



GOVERNMENT
OF MALTA

Malta Financial Services Oversight newsletter

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Introduction

In this newsletter, we review Malta's report to Moneyval in which it addresses recommendations made in the Mutual Evaluation Report, specifically in regards to nine areas where Malta was deemed to be partially compliant. Out of a total of forty recommendations, Malta was deemed to be compliant on 10, and largely compliant on a further 21. Malta remains committed to enacting in full all recommendations made by Moneyval.

in this news letter

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NON-PROFIT ORGANISATIONS

Last year's Moneyval report highlighted that Malta's risk assessment of Voluntary Organisations was not comprehensive because it did not identify which organisations might be at risk of FT abuse or the nature of the threats they faced.

Those deficiencies have been resolved following amendments made to the Voluntary Organisations Act, which had the effect of making enrolment mandatory for all VO organisations. The Office of the Commissioner for Voluntary Organisations (OCVO) has developed criteria to risk assess all enrolled VOs and developed a supervisory tool to assist with oversight. Earlier this year, the OCVO contracted an external audit firm to carry out a detailed analysis of the sector.

The Office also developed a toolkit to help voluntary organisations mitigate against AML/CFT issues through the establishment of appropriate procedures. Under separate legislation, one central register has been set up under the remit of the Malta Business Registry (MBR) for the registration of legal entities and their beneficial owners. The MBR has developed an online portal for registered non-profit organisations and a register of their beneficial owners.

Relevant Legislation

- Chapter 492 of the laws of Malta
- Subsidiary Legislation 492.01 (Accounts and Annual Returns)

CORRESPONDENT BANKING

The Moneyval report highlighted that (1) mandatory measures regarding correspondent banking relationships apply only to respondent institutions outside the EU; (2) that correspondent banks are not required to determine if a respondent has been subject to a ML/FT investigation or regulatory action, and (3) that correspondent banks are required to document rather than clearly understand the respective responsibilities.

Malta has resolved these technical deficiencies through the implementation of mandatory Enhanced Due Diligence (EDD). Amendments made to the Prevention of Money Laundering and Financing of Terrorism (PMLFTR) have the legal effect of requiring correspondent banks, whether they be EU or non-EU entities, to determine whether a respondent institution has been subject to ML/FT investigations or regulatory action; and also clarifying that correspondent banks are not only required to document but also to understand the responsibilities of each institution for preventing ML/FT.

Relevant Legislation

- Legal Notice 26 of 2020 - Amending the PMLFTR to transpose a number of 5th AMLD provisions
- Prevention of Money Laundering (Amendment No 2) Regulations 2020
- Act I of 2020 - Amending the PMLA to transpose some provisions of the 5th AMLD and address some technical deficiencies within the PMLA (identified by MONEYVAL)
- In 2019 the following amendments were enacted to the Prevention of Money Laundering Act (PMLA) and Prevention of Money Laundering and Funding of Terrorism (PMLFTR):
- Act No. VII of 2019 - Amending the PMLA to ensure that certain provisions found not to be in adherence to the 4th AMLD
- Legal Notice 77 of 2019 - Amending the PMLFTR to ensure that certain provisions found not to be in adherence to the 4th AMLD

NEW TECHNOLOGIES

Moneyval highlighted that Malta had not carried out a risk assessment in order to identify and assess ML/FT risks in relation to the use of new technologies.

In Malta, Virtual Financial Asset Service Providers (VFASPs) are subject to the Virtual Financial Assets Act which came into force on 1 November 2018, under which VFASPs are required to become licensed and thereafter supervised by the MFSA from a prudential perspective and by the FIAU for AML/CFT purposes. The MFSA also acts as an agent for the FIAU to perform AML/CFT supervision on VFASPs. VFASPs which operate an Innovative Technological Arrangement also have the requirement of a Systems Audit which must be carried out by a Systems Auditor registered by the Malta Digital and Innovation Authority Act.

The MFSA has also introduced the Financial Instrument Test, a mandatory requirement under the VFA Act, designed to guarantee that VASPs' activities do not constitute regulated activities falling under separate regimes, and do not fail to comply with the relevant legislation. This ensures that all activities carried out in relation to distributed ledger technology assets fall within the scope of AML/CFT supervision. Legal Notice 430 of 2018 extended the application of the PMLFTR to activities regulated by the VFA Act, rendering VFA Agents, VFA Service Providers and anyone offering VFAs to the public subject persons.

