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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT ON MALTA[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Memorandum
prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs

[1] Adopted by the Committee MONEYVAL at its 24th plenary session (Strasbourg, 10-14 September 2007).

TABLE OF CONTENTS

LIST OF ACRONYMS USED

AML	—	Anti-Money Laundering
AG	—	Attorney General
CBM	—	Central Bank of Malta
CSD	—	Central Securities Depositary
CIS	—	Collective Investment Schemes
CFT	—	Combating Financing of Terrorism
CC	—	Criminal Code
CDD	—	Customer Due Diligence
CEU	—	Customs Enforcement Unit
CIU	—	Customs Intelligence Unit
DDO	—	Dangerous Drugs Ordinance
DNFBP's	—	Designated non-Financial Business and Professionals
EU	—	European Union
ERM II	—	Exchange Rate Mechanism II
EMC	—	Executive Management Committee
ETA	—	External Transactions Act
FIAU	—	Financial Intelligence Analyses Unit
FIU	—	Financial Intelligence Unit
FT	—	Financing of Terrorism
GN	—	Guidance Notes
GDP	—	Gross Domestic Product
GNP	—	Gross National Product
HICP	—	Harmonise Index of Consumer Price
IMF	—	International Monetary Fund
LN	—	Legal Notice
LGA	—	Lotteries and Gaming Authority
MATS	—	Malta Automated Trading Systems
MFSA	—	Malta Financial Services Authority
MIA	—	Malta Institute of Accountants
MSS	—	Malta Security Service

MSE	—	Malta Stock Exchange
MTL	—	Maltese Lira
MKPO	—	Medical and Kindred Profession Ordinance
MoU	—	Memorandum of Understanding
MLRO	—	Money Laundering Reporting Officer
ML	—	Money Laundering
NDIU	—	National Drugs Intelligence Unit
PMLA	—	Prevention of Money Laundering Act
PMLR	—	Prevention of Money Laundering Regulations (2003)
RIF	—	Risk Information Forms
SRO	—	Self Regulatory Organisation
SME	—	Small and Medium Enterprises
UNSC	—	United Nations Security Council
UN	—	United Nations

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Malta was based on the forty Recommendations of the FATF (2003) and the 9 Special Recommendations on financing of terrorism of the FATF, together with the two Directives of the European Commission (91/308/EEC and 2001/97/EC), in accordance with MONEYVAL's terms of reference and Procedural Rules. The evaluation was based on the laws, regulations and other materials supplied by Malta during the on-site visit from 13 to 19 November 2005 and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant Maltese Government agencies and the private sector. A list of the persons and bodies met is set out in Annex I to the mutual evaluation report.

2. The evaluation team comprised Mr Dietmar BAUR, Office of the Public Prosecutor, Furstliche Liechtensteinische Staatsanwaltschaft, Liechtenstein (Legal Evaluator); Mr Vasil KIROV, Director General, Financial Intelligence Agency, Bulgaria (Financial Evaluator); Mr Raul VAHTRA, FIU of Estonia, Central Criminal Police, Estonia (Law Enforcement Evaluator); Mr William Amos, Financial Service Authority, United Kingdom (Financial Evaluator). The examiners reviewed the institutional framework, the relevant AML/CFT Laws, regulations and guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all the systems.

3. This report provides a summary of the AML/CFT measures in place in Malta as at the date of the on-site visit or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened (see Table 2). It also sets out Malta's levels of compliance with the FATF 40 + 9 Recommendations (see Table 1). Compliance or non-compliance with the EC Directives has not been considered in the ratings in Table 1.

II. EXECUTIVE SUMMARY

1. Background information

1. This report provides a summary of the AML/CFT measures in place in Malta as at the date of the third on-site visit from 13 to 19 November 2005, or immediately thereafter. It describes and analyses the measures in place and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Malta's levels of compliance with the FATF 40 + 9 Recommendations (see the attached table of Ratings of Compliance with the FATF Recommendations).

2. The second evaluation of Malta took place in January 2002. In general Malta's crime situation has not changed since the second round. Fraud and drug trafficking are still considered as the main sources of illegal proceeds. In recent years illegal immigration and human trafficking have increased among profit-generating activities.

3. Approximately 95% of account holders in Malta are Maltese residents and 5% non-residents. The team were advised that the majority of business conducted by Maltese financial institutions involves non-complex financial transactions focused on residents of Malta.

4. Since the last evaluation Malta has moved to an all crime approach regarding predicate offences. Separate criminal offences for terrorist financing were introduced in June 2005. Furthermore the Maltese authorities have introduced corporate liability, which should also assist in money laundering investigation and prosecution. Mandatory confiscation orders can now be made in relation to all offences carrying imprisonment for more than one year. Overall, therefore, the legal base to prosecute money laundering is now quite sound but effective implementation could be improved.

5. The results in term of convictions for money laundering at the time of the on-site visit remain disappointing. The lack of convictions for money laundering means that there is currently a lack of jurisprudence to assist prosecutors and investigators on issues of proof.

6. The Malta Financial Services Authority (MFSA) is the single financial regulator for credit and financial institutions. It ensures that the financial sector maintains adequate anti-money laundering controls. Customer due diligence, record keeping and reporting obligations in respect of suspected money laundering for the DNFBP have been introduced since the last evaluation.

7. The Financial Intelligence Analysis Unit (FIAU) has been established since the second round. The FIAU is an administrative FIU. Since the Unit was established there has been an increase in STRs. The majority of STRs are from the financial sector.

2. Legal Systems and Related Institutional Measures

8. On the criminal side, money laundering is still criminalised by a number of laws. The Prevention of Money Laundering Act (PMLA) criminalises money laundering offences in general, while two earlier ordinances (Dangerous Drugs Ordinance, and Medical and Kindred Professions Ordinance) criminalise drug-related money-laundering.

9. Malta extended in 2005 the money laundering criminal provision under the PMLA to any criminal offence, including the offence of terrorist financing. All the designated categories of offences under the Glossary to the FATF Recommendations are covered. The Prevention of Money

Laundering Regulations (PMLR), which supplement the AML Law did not at the time of the on-site visit require reporting of suspicious transactions related to the financing of terrorism[2].

10. Some differences remain in the physical and mental elements of the various money laundering offences. The language in the offence under PMLA closely reflects the international standards. Drug money laundering can be prosecuted on the basis of suspicion as well as knowledge, whereas the "all crimes" money laundering offence requires knowledge that the proceeds are derived from criminal activity. While the extension of the predicate base under the PMLA offence to "all crimes" may make the knowledge standard easier to prove under the general money laundering offence the introduction of the suspicion standard in this offence would assist the prosecutorial effort. Such an amendment could be particularly helpful, given that there are still no plans to introduce the negligence standard in any of the money laundering offences.

11. Unfortunately no final money laundering convictions had been secured since the second evaluation, although the legal basis to prosecute money laundering is quite sound[3]. However, it lacks effective implementation so far in certain respects. It was nonetheless encouraging to note that ten cases were currently before the courts. While one case invokes a foreign predicate, the Maltese authorities may nonetheless wish to consider in future affording more priority to the investigation and prosecution of money laundering based on foreign predicates. In this respect there appeared to be some lack of financial expertise and a hesitation to address this time and cost-intensive field of money laundering.

12. Since the form of criminal liability of legal entities, recently introduced in February 2002 for serious offences including money laundering, appears only to occur upon the conviction of a natural person, criminal sanctions for a criminal activity of a legal person do not apply even in the case of clear evidence. This approach means that the confiscation or the forfeiture of assets cannot occur in such cases. While it may be too early to evaluate the effectiveness of the implementation of this provision, the Maltese authorities are urged to consider whether criminal liability for corporations not based solely on vicarious liability might prove to have greater utility. At the very least, it would be helpful to provide for the confiscation of assets of a legal entity where it is shown to have benefited from money laundering.

13. Separate criminal offences of terrorist financing were introduced in June 2005. The criminalisation of terrorist financing is largely inspired by the 1999 UN Convention for the Suppression of the Financing of Terrorism and detailed provisions appear reasonably comprehensive. They also provide for confiscating of terrorist funds from natural and legal persons upon conviction.

14. No prosecutions or investigations of the funding of terrorist activities have taken place yet. Given that there is no jurisprudence and the difficulties in relation to courts being prepared to draw inferences from facts and circumstances in money laundering cases, it is unclear how willing the courts will be to draw the necessary inferences in respect of the intentional element of the terrorist financing offence. The Maltese authorities consider that the courts would more readily draw such inferences in these cases.
15. The confiscation regime appears to be legally sound. It is expressed in generally mandatory terms. It now applies to all offences subject to over one year's imprisonment. Property and proceeds are widely defined. The laundered proceeds can be forfeited in autonomous money laundering

[2] The reporting of knowledge or suspicion of TF was introduced in the 2006 revision to the Prevention of Money Laundering Regulations.

[3] The Maltese authorities indicated that a judgment was delivered by the Criminal Court in March 2007 concerning a Maltese national, convicting her for money laundering and falsification of documents, sentencing her to 6 years and ordering the confiscation of all her assets, subject to the defendant's right of application to the civil courts to establish that certain of her assets were not criminally obtained and should not be subject to the confiscation order.

prosecutions. Value confiscation is provided for and there are now reverse onus provisions. These require the defendant to demonstrate the lawful origin of alleged proceeds. These are all very positive features. There are statutory provisions which make reference to property under the control of third parties to whom property has been transferred, possibly to defeat confiscation or for undervalue. The Maltese authorities advised that decisions would be made on a case by case basis by the courts as to whether control is actually retained by the accused. The Maltese authorities were not able to point to examples in practice of the courts making such decisions in the case of any third party transfers. The Maltese authorities advised the evaluators that they have not come across a situation as yet where the issue of transferring assets to third parties would need to have been raised during confiscation proceedings. The prosecution would seek to establish that the property remained under the control of the accused. The Maltese authorities may wish to consider more detailed provisions covering these issues or at the least clear prosecutorial guidance on this point.

16. The number of confiscation orders for all proceeds generating cases is unknown, and, therefore, there is insufficient data on which the overall effectiveness of confiscation generally in proceeds generating offences can be judged. No confiscations had been achieved at the time of the on-site visit in money laundering cases and the actual number of attachment orders in these cases was unclear[4].

17. Malta has the ability to freeze funds in accordance with S/RES/1373 and under 1267 under European Union legislation. However, the definition of funds in the Regulations does not fully cover the terms in SR.III. They have the legal capacity to act in relation to European Union internals and on behalf of other jurisdictions but it is unclear whether they have done so in the latter case. Malta needs to develop guidance and communication mechanisms with all the non-financial sector and DNFBP and a clear and publicly known procedure for de-listing and unfreezing in appropriate cases in a timely manner.

18. The Financial Intelligence Analyses Unit (FIAU) was established in 2001 and in 2002 the FIAU became fully operational. The FIAU is an agency under the Ministry of Finance for budgetary purposes but the law recognises its independence from the Ministry in its operations. The FIAU has an important central role in the anti-money laundering system in Malta.

19. Although the FIAU is responsible for receiving suspicious transaction reports on funding of terrorism, according to the Maltese legislation the obliged entities were not (at the time of the assessment) required to report suspicions of financing of terrorism to the FIAU. The Unit has a wide range of responsibilities but focuses on its analytical function. The Unit has started to provide some training to the industry. In order for the Unit to carry out its functions fully it needs additional staff and IT resources. The FIAU has sufficient legal powers. It can access relevant information from subject persons but it does not have any power to impose sanctions when information is not provided. This does not appear, so far, to have had an impact on the Unit's effectiveness. The Unit has the power to prevent a transaction proceeding for 24 hours and this power has been used on 2 occasions. The Maltese authorities may wish to consider whether the 24 hours period is adequate.

20. Since the last evaluation a small unit within the police Economic Crime Division dedicated to the investigation of money laundering reports received from the FIAU and other money laundering cases (and which would investigate terrorist financing as necessary) has been established.

3. Preventive measures – financial institutions

[4] See footnote 2

21. The Maltese Prevention of Money Laundering regime is based on three levels. The first is the Prevention of Money Laundering Act, 1994 (PMLA), which has been amended several times since the first round evaluation. The PMLA is supplemented by the Prevention of Money Laundering Regulations, 2003 (PMLR)5, which further elaborate the preventive obligations under the Maltese anti-laundering regime. These cover obligations required by Law or Regulation under the Methodology. The Regulations are supported at the third level by more detailed Guidance Notes. There are Guidance Notes for credit and financial institutions (issued by the MFSA in 2003), for money or value transfer service operators, for insurance firms, investment firms and trustees. These provide instructions on the steps subject persons should take to comply with the Regulations. In the examiners' view the Guidance notes are enforceable means.

22. The PML Regulations provides for identification requirements in the financial sector and determination of ownership of funds and determination of whether the customer acts on his own behalf.

23. Customer identification requirements provide that no business relationship is established or any transaction undertaken between two parties one of whom is a "subject person" unless there is a proper and effective customer identification process in place and implemented. In terms of the identification this implies that financial institutions cannot keep anonymous accounts or other types of accounts where the owner is not identified and known.

