

Prevention of Money Laundering: The Maltese Position

A PRESENTATION FOR
*'THE COMBATING OF
MONEY LAUNDERING
CONFERENCE'*

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Prevention of Money Laundering: The Maltese Position

PRINCIPAL SOURCES OF LAW

- ▶ DANGEROUS DRUGS ORDINANCE.
- ▶ PREVENTION OF MONEY LAUNDERING REGULATIONS.
- ▶ PREVENTION OF MONEY LAUNDERING GUIDANCE NOTES FOR:
 - * *CREDIT AND FINANCIAL INSTITUTIONS (CBM);*
 - * *INVESTMENT SERVICES & LIFE ASSURANCE BUSINESSES (MFSC);*
 - * *STOCKBROKERS AND FINANCIAL INTERMEDIARIES (MSE).*

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OVERVIEW

- ▶ WHAT ARE THE ELEMENTS OF THE OFFENCE ?
- ▶ WHO MAY COMMIT THE OFFENCE ?
- ▶ WHAT SPECIAL PROCEDURAL REMEDIES DOES THE EXECUTIVE HAVE TO COMBAT MONEY LAUNDERING ?
- ▶ WHAT PUNISHMENT DOES THE OFFENCE ATTRACT?

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THE OFFENCE.

- ▶ **MONEY LAUNDERING OFFENCE AND UNDERLYING CRIMINAL OFFENCE ARE SEPARATE AND DISTINCT.**
- ▶ **CRIMINAL ACTIVITY DEFINED TO MEAN ANY ACTIVITY, WHENEVER OR WHEREVER CARRIED OUT, WHICH AMOUNTS TO A CRIME OR CRIMES SPECIFIED IN ART.3 (1) (A) OF VIENNA CONVENTION OR A CRIME OR CRIMES LISTED IN THE SECOND SCHEDULE TO THE ACT: (Eg. Drug offences, arms dealing, crime affecting public trust, fraud, crimes against Exchange Control Act, Customs Ordinance, "corrupt practice" in terms of Permanent Commission against Corruption Act.**

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THE OFFENCE.

- ▶ **INTENTIONAL ELEMENT NECESSARY:** knowledge that property is derived from “criminal activity”.
- ▶ **ACTUS REUS:** conversion or transfer of “tainted” property for the purpose of concealing or disguising the origin, true nature, source, location rights with respect of “tainted” property; acquiring “tainted” property or retaining it without reasonable excuse.

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WHO MAY COMMIT THE OFFENCE?

- ▶ **ANY PERSON, WHETHER THE OFFENCE IS ATTEMPTED OR CONSUMMATED.**
- ▶ **ACCOMPLICES.**
- ▶ **IN THE CASE OF A BODY OF PERSONS, COMMUNICATION OF LIABILITY TO OFFICERS.**

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SPECIAL PROCEDURAL REMEDIES.

- ▶ **INVESTIGATION ORDER (PRE-CHARGE)**
- ▶ **ATTACHMENT ORDER (PRE-CHARGE)**
- ▶ **FREEZING ORDER (POST CHARGE)**
- ▶ **ORDER OF FORFEITURE (JUDGEMENT)**
- ▶ **The above remedies have been extended to offences prosecuted overseas.**

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SUBJECT PERSONS.

- ▶ CREDIT AND FINANCIAL INSTITUTIONS.
- ▶ LIFE ASSURANCE.
- ▶ PROVIDERS OF INVESTMENT SERVICES, COLLECTIVE INVESTMENT SCHEMES.
- ▶ STOCKBROKERS.
- ▶ ANY ACTIVITY ASSOCIATED WITH THE ABOVE.
- ▶ *SUPERVISORY AUTHORITIES.*
- ▶ *PROFESSIONAL PERSONS ACTING ON BEHALF OF UNDISCLOSED PRINCIPALS IN TERMS OF REG. 7(5).*
- *Is the list of Subject Persons sufficiently extensive ?*

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DUTIES IMPOSED BY THE REGULATIONS.