This means that anyone carrying out regulated VFA activities has to comply with the obligations arising from the PMLA, the PMLFTR and the Implementing Procedures – Part I. Any VFASP which has notified the MFSA of its intention to apply for a licence and is allowed to continue providing VFA services under the Transitory Period, is also considered to be a subject person in terms of the PMLFTR, and therefore subject to compliance obligations with PML Act.

The VFA framework contains checks and controls to prevent criminal infiltrations, as a VFA service licence is only granted if it is determined that anyone involved with the applicant is a fit and proper person. The MFSA's Due Diligence function also performs ongoing due diligence on a risk sensitive basis, as well as continuous sanctions screening, PEP screening and adverse media screening.

Following the expiry of the transitory period which ended on 31 October 2019, the MFSA initiated an exercise in order to ascertain that all VFASPs which had originally notified the Authority of their intention to operate within the transitory period, had either submitted a Letter of Intent to signal their intention to apply for a license, or otherwise submitted a notification with a declaration of their cessation of operations.

57 out of the original 180 companies did not provide any notification to the Authority, and after several attempts to communicate with them through emails and letters, they remained unresponsive. Thus, enforcement action was taken in order to ensure that these firms were no longer providing their VFA services in or from within Malta, which would now be deemed to be illegal. The MFSA has also liaised with the Malta Business Registry to strike off these companies from the MBR Register.

Relevant legislation

- Legal Notice 26 of 2020 Prevention of Money Laundering Act (Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2020 inclusion of additional Virtual Financial Assets provisions)
- Legal Notice 430 of 2018 - Prevention of Money Laundering Act Amendment Regulations 2018 (Prevention of Money Laundering and Funding of Terrorism - inclusion of Virtual Financial Assets provisions)

REPORTING OF SUSPICIOUS TRANSACTIONS

Moneyval's report highlighted that the mechanism to file Suspicious Transaction Reports or STRs casts doubts on the fulfilment of the obligation to do so 'promptly', in line with FATF recommendations. It also highlighted that Malta's legislation does not clearly and expressly include attempted transactions among those to be reported by subject persons.

As noted above, Malta has subsequently amended the Prevention of Money Laundering and Financing of Terrorism (PMLFTR). The relevant revised regulations require subject persons and supervisory authorities to report suspicions of proceeds of crime, money laundering and finance of terrorism. This must now be done promptly, replacing the earlier time limit of five working days for STRs to be submitted to the FIAU.

Relevant legislation

- Legal Notice 26 of 2020 - Amending the PMLFTR to transpose a number of 5th AMLD provisions
- Prevention of Money Laundering (Amendment No 2) Regulations 2020
- Act I of 2020 - Amending the PMLA to transpose some provisions of the 5th AMLD and address some technical deficiencies within the PMLA (identified by MONEYVAL)
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Transparency and Beneficial Owner (BO) of legal persons

Malta was found not to be fully compliant on matters of transparency and beneficial ownership by Moneyval. In particular the assessment found that:

- In-depth analysis of how all types of Maltese legal persons and legal arrangements could be used for ML/FT purposes has not been finalised;
- Shortcomings in mechanisms could call into question the accuracy of beneficial ownership information;
- There is no explicit obligation for the liquidator to retain beneficial ownership information;
- Financial sanctions are not sufficiently dissuasive and proportionate in respect of failing to submit beneficial ownership information to the Registries in respect of companies, commercial partnerships and foundations;
- No information provided by the country on how the AGO or the MFSA and MGA monitor the quality of assistance received from other countries.

On these points Malta has acted decisively to enact the recommendations made. During 2019, the National Coordinating Committee on Combating Money Laundering and Funding of Terrorism (NCC) completed a sector-based risk assessment on legal entities, legal arrangements (LEA) and voluntary organisations (VOs).

This sector-based risk assessment focused on all legal entities and arrangements that are established or operating in Malta.

Following this risk-assessment, an Action Plan has been drawn up and implemented by the Malta Business Bureau.

On the back of the assessment and action plan the MBR has put in place measures to address all shortcomings addressed in the Moneyval Report, in order to ensure that it offers a well-resourced and proactive company registry holding accurate and up-to-date beneficial ownership information.

Thanks to amendments to the relevant laws, the MBR has now moved from a passive role to undertaking a proactive role in verifying, monitoring and putting measures in place in order to ensure that accurate and up-to-date information on beneficial owners is kept. Legislative amendments have enabled the Register to carry out onsite supervision and for this purpose a fully-fledged Compliance Unit has been set up. The Compliance Unit has also been given all the necessary training, even by foreign AML experts.