24. The concept of beneficial owner is addressed in Regulation 7 of the 2003 Regulations. The Regulations require reasonable measures to be taken to identify the person on whose behalf the applicant for business is acting. This is in addition to identifying the applicant for business. The Regulations furthermore provide measures for the identification of the beneficial owner.

25. Evaluators assess that the implementation of the CDD requirements is effective in the financial sector. Firms have a good understanding of their obligations. The meetings with the industry suggested that these obligations are generally implemented. The industry's understanding and implementation appears to be the result of the focus given to AML by the MFSA.

26. Identification is mandatory before conducting a one-off transaction equal to or in excess of LM 5000 (app. 11 646 Euro).

27. The Regulations require credit and financial institutions to seek satisfactory evidence of identity at the time of establishing a business relationship or carrying out a one-off transaction. It follows from the Regulations that evidence of identity is deemed satisfactory if it establishes that the applicant is the person who he claims to be. Therefore, evidence should be in such a form as to be able to provide undoubted identification should an investigation be undertaken at any further time. There is, however, no clear rule in an act of primary or secondary legislation concerning verification using reliable and independent source documents. The Guidance notes set out the details of how the requirements of the Regulation should be met for personal customers (by reference to a valid identification document with a photograph – the best source being a valid ID card or a passport). Non resident personal accounts can be applied for by post but verification details must also be sought from a reputable credit or financial institution in the applicant's country of residence. The requirements for identification of legal persons are set out in the Regulations and complemented by the Guidance Notes. In summary the institution needs to obtain satisfactory identification of the principal (the company), directors, and all other officers representing the principal.

[5] These Regulations were being revised at the time of the on-site visit and revisions were brought into force in February 2006 by Legal Notice 199 of 2003, as amended by Legal Notice 42 of 2006. The implementation of the amended Regulations was more than 2 months after the on-site visit.

28. Ongoing due diligence throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customers, their business and risk profiles, and where necessary, the sources of funds should be provided for in law or regulations.

29. The general identification limit of MTL 5000 (EURO 11 650) applies to occasional wire transfers. Maltese authorities should introduce in Law or Regulation a limit which is in line with the Interpretative Note to SR.VII.

30. Evaluators assess that the implementation of the CDD requirements is effective in the financial sector. Firms have a good understanding of their obligations. The meetings with the industry suggested that these obligations are generally implemented. The industry's understanding and implementation appears to be the result of the focus given to AML by the MFSA.

31. The Regulations do not currently address a risk based approach. The issue was to be addressed in the amended version of the Regulations. Firms are not permitted currently to use simplified or reduced CDD measures. The Maltese authorities should introduce more guidance on high risk customers and a specific requirement should be implemented for firms to understand the purpose and nature of business relationships.

32. Malta has not implemented adequate AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs). Malta intends to adopt new provisions in the context of the Third European Union Directive. The AML Law and the Act on Banks are silent on this issue.

33. Correspondent banking relationships were not addressed under the Regulation at the time of the on-site visit. The team understood banks generally have internal policies for correspondent banking relationships. When enacting the Third Directive correspondent banking will be addressed.

34. The evaluators found that identification procedures for third parties and introduced business were in compliance with the FATF Recommendation, as are the rules on record keeping.

35. There is no specific mention in the legislation of the need for firms to pay special attention to business relationships and transactions from jurisdictions that do not, or insufficiently, apply the FATF recommendations. This issue is covered by the Guidance Notes and the examiners were informed that this issue will be covered in the revised Regulations.

36. The Regulations require financial institutions that suspect or have reasons to believe that a transaction could involve money laundering or that a person has or may have been involved in money laundering to report to the FIAU. Specifically, it should clearly be reflected that attempted transactions and terrorist financing should be covered by the reporting obligation. Since the FIAU was established there has been a steady number of STRs received. However, the majority of STRs are from the credit sector and the examiners would have expected to see more reporting from lawyers, accountants, nominees & trustees and casinos

37. At the time of the on-site visit the mandatory obligations for filing STRs had not been expanded to cover reporting to the FIAU of suspicious transactions linked to terrorism financing. The examiners were informed that the Regulations are due to be amended.6

[6] Reporting of transaction suspected to be related to the financing of terrorism is now provided for under the February 2006 revisions for the Prevention of Money Laundering Regulations.

38. There is no specific legally binding prohibition on financial institutions on entering into or continuing correspondent banking relationships with shell banks. Nor is there any obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.

39. Sanctions which may be proportionate and dissuasive are available for AML breaches and may be imposed by the FIAU and the MFSA, but the effectiveness of the overall sanctioning regime, at present, is questioned.

40. The arrangements for supervision on AML/CFT for all licensed institution are found to be satisfactory. The MFSA keeps detailed statistics covering on site examinations of AML.

41. Money remittance activities must be appropriately licensed by the MFSA in order to provide such services. Being "subject persons" the MVT service providers are bound by the PMLR, including the regulations on identification, record keeping and internal reporting procedures. MVT service providers are supervised by the MFSA.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

42. The coverage of DNFBP is almost complete and in line with both international standards and the EU Directive. It comprises auditors, external accountants, tax advisors, real estate agents, notaries and other independent legal professionals, nominee companies and licensed nominees acting as nominee shareholders or trustees, dealers in precious stones and metals or works of art or similar goods and auctioneers. Additionally, any activity which is associated with an activity mentioned above, has been included. Casinos are also covered by the DNFBP rules. A small number of trust service providers not being a nominee company or licensed nominee, however, were still not covered at the time of the on-site visit. The CDD requirements, so far as they go, are applicable to DNFBP more or less the same as those applicable to financial institutions, since the core obligations for both DNFBP and financial institutions are based on the same Regulations (PMLR, 2003). Guidance notes have not yet been developed. However, the same concerns in the implementation of the core obligations apply equally to obliged financial institutions and DNFBP.

43. The same deficiencies in the implementation of the reporting regime in respect of financial institutions apply equally to DNFBP. The number of reports coming from DNFBP is very small, which appears to indicate a low level of effectiveness of the AML regime in this area so far.

44. The requirement to develop training programmes against money laundering and terrorist financing should apply equally in relation to DNFBP. There are some programmes against money laundering by some DNFBP, particularly casinos and a number of large accounting firms. As far as internet casinos, lawyers, notaries, other independent legal professionals and accountants such programmes do not exist or they are at different stages of development but not in place yet. Programmes and drafts do not cover terrorism financing.

45. The same comments concerning the implementation of the sanction regime apply equally to obliged financial institutions and DNFBP. The level of monitoring given the size of the sector is considered tiny and it is difficult to see how sanctioning for AML breaches would be imposed. No power to sanction for CFT.

46. More resources are needed for monitoring and ensuring compliance by DNFBPs other than casinos.

5. Legal Persons and Arrangements & Non-Profit Organisations

47. Companies and other commercial partnerships are registered with the Registrar of Companies. The Registrar is a public official appointed by the Minister of Finance in terms of the Companies Act 1995. Malta has one national registry of companies and this is situated within the MFSA.

48. Trusts, trustees and other fiduciary relationships are regulated by the Trusts and Trustees Act. Persons providing trustee or other fiduciary services require an authorisation from the MFSA under the said Act and are supervised by the MFSA.

49. All subject persons are required by the Regulations not to enter into a business relationship with any person unless they obtain the identity and identification documentation of the applicant for business. Where an applicant for business appears to be acting on behalf of another the Regulations require the subject persons to obtain the identity and identification documents of principals, settlors, beneficial owners or trust beneficiaries. This is a continuing obligation and applies also where there are changes.

50. Although Maltese authorities advised that NPOs established in Malta are mainly organisations operating on a national level, the adequacy of the laws and regulations in respect of entities that can be abused for financing of terrorism has not been reviewed since SR.VIII was introduced.

51. The evaluators found that Maltese authorities should review and if necessary adopt a clearer legal framework, both for charities and NPOs, which covers registration/licensing and requires financial transparency and reporting at least annually to a designated authority on their activities. Programme verification and direct field audits should also be considered in identified vulnerable parts of the NPO sector. Consideration might usefully be given as to whether and how any relevant private sector watchdogs (if such exist) could be utilised. It would be helpful also to raise awareness of SR VIII within the Police, as the Commissioner is currently the licensing authority.

6. National and International Co-operation

52. The Maltese authorities have undertaken commendable work in bringing together the competent authorities in Malta anti-money laundering framework. The evaluators, however, urge the Maltese authorities to allocate more human resources to the FIAU in order to carry out its tasks as main AML policy co-ordination body more effectively.

53. The Vienna and Palermo Conventions are broadly implemented. However, the implementation of the Terrorist Financing Convention and the UNC Resolutions are not complete. There are still uncertainties about the effectiveness of implementation in some instances, particularly the scope of the terrorist financing criminalisation and some aspects of the provisional measures regime.
54. While Malta has the ability to freeze funds in accordance with the United Nations Resolutions a comprehensive system is not yet fully in place. In particular they need to develop guidance and communication mechanisms with the non-financial sector and DNFBP. A clear and publicly known procedure for de-listing and unfreezing needs to be developed.

55. The Attorney General's Office has been designated as the central judicial authority in all major agreements dealing with mutual legal assistance. This is also the case for purposes of the receipt and implementation of European Arrest Warrants.

56. The mutual legal assistance framework, both in money laundering and in terrorism financing cases, is comprehensive. It has been effective, so far, and assistance has been granted in a timely manner.

57. The examiners advise that Malta keep more detailed statistics in order to allow them to assess the effectiveness of their system.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Malta and its economy

1. The Maltese archipelago consists of three main islands, in descending order, Malta, Gozo and Comino. These islands altogether occupy an area of around 316 square km. Malta hosts a total population of 402,668 (2004 figures), 50.4% of which are females, and is one of the most densely populated countries in the world (1,269 people per km2, with a higher rate on the main island). The largest age segment is held by the 45-59 year age group. Malta is the smallest Member State of the European Union. It lies 93 km away from Sicily to its North and 288 km from Tunisia to its South. Strategically located in the middle of the Mediterranean, Malta is ideally placed to serve as a transhipment hub and a bridge between Europe and Africa, a role which it played in ancient times and which today continues to contribute to economic activity in the country. The capital city is Valletta. Maltese and English are both official languages. Other languages, particularly Italian, are widely spoken.

2. A parliamentary democracy, Malta has been an independent state since 1964 and a constitutional republic since 1974. The President is the Head of State and has executive authority. He is elected by the House of Representatives for a period of five years. The President is responsible for appointing the Chief Justice and the judges who sit on the independent Constitutional Court and the Court of Appeal. The President also appoints as Prime Minister the leader of the party that attains the majority of votes in national elections. The latter, is also appointed for a period of five years. The Prime Minister acts as Head of Government, assisted by a Cabinet of Ministers, who are appointed by the President from among elected Members of Parliament on the advice of the Prime Minister.

3. Legislative powers are vested in Parliament, which includes the President and a unicameral House of Representatives. Members of the House (Members of Parliament) are elected by universal suffrage at maximum intervals of five years. Any person who is a citizen of Malta and who has attained the age of eighteen years may vote in elections, provided he/she has resided in Malta for a minimum period of six months during the eighteen months immediately preceding his registration as an eligible voter.

4. Malta and Gozo are sub-divided into 68 local councils, which are responsible for the general upkeep and embellishment of the locality, answering government-related inquiries and carrying out a number of other general administrative duties delegated to them by central government. Local council elections are separate from the general elections and are held every three years by means of a system of proportional representation using the single transferable vote. A third of local councils may have an election in any one year, in accordance with a pre-specified schedule. Each local council is headed by a mayor and assisted by an executive secretary that is in charge of executive, administrative, and financial duties.

5. Although the Maltese Constitution supports multiparty democracy, over the years the political system has evolved into a bipolar system which is dominated by two parties, each commanding a roughly even number of votes. A number of other parties contest elections but only gain a small percentage of the votes.

6. Malta's relations with the European Union ("EU") date back to 1970, when Malta signed an Association Agreement with the European Economic Community. Malta submitted a formal application to join the European Community on 16 July 1990. The application was suspended in

1996 after a change in Government. After another change in Government in September 1998, the application was re-activated in that same month. Accession negotiations formally opened in February 2000 and closed in December 2002 at the Copenhagen Summit. Malta signed the EU Accession Treaty on 16 April 2003 and became a member of the EU with nine other countries on 1 May 2004.

7. After independence in 1964 Malta became a member of the United Nations ("UN"). In subsequent years it joined a number of other UN agencies. It is also an active member of the Commonwealth. Malta is a member of international financial institutions such as the International Monetary Fund ("IMF"), the World Bank Group, the European Bank for Reconstruction and Development and the European Investment Bank. It also participates actively in regional groupings and fora that promote dialogue and co-operation in the Mediterranean region. Malta has signed a number of international environmental agreements including the Climate Change-Kyoto Protocol.

8. The national currency is the Maltese lira, which is further subdivided into 100 cents. The Central Bank of Malta ("CBM" or "Bank") is the sole issuer of the currency and is also responsible for advising the Government on exchange rate matters and for maintaining adequate external reserves to safeguard the external value of the Maltese lira. At the end of 2004, the amount of currency in circulation stood at around EUR 1,132 million, approximately 26% of GDP.

