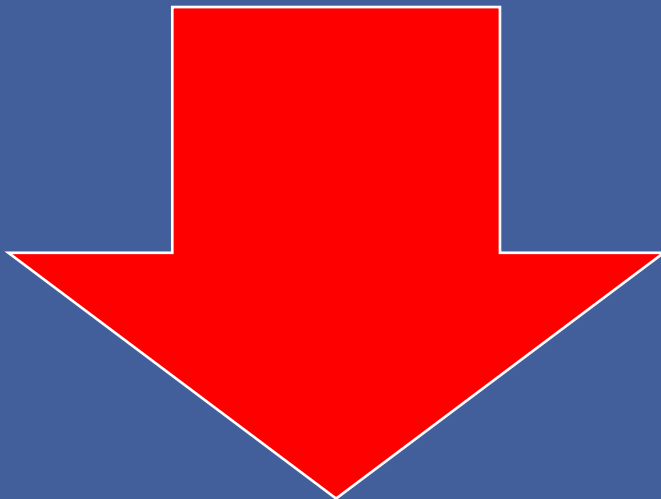


Permissible disclosures:

Disclosures to the supervisory authority relevant to that subject person or to law enforcement agencies in accordance with applicable law

Disclosures to any competent court, tribunal or other judicial authority in or outside Malta that the subject person refrained from carrying out a transaction

Any *bona fide* communication or disclosure made by a subject person or by an employee or director of such subject person



Prohibited disclosures:

When a subject person has a suspicion that ML/FT is occurring, both the subject person as well as any official or employee of a subject person, are prohibited from disclosing to the person under investigation or to a third party, that an investigation is being carried out, may be carried out, or that information has been or may be transmitted to the FIAU

Disclosure of such information would give rise to the offence of **tipping off** and may prejudice an investigation

Confidentiality and tipping off

- Any STR should be completed as soon as possible after the transaction and **not in** the presence of the subject of the report. The subject of the report must not be advised of the suspicions or the submission of a report by the reporting firm.
- It is an offence to disclose to anyone that a suspicion has been formed or that information has been communicate to the FIAU.
- To guard against the fears of being sued for breach of customer confidentiality, legislation offers statutory protection against breach of confidentiality for all information that is included in a disclosure report.

Financial Action Task Force (FATF) recommendation 21 requires that:

Financial institutions, their directors, officers and employees should be:

- a) protected by law from criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred; and*
- b) prohibited by law from disclosing (“tipping-off”) the fact that a suspicious transaction report (STR) or related information is being filed with the FIU.*

FIAU Guidance document – Reporting through goAML

- This guidance note was issued with the intention to clarify and assist with the reporting of transactions connected to Iran by means of the goAML platform.
- Iran is considered as a jurisdiction for which there has been an international call for countermeasures (i.e. blacklisted by the FATF).
- Subject Persons should be aware that the Implementing Procedures Part 1 state that the natural or legal person should be ‘established’ in the jurisdiction in question. Guidance has been provided as to how ‘established’ should be interpreted under Section 4.9.1 of the Implementing Procedures.

FIAU Guidance document – Reporting through goAML (Cont.)

Note that the section refers to numerous factors that ‘establish’ the person to the non-reputable jurisdiction, such as where the main activities of the person generating his wealth are located or where the person is residing or operating. The guidance also makes reference to personal connecting factors like place of birth and citizenship, but this section also provides that:

- **having citizenship on its own need not be automatically equated with the natural person being established in the non-reputable jurisdiction if the individual has no other links with the jurisdiction concerned’**

Example: Reportable scenario

- A Maltese registered Company ultimately owned by a UK national is going to be onboarded by a Company Service Provider (“CSP”). Upon taking closer look at its structure chart, the CSP notes that the UK national ultimately owns the company through an Iranian registered company. Moreover, the CSP is informed that the objective of the company is to sell grain in Iran.
- Therefore, since most of the source of wealth of the company originates from Iran and 25%+1 shares are owned by an Iranian registered company, the CSP is obliged to report the company under the mentioned regulations.

