The MLRO, Reporting & Whistleblowing

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The MLRO’s functions

(a) Receiving reports of knowledge or suspicion of ML/FT or that a person may have been, is or may be connected with ML/FT from the subject person’s employees;

(b) Considering such reports to determine whether knowledge or suspicion of ML/FT subsists or whether a person may have been, is or may be connected with ML/FT;

(c) Reporting knowledge or suspicion of ML/FT or of a person’s connection with ML/FT to the FIAU; and

(d) Responding promptly to any request for information made by the FIAU.
Who can be appointed as MLRO?

An MLRO must be:

• An officer of the Subject Person; and

• Must have sufficient seniority and command
Who can be appointed as MLRO?

An officer of the Subject Person - *as a general rule*

The functions of a MLRO may not be:

- Outsourced;
- Carried out by a non-executive director of the subject person;
- Carried out by a person who only occupies the position of company secretary; and
- Carried out by a person who undertakes internal audit functions
Who can be appointed as MLRO?

An officer of the Subject Person – *the exceptions*

Cases where MLRO need not be an officer in employment or an executive director:

- Insurance company managed by an insurance manager (in terms of the Insurance Intermediaries Act71) - may enter into an arrangement with the insurance manager;

- CIS that is subject to the PMLFTR and which:
  - Does not have a physical operational set-up in Malta
  - Does not engage any employees
  - Is not involved in the acceptance and processing of subscriptions and the collection of funds from investors

- Group of subject persons which may designate one of their employees as group-wide MLRO;
Who can be appointed as MLRO?

An officer of the Subject Person – the exceptions

- Person seconded from a subject person within a group.

MLRO must be present from where the activities of the subject person are being directed and the relative back office operations are being conducted.

A subject person must ensure that if its MLRO has multiple appointments, he/she fulfils the MLRO’s functions in an effective manner.
Who can be appointed as MLRO?

• Must have sufficient seniority and command

The MLRO **must** occupy a senior position.

He/she should be able to exercise effective influence on:
  • AML/CFT measures
  • Policies
  • Controls
  • Procedures

He/she should not be precluded from posing effective challenge where necessary.

Must be able to communicate directly with the Board of Directors.
Who can be appointed as MLRO?

The MLRO must also have:

- The authority to act independently in carrying out his responsibilities; and

- Should have **full and unlimited access** to all records, data, documentation and information **held by the subject person** for the purposes of fulfilling his responsibilities.
The Monitoring Functions

Regulation 5(5)(c) of the PMLFTR

*appoint, where appropriate with regard to the nature and size of the business, an officer at management level whose duties shall include the monitoring of the day-to-day implementation of the measures, policies, controls and procedures adopted under this regulation;*

In terms of Regulation 5(5)(c), a subject person **has to consider** whether in view of the nature and size of its business there is a need to appoint an officer at management level whose duties are to include the monitoring of the day-to-day application of the measures, policies, controls and procedures adopted by the subject person to ensure compliance with its AML/CFT obligations.
The Monitoring Function

If subject person considers such function is required within its structure, the officer entrusted with this function would have to be:

(i) an officer of the subject person; and

(ii) at management level.

Subject person to determine whether this function is to be also carried out by the MLRO or entrusted to a separate officer.
The Monitoring Function

- Day-to-Day Monitoring Function - the responsibilities:

  - ensuring continued compliance with AML/CFT obligations;
  - day-to-day oversight of the subject person’s applications of its AML/CFT measures, policies, procedures and controls;
  - 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).
The Monitoring Function

• General Oversight Function - the responsibilities:

It is a subject person that is ultimately responsible for ensuring compliance with its AML/CFT obligations,

Regulation 5(6) – where applicable, a subject person has to designate one of its members of management with the responsibility to ensure that the subject person is fulfilling its AML/CFT obligations.

Senior management must provide the MLRO and its monitoring function sufficient resources, including appropriate staff and technological means, to ensure that they are able to carry out their obligations effectively.
Reporting Obligations

- Subject persons must have internal reporting procedures.
- Procedures must clearly set out the steps to be followed when an employee knows or suspects that a person, activity or a transaction could be connected to ML/TF or proceeds of crime.
- An employee has to report such information to the MLRO without delay.
- Internal reports are to be submitted in writing.
- Reporting lines are to be kept as short as possible.
- Consideration of internal UARs or STRs fall under the responsibility of the MLRO.
Reporting Obligations

- Internal reports need not be transmitted directly to the MLRO, especially in the case of large entities, where the direct transmission of report to the MLRO may be counter productive.

- Subject persons may therefore have intermediate filtering stages.

- MLRO must be fully aware and in agreement with filtering criteria and methodology used to process internal reports.

- When an internal report made by an employee does result in a report to the MLRO for his/her consideration, a written record should be kept of the circumstances of the case and the reasons why it was decided not to proceed with the case.
Reporting Obligations

- Such records need to be available to the MLRO and, if applicable, to the internal audit function.

- When an internal report made by an employee does result in a report to the MLRO for his/her consideration, the employee having made the internal report shall be informed of the outcome.