9. Since the CBM was established in 1968, the Maltese authorities have always pursued a conventional fixed exchange rate featuring one or more foreign currencies of trading partners. Throughout the years the composition and currency weights in the basket was updated on a number of occasions to reflect Malta's changing trade patterns. As at the end of April 2005, the Maltese lira was pegged to a basket of foreign currencies made up of the euro, the US dollar and the pound sterling, with weights of 70%, 10% and 20%, respectively. On 2 May 2005, Malta joined the Exchange Rate Mechanism II ("ERM II") of the EU. As a result, the Maltese lira was re-pegged from a composite basket to a single currency (the Euro). Malta participates in ERM II with a central parity rate of MTL/EUR 0.429300, which the Maltese Authorities seek to maintain as a unilateral commitment. It is the intention of the authorities to adopt the Euro and become full participants in Economic and Monetary Union as soon as the necessary conditions for entry are met.

10. The Maltese economy is a very small open economy in absolute terms, with a GDP of EUR 4.2 billion. It thus contributes less than 0.05% of EU GDP. Malta nonetheless enjoys a high standard of living, with a GDP per capita in PPP terms of EUR 15,900, which is equivalent to 72% of the EU average. Following negative growth in 2003, the Maltese economy recovered in 2004, registering a 1.5% rate of growth in GDP at constant market prices.

11. Only around 20% of food requirements are met through local production, water supplies are limited and there are no domestic energy sources. With very few natural resources, the labour force remains Malta's single most important resource. Imports and exports, in fact, each account for around 100% of domestic output, with the EU emerging as Malta's main trading partner, accounting for around 70% of Malta's foreign trade. This necessarily makes the Maltese economy largely a service-based economy and one which is highly dependent on foreign trade. Agriculture and other primary activities, manufacturing and services each account, respectively, for 3%, 23% and 74% of GDP. Within the manufacturing sector, the electronics sector remains the main driver of growth, although, clothing, pharmaceuticals and food and beverages also have high value-added shares. In the services sector, ship repair, real estate, tourism and financial services are the leading sectors in terms of value added contribution. Tourism is the most significant sector of the Maltese economy. In 2004, total tourist expenditure amounted to Lm[7] 432.3 million (EUR 1 billion) – a 0.6 % increase over the previous year. Figures for the period January to June 2005

[7] 1 Euro is equal to LM 0,4293

show a total of Lm 167.49 million in tourist expenditure[8]. Electronics and, increasingly, pharmaceuticals are the leading segments as high value-added products in the export manufacturing sector.

12. The financial services industry's direct contribution to Malta's Gross National Product (GNP) was of Lm 144 million in 2004, which translates to 6.1% of GNP. The figure only covers banks, insurance companies, investment managers, stock brokers and an estimate of the contribution of accountants and lawyers providing services to international financial companies in Malta. Together with retail services, transport and communication these contribute to more than 45 % of GDP.

13. Given the important role which the EU plays in Malta's trade patterns and its equally dominant role in the pattern of tourist arrivals (80% of incoming tourists originate in the EU), economic growth patterns follow very closely those in the EU. After registering average growth rates in the range of 5 % per annum between 1994 and 2000, real GDP growth slowed down somewhat in recent years, fluctuating in a range between -1.9 and 1 % between 2001 and 2004. Government finances are characterised by annual deficits and a relatively high debt figure as a percentage of the country's GDP. In 2004, government expenditure totalled Lm 933 million (of which capital – Lm 104 million; recurrent – Lm 732 million), while total revenue stood at Lm 921 million (of which recurrent – Lm 813 million). Gross Government Debt was 67.9 % of the GDP of that same year. The General Government debt-to-GDP ratio stood at 73.2 % in 2004. Gross Government Debt was Lm 1.399 billion (EUR 3 billion) by June 2005. Government finance figures for the first six months of 2005 were the following: total revenue amounted to Lm 456.4 million; total expenditure Lm 476.8 million

14. The inflation rate, based on the retail price index (RPI), stood at 2.94 % in June 2005. It must be noted that RPI inflation had risen consistently in 2004, mostly due to higher indirect taxation and oil prices. The Harmonised Index of Consumer Prices (HICP) stood at 109.44 points in June 2005, a decrease of 0.01 % over the previous month but an increase of 2.07 % over the June 2004 figure. The authorities are nonetheless determined to restore the economy on a path of higher growth rates, through the implementation of a comprehensive set of structural reforms which seek to restore Malta's international competitiveness. These reforms span all sectors of the economy but are especially oriented towards information and communications technology, education and retraining, SME support and transport.

15. These reforms are further supported by the Government's fiscal consolidation programme which aims to gradually reduce the fiscal deficit to 1.4 % by 2007. The 5.2 % target for 2004 has been met. The authorities are determined to implement further measures consistent with the achievement of the targets set out in the programme, with an emphasis on pension reform and the continued privatisation of those entities in which the Government retains a shareholding.

16. Figures for the three months leading to January 2005 show that the number of persons aged 15 years and over totalled to around 322,000. Of these, 46 % were employed (14.3 % of these were self-employed), 3 % unemployed, and 50 % inactive (percentages have been rounded). Employed persons were mostly found in the services sector (68.4 %), followed by industry (29.7 %) and lastly agriculture (1.9 %).

17. Against this backdrop of slow economic growth, the unemployment rate has edged upwards in recent years, averaging 7 % between 2001 and 2004. The unemployment rate has nonetheless remained below the Euro area average, and in the first quarter of 2005 it edged lower to 6.7 %. Inflation has remained low and stable, consistently below the 3 % mark, supported by the discipline emanating from the fixed exchange rate peg. Malta's low inflation rate has in turn

[8] Please note that this figure does not translate into national earnings from tourism.

favoured a gradual but steady convergence of interest rates towards Euro area levels across the entire maturity spectrum, with the 10-year interest rate standing at 4.7 % in May 2005.

18. The high degree of openness on trade makes Malta's balance of payments position especially susceptible to developments abroad. Although the services balance is typically in surplus, the latter normally falls short of the deficit on the merchandise trade account. Consequently, the current account ordinarily shows a deficit. In 2004, the current account deficit had continued to increase over the previous year to Lm 191.3 million. Total imports for the period January to May 2005 totalled Lm 513.5 million, a 5.3 % decrease over the same period of the previous year. Total exports too were down, by 16.9 %, to Lm 321.1 million. For 2004, total imports were of Lm 1.32 billion, while exports were Lm 909.2 million. The current account deficit averaged 4.5 % in recent years. Nonetheless, net inflows on the capital account of the balance of payments have comfortably financed the current account deficit, as reflected in the country's external reserves position, with the ratio of official external reserves assets to currency and deposit liabilities remaining above 100 %.

19. As part of the IMF assessment under the FSAP programme (which Malta underwent in 2002) the IMF mission team carried out a detailed examination on transparency and good governance in the financial sector and the financial regulator (financial policies), the Central Bank (monetary policies); and the government in general (fiscal policies). It also included an assessment of corporate governance and legislative process. The FSSA report can be accessed on the IMF website www.imf.org.

20. Since the introduction of the Prevention of Money Laundering Act in 1994 and the consequent Prevention of Money Laundering Regulations, also in 1994, the government, the CBM and the Financial Regulator embarked on an awareness campaign that was meant to develop a proper culture of anti-money laundering compliance and observation of the relevant regulations. To date the authorities are satisfied on the level of culture of compliance within the financial sector and other bodies that at the time were also subject to the Regulations. With the inclusion of designated non-financial businesses and professions (DNFBPs) as subject persons within the anti-money laundering strategy, the authorities have, for the past months, been involved in instilling the proper culture of compliance within this sector. As a result of the recent introduction of the criminal offence of the financing of terrorism (through Act No VI of 2005) in the Criminal Code *(Cap 9)* and the expected changes to the Prevention of Money Laundering Regulations to include also the financing of terrorism, efforts in creating a proper culture of compliance will be extended to further cover also the financing of terrorism. To date, there have been positive responses and the authorities have no reason to believe that such culture will not continue to develop.

21. Government policy has been to facilitate the investigation and detection of corruption and to put in place such authorities, agencies and institutions which can ensure that any person having information on any possible corruption can come forward with the information to the appropriate authority which would be able to investigate the information in confidence where so warranted thus protecting the complainant from harassment while at the same time protecting the person fingered out from unjust accusations. Thus Government has set up the Permanent Commission Against Corruption, the Tribunal for the Investigation of Injustices and the Ombudsman who all have a role in connection with the investigation of corruption.

22. At present corruption offences consist in: unlawful exaction (art. 112 of the Criminal Code); extortion (art. 113 of the Criminal Code), where the unlawful exaction is committed by threats, or abuse of authority; active and passive bribery of a public officer or servant, including bribery of judges, who, in connection with his office or employment, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled (art. 115, 116, 117 and 120 of the Criminal Code); active or passive bribery of a member of the House of Representatives (art.

118 and 120 of the Criminal Code); active and passive bribery of persons entrusted with or having functions relating to the administration of a statutory body having a distinct legal personality or who are employed with such a body (art. 121 (1) and 120 of the Criminal Code); active and passive bribery of jurors (art. 121(2) and 120 of the Criminal Code); private interest in adjudications (art. 124 of the Criminal Code); private interest in the issue of orders (art. 125 of the Criminal Code); embezzlement (art. 127 of the Criminal Code); malicious violation of official duties (art. 138 of the Criminal Code).

23. A number of new bribery and other offences as well as other measures against corruption were introduced 2002. Thus corruption in the private sector became a criminal offence because the application of articles 112 (unlawful exaction) and of article 115 (bribery of a public officer) were extended to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner provided for in those articles. For the purpose of this provision the expression "breach of duty" is defined as to include any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply to the business in question.

24. Moreover, the provisions on corruption were extended to apply to a public officer or servant of any foreign State; any officer or servant, or any other contracted employee, of any international or supranational organisation or body of which Malta is a member, or any other person carrying out functions corresponding to those performed by any said officer, servant or contracted employee; any member of a parliamentary assembly of any international or supranational organisation of which Malta is a member; any holder of judicial office or any official of any international court whose jurisdiction is accepted by Malta; any member, officer or servant of a Local Council.

25. Moreover, the offences of "trading in influence", "accounting offences" and "false invoicing" were also introduced. Jurisdiction was extended to apply where only part of the action giving execution to the offence took place in Malta; the offender is a Maltese national or permanent resident in Malta, a public officer or servant of Malta or a member of the House of Representatives or of a Local Council; the offence involves a public officer or servant of Malta or is a member of the House of Representatives or of a Local Council.

26. Corporate criminal liability was also established and the forfeiture of the proceeds to the benefit of a legal person was also laid down with the further provision that where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine which is the equivalent of the amount of the proceeds of the offence; "property" and "proceeds" are defined in very broad terms.

27. All offences of corruption have always been predicate offences of the money laundering offence.

28. The same article also provides for corporate criminal liability where the offence is committed by a person who is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence was committed for the benefit, in part or in whole, of that body corporate.

29. Article 121D of the Criminal Code provides for corporate criminal liability for offences of corruption and article 3 of the Prevention of Money Laundering Act provides for corporate criminal liability for offences of money laundering.

30. At present there is no jurisdiction over offence of corruption committed outside Malta by Maltese nationals. However, the Bill to Amend the Criminal Code will amend the Code by means of clause 28 which will introduce into the Code new article 121C which lays By virtue of article 121C of the Criminal Code the Maltese Courts have jurisdiction over Maltese nationals who commit offences of corruption abroad.

31. The following are the organisations and entities that have a role or exercise powers in the prevention, detection, and repression of corruption at a national level:

32. **The Police** is the main law enforcement authority in Malta vested with general law enforcement powers. Offences of corruption are liable to prosecution ex officio by the police. Within the Police the Economic Crimes Unit is the unit mainly concerned with the investigation and detection of offences of corruption.

33. **The Security Service** has *inter alia* the function of preventing or detecting serious crime which includes serious offences of corruption.

34. **The Permanent Commission Against Corruption** consists of a chairman and two other members appointed by the President of Malta acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition. The Commission is an investigative specialised body which is exclusively concerned with the investigation of allegations of corruption. In the exercise of its functions the Commission is not subject to the direction or control of any other person or authority.

35. **The Attorney General** is the principal law officer of the Government, acts as Public Prosecutor in the higher courts of criminal jurisdiction, exercises functions in connection with pre-trial judicial investigations and gives advice to the police concerning investigations carried out by them. The Attorney General also has the power, in his individual judgment to issue a certificate in writing exempting any person mentioned in the certificate from any criminal proceedings on condition that such person gives evidence according to law of all the facts known to him relating to any corrupt practice or any offence connected therewith before the Commission and, or, any court of criminal jurisdiction.

36. **Magistrates and Courts of Magistrates** are vested with the authority to carry out judicial investigations into the suspected commission of criminal offences where a criminal inquiry is necessary and also carry out judicial pre-trial investigations as a court of committal with respect to persons charged with a criminal offence triable on indictment.

37. **The Tribunal for the Investigation of Injustices** hears and determines any written complaint made by any person who claims to have sustained injustice to his prejudice by any action taken by any person to whom the Act applies in respect of appointments, promotions or transfers of public officers, of officers or employees of any body established by law; recruitment for employment; licences or permits required by law; any other matter which may be approved by resolution of the House of Representatives.

