

21 July 2020

## What is a Money Laundering Reporting Officer (MLRO)?

Under the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR), all Subject Persons, including those within the regulated financial services sector, are required to appoint a Money Laundering Reporting Officer (MLRO).

The MLRO holds a key role in protecting the integrity of the financial system. Anyone carrying out this function must make informed decisions as to whether a Subject Person is being abused to launder the proceeds of criminal activity or to otherwise provide financial support to terrorists and alert the authorities. In addition, the MLRO may be called upon to exercise oversight over a Subject Person's Anti-Money Laundering and Countering the Funding of Terrorism (AML/CFT) systems. In either instance, the MRO will also act as a focal point for related enquiries. The responsibility attached to this role should not be underestimated or otherwise taken for granted.

The MLRO role is an extremely important position within a business. It is therefore vital that anyone taking on this role understands the responsibilities attached to it and considers carefully the consequences that may result from not meeting those responsibilities in an effective manner prior to taking on the role.

### What does an MLRO do?

The PMLFTR requires Subject Persons to appoint an Officer and entrust to the same Officer the receipt of any internal reports on possible instances of Money Laundering (ML) or Funding of Terrorism (FT). The Officer is to consider ML/FT reports and determine if there are grounds to submit a Suspicious Transaction Report (STR) to the Financial Intelligence Analysis Unit (FIAU). Together with this key function, the MLRO may exercise oversight over all AML/CFT related activities. This calls for the MLRO not only to have the necessary experience and knowledge of AML/CFT matters but to also be of sufficient seniority and free from conflicts of interest to take independent action when this is necessary. To undertake this significant role requires the prior approval of the Malta Financial Services Authority (MFSA) to ensure that anyone proposed for this role will be able to carry out the associated functions in an effective and efficient manner.

From a practical perspective, MLROs are involved in a Subject Person's communications with the FIAU, be it in relation to the filing of STRs or replying to requests for information. They also have a role to play in designing relevant AML/CFT policies and procedures, including record-keeping and internal reporting procedures, and in ensuring that proper and sufficient due diligence is performed on customers and their activities. MLROs should also participate in the ongoing review of a Subject Person's internal policies, procedures, and professional relationships, to ensure that its systems are sufficiently robust to prevent any previously identified instances of proceeds of crime or funding of terrorism. In this capacity, MLROs may need to provide training to colleagues within their business.

The MFSA points out that a person appointed as MLRO should have sufficient authority to carry out their duties effectively. Crucially, MLROs are to be free to make their own determination as to whether there is a need or otherwise to file an STR with the FIAU. There should be no attempt, be it internal or

external, to exercise pressure on the MLRO or otherwise influence any decision with regards to how to proceed with respect to any suspicion of ML/FT. MLROs are also key in advising senior management about the risk exposure the Subject Person faces from ML/FT and how to manage that risk. Considering the diverse range of activities that a MLRO must perform, Subject Persons are to ensure that their MLRO has sufficient time to do so and that the MLRO is provided with the necessary human and technological resources to carry out these duties effectively. In particular, Subject Persons should consider whether the appointment of a designated employee is called for.

### An Effective MLRO

It goes without saying that dedication, honesty and integrity are fundamental traits for a MLRO. Similarly, senior management must be committed to giving their MLRO ongoing professional support. While there are currently no regulatory requirements for who should be appointed MLRO, there are several requirements that a Subject Person must meet when considering the MLRO's function within its overall organisational set-up.

### Authority and Independence

An MLRO should hold a position of sufficient seniority within the Subject Person so that they can take the necessary decisions without undue pressure and, where necessary, challenge decisions that they consider ill-suited to protect the Subject Person from possible ML or FT abuse. Ensuring the MLRO's independence of judgement is also why the MLRO is to be free from conflicts of interest, be they pecuniary or otherwise. Contrasting functions or having one's remuneration dependent on financial parameters can unduly influence an MLRO when considering the best course of action to take.

### Knowledge and Confidentiality

Any decision taken by the MLRO must be an informed one. Therefore, the MLRO is required to have access to any information the MLRO deems necessary to properly assess internal reports or to otherwise carry out any other AML/CFT function the MLRO may be responsible for. Given that the MLRO should be a senior and authoritative one, there should be no obstacle to the MLRO having access to relevant information.

The MLRO also needs to have a sound understanding of the day-to-day operations of the Subject Person which is why individuals holding specific positions within the organisation of the Subject Person are expressly barred from holding the role. This is also one of the reasons why the outsourcing of the MLRO position is not possible, other than in specific instances provided for by law. However, outsourcing is also prohibited due to the confidentiality that surrounds the work of the MLRO as the knowledge on reports made to the FIAU and on any request for information received from the same cannot be disclosed other than in those situations catered for under the PMLFTR.

A sound level of experience in not only AML/CFT but also Sanctions and Anti-bribery and Corruption is warranted. All aspects of financial crime that could ultimately result in ML must be included in the knowledge bank of an MLRO.

## Understanding ML/FT Risk

MLROs must be able understand the ML/FT threats to which the Subject Person is exposed and the vulnerabilities that may be exploited for ML/FT. This skill requires not only a thorough understanding of the services and activities provided by the Subject Person but also a general understanding of customers' activities and behaviour. Having a sound understanding of ML/FT risk will allow the MLRO to determine if internal reports are justified and are therefore escalated through the submission of an STR with the FIAU. In so doing, the MLRO will assist the Subject Person in avoiding the dangers of under-compliance and the otherwise costly burden of over-compliance.

Anyone considering taking on the role of the MLRO should assess whether they possess the necessary qualities to carry out the role in an effective manner. Individuals should be aware that where an MLRO contributes or causes a Subject Person to be in breach of its AML/CFT obligations either through an act or omission, the person in question may be subject to an administrative penalty as high as Euro 250,000. Anyone found to be complicit in ML could face a prison sentence of up to 18 years.

## Legal Privilege

An MLRO should have a strong grasp of the concept of legal professional privilege since they might be required to disclose sensitive information to the FIAU – with legal implications for the Subject Person and its employees. Knowing what information must be revealed, and when, is therefore, a central focus of the MLRO mandate. With this in mind, while an MLRO does not necessarily need to be legally-trained, knowledge of the field is useful. Alternatively, an MLRO might be given access to good legal advice about this aspect of their role.