- If the employee still considers that the report should be proceeded to the MLRO, he/she should be able to submit the report directly to the MLRO.
Reporting Obligations

- MLRO must consider, without delay, every internal report he/she receive to determine whether:
  - Information in report gives rise to knowledge or suspicion;
  - More information is necessary to reach such a determination;

When the information in the report gives rise to knowledge or suspicion, subject persons must submit a suspicious transaction report (STR) to the FIAU as soon as is reasonably practicable, but not more than **five working days** from when knowledge or suspicion first arose, or from the existence of reasonable ground to suspect ML/FT.

STRs should be submitted to the FIAU – and not to any other authority.
Reporting Obligations

- When the additional is necessary to reach such a determination...

The MLRO must collect and consider without delay any additional information and/or documentation he deems relevant to make the determination. Such information may include:

- Transactional information;
- Information on other connected accounts and/or relationships;
- Other information or documents which are reasonable accessible through public sources.

MLROs **should have unrestricted access** to all relevant information and documentation.
Reporting Obligations

Trigger of a potential suspicion
Automated / Employee Generated

Report to MLRO directly or indirectly without delay

MLRO to consider internal report without delay

Internal Report information suffices
Additional information required

No ML/FT suspicion – No STR but keep an internal record

Gather additional information without delay
Reporting Obligations

Actions after reporting ...

- FIAU acknowledges STR and provides feedback on the quality of the report (not to be confused with feedback on the outcome of a report);

- FIAU may request further information;

- Subject persons should classify customer as high-risk;

- Subject person should remain vigilant and monitor the activities of that customer to a larger extent;
Reporting Obligations

Actions after reporting ...

- Subject person should update FIAU on any further activity or transactions which are also suspicious (the submission of an STR therefore does not absolve the subject person from having to submit further STRs to the FIAU on the same customer)

- It is advisable to inform the FIAU before taking any decision related to the customer, ex: termination of services;

- Subject persons may request feedback from the FIAU on the status of the analysis or on the outcome of the analysis;

- FIAU provides feedback on outcome.
Reporting Obligations

- **Regulation 15(4) - delay of execution of a suspicious transaction**

  - Subject persons are to refrain from carrying out a transaction which they know or suspect to be connected to ML/TF or proceeds of crime.

  - In such circumstances, subject persons should inform the FIAU by means of an STR. It is advisable to ring the FIAU upon the submission of such an STR.

  - Where it is not possible for the subject person to refrain from carrying out the suspected or known to be linked to ML/TF or POC, subject persons shall carry out the transaction and inform the FIAU immediately thereafter.

  - In such cases, subject persons shall also inform the FIAU with the reasons as to why it was not possible to inform the FIAU before the transaction was executed.
Reporting Obligations

Postponement Order Time-Line

Friday 17/02  
S/P reports transaction to be executed

Saturday 18/02  
Transaction suspended

Sunday 19/02  
Transaction suspended

Monday 20/02  
Transaction suspended

Tuesday 21/02  
Suspension w/d 1
By operation of the Law (Article 28)

Wednesday 22/02  
Suspension w/d 2 – FIAU Notice (Discretionary)

Thursday 23/02  
Suspension w/d 3 – FIAU Notice (Discretionary)

On the lapse of the 1st w/d the subject person may proceed unless FIAU postpones the transaction or if an attachment order is issued.
Reporting Obligations

- **Reports for Compliance Purposes (ACR)**

  - As part of the FIAU’s risk-based approach to AML/CFT supervision, subject persons may be requested by the FIAU to respond to data collection exercises and questionnaires.

  - Such questionnaires may contain closed or open-ended questions and may include requests on:
    - Information and data relating to the risk exposure of the subject person;
    - Information and data relating to the AML/CFT preventive measures of the subject person;
    - Statistical data in relation to the subject person’s business.
The FIAU is one of the authorities designated by the Protection of the Whistleblower Act to receive external disclosures on improper practices from employees in the private sector at large.

Disclosures may relate to:

- Instances of money laundering and/or funding of terrorism; or
- Instances where measures intended to prevent money laundering and/or funding of terrorism are breached.

Disclosures that meet the requirements set out in the Protection of the Whistleblower Act entitle the whistleblower to protection from detrimental action by the employer and to anonymity.
Protection of the Whistleblower Act (2)

Any employee in the private sector can make an external disclosure as long as:

- He falls to be considered as an employee (including seconded employees, former employees, contractors etc.) in terms of the Act;
- He has already attempted to make an internal disclosure but to no avail or otherwise considers this to be counterproductive/impossible; and
- He makes the same in good faith and the disclosure is not anonymous.

Outcome of an external disclosure:

- Information provided is deemed to fall within the FIAU’s remit and is used for analytical and/or supervisory purposes
- Information provided is deemed to fall outside the FIAU’s remit and is referred, without disclosing the individual’s identity, to another competent authority or to the Police
- Refused as conditions for an external disclosure are not met.
Protection of the Whistleblower Act (3)

- Not a substitute for reporting under the PMLFTR but complementary thereto:
  
  **Suspicious Transaction Report** – report a subject person’s customer/s and/or their activities

  **External Disclosure** – report on employer’s activities when suspect that there are breaches of AML/CFT obligations or that the employer is facilitating ML/FT

- Independently of the Protection of the Whistleblower Act, the FIAU is bound by its own confidentiality obligations and does not disclose THE source of any information it receives however received.