38. **The Public Service Commission** is a commission established by the Constitution on the recommendation of which the Prime Minister exercises his powers to make appointments to public offices or to remove, and to exercise disciplinary control over, persons holding or acting in any such office.

39. **The Employment Commission** is in effect a tribunal consisting of a chairman and four other members all appointed by the President. The function of the Commission is to ensure that, in respect of employment, no distinction, exclusion or preference that is not justifiable in a democratic society is made or given in favour or against any person by reason of his political

opinions. Persons alleging such distinction, exclusion or preference may apply to the Commission for redress.

40. **The Ombudsman** is an officer of Parliament and has the function to investigate any action taken by or on behalf of the Government, or other authority, body or person to whom the Ombudsman Act applies. If, during or after any investigation, the Ombudsman is of the opinion that there is substantial evidence of any significant breach of duty or misconduct on the part of any officer or employee of any department, organisation or local council he is required to refer the matter to the appropriate authority including the Police.

41. **The Director of Contracts and the General and Special Contracts Committees** is responsible for the running of the Department of Contracts and generally for the administration of the procurement procedures.

42. **The Public Accounts Committee of the House of Representatives** is a Parliamentary committee of the House of Representatives and has *inter alia* the power to inquire into matters relating to public accounts, expenditure under supplementary estimates or expenditures before appropriation; the accounts of statutory authorities and to report to the House on any accounts, reports or documents referred to above.

43. **The National Audit Office** consists of the Auditor General, who is the head of the office, the Deputy Auditor General and other officers appointed by the Auditor General as he may deem necessary to assist him in the proper discharge of his office. The Auditor General is an officer of the House of Representatives and may only be removed in the same circumstances and in the same manner as the Ombudsman. The Auditor General is an office under the Constitution and has the function of auditing the accounts of all departments and offices of the Government of Malta and of such other public authorities or other bodies administering, holding, or using funds belonging directly or indirectly to the Government of Malta as may be prescribed by or under any law.

44. **The Internal Audit and Investigations Board** (IAIB) is appointed on the authority of the Prime Minister and is authorised to direct and regulate the Government Internal Audit and Financial Investigative Function. It is responsible, *inter alia*, for monitoring Government's financial and other reporting processes and internal control systems, requesting the Internal Audit and Investigations Directorate to carry out specific audits and investigations as it deems necessary and considering and approving major changes to Government internal audit policies, practices and procedures.

45. **The Internal Audit and Investigations Directorate** is established under the responsibility of the Director Internal Audit and Investigations and derives its authority from the IAIB. It is assigned responsibility for the conduct of the Government internal audit and financial investigations function and as such it conducts, *inter alia*, financial investigations into suspected cases of mismanagement and fraud.

46. The courts system is divided into courts of civil jurisdiction and courts of criminal jurisdiction apart from the Constitutional Court. The courts of civil jurisdiction are divided into the Superior Courts and the Inferior Courts. The superior courts are presided over by judges and these consist of courts of first instance known as the First Hall of the Civil Court and the Court of Appeal presided by three judges. The inferior courts are known as the Courts of Magistrates which are presided over by a Magistrate and form their judgments an appeal lies to the Court of Appeal consisting of one judge. The judgments of the courts of civil jurisdiction are executed by the Marshals of the Courts.

47. The courts of criminal jurisdiction consist again of the Superior Courts and of the Inferior Courts. The Superior Courts consist of the Criminal Court presided over by a judge and usually assisted by

a jury. From judgments of the Criminal Court an appeal lies to the Court of Criminal Appeal consisting of three judges. The Inferior Courts consist of the Courts of Magistrates which are presided over by a Magistrate and have a double jurisdiction as courts of criminal judicature and courts of criminal inquiry. From judgments of the court of Magistrates as a Court of Criminal Judicature an appeal lies to the Court of Criminal Appeal consisting of one judge.

48. Any litigation touching on the Constitution is brought before the First Hall of the Civil Court from which an appeal lies to the Constitutional Court consisting of three judges.

49. In May 1995 Parliament introduced a **Code of Ethics for Members of the House of Representatives**. The Code of Ethics established standards of correct behaviour which the Members of the House are expected to observe as elected representatives. The Code also introduces a Register of Member' Interests. The Code provides that a member of the House may not receive any remuneration or compensation under whatever form for his work as a Member of the House of Representatives, except for his official remuneration as a Member. Moreover, according to the same rules the Member is expected not to use any improper influence, threats or undue pressure in the course of his duties. With a view to allow for the monitoring of their assets, Members are also required to annually give detailed information on various matters in a register which will be purposely kept by the Speaker, which register shall be open to inspection by the public. Moreover in professional, occupational or business matters Members of the House are expected not to make any reference to their membership of the House which in any way can give them undue advantage.

50. A **Code of Ethics for Ministers and Parliamentary Secretaries** was also adopted by the Cabinet of Ministers. The Code makes detailed provision to ensure that a Minister's integrity.

51. In 1994 a **Code of Ethics for Employees in the Public Sector** was also published. The Code provides that public officers should avoid any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties and place on the officer the onus to disclose to his or her senior officers if a potential or actual conflict of interest arises. Moreover, the Code provides that no public officer should accept a gift or benefit if considering the circumstances it could be interpreted as intended or likely to cause the official to do his or her job in a particular way or deviate from the proper course of duty. The Code provides that sanctions may be applied if public officers are involved in breaches of the Code.

52. The **Commission for the Administration of Justice** is a Commission set up under the Constitution which must at all times have a committee for Advocates and Legal Procurators and among its functions the Commission has that of drawing up a code of ethics regulating the conduct of members of the judiciary and, on the advice of the Committee for Advocates and Legal Procurators, to draw up a code or codes of ethics regulating the professional conduct of members of the said professions. Three such codes were in fact drawn up, one for the Judiciary, another **Code of Ethics and Conduct for Advocates** and the third a **Code of Ethics and Conduct for Legal Procurators**.

53. **The Code of Ethics for Members of the Judiciary** provides that members of the judiciary shall not accept any post that could hinder them or restrict them in the full and correct performance of their duties and that they shall not practise any activity that is in its very nature incompatible with the office they hold. They are also required not to hold any post except that of a Judge or Magistrate, saving those posts which are expressly permitted by law. They are required to inform the Chief Justice of every other post that they might hold both in Malta and overseas, be it remunerated or otherwise. They are also required to ensure that their conduct is consistent with their office and that it does not tarnish their personal integrity and dignity. They are precluded from accepting any gift, favour or benefit which might possibly influence them in the proper fulfilment of their judicial duties or which might give an impression of improper conduct. They are also

precluded from individually accepting any advantage or benefit from the Executive except when such advantages or benefits are addressed to the Judiciary collectively.

54. Under the authority of the Accountancy Profession Act, 1979 and the Accountancy Profession Regulations, 1987 made hereunder and as amended in 1996, a **Code of Ethics for Accountants** was also published for the accountancy profession and after laying down the fundamental principles concerning integrity, objectivity, professional competence and due care, confidentiality, professional behaviour and technical standards it has a part which applies to all warrant holders while another part applies to warrant holders in public practice. The Code provides that all warrant holders have an obligation to be fair, intellectually honest and free of conflicts of interest.

55. On the 21st April 2005 a **Police Code of Ethics** was published. The code lays down the main ethical principles which govern the role and mission of the police, the observance of human rights by the police, the obligations of the police force towards the community, the use of powers of arrest and detention, the use of force, the production of witnesses and evidence, and finally the obligations of members of the police force. Each category of principles is accompanied by a detailed commentary.

56. The ethical and professional behaviour on the part of professionals in all sectors including accountants, auditors, notaries and lawyers, has always been a focal point which the authorities have seriously addressed not only because of money laundering purposes but also because various other implications that such professionals can have on the economy and the well-being of the country in general. Accountants and auditors, apart from having their own professional association, are governed by the *Accountancy Profession Act (Cap 281)*. An Accountancy Board, under the auspices of the Ministry of Finance, is responsible to license (issue warrant) and oversee the accountancy professions. The Commission for the Administration of Justice set up by law oversees the legal profession and has the power to suspend and /or revoke a warrant. The accountancy profession has its own code of professional ethics which must be observed subject to sanctioning by the Board. The legal profession (lawyers and notaries) are also subject to high professional ethical standards which must be observed subject to sanctioning.

1.2 General situation of money laundering and financing of terrorism

57. The Maltese authorities advised in their replies to the questionnaire that the crimes which are considered to be the major source of illegal proceeds are undoubtedly drug trafficking, fraud, breaches of the laws regulating exchange control and the charging of sometimes exorbitant interest rates. With the removal of exchange control constraints within the European Union, such crimes have declined. Given that usury has now been introduced as a criminal offence coupled with the increase of enforcement in this area spurred by an incidence in more individuals coming forward to report such cases, it is envisaged that crimes will commence to decline. However, it must be said that the crimes which present law-enforcement with concern, in relation to the continuous generation of illicit proceeds which remain unrelenting, are drug-related crimes. There have been cases of traffic in persons for the purpose of illegal immigration into other countries (especially into Italy) involving foreigners resident in Malta as well as the involvement of Maltese citizens in smuggling activities; this activity is being closely monitored for its possible impact on the money laundering situation in Malta.

58. The Maltese authorities indicate that generally, the proceeds generated in Malta are not huge and most of this money can be passed off as earnings from successful business operations. As far as the scale of proceeds is concerned, the Maltese authorities note that the local cases are not exorbitant, although the amount cannot be quantified. In fact, the most serious local case so far was the laundering of money that came from a scam operated overseas. This sum was of approximately Lm 65,000 (just over €150,000.). Scams operated by foreigners who attempt to pass their money

through local accounts make up the major part of the seizures affected by the Money Laundering Squad with the assistance of the Attorney General's Office. These cases usually amount to several hundreds of thousands of Euros.

59. To date, no financing of terrorism or of terrorist acts has been detected. The Maltese authorities tend to find that this is perhaps due to the stringent controls inherent in the Maltese banking system as well as to the hefty sanctions which any breach of regulations enacted under the National Interest (Enabling Powers) Act, Chapter 365, Laws of Malta, entail.[9]

60. The Maltese authorities also draw the attention to a draft legislation amending this Act and addressing specifically sanctions and/or restrictive measures against third countries, entities or individuals within the framework of the European Union's Common Foreign and Security Policy, as well as Regulations issued by the European Union, has been finalised and is presently being studied.

61. The following tables for 2002-2005 have been provided by the Maltese authorities and are an indication of the types of crimes investigated and prosecuted by the Drug Squad, the Economic Crimes Unit and the Vice Squad. Most of the crimes listed here are generally considered by the Maltese authorities to be those that generate cash for the perpetrator.

[9] Where a regulation enacted under the National Interest (Enabling Powers) Act requires a person or an entity to carry out the identification of funds or assets belonging to or in the possession of persons or entities as may be identified or identifiable under the regulation, or where a regulation requires the freezing or blocking of such funds or assets, any person or entity whose activities are subject to a license, shall without delay notify in writing any relevant information in hand to its licensing authority. Such licensing authority is then bound to pass such relevant information to the Sanctions Monitoring Board established under the National Interest (Enabling Powers) Act. For offences against the regulations issued by the above Legal Notices under the National Interest (Enabling Powers) Act there is laid down the punishment of a maximum fine of fifty thousand Maltese liri or of imprisonment not exceeding five years or both such fine and imprisonment.

Cases Investigated 2002 - 2005				
	2002	***2003***	***2004***	***2005****
Drugs				
Possession of	280	159	426	
Trafficking of	107	60	143	
Economic Crimes				
Contraband related	23	33	42	26
Corruption	2	1	2	3
Counterfeited Currency (Foreign)	113	2	3	2
Counterfeited Currency (Local)	16	4	21	5
Extortion/Bribery/Blackmail		4		
Foreign Requests for Assistance	25	20	28	14
Fraud/Forgery/Embezzlement/Misappropriation	206	155	196	107
Intellectual Property Rights	70	56	65	28
Money Laundering related cases	8	6	6	2
Money Laundering STR's	28	17	23	8
Perjury	1	1		
Plastic Card Fraud	13	13	12	4
Stolen/Forged Cheques	20	16	11	9
Influence in Trading		1		
Violations of Financial Institution Act	10	8		
Vice				
Breaches of the Gaming Act	9			
Child Pornography	2		11	2
Compelled/Induced Persons to Prostitution		3	1	
Complicity in Keeping a Brothel			1	1
Complicity in trafficking in Human Beings			2	
Conspiracy in Trafficking of Human Beings			2	
Defilement of Minors	13	20	17	10
Illegal Arrest	6	13	7	
Illegal Gambling	20	10	11	6
Keeping a Brothel	1	5	12	1
Living off the Earnings of Prostitution	1	3	10	
Loitering & Soliciting	61	62	191	77
Pornography (possession for circulation)			1	
Rape	9	5	2	2
Trafficking of Human Beings for Prostitution		3	11	1

62. Although some of the crimes listed above are not considered to be cash generators, they are included by Malta to show the cross-section of crimes that are investigated by the specialised units.

63. From the investigative perspective the present money laundering situation does not seem to be a widespread problem according to the Maltese authorities.