What to report?

1. Inform the FIAU of:

- a. Any existing business relationships connected with Category 1 jurisdictions
- b. Any pending transactions connected with a Category 1 jurisdiction
- c. Any requests to establish a business relationship or carry out a transaction (whether occasional or otherwise) connected with a Category 1 jurisdiction.

In addition, any transaction(s) connected with Iran, should include the provision of the following details:

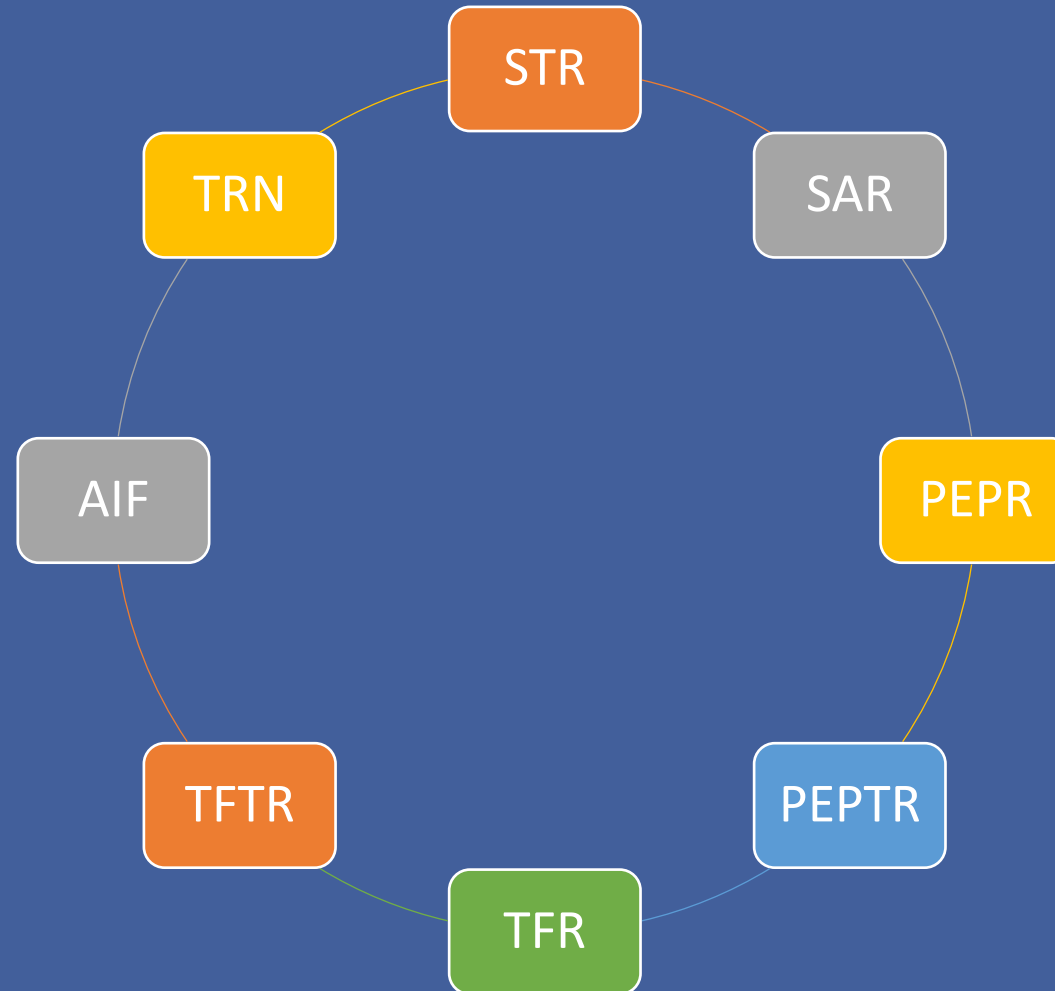
- i. Full name and details of the customer and, where applicable, the beneficial owner, who has a business relationship or is carrying out an occasional transaction in the context of which transactions connected with Iran are to take place;
- ii. Details of any other known parties to those transactions;
- iii. The manner/channel through which the transaction is to be made;
- iv. The exact value of the transaction;
- v. A description of the transaction, including its purpose and scope.

