

Anti-Money Laundering

Know Your Customer

DR SARAH GRIMA

Money laundering is a reality. It has become today one of the chief concerns of all governments - and so it should be! It is NOT merely financial institutions and large organisations which may fall victim to such offence, but *any* individual who provides services to another in return for remuneration. But what is money laundering?

Money laundering constitutes the processing of profits derived from the commission of *any* crime, in such a manner as to conceal their illegal origin.¹ Put simply, it is the act of making money which comes from an illegitimate Activity X appear to come from a legitimate Activity Y. Endless variations of schemes may be adopted by money launderers to obscure the guise of illegally-obtained money, which renders it extremely difficult, and sometimes impossible for law enforcement authorities to separate the 'clean' from 'dirty' proceeds.

So how can we aid in this process? By obtaining all information required to properly know the customer.

Let's have a look at those individuals who are most likely to encounter money laundering or an attempt thereof. The Prevention of Money Laundering and Funding of Terrorism Regulations, 2008,² being one of the applicable local legislation,³ have identified such individuals as 'subject persons',⁴ which term comprises banks, insurance companies, stock-brokers, investment services providers, corporate service providers, trustees and other fiduciaries, auditors, accountants, tax advisors, notaries, lawyers, real estate agents, casino licensees, and generally any person

¹ *Vide* Prevention of Money Laundering Act (herein referred as 'PMLA'), Chapter 373 of the Laws of Malta, article 2 and Prevention of Money Laundering and Funding of Terrorism Regulations (herein referred as 'PMLFTR'), 2008, Subsidiary Legislation 373.01, regulation 2 for the full definition of 'money laundering'.

² Prevention of Money Laundering and Funding of Terrorism Regulations, Legal Notice 180 of 2008 as amended, issued on 31st July 2008.

³ *Vide* also Prevention of Money Laundering Act and The Financial Intelligence Analysis Unit (FIAU) Implementing Procedures, issued in terms of Regulation 17 of the PMLFTR, available at <<http://www.fiumalta.org/library/SiteImages/PDF/implementprocedures/04-02-2013ImplementingProceduresPart1.pdf>> accessed 13th October 2014

⁴ Prevention of Money Laundering and Funding of Terrorism Regulations, regulation 2

trading in goods whenever payment is made in cash amounting to or exceeding €15,000 (whether the transaction is executed in one single operation or several linked operations).

The law imposes upon subject persons the duty to adopt policies and procedures designed to prevent, detect and report money laundering. This effectively begins with the establishment of robust, thorough and continuous customer due diligence checks.⁵

Therefore, upon the first moment of contact with a potential customer, procedures must be in place to identify and verify such individual. This means asking the right questions and obtaining information in relation to same. What is essential is that each question relates to the customer's identification *at every level*, and not simply that at face value. Typical questions should include: Who is the current/prospective customer? Is the customer exactly who s/he says s/he is? Is the customer acting on behalf of another person? Does the customer operate within a high-risk jurisdiction? Are there any financial sanctions imposed against the customer?

This information must be sought and obtained not merely upon the establishment of a potential business relationship, but also in respect of existing customers and one-time transactions⁶ - and naturally, whenever there is suspicion/doubt as to the activity of, or documents supplied by, the customer – regardless of how loyal or long-standing said customer may be.

Customer knowledge should not stop here. It is furthermore important to have a clear understanding of the purpose and intended nature of the business relationship,⁷ and therefore, obtain information pertaining to the nature and details of the customer's business/occupation/employment; the source(s) of overall wealth of the customer;⁸ and the anticipated level and nature of activity to be undertaken throughout the business relationship.⁹

Subject persons must also obtain clarification as to the precise source and origin of the customer's funds. This essentially refers to the activity/event/business/occupation of the customer which generates the funds necessary for execution of the particular transaction, and must be identified both at the establishment of the business relationship and on an ongoing basis thereafter.¹⁰

While these measures apply equally to natural and legal persons, in the latter instance, subject persons must go one step further, and not merely obtain and verify the identity of the legal person, but also that of the beneficial owner thereof.¹¹ It is consequently, imperative to know the type of entity being dealt with, so as to identify the natural person (i) who essentially owns and controls such entity, (ii) under whose

⁵ Ibid, regulation 4

⁶ Ibid, regulation 7, sub-regulation 6

⁷ Ibid, sub-regulation (1) para ©

⁸ Ibid, regulation 11, sub-regulation 6 para (b)

⁹ FIAU Implementing Procedures (n 3), Section 3.1.4

¹⁰ Ibid, regulation 7 sub-regulation 2 para (a)

¹¹ Ibid, sub-regulation 1 para (b)

direction such entity is to act, or (iii) on whose behalf or for whose benefit a transaction is being conducted.

Only by obtaining such information can subject persons properly understand the customer's business profile and thereby manage risks prudently. After all, it is those who ask the least questions, who will most likely be targeted by money launderers. Know Your Customer procedures should therefore be the first line of action for every subject person when engaging with customers, thereby contributing to the fight against money laundering which has pervaded our lives so significantly.