64. Malta recognises, that the money laundering situation, from a prosecutions perspective, cannot be said to have undergone significant changes, albeit there has been an increase in prosecutions, in the sense that fraud and drug crimes remain the major source of illicit proceeds. The most common form of laundering has been the use of various transactions, at times intricate, to conceal the origin of the funds, whether through third parties or through diverse financial transactions. As such no groups have been detected in this process but police investigations and prosecutions revealed that the laundering generally takes place by the very same individuals who commit the predicate crime.

65. There have been no cases of terrorist financing. Act VI of 2005 brought about amendments to the Criminal Code by introducing specifically a sub-title headed "Of Acts of Terrorism, Funding of Terrorism and Ancillary Offences", (although Malta always contended that notwithstanding there was no specific definition of crimes of terrorism yet the various offences which are now defined as "acts of terrorism" did exist in various laws), under which title, in Article 328F, one finds dispositions relating to the funding of terrorism. The laundering of such funds is now also covered by the Second Schedule to the Prevention of Money Laundering Act, Chapter 373, Laws of Malta, since this now defines as predicate criminal activity "any criminal offence".

1.3 Overview of the financial sector and Designated Non-Financial Businesses and Professions (DNFBP)

Financial Sector

66. The different types of financial institutions which operate in Malta can be classified under the following categories. All types of financial institutions need to be licensed or otherwise authorised by the Malta Financial Services Authority (MFSA) as the single regulatory and supervisory authority for financial services in Malta.

67. **Credit institutions** are licensed under the Banking Act 1994 and are authorised to undertake the business of banking as specified in Article 2(4) of the said Act. Credit institutions may also carry out the other activities indicated in the List of Additional Activities included in the Schedule to the same Act. This list is reproduced hereunder:

1. Financial leasing;
2. Money transmission services;
3. Issuing and administering means of payment (credit cards, travellers' cheques and bankers' drafts and similar instruments);
4. Guarantees and commitments;
5. Trading for own account or for account of customers in:
   (a) money market instruments (cheques, bills, certificates of deposit, and similar instruments);
   (b) foreign exchange;
   (c) financial futures and options;
   (d) exchange and interest-rate instruments;
   (e) transferable securities.
6. Participation in securities issues and the provision of services related to such issues;
7. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;

8. Money broking;
9. Portfolio management and advice;
10. Safekeeping and administration of securities;
11. Credit reference services;
12. Safe custody services.

68. Exchange houses and outlets offering money remittance services are licensed as financial institutions by the MFSA under the Financial Institutions Act. Such activities are only a selection of the activities that such institutions may be authorized to undertake as specified in the list as indicated in paragraph 69. Out of the 14 financial institutions, eight are authorised to undertake foreign exchange and money remittance services.

69. In accordance with Article 2(5) of the Banking Act 1994, the MFSA can also license electronic money institutions. According to the same Article of the Act, the activities of an electronic money institution may be extended to:

(i) the provision of closely related financial and non-financial services such as the administering of electronic money by the performance of operational and other ancillary functions related to its issuance, and the issuing and administering of other means of payment but excluding the granting of any form of credit; and

(ii) the storing of data on the electronic device on behalf of other persons or public institutions.

As of November 2005 Malta had 18 credit institutions having a total balance sheet value of Lm 10,407,016,000.

70. Approximately 95% of account holders in Malta are Maltese residents and 5% non-residents. All the 18 credit institutions basically have a similar license under the Banking Act which allows them to operate both on the domestic and international markets. Nine are subsidiaries of banks established within the European Union and hence are fully foreign owned. Because of the size of the sector in Malta these banks operate predominantly in the international markets. Taking the whole banking sector, the ratio of ownership would be domestic ownership at 7.31 percent and foreign ownership at 92.69 percent. However, the ownership of the four major banks that dominate the domestic market – one of which is a subsidiary of an international European banking institution - would be 57 percent domestic ownership and 43 percent foreign ownership.

71. **Financial institutions**, other than credit institutions, are also licensed under the Financial Institutions Act 1994 (FIA). Such institutions cannot transact the business of banking and the activities which they are allowed to undertake are specified in the Schedule to the (FIA), namely:

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including forfeiting);
2. Financial leasing;
3. Venture or risk capital;
4. Money transmission services;
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);
6. Guarantees and commitments;
7. Trading for own account or for account of customers in:
   (a) money market instruments (cheques, bills, Certificates of deposits, etc.);
   (b) foreign exchange;
   (c) financial futures and options;
   (d) exchange and interest rate instruments;
   (e) transferable instruments;

8. Underwriting share issues and the participation in such issues;
9. Money broking.

72. It should be noted that activities 9, 10 and 11 in the definition of financial institutions in the Glossary to the FATF 40 Recommendations, that is to say:

a) individual and collective portfolio management
b) safekeeping and administration of cash or liquid securities on behalf of other persons and
c) otherwise investing, administering or managing funds or money on behalf of other persons,

fall under securities business and are thus covered by the Investment Services Act 1994.

73. Also, activity 12 in the FATF definition, :

- underwriting and placement of life insurance and other investment related insurance

falls under insurance business and is therefore covered by the Insurance Business Act 1998.

74. As of November 2005 there were in Malta 11 financial institutions (other than those operating in the securities and insurance sectors) having a total balance sheet value of Lm 10,207,025.

75. All credit and other financial institutions licensed under the Banking Act and under the Financial Institutions Act are subject persons under the Prevention of Money Laundering Regulations 2003.

Securities

76. The following types of financial institutions operate in or from Malta in terms of an Investment Services Licence issued under Section 3 of the Investment Services Act, 1994 ("ISA") (Unless otherwise indicated, the Maltese authorities have reported that statistics are as at end June, 2005).

77. Category 1a and b Licence Holders (Total Number:16)
These institutions provide investment services which primarily include arranging deals on behalf of clients in transferable securities, and the provision of investment advice. They may not hold or control clients' money or customers' assets, and may not deal for their own account or underwrite. Whereas Category 1b Licence Holders may only service non-Private Customers (non-retail customers), Category 1a Licence Holders may service all types of customers. Most of the institutions falling under this Category are typically small independent family owned businesses employing fewer than 10 persons.

78. Category 2 Licence Holders (Total Number: 44)
These are institutions providing investment services which are authorised to hold or control clients' money or customers' assets, but not to deal for own account or underwrite. These comprise the following:

(a) 12 companies providing stock broking services in relation to securities listed and traded on the Malta Stock Exchange, 7 of which also provide individual portfolio management services.

(b) 10 companies providing collective (fund) management services, 3 of which are subsidiaries of local credit institutions. Together, such companies had approximately Euro 1,044,422,700 worth of funds under management as at 31st May, 2005.

(c) 22 companies providing investment services which primarily involve arranging deals and dealing as agent in transferable securities on behalf of customers. These include 5 credit institutions which besides being licensed under the Banking Act, 1994, are also licensed to provide investment services in terms of the Investment Services Act, 1994.

With the exception of the banks (and few other exceptions[10]) the institutions under (a) and (c) above are typically small independent family owned businesses employing an average of less than 10 persons.

79. Category 3 Licence Holders (Total Number: 2)
Two major banks are currently licensed under this Category which permits them to provide a range of investment services in relation to transferable securities (arranging deals, dealing as agent, individual portfolio management, investment advice etc) and permits them to hold and control clients' money or customers' assets, and to deal for own account or underwrite.

80. Category 4 Licence Holders (Total Number: 2)
The two Licence Holders are banks licensed under this Category of Investment Services Licence which allows them to act as Custodian to collective investment schemes, providing a range of custody services for such schemes.

81. Category 5 Licence Holders (Total Number: 25)
These comprise 21 individuals and 4 companies which are only licensed to sell Linked Long-Term Contracts of Insurance (more commonly referred to as unit-linked policies) issued by local insurance undertakings authorised under the Insurance Business Act, 1998, with whom they are 'tied'. This Category of Licence Holder is not authorised to hold or control clients' money or assets.

82. As at 30th June, 2005, there were also the following collective investment schemes (CISs) set up under Maltese law and operating in/ from Malta in terms of a Licence issued under Section 4 of the ISA:

Approx. Net Asset Value (31/5/05)		
a)	52 CISs available for sale to retail investors:	EURO 1,105,436,000
b)	20 CISs available for sale to professional investors only:	EURO 39,041,099

Insurance

83. Institutions providing insurance services are required to be authorised under the Insurance Business Act or under the Insurance Brokers and other Intermediaries Act.

84. The Maltese authorities indicated that the profile of the local insurance market has been gradually changing over the last few years. Foreign insurance companies operating locally over the years gradually decreased as the number of domestic insurance companies increased. This trend continued during 2004 as a number of foreign insurance principals transferred their Malta business portfolio to newly established insurance companies. These portfolios concerned non-life insurance business. As at the end of June 2005 the number of domestic insurance undertakings authorised to carry on insurance business in Malta stood at 8. 3 of these insurance

[10] The exceptions relate primarily to two companies which form part of a financial services group involved in insurance, investment services and property; two companies which are subsidiaries of banks and one company which is a subsidiary of an insurance company.

undertakings are authorised to carry on life insurance business whilst there are two insurance undertakings which are authorised to carry on both life and non-life insurance business. As at 30th June 2005, the number of foreign insurance undertakings authorised to carry on insurance business in Malta totalled 10. These foreign insurance undertakings are involved in non-life insurance business. Lloyd's also carries on business locally, either through Maltese insurance agents or directly with local insurance broking firms. Lloyd's carries out in Malta non-life insurance business. There are also a number of foreign insurance undertakings which were previously authorised to carry on life insurance business in Malta and which have voluntarily ceased to conduct such business in Malta.

85. The gross premium receivable by insurance undertakings in Malta during the year 2004 amounted to Lm 57.7 million. From this figure the amount of Lm 55.3 million gross premium is attributable to the domestic insurance companies, and the remaining balance to life insurance business, which is in run-off[11].

86. As a result of Malta's accession into the European Union, European insurance undertakings are permitted, pursuant to the Third Life and Non-life Insurance Directives, to carry on business in Malta under the freedom of services and/or establishment. As at 30th June 2005 the number of European insurance undertakings which have offered their services in Malta in relation to life insurance business amounted to 22.

87. As at 30th June 2005 there is one insurance captive authorised under the Insurance Business Act (Cap. 403). This captive carries non-life insurance business. By the end of July 2005 the number of captives authorised under the said Act will go up to 3. All these captives are involved in non-life insurance business.

88. The number of insurance intermediaries carrying on insurance mediation activities of life insurance business as at 30th June 2005 stood at 24 insurance broking firms and 237 insurance sub-agents (199 individuals and 38 legal entities). The Insurance Brokers and Other Intermediaries Act (Cap.404) defines the activity of an insurance sub-agent as: "activities of persons, who acting on behalf of authorised companies, among other things carry out introductory work, introduce contracts of insurance or collect premiums provided that no insurance commitments towards or on the part of the public are given as part of these activities."

89. Banks licensed by the MFSA are permitted to carry on the activities of insurance sub-agents limited to the class of life insurance business. Banks can conduct these activities either through their branches or by appointing their employees to carry out insurance sub-agency activities for and on behalf of the bank. In the latter case these activities may be carried out by these employees outside the bank branches. Currently there are 3 local banks which are involved in these activities. Currently, insurance sub-agency activities are carried out from 101 branches whilst 57 bank employees are permitted to carry out these activities outside the banks' branches.

90. Although there are 20 firms which are authorised to act as insurance agents of local and/or foreign insurance undertakings none of these firms have been appointed to act as agents of life insurance companies. There are however a number insurance agencies which are involved in the servicing of the business of life insurance companies which had ceased to carry on insurance business in Malta. Following the coming into force of the EU Insurance Mediation Directive 2002/92/EC on the 15th January 2005 the MFSA has received a number of notifications from EU insurance supervisory authorities informing it of insurance intermediaries intending to carry

[11] The term 'which is in run off' in insurance language refers to those insurance companies which have ceased to carry on life insurance business and which are required to continue servicing life insurance contracts until the policy matures or the sum insured is paid out. These companies are not allowed to write new business.

on insurance mediation activities. The MFSA, as at 30th June 2005, received 525 such notifications.

91. Maltese insurance legislation envisages another type of insurance intermediary – an insurance management company. Such companies are generally appointed by insurance undertakings, in particular captives, to manage the undertaking's business or part of its business. As at the end of 30th June 2005 the number of such insurance companies stood at 6.