2. To inform the FIAU about Iranian registered companies or those companies having branches or subsidiaries in Iran and to: a) identify who exercises control over such companies, branches, and subsidiaries b) carry out increased external audits on the application of the group-wide AML/CFT policies and procedures by such companies, branches, or subsidiaries

Example: Non-reportable scenario

- A Casino is faced with a customer that has deposited EUR 2,000.00 in cash. Source of wealth documentation has been provided which shows that he is employed with a reputable Maltese company earning a sufficient salary to cover his gaming activity. However, upon verifying the customer's identity, the gaming operator notes that he was born in Iran and holds an Iranian Passport. When questioned about this, the customer points out that he has been living in Malta for the past 20 years, which is clearly evidenced by the contract of employment and his proof of address, and that he has no ties with Iran as he left at a very young age.
- Additionally, he has dual citizenship and holds a Maltese passport. In this regard, under the regulations and notices in question, the casino is not obliged to report the individual. As a further mitigating measure, the remote gaming company will continue monitoring the activity of the customer to ensure that, throughout the course of the business relationship, the customer does not disclose any links with Iran (such as the use of an Iranian bank account to deposit or withdraw funds).

Different types of reports available in goAML portal



When to Submit an STR?

The main components of an STR are '**Suspicion and Transaction**'. An STR consists of a transaction or series of transactions which are deemed to be suspicious due to not being in line with the customer's known or expected transactional profile

Example 1:

- Customer deposits a onetime cash payment of €20K which is not observed to be in line with their known profile and offers no reasonable explanation for this deposit. All other transactions made by the customer are in line with their expected activity. In this case, the SP should report only the suspicious transaction to the FIAU by submitting an STR regarding the €20K transaction.
- The remaining transactions should be submitted as an additional information file (“AIF”).

Example 2:

- Customer has an expected turnover of €20K per year. However, the transactional activity shows that the turnover of the customer adds up to €50K per year. In this case, the reporting entity should submit an STR with the FIAU, highlighting all the transactions carried out by the customer which total to the €50K.