Access to the register of beneficial owners has been extended to the general public and competent authorities, and the Financial Intelligence Analysis Unit is permitted to share information on beneficial owners with other competent authorities and Financial Intelligent Units of other Member States in a timely manner and free of charge.

In addition to the human supervision, the MBR has also invested in intelligent technologies that have access to data, held by national and foreign authorities for cross-checking and conducting advanced analyses.

New powers given to the Registrar, will enable him to restrict a person from being appointed as director or company secretary of an organisation if he is or has been a director or secretary of an existing Maltese company and found in breach of law in three instances or more, within a two-year period. the law three times within a period of two years. These breaches include, but are not limited to, BO notification forms, annual returns and annual accounts.

Relevant Legislation

- ACT No. XLVII of 2020 - An ACT to amend the Second Schedule to the Civil Code, Cap. 16 and the Companies Act, Cap. 386 and to provide for related and ancillary provisions.
- L.N. 158 of 2019 - Companies Act (Register of Beneficial Owners) (Amendments) Regulations, 2019
- Legal Notice 27 of 2020 Trust and Trustees Act (Register of Beneficial Owners) Amendment Regulations 2020
- Legal Notice 373 of 2017 Trust and Trustees Act (Register of Beneficial Owners) Regulations 2017 - (Prevention of Money Laundering and Funding of Terrorism Trust Ultimate Beneficial Owner Register Regulations 20/12/2017)

REGULATION AND SUPERVISION OF FINANCIAL INSTITUTIONS

Parliament had approved amendments to address the deficiencies presented in the MER on the regulation and supervision of financial institutions. These changes directly affect the MFSA which oversees these matters.

This has led to a number of changes including a new fitness and propriety test which incorporates evaluation of all the information held by the MFSA (or other competent authorities in Malta or elsewhere) about the individual or entity where they are known to the MFSA already, the competence of senior management in the case of individuals, and information gathered through a Due Diligence process.

To facilitate this the MFSA has introduced more intrusive checks to prevent criminals and their associates from being involved in all licensed entities including FIs and TCSPs: creating a new Due Diligence Function, procedures and tools. The same processes and tools used by the Due Diligence Function have significantly enhanced the ongoing monitoring process, including UN Sanctions and adverse media screening on all persons involved in the regulated financial sector.

The Due Diligence Function employs a risk framework which focuses on both the sectoral (based on the risk of the sector in which an applicant/entity is involved) and individual risk scoring (personal indicators, such as geography and competence). The resulting risk scores determine the depth of analysis (standard or enhanced), as well as the frequency of ongoing checks. Furthermore, legislative changes mean supervision is now to be carried out “on a risk sensitive basis” and provides guidance on what elements are to be taken into consideration and how such supervision is to be done on a risk sensitive basis.

Relevant Legislation

- Legal Notice 27 of 2020 Trust and Trustees Act (Register of Beneficial Owners) Amendment Regulations 2020
- Legal Notice 373 of 2017 Trust and Trustees Act (Register of Beneficial Owners) Regulations 2017 - (Prevention of Money Laundering and Funding of Terrorism Trust Ultimate Beneficial Owner Register Regulations 20/12/2017)

Regulation and supervision of Designated Non-Financial Businesses and Professions (DPMS)

In view of the legislation that is now in force, Malta has the necessary tools for regulation and supervision of the most relevant sectors in Malta, therefore directly addressing the recommendations outlined by Moneyval on specific laws regulating DPMS and real estate agents.

As a result of new legislation brought in on 26th June 2020 any person who wants to operate in Malta as a DPMS or dealer in precious metal stones, as from 1st January 2021 can only do so if in possession of a trading licence. Moreover, individuals who want to deal in precious metals and stones must satisfy the fit and proper test. In preparation for the assessment of this requirement, the Trade Licensing Unit is already working closely with the MBR, VAT Department and the FIAU in order to scrutinize the list of individuals and companies who are listed with the authorities (VAT Department) as dealers in precious metals and stones in order to form an opinion whether these individuals and companies on the basis of their conduct and repute are considered to be fit and proper persons to carry on the business of a dealer in precious metals and stone.