DNFBP

92. The major DNFBP are as follows:

- At the time of the on-site visit there were 3 casinos authorised to operate in Malta. The companies are authorised by the Lotteries and Gaming Authority which is also responsible for prudential regulation and supervision of them. Casinos are governed by the Gaming Act, Cap 400 and the consequent Gaming Act Regulation, 1998, which impose the obligations under the Prevention of Money Laundering Regulation, 2003 on casino licences[12].
- It is estimated that there are in the region of 154 real estate agents operating in Malta either in legal form or as individuals. Real estate agents do not require a specific authorisation to operate except the normal trading licence to undertake a business activity. A Real Estate agent functions mainly by bringing together buyers and sellers and therefore acts as "middle-man" in facilitating the sale/purchase of immovable property. The transfer of the title to the immovable property and the financial settlement of real estate deals are carried out by means of a public deed enrolled in the acts of a public notary.
- Traders in precious metals and precious stones and products: Most dealers consist of retail outlets in high-street areas. There are about ten large dealers that operate also in the importation/wholesale business and the manufacturing of precious metals/stones. All such dealers operate in terms of a trading licence without need of any specific authorisation or registration.
- At the time of the on-site visit there were 716 lawyers and 30 solicitors in Malta. Most of them provide their services as sole practitioners. There are around 10 law firms. Advocates are authorised to practise their profession by virtue of the Government Warrant issued after fulfilling certain conditions. Around 650 advocates belong to the Chambers of Advocates. The Commission for the Administration of Justice set up by law oversees the legal profession and has the power to recommend the suspension and/or revoke a warrant.
- Notaries provide notary services including the publication of public deeds. They are appointed for life by the President of the Republic. Their professional organisation is the College of Notaries. This body does not have a strict regulatory role but is mainly concerned with the general interest, well-being and proper conduct of the profession and with ethical/disciplinary matters. Notaries are reported to be 175.
- There are 1,600 certified public accountants and auditors. The activities of accountants are also typical of the profession worldwide and include also company services and other consultancy services. Auditors act as independent external auditors in relation to annual accounts of companies and other entities. All the leading international accountancy firms are present in Malta. The Accountancy

[12] Under the revisions of the PMLR as published and brought into force in February 2006, the AML/CFT obligations for casinos have been integrated into the main regulations.

Board oversees the accountancy/audit profession and has the power to recommend the suspension and/or revoke a warrant.

- Trustees and other persons providing fiduciary services are authorised and supervised by the MFSA in terms of the Trusts and Trustees Act (Annex 6). This legislation came into force at the beginning of 2005 and put into effect an extensive review of Maltese trust law and provided for the phasing out of the licensed nominee regime.

In terms of the Trusts and Trustees Act, all the officers of corporate trustees must be qualified and experienced in financial, fiduciary, accounting or legal profession. All directors, shareholders and other senior managers of corporate trustees must be approved by the Authority as being fit and proper persons, after going through a due diligence process. Since 1 January 2005, 16 companies were authorised to act as trustee and provide other fiduciary services in terms of the Trusts and Trustees Act. These companies are normally related to or associated with professional legal or accounting firms. At the time on the on-site visit there were still 45 licensed nominees under the old legislation and who were able to operate until the end of 2006, when they would be obliged to surrender their license and apply to becoming licensed under the Trust and Trustees Act. They were not able to take on any new business as from 1/7/05. The MFSA advised that if companies which had operated in this field did not apply for a new license, they would be checked to ensure that they were not undertaking nominee business.

- So-called private trustees are not subject to the licensing powers of the MFSA. They are covered by A.43A of the Trusts and Trustees Act, in particular paragraphs 2 and 3, which cover their definition and the type of activities they can undertake (see Annex 6). They are usually relatives of the settlor or persons who have known the settlor for at least 10 years, who are not remunerated and do not hold themselves out to the public as offering trust services. A private trustee is subject to a degree of oversight and may be requested to provide information to the MFSA in terms of A.47.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

93. The registration of legal persons and legal arrangements is regulated by the Companies Act 1995. In terms of this law three types of commercial partnership may be set up in Malta:

- the limited liability company
- the partnership *en nom collectif*; and
- the partnership *en commandite.*

94. Companies and other commercial partnerships are registered with the Registrar of companies. The Registrar is a public official appointed by the Minister of Finance and operates within the framework of the Malta Financial Services Authority (MFSA).

95. The registry of companies is a public registry and all documents are available to the public both at the registry premises and also on-line at the registry web-site.

96. Since 1965, 37,050 companies have been registered in Malta. 23-24 thousand companies were active either in Malta or from Malta at the time of the on-site visit. At least 8000 companies had been struck off after initial registration. In 2004, 2479 new registrations had taken place, and in 2005, 1687 registrations had taken place.

97. Partnerships *en nom collectif* are commercial partnerships where all the partners have unlimited joint and several liability for the obligations of the partnership. Such a partnership is established by means of a deed of partnership which is signed by all the partners and registered with the Registrar of Companies.

1051 partnerships *en nom collectif* have been registered since 1965.

98. Partnerships *en commandite*, or limited partnerships, are commercial partnerships whose obligations are guaranteed by the unlimited, joint and several liability of one or more general partners, and by the limited liability of one or more limited partners. Such a partnership is also established by means of a deed of partnership signed by all the partners and registered with the Registrar of companies.

68 partnerships *en commandite* have been registered since 1965.

99. The partnership deed - as mentioned above - includes information on the name and registered office of the partnership, the objects of the partnership, the names, addresses and official identification document numbers of the partners and of the managing partner and the contribution paid by each partner.

100. **Limited liability** companies are the prevailing legal form in the financial market. They are formed by means of capital divided into shares, which are held by the share holders, whose liability is limited to any unpaid amount on the shares held by them. The administration of such a company is vested in the board of directors, which normally exercises also the legal representation. A company is constituted by means of a Memorandum of Association entered into and signed by the shareholders. The Memorandum of Association is registered with the Registrar of companies and a company obtains legal personality by virtue of its acceptance and registration.

101. Limited liability companies may be either private companies (which cannot have more than 50 shareholders, and cannot be listed on a stock exchange) or public companies (only 70 public

companies have been registered). The limited liability company in the form of a SICAV is set up exclusively for the purpose of a collective investment scheme.

102. The Memorandum of Association must state whether a company is private or public, the company name and registered address in Malta, the objects of the company, the amount of share capital, the number of shares and the amount paid up in respect of each share, the name, address and official identification document number of all shareholders, directors and company secretary. Documentary evidence of the paid up capital and the copy of an official identification document (identity card or passport) of all shareholders, directors and company secretary must be submitted to the Registrar of companies.

103. 310 branches of foreign companies were registered in Malta up to September 30th 2005. Upon registration branches have to submit, amongst other documents, a copy of the foreign company's statute or charter, names and personal details of the persons vested with the administration and legal representation of the company, the address of the branch in Malta, the activities of the branch and the names and personal details of the branch representatives in Malta.

104. Since the beginning of 2005 16 companies were authorised to act as trustee and provide other fiduciary services on the basis of the newly introduced Trusts and Trustees Act. Trusts are not considered to be legal persons. Trustees hold and administer the trust property and act in the interest of the beneficiaries. The settlor passes on the control of assets to the trustee by means of the trust deed. Trust Deeds do not have to be registered. The MFSA regulates and supervises (off-site and on-site supervision) trustees in Malta in accordance with the provisions of the Act.

105. Civil partnerships, associations, foundations, clubs and other non-profit organisations of various natures, mainly involved with sports, recreational, educational, religious, social purposes and other non-governmental organisations may also be set up. These are not registered with any authority.

106. There are also state owned and controlled legal entities set up by act of parliament to carry out a commercial activity or to promote economic activity (e.g. Water Services Corporation, State Supplier of Electricity, Petroleum and Gas, Malta Export Trade Corporation, etc.)

107. **Non-profit organisations** (NPOs) established in Malta are mainly organisations operating on a national level and are mostly involved in social, educational, missionary, religious, sporting, educational, and philanthropic work. In most cases they are administered by administration committees involving well known personalities or fall under the umbrella of the Catholic Church. Often their work is recognised by the Government, which may also contribute to their fund raising activities by direct donations or by means of other types of assistance. NPOs keep financial records and prepare financial statements in which may also be made public.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

108. The Government's commitment to combat AML/CFT is underscored by the strengthening of anti-money laundering measures through the enactments of amendments to both the PMLA and the PMLR and the Criminal Code.

109. Amendments introduced to the PMLA resulted in the extension of the list of predicate offences to cover all criminal offences (L.N. 176 of 2005); the shifting of the burden of proof on to the accused when it comes to proving the lawful origin of the proceeds when there is no reasonable explanation by the accused in relation to offences under the Act; creating corporate criminal liability for money laundering offences and providing for the forfeiture of proceeds from legal persons; extending the jurisdiction of Maltese courts over money laundering offences and the introduction of the controlled delivery technique in relation to illicit proceeds (Act III of 2002).

110. Moreover the introduction of a new sub-title in the Criminal Code (through Act no.VI of 2005 – Cap.3) criminalising specifically acts of terrorism, funding of terrorism and other related offences, clearly manifests that the Maltese Government is anxious to deter such crimes whilst introducing stringent measures designed to circumvent such offences.

111. The Prevention of Money Laundering Joint Committee continues to meet regularly to ensure co-ordination and effective use of resources. The Committee has been instrumental in suggesting the amendments to the Prevention of Money Laundering Regulations, the issue of directives by the financial regulators for the disclosure of ultimate beneficiaries and the amalgamation of the Guidance Notes. The Joint Committee is a forum bringing together representatives from those agencies, departments, authorities, financial institutions, banking and non-banking sectors, all having a role to play in the fight against money laundering. In this forum, which meets regularly, views are exchanged on new measures both domestically as well as internationally and methods on how best to implement the said measures are studied. Moreover the forum serves a purpose of not only keeping abreast with developments, policies, new legislation, regulations and directives in this arena, but also offers an efficient opportunity for bringing forward the different views and didactic experience of the members in a bid to formulate comprehensive and all-inclusive guidelines and measures which will ultimately serve as the very tools to curb and detect money laundering activities.

112. Moreover the increase in money laundering prosecutions mirrors the potential of the legislation Malta has put in place, which is aimed to equip better prosecutions in their ongoing fight against laundering.

113. The Draft legislation amending the National Interest (Enabling Powers) Act, Chapter 365, which is presently under consideration, is still outstanding. The other Government initiatives have been realised (namely the amendments to the Criminal Code and the Prevention of Money Laundering Act) as has been stated above. Nonetheless Government remains adamant to introduce further measures as necessary. On the preventive side, further amendments are contemplated in the Prevention of Money Laundering Regulations, 2003 with the scope of further harmonisation and convergence of these Regulations to accepted international standards. The Government issued a high level Crime Prevention Strategy for the period of 2003 – 2006 in June 2003. The main responsibility of prevention bodies at all levels consists of performing tasks in the field of prevention set out on the basis of the Prevention Strategy, coordinating preparation, implementation and evaluation of preventive activities within their scope of authority, and involving the relevant entities in this process on the principle of partnership.

b. The institutional framework for combating money laundering and terrorist financing

114. The following are the main bodies and authorities involved in combating money laundering or financing of terrorism on the financial side:

The Malta Financial Services Authority ("the MFSA")

115. The MFSA is a public authority set up by special Act of Parliament in 1989 and subsequently amended in 1994 and 2002.

116. The MFSA is the single regulator for all banking, securities and insurance business in Malta. The MFSA regulates also trustees and houses the Registry of Companies. It has assumed the regulatory and supervisory responsibilities previously shared between the MFSA, the Central Bank of Malta and the Malta Stock Exchange. Malta has a comprehensive legal framework and adheres to international standards and codes. Malta's legal framework comprises essential elements for AML and CFT

117. As the single financial services regulator in Malta, the MFSA is responsible for ensuring that persons providing any type of financial service are 'fit and proper', both as a pre-licensing condition and post-licensing and also on an on-going basis. The MFSA regards the maintenance and implementation of adequate policies and procedures for the deterrence and prevention of money laundering as an important element of the continuing 'fit and proper' test applicable to all its Licence Holders. The Prevention of Money Laundering Guidance Notes issued to the various financial institutions licensed or otherwise authorised by the MFSA are used as a yardstick for measuring the adequacy of systems implemented by Licence Holders to comply with the Prevention of Money Laundering Regulations and to counter money laundering.

118. As part of its efforts to ensure Licence Holders are fully aware and comply with their obligations in terms of the Regulations, the MFSA in collaboration with the FIAU requires Licence Holders to appoint a Money Laundering Reporting Officer (MLRO) who is subject to MFSA's approval. Such individual is approved subject to the satisfactory outcome of a due diligence process and subject to satisfying the MFSA that the person is appropriately qualified to assume the role of the MLRO.

119. The MFSA, as an agent of the FIAU, undertakes a number of on-site AML/CFT checks on Licence Holders during its compliance visits. These aim at verifying compliance with the identification, record-keeping and reporting requirements of the Prevention of Money Laundering Regulations and they report their findings to the FIAU. They can also include any requirements for remedial action to be taken by Licence Holders in their post-visit follow-up letters to Licence Holders.

120. The MFSA, as a supervisory authority, is required to report any suspicion of money laundering or financing of terrorism to the FIAU in terms of regulation 11 of the Prevention of Money laundering Regulations 2003.

Malta Stock Exchange

121. The Malta Stock Exchange is set up as a public corporation by virtue of section 24(1) of the Financial Markets Act (Cap. 345 of the Laws of Malta) and is deemed to be a body in respect of which the competent supervisory authority (the Malta Financial Services Authority) has issued a recognition order for it to provide the services of an investment exchange in terms of the said Act. Regulation 2 of the Prevention of Money Laundering Regulations 2003 (Legal Notice Number 199 of 2003, hereinafter referred to as the 'Regulations') includes the Malta Stock Exchange as one of the "relevant financial business" activities that is bound to combat money laundering and terrorist financing.