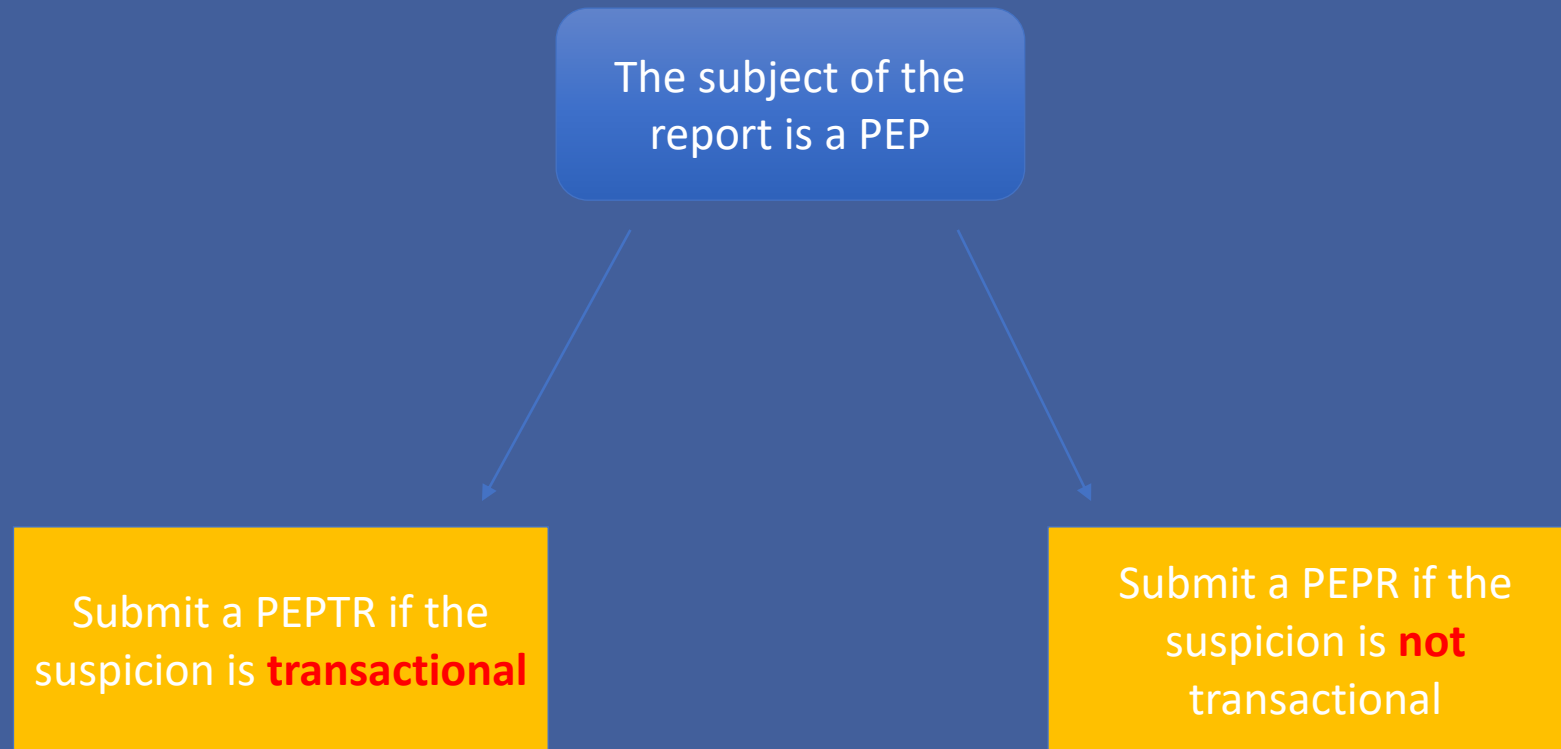
Example 3

- Customer carries out a series of deposits which are not in line with their usual or expected activity. No explanation for this was provided. In this case, the reporting entity should submit an STR containing all the transactions made by the customer which gave rise to the SP's ML/ FT suspicion.

When to submit a SAR?

- The main components of an SAR are '**Suspicion and Activity**'. An SAR consists of transactional activity which is in line with the known or expected profile, but the customer displays behaviours which raise suspicion.
- Examples of this include but are not necessarily limited to;
 - Adverse information through open sources;
 - Refusal to provide requested documentation;
 - Uncooperative behaviour;
 - Becoming uncommunicative; and
 - Refused onboarding.

When to submit a PEPR/PEPTR



When to submit a TFR/TFTR?

1. TFR = Terrorism Financing Reports are to be submitted when there is suspicion of terrorist financing activities. This report is predominantly activity based and the suspicion does not arise from the actual transaction(s). This report type does not allow for the inclusion of suspicious transaction reporting.
2. TFTR = This report is to be submitted when there is a clear suspicion of terrorist financing, however the suspicion emanated from a transaction or series of transactions carried out by the reported natural or legal persons.

Record Keeping

The FIAU emphasises that records need to:

Be kept in order on file, be it physical or electronic, and in a manner that is easily retrievable when they are requested to be produced by the authorities

Contain sufficient information explaining the reasoning behind the decision taken by the MLRO, for ease of reconstructing and understanding the scenario.

Demonstrate a consistent approach to the decisions being taken by the MLRO.

Document the reasons why it was impossible for the MLRO to act in keeping with the requirements of the Implementing Procedures – Part I. As this may prove to be a mitigating circumstance, including any possible obstacles encountered and the actions taken to address or attempt to address any such obstacles.

Record keeping should therefore not be overlooked as it can prove to be an important aspect of the MLRO's activity.

Any questions?