A new act regulating Real Estate Agents came into force on 3rd July 2020. In light of this, a notice will be issued that all interested parties within the sector should register their intention, by end of December 2020 to be licensed to operate in the sector, till end of December 2021. Those who fail to register within the timelines mentioned here, will then have to register for a licence as from January 2022. Furthermore, a legal notice was issued on 22 May 2020 extended the applicability of administrative penalties for AML/CFT breaches to cover also other senior management officials of a subject person.

Relevant Legislation

- Legal Notice L.N. 261 of 2020, Trading Licences Act (CAP. 441) Trading Licences (Amendment) Regulations, 2020
- Act No. XXXII of 2020 - Real Estate Agents, Property Brokers and Property Consultants Act, 2020.

INTERNATIONAL INSTRUMENTS

MoneyVal's report highlighted that the provision implementing Article 5 of the Vienna Convention as written, might lead to conflicting interpretations. Moneyval also highlighted that the principles on third party confiscation were not fully implemented.

In view of the amendments that were introduced, Malta has addressed the deficiencies of this recommendation. Amendments were carried out to Criminal Code Chapter 9, Dangerous Drugs Ordinance Chapter 101 and The Prevention of Money Laundering Act (PMLA) Chapter 373 of the laws of Malta and wherein such legislative amendments recognise the Asset Recovery Bureau (ARB) as the competent authority. Furthermore, in cases of money laundering and drug related offences, any third party, whose assets have been seized,

may lodge an appeal against the declaration bring action for the declaration that any or all of the property forfeited is not the profits or proceeds from the offence, unless the third party knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation. (Addressing Article 5(8) of the Vienna Convention).

Relevant Legislation

- Act No XXXI of 2019 – An ACT to amend various laws (better administration of justice).
- Legal Notice 343 of 2019 – Various Laws (Better Administration of Justice (Amendment) 2019 (Act No. XXXI of 2019) Commencement Notice

Mutual legal assistance: freezing and confiscation

Mutual Legal Assistance is an important component of cooperation between states for obtaining assistance in the investigation or prosecution of criminal offences, including the sharing of information and additional investigative materials.

Malta was rated 'partial compliant' on this recommendation, whereby there was lack of sharing of information on a number of categories of properties as listed in the report itself. In particular, it was commented that no specific information has been provided on freezing or seizing property which does not belong or is not due to a suspect, but which could however constitute laundered property, proceeds of crime or instrumentalities. This is an issue when working with foreign authorities which want to act to confiscate these assets as there was no clear mechanism to enact the request. To address the issue, the legal frame work has been changed so that if

the Attorney General receives a request from outside of Malta for property to be confiscated, the foreign legal documents can be raised at the First Hall of the Civil Court for enforcement in Malta.

Malta was also found to have no specific mechanism for managing, and when necessary disposing of, property frozen, seized or confiscated in the context of mutual legal assistance. The Attorney General has now been given the powers to instruct ARB to take action and manage the property as necessary. The Office of the Attorney General has also adopted guidelines to ensure the promptness in the execution of freezing; seizure and confiscation requests received from foreign judicial authorities. These guidelines ensure that in such cases an application should be filed before the Criminal Court in any case in no longer than 48 hours so that there will be no dissipation of funds.

Management of a Central Bank Account Registry ('CBAR')

The FIAU has been vested with the power to administer a central bank account registry for Malta. Such a registry is being established pursuant to a requirement introduced by the 5AMLD, which obliges Member States to establish centralised automated mechanisms to allow the retrieval of information on anyone holding or controlling payment and bank accounts identifiable by IBAN, as well as safe deposit boxes held by credit institutions.

The purpose of this mechanism is to allow Financial Intelligence Units and other national competent authorities to have timely access to information on bank and payment account holders, and on owners of safety deposit boxes, so as to improve the efficiency with which they discharge their functions.

Through this power, the FIAU shall be the authority responsible for establishing and managing this centralized automated mechanism for Malta. This will be complemented by subsidiary legislation to set out the functional requirements of the mechanism and to list the authorities that are to have access to it, and under which conditions. Legal Notice No. 401 of 2020, establishes the centralized bank account register regulations for credit and financial institutions.

The legal notice includes measures on: 1) defining beneficial owner, credit institution, and financial institution; 2) establishing obligations for credit and financial institutions; 3) explaining the establishment, management, and administration of the register; and 4) issuing procedures and guidance for accessing and maintaining the register.

Relevant Legislation

- Legal Notice No. 401 of 2020, establishing centralized bank account register regulations for credit and financial institutions.



GOVERNMENT
OF MALTA



Contributing Institutions