122. As a subject person conducting relevant financial business, the Regulations require the Exchange to adopt identification procedures to positively identify its customers and maintain record-keeping procedures of identification and transactions details, internal reporting procedures enabling a reporting officer to report suspicious transactions to the Financial Intelligence and Analysis Unit and to educate and train its personnel on the detection and handling of suspicious transactions.

123. The Exchange contributes and fully cooperates in Malta's fight against money laundering and terrorist financing and from time to time conducts detailed in-house presentations to its employees on the threats posed by money laundering and terrorist financing and detection and reporting of suspicious transactions. It has participated in international conferences where it shared its experience in combating economic crime, money laundering and terrorist financing.

124. The principal business of the Exchange consists in providing efficient and reliable facilities for the purchase and sale of listed securities as well as securities clearance, settlement, registration and administration services through its Central Securities Depository ('CSD'). Upon admission to listing and trading on the Exchange, the CSD acquires a complete register of identified holders of the listed securities. This information is inputted into the CSD's information system that incorporates a large database and allows ready access to registered securities holdings through a book-entry facility. Within the CSD, customers holding securities registered for the first time are assigned an MSE Account Number (or Folio Number) allowing for easy access for any eventual transfer when needed.

125. Clients' identification information is provided by reference from licensed stockbroker Exchange members and other regulated investment services providers that would have obtained satisfactory evidence of identity of such clients. Such information is inputted and transformed into clients' profiles and available holdings' database or 'data warehouse'. In fact this data is then utilised whenever the customer seeks to negotiate or deal in his investments through his appointed stockbroker who deals on his behalf during the open session hours of the Exchange's trading system. In practice, the Exchange's customer furnishes his appointed broker signed instructions to offer (sell) or to bid (purchase) listed securities on the trading system together with his MSE Account Number. Any transacted matches on the Malta Automated Trading System ('MATS') are recorded as struck deals on MATS. The transactions are also included in a trading report providing a critical feedback at the end of the trading session for due diligence purposes undertaken by the market surveillance team.

126. Securities delivery in Exchange-traded securities effectively takes place against payment through an appropriate link with the Central Bank of Malta ('CBM') that oversees the settlement of the payment leg. Securities sold are delivered though crediting the buying customer's CSD securities MSE account against a corresponding payment and crediting of the relevant consideration in favour of the selling stockbroker's settlement agent CBM account. Amendments of data kept on the CSD database prompts the issuance of a relevant registration advice that is dispatched to the customer for his satisfaction by way of confirmation of the executed transaction.

127. The Exchange's CSD thus operates a reliable and automated securities settlement registration database that is instrumental in assisting law enforcement agencies and the Financial Intelligence and Analysis Unit in their requests for information necessary for the investigation of possible money laundering and terrorist financing activities. It provides a self-auditing insight and indispensable tracking mechanism for the detection of any single or series of possible suspicious transactions spanning over the dealings executed and registered by all the Exchange trading members. The Exchange also puts into effect precautionary court attachment orders having the effect of attaching any securities holdings that may be registered in the names of persons accused of money laundering offences. In this respect, by requiring the Exchange to recognise, detect and report any suspicious transactions, the Regulations have also laid higher compliance

standards than the ones applying under the revised European Community Prevention of Money Laundering and Terrorist Financing (i.e. the Third EC Directive) that merely requires market supervisory authorities rather than the market providers themselves to report suspicious transactions which may come to their knowledge when carrying out their market supervision functions. In fact, the Exchange's implementation of the anti-money laundering and anti-terrorist financing measures are in addition to the supervisory role of the Malta Financial Services Authority in conducting its ongoing regulation as the markets' competent authority. Moreover, in carrying out their due diligence functions, the Exchange's CSD personnel and market surveillance team officers are equipped with information systems that assist them in detecting possible higher-risk suspicious transactions whereby such transactions are referred for enhanced due diligence consideration.

The Central Bank of Malta

128. The Central Bank of Malta ("CBM" or "Bank") is an independent autonomous body, established by the Central Bank of Malta Act (Cap 204), and is responsible to Parliament. The CBM is primarily responsible for price stability but the Act further places upon the Bank the responsibility of ensuring the stability of the financial system. The Bank acts as banker to the Government and its agencies and to the banking system. Consequently, the CBM attaches great importance to the fight against money laundering not only in the interest of the Bank but also in safeguarding the stability, credibility and reputation of the financial system in general.

129. The customers of the CBM are the Malta Government, government departments and other government agencies, the local credit institutions and the Bank's own staff. Therefore, except for staff accounts, the CBM is not allowed to keep other public household or corporate accounts. Hence the CBM does not carry out commercial transactions, except for those related to numismatic coins and sale of government securities (primary market), thus minimising its exposure to the laundering of funds. This notwithstanding the CBM is recognised as a supervisory authority in terms of regulation 2(1) of the Prevention of Money Laundering Regulations, 2003. Certain obligations are therefore imposed on the CBM particularly the reporting of suspicious transactions. In order to meet these obligations the CBM has appointed a senior officer to assume the responsibilities of the Money Laundering Reporting Officer ("MLRO") as required by the Prevention of Money Laundering Regulations, 2003. Furthermore the CBM has drawn up the "Prevention of Money Laundering – An Internal Handbook for Management and Staff" ("Handbook") which establishes the necessary internal procedures and controls for its staff.

130. The Handbook includes procedures to ensure that:

- the identity of all persons conducting business with the Bank is properly verified and sufficient information gathered and recorded to permit the Bank to **know its customer**;
- potential new relationships that do not appear to be legitimate are declined and reported accordingly;
- transactions by non-account holders that do not appear legitimate are declined and reported accordingly;
- established relationships are regularly monitored in respect of large or abnormal transactions;
- records are retained to provide an audit trail and adequate evidence to the Financial Intelligence Analysis Unit ("FIAU") and the law enforcement agencies in their respective analysis and investigations of such transactions;
- all suspicions of transactions that could be related to money laundering are promptly reported to the FIAU. The Bank provides full co-operation to the FIAU and the enforcement authorities to the extent required by statute/regulations.

131. The Bank deems it appropriate to ensure that its officials are aware of their particular responsibilities in order to fulfil its obligations. As such:

Members of management are responsible for:

- the day-to-day compliance with prevention of money laundering obligations within those parts of the Bank for which they are responsible;
- providing the MLRO appointed by the Bank with all the information and advice on suspicious reports made.

The Money Laundering Reporting Officer is responsible for:

- developing and maintaining policy in line with evolving statutory and regulatory obligations based upon the experience/advice of the FIAU and the enforcement agencies;
- ensuring that all relevant areas of the Bank are complying with this policy by monitoring operations and development to this end and by providing the necessary training and education;
- receiving suspicious transaction reports and undertaking the internal review of all such reports in order to determine whether or not such suspicious reports are sustained and hence require disclosure to the FIAU;
- all contact between the Bank and the Authorities in respect of routine reports made to the FIAU;
- organising initial training to new recruits and providing ongoing training to specific staff.

All employees are responsible for:

- remaining vigilant to the possibility of using the Bank's services for money laundering (A list of potentially vulnerable areas by department/office is given in Appendix IV of the Handbook);
- reporting to the MLRO all suspicions of money laundering;
- complying with the full with all money laundering procedures in respect of customer identification, monitoring of transactions and record keeping.

The Internal Auditor is responsible for:

- auditing compliance with money laundering statutory and regulatory obligations and the implementation of the Bank's prevention of money laundering policy as part of the internal audit function.

132. The CBM also attaches great importance to the operations of the FIAU. The current four members of the FIAU Board are appointed by the Minister responsible for finance in terms of article 19 of the Prevention of Money Laundering Act (Cap 373). One of these members is selected by the Minister from a panel of at least three senior CBM officials nominated by the CBM Governor. Like the other members of the Board, this member discharges his duties in his own judgement and is not in any way subject to the direction or control of the Bank.

133. The CBM's MLRO is a member of the Prevention of Money Laundering Joint Committee which includes all sectors of subject persons as defined in the Prevention of Money Laundering Regulations, 2003. The Committee meets regularly under the chairmanship of the Director of the FIAU.

134. In ensuring that its staff is kept aware of the Bank's obligations in terms of the Prevention of Money Laundering Regulations and of developments in the national and international anti-money laundering strategies, the MLRO, as already indicated, organises periodic internal

training sessions for the Bank's staff. Since 2002 the MLRO has organised and delivered six training sessions to various categories of staff and new recruits.

Ministry of Finance

135. The Minister responsible for finance has the authority, under Article 12 of the Prevention of Money Laundering Act, to make rules and regulations for the better application of the provisions of the Act. This includes provisions for subject persons to provide for procedures and systems for training, identification, record-keeping, internal reporting and reporting to supervisory authorities for the prevention of both money laundering acts and funding of terrorism. Rules and regulations established through such an authority may impose punishments and penalties in respect of any contravention or non-compliance, and may be in the form of a fine or imprisonment.

Ministry of Justice & Home Affairs

136. The functions relevant to AML/CFT for this Ministry are performed through the Attorney General's office and the Malta Police-please refer accordingly.

Ministry of Foreign Affairs

137. In 1994, the Government of Malta in exercise of the powers conferred by Article 3 of the National Interest (Enabling Powers) Act established the Sanctions Monitoring Board. The terms of reference of the Sanctions Monitoring Board are to monitor the operation and implementation of all regulations and administrative measures made under the National Interest (Enabling Powers) Act 1993, in accordance with resolutions and regulations issued by the United Nations Security Council or by the Prime Minister of Malta. A report on the activities of the Board is submitted to the Prime Minister on an annual basis.

138. The Board presently consists of the Director responsible for Multilateral Affairs at the Ministry of Foreign Affairs, as Chairman, and seven members being the Attorney General (or his representative) and officials from the Ministry of Finance, Trade Services Directorate, Central Bank of Malta, European Union Directorate, Customs Department and the Malta Financial Services Authority.

139. The Ministry of Foreign Affairs in co-ordination with the Office of the Attorney General takes action to issue the relevant Legal Notices or Government Notices relating to the implementation of UNSC resolutions and these are published in the Government Gazette and circulated to all Ministries, Departments and parastatal Organisations by the Office of the Prime Minister.

140. In accordance with a standing arrangement with the Multilateral Affairs Directorate and the European Union Directorate at the Ministry of Foreign Affairs, all United Nations Security Council sanctions and restrictive measures of the European Union imposing the freezing of funds are sent to the Malta Financial Services Authority to be placed on the "Implementation of Sanctions" section of the MFSA website. Financial services holders are informed periodically that they are to keep themselves updated as to the amendments to the lists which may be updated from time to time.

141. The Police authorities are also provided by the Multilateral Affairs Directorate, Ministry of Foreign Affairs with Government Notices having the updated consolidated lists of individuals, groups and entities whose financial assets or economic resources are subject to assets freezing under the relevant UNSC resolutions.

142. Malta is State Party to all the relevant international Conventions and Protocols to combat terrorism. The Multilateral Affairs Directorate at the Ministry of Foreign Affairs, in liaison with

the Office of the Attorney General continues to work to ensure that all the measures stipulated in UN Security Council resolution 1373 (2001) are implemented under Maltese law. The Multilateral Affairs Directorate, in close consultation with a number of Ministries and other Government entities, has to date compiled and submitted four extensive reports to the UN Security Council Counter-Terrorism Committee established pursuant to UNSC resolution 1373 (2001) in compliance with Malta's obligations under the said resolution. At the time of the on-site visit the latest report which concerned the next set of priorities aimed at furthering the implementation of resolution 1373 (2001) by Malta was forwarded to the CTC Secretariat in April 2005.

Ministry Responsible for the Law Relating to Legal Persons and Arrangements

143. This responsibility lies with the Register of Companies at the MFSA as appointed by the Minister of Finance under the Companies Act, 1995.

Joint Prevention of Money Laundering Committee

144. One of the consultation tools of the FIAU is The Prevention of Money Laundering Joint Committee, which was initially established by the Central Bank of Malta in 1994 to ensure the smooth implementation of the Prevention of Money Laundering Regulations. Since the establishment of the FIAU the Committee was restructured and reconstituted.

145. The Committee, which now includes representatives of all sectors of subject persons, supervisory authorities, the Attorney General's Office and the Malta Police, is an ad hoc Committee which meets regularly under the chairmanship of the Director of the FIAU.

146. The primary objective of the Committee is to provide a forum for discussion and exchange of views relating to prevention of money laundering and the funding of terrorism with a view to develop common anti-money laundering standards and practices in compliance with the Prevention of Money Laundering Regulations and/or any other directives, including any amendments thereto, as may be issued from time to time.

147. The Committee is not a policy making or a decision taking body but discusses matters of interest in the development of the anti-money laundering regime and makes relevant recommendations to the FIAU who acts accordingly either on its own initiative if the recommendation is within its powers or by referral to the relevant authorities as may be appropriate. The matters discussed and recommendations of this Committee are taken into consideration by the relevant authorities and associations which are members of the Committee, in issuing, approving or adopting any guidance or procedures for the implementation of prevention of money laundering regulations.

The Financial Intelligence Analysis Unit

148. The Financial Intelligence Analysis Unit (FIAU) is a government agency having a distinct legal personality. It is responsible for the collection, collation, processing, analysis and dissemination of information with a view to combating money laundering and terrorist financing. It is the authority to whom reports of transactions suspected to involve money laundering are disclosed by subject persons under the Prevention of Money Laundering Regulation, 2003[13].