- ▶ **IDENTIFICATION.**
- ▶ **INTERNAL RECORD KEEPING.**
- ▶ **INTERNAL REPORTING.**
- ▶ **(EXTERNAL) REPORTING.**
- ▶ **EMPLOYEE INSTRUCTION AND ONGOING
TRAINING.**

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IDENTIFICATION.

- ▶ *WHO IS OBLIGED TO IDENTIFY?*
THE SUBJECT PERSON.
- ▶ *IN WHICH CIRCUMSTANCES IS IDENTIFICATION OF APPLICANT FOR BUSINESS NECESSARY?*
IN CASES 1 TO 4 UNLESS EXEMPTED IN TERMS OF REG.8.
- ▶ *HOW SOON MUST IDENTIFICATION BE MADE?*
AS SOON AS IS REASONABLY PRACTICAL AFTER CONTACT IS FIRST MADE WITH APPLICANT FOR BUSINESS.
- ▶ *HOW IS IDENTIFICATION MADE?*
"ACTUAL" OR "DEEMED" IN THE CASE OF PAYMENTS BY POST ETC.

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TRANSACTIONS ON BEHALF OF ANOTHER.

- ▶ **APPLICANT MUST ALWAYS BE IDENTIFIED, WHETHER HE ACTS ON HIS OWN BEHALF OR ON BEHALF OF A PRINCIPAL.**
- ▶ **WHERE APPLICANT ACTS ON BEHALF OF A PRINCIPAL, PRINCIPAL MUST ALSO BE IDENTIFIED.**
- ▶ **WHERE PRINCIPAL IS A BODY CORPORATE ALL DIRECTORS OF PRINCIPAL MUST BE IDENTIFIED.**
- ▶ **WHERE APPLICANT IS A PROFESSIONAL PERSON WHO IS NOT ACTING ON HIS OWN BEHALF, DECLARATION IN TERMS OF REG.7(5) MUST BE ELICITED.**

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INTERNAL RECORD KEEPING PROCEDRES.

**RECORDS OF IDENTITY AND RECORDS OF
DETAILS OF TRANSACTIONS MUST BE
MAINTAINED FOR A PERIOD OF FIVE YEARS.**

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INTERNAL REPORTING PROCEDURES.

SUBJECT PERSON MUST DESIGNATE A REPORTING OFFICER WHO IS TO EXERCISE JUDGEMENT AS TO WHETHER FACTS REPORTED TO HIM DO GIVE RISE TO A SUSPICION OF MONEY LAUNDERING.

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EMPLOYEE INSTRUCTION AND ONGOING TRAINING.

SUBJECT PERSONS ARE TO TAKE MEASURES TO MAKE EMPLOYEES AWARE OF PROVISIONS OF THE ACT AND THE REGULATIONS AND TO PROVIDE PERIODIC TRAINING IN THE RECOGNITION AND HANDLING OF MONEY LAUNDERING.

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PUNISHMENT [1].

- ▶ **MONEY LAUNDERING OFFENCE UNDER THE ACT:**
 - **FINE NOT EXCEEDING LM1,000,000 AND/OR IMPRISONMENT NOT EXCEEDING 14 YEARS;**
 - **CONFISCATION OR FORFEITURE.**

- ▶ **FAILURE TO COMPLY WITH INVESTIGATION ORDER, ATTACHMENT ORDER:**
 - **FINE NOT EXCEEDING LM 5,000 AND/OR IMPRISONMENT NOT EXCEEDING 12 MONTHS.**

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PUNISHMENT [2].

- ▶ FAILURE TO COMPLY WITH MONEY LAUNDERING REGULATIONS;
- ▶ "TIPPING OFF";
 - FINE NOT EXCEEDING LM20,000 AND/OR IMPRISONMENT NOT EXCEEDING 2 YEARS.

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**MONEY: THE GOOD,
THE BAD AND THE
LAUNDERED.**