[13] Since the February 2006 amendments to the PMLR, the FIAU is now responsible also to receive and process disclosures suspected to involve financing of terrorism.

149. The FIAU was established by Act XXXI of 2001 which amended the Prevention of Money Laundering Act (PMLA), Chapter 373 of the Laws of Malta. All provisions of the amending Act were brought into force in October 2002, when the FIAU became fully operational.

150. The main three core activities of the FIAU are: Receive and Analyse financial information suspected of involving money laundering (and terrorist financing) and Report thereon; Exchange Information with local and foreign authorities and other FIUs either under an MoU or under conditions which the FIAU determines; and, Monitor Compliance by subject persons either on its own or through the assistance, co-ordination and co-operation of other supervisory authorities. The Unit is tasked with, among others, liaising with the Minister responsible for finance and the Commissioner of Police, advise and assist persons to put in place and develop effective measures for the prevention of money laundering and terrorism financing, and exchange information with foreign bodies whose functions are equivalent. The Commissioner of Police details a police officer to act as liaison officer to the Unit.

Malta Police

151. One of the specialised sections within the Malta Police Force is the Economic Crimes' Squad. This Squad is responsible for the investigation of all financial related crimes.

152. The Money Laundering Unit forms part of the Economic Crimes Squad which has been set up since December, 2001 and was made up of one investigating team consisting of one Inspector and two constables. Since May, 2004 the money laundering unit was increased to two investigating teams, also with one Inspector and two Constables in each team. The function of the Police Money Laundering Unit is to investigate reports sent by the FIAU. The Police Money Laundering Unit also investigates reports originating from other sources that may concern money laundering. The Unit also acts as a support to other Police units on possible money laundering matters. Assistance is also given by the Unit to requests for assistance from foreign law enforcement agencies and assists the judiciary and the Attorney General in executing Rogatory Letters of Request concerning money laundering issues. Assistance is also given through Interpol and Europol. There is no asset tracing agency and as such this research is done by the Police Money Laundering Unit and the office of the Attorney General. Documents collected during the execution of the investigation orders are used to trace assets.

153. The police investigating officers also prosecute the cases they investigate

The Office of the Attorney General

154. The establishment within the Attorney General's Office of a Unit to deal with money laundering and with international co-operation in criminal matters was intended to create a point of reference which allows more specialisation, data recording and data generation and contributes to the handling of requests for assistance and for interim measures, prosecutions and confiscation measures under the anti-money laundering legislation in place being dealt with more expeditiously.

155. The Attorney General's Office, which recently has been designated as a Government Agency, has designated two lawyers to deal with money laundering cases. This ensures not merely specialisation in this field, but also seeks to attain a centralised unit, to which all related matters are addressed, thus resulting in more efficiency. Since the first and second evaluations, the functions of the Attorney General in relation to money laundering investigations and prosecutions have not changed.

156. The official of the Attorney General is empowered by law to apply to the courts for the issue of a number of crucial judicial orders specifically designed to facilitate money laundering

investigations these being investigation and attachment order, which eventually could be followed by freezing and confiscation orders.

157. The Attorney General, in his capacity as the domestic central judicial authority for the purpose of mutual assistance in criminal matters, may request legal assistance from other foreign judicial authorities. In such cases letters of request are drawn up by the office of the Attorney General and transmitted to foreign counter-parts. Such assistance may vary from a request for interim measures, coercive measures, taking of testimony, gathering evidence and the production of documents, among others. In cases where the request is treaty-based, direct transmission takes place where this is allowed by the treaty. Otherwise the request must be channelled through the Ministry of Foreign Affairs. Malta is a party to the 1959 European Convention on Mutual Assistance in Criminal Matters, to the 1990 Convention of Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and to the United Nations Convention against Transnational Organised Crime and its Protocols. Moreover the Attorney General's Office has also been designated as the central authority for purposes of the European Arrest Warrant.

Customs Department

158. The Customs Class Uniformed Unit and Enforcement Unit (CEU) are the two main units which effect currency checks at the airport, seaport and the yacht marinas.

159. The CEU Officers have executive powers which empower them to effect currency checks including body searches.

160. The executive powers vested in a CEU Officer are limited to certain areas; however such offices do not have general executive/investigative powers and only assist the police in their investigations when requested.

161. Whenever Customs detect a criminal offence, Customs is obliged to hand the case over to the police who continue with the investigations and prosecution.

162. The Malta Customs strategy on money laundering involves cross-border and intra- community checks and controls on the movement of currency (including cash and monetary instruments) and to improve methods to meet present needs.

163. In February 2004 the Customs Intelligence Section (CIS) was set up. The main objectives of this section are gathering and evaluating information. This is turned into intelligence which is disseminated so as to fight evasion of duties/VAT, illicit trafficking of drugs and contraband in general, safeguarding public health/morality as well as internal security. This is done through targeting and issue of alerts.

164. The CIS is creating a data base in order to develop a centralised source of information.

165. The CIS works very closely with the CEU who effect searches on passengers and assist in the examination of imports for drugs, IPR and contraband and carry on outside investigations for CIS and the Department in general. The CEU also incorporates the anti-drug squad and the IPR unit. The CEU plans to contribute to the development of the Customs' role in the strategy on money laundering.

166. CIS also works very closely with other Customs department branches and units such as the Compliance Verification Unit and the Post Clearance Unit. It is in mind to create more awareness about the problem of money laundering in these latter sections.

167. In 2005 the CIS was given the task to start monitoring passengers and traders with regard to movement of currency. CIS is in the process of creating risk profiles to investigate and target

passengers and traders who are not declaring intra community and cross border movement of currency. This will include movements at both the airport and seaport.

168. This can be done primarily from passenger lists that are available in advance and from the scrutiny of manifests and declarations. This information can be exchanged with the Central Bank and other organisations combating money laundering to check how traders are moving currency in order to pay for imports. This may reveal inflated and deflated invoices to evade taxes and money laundering activities and financing of terrorism.

169. Customs is keeping records of all declared imports/exports of currency. This information was forwarded to the Police and the National Drug Intelligence Unit (NDIU) currently the MSS.

170. As from the 1st of January, 2005 information on declared movement of currency is being recorded and forwarded to the Central Bank on specific forms. Three copies are compiled; one for the declarant, one for the Central Bank and a third copy is kept by Customs for records purposes.

171. Customs have been keeping records of movements of currency primarily at the airport as this is the main gateway to leave and enter the island.

172. No records are available of movements of past currency declarations at the seaport.

173. Problems to tackle cross-border movements of currency and intra-community movements include the lack of advance information on the movements of passengers due to data protection problems and the Schengen agreement about the free movement within the EU.

174. The Customs anti-drug unit has been keeping records of personal searches which include luggage searches since the year 2000. These searches were affected mainly on selected incoming passengers and not triggered by suspicious currency movements. However all customs officers effecting these searches are well aware of currency movements restrictions in force during these last years.

175. Below is a breakdown of the searches affected by the Enforcement unit from the year 2000 to the time of the on-site visit.

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2000	56	89	91	45	151	119	54	25	63	51	102	56
2001	77	69	55	80	38	37	42	30	199	35	32	52
2002	59	62	63	99	16	28	33	23	79	31	94	13
2003	27	28	44	13	21	23	25	26	191	33	6	45
2004	41	41	21	36	16	54	13	27	32	31	39	21
2005	29	96	46	46	39	27						

176. Uniformed Officers at the airport also effect personal searches and have kept proper records which are listed hereunder as from the year 2000 to the time of the on-site visit.

Year	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*Jun*	*Jul*	*Aug*	*Sep*	*Oct*	*Nov*	*Dec*
2000	2	1	4	2	1	0	2	1	2	1	0	0
2001	0	2	2	3	0	2	2	0	1	3	0	2
2002	3	4	5	0	2	0	0	0	3	0	1	0
2003	1	0	2	0	5	1	0	0	1	4	1	1
2004	0	0	0	0	0	0	1	0	0	0	0	0
2005	0	0	0	0	2	6	0					

177. As in the case of personal searches conducted by Enforcement personnel the searches effected by uniformed personnel were not triggered by suspicious currency movement but again if any currency was found in excess of regulations, this would have been withheld.

178. Before April 2002 Uniformed Customs personnel at Malta International Airport had been issuing official receipts forms from receipt books provided by the Department to passengers making currency declarations on arrival or at departure. A copy was kept for customs records and a copy was given to the passenger. From 15th April 2002 Uniformed Customs personnel at Malta International Airport have been keeping a data base of all in coming and outgoing currency declaration besides issuing and compiling receipts which included the date, flight No., name, surname, local address where passenger in transit was staying, nationality, Passport No. or I.D. card No. and the amount and denomination of currency being declared. This information was being passed on to the Police and the NDIU today the MSS.

179. As already mentioned from the 1st of January, 2005 a new procedure has been put in place. Notices in various languages were fixed at the arrivals and departure sections advising passengers on the obligation to declare to customs any currency in possession at that time amounting to Lm 5,000 or more.

180. Below is a breakdown of currency declarations made by passengers to Customs uniformed personnel at the Arrivals and Departure sections at MIA.

Year	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*Jun*	*Jul*	*Aug*	*Sep*	*Oct*	*Nov*	*Dec*	*Total*	*Dep*
2001						45	99	96	82	109	72	83	586	Nil
2002	93	59	77	67	69	63	75	84	62	82	44	48	823	Nil
2003	61	45	61	63	49	69	75	63	64	60	28	55	693	Nil
2004	47	49	51	50	37	37	51	35	40	24	31	40	492	Nil
2005	20	32	12	22	22	16							124	3

Malta Security Service

181. The Malta Security Service is regulated by the Security Services Act. The function of the Service is to protect

(a) the national security and, in particular, against threats from organised crime, espionage, terrorism and sabotage, the activities of agents of foreign powers and against actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.

(b) To act in the interests of the economic well-being of Malta and public safety, in particular, the prevention of detection of serious crime.

182. The operations of the Security Service include the collection of intelligence relating to terrorism, drug trafficking, money laundering and organised crime as well as the dissemination of this information and analysis to other agencies such as the Police, Armed Forces, Customs, Airport Security and others.

183. A Security Committee which is made up of the Prime Minister, the Minister for Justice and Home Affairs, the Minister responsible for foreign Affairs and the Leader of the Opposition examines the expenditure, administration and policy of the Security Service.

184. The Security Service has excellent relations with the Police, Customs, Armed Forces of Malta and other local Government Bodies and a member of the Service has been appointed as the contact person with the Financial Intelligence Analysis Unit.

185. The Service is fully engaged in international co-operations on a bilateral and multilateral basis. Members of the Service attend the Counter Terrorism Group, the EU Working Party on Terrorism and the Council Security Committee meetings on a regular basis.

186. Apart from the FIAU, which by legislation is given the primary responsibility in combating money laundering or financing of terrorism, the following are other bodies and authorities involved in combating money laundering or financing of terrorism in designated non-financial business and professions (DNBFBP).

Casino Supervisory Body

187. The Lotteries and Gaming Authority (LGA), set up in 2001, is a public single regulatory and supervisory body that is responsible for the governance of all forms of gaming in Malta. The LGA licences casinos under the Gaming Act 1998 and all other games mentioned in the Lotteries and Other Games Act, 2001. Several requirements are made mandatory in both Acts. The LGA has put in place detailed procedures that must be adhered to by all licensees and all applications for a licence must undergo a vigorous due diligence test. Casinos are made subject to Prevention of Money Laundering Regulations 2003 through the Gaming Regulations 1998[14].

Self regulatory organisations (SRO) for professionals such as lawyers and accountants

188. With regards to professional bodies related to the professions, the Chamber of Advocates is the Maltese Bar Association while the Malta Institute of Accountants brings together the accountancy and audit profession. There are also the College of Notaries and the College of

[14] Under the revisions of the PMLR as published and brought into force in February 2006, the AML/CFT obligations for casinos have been integrated into the main regulations.

Legal Procurators. These bodies have no regulatory role as such but are mainly concerned with the general interest, well-being and proper conduct of the respective profession and with ethical/disciplinary matters. They have a vested interest in ensuring that their members comply with AML and CFT obligations and for this purpose they provide training and guidance to their members. Professional bodies may take disciplinary action against their members, including withdrawal of membership. The FIAU however retains primary responsibility to supervise AML/CFT compliance in terms of the PMLA.

Accountancy Board

189. The Accountancy Board is regulatory and supervisory authority for certified public accountants and auditors. It is responsible to license (issue warrant) and oversee the accountancy professions It is appointed by Minister responsible for finance. The Board has not carried out any on site inspections at the time of evaluation visit.

Registry for companies and other legal persons.

190. The role of the Registry of Companies is primarily that of the authority with which companies and other commercial partnerships are registered. It receives and retains copies of official identification documents in relation to all individuals involved as shareholders, directors and company secretaries in companies. It therefore has an indirect role in the prevention of money laundering and terrorist financing. All companies and other commercial partnerships requesting services from subject persons, such as the opening of bank accounts, have to be identified including the beneficial owners.

c. The approach concerning risk

191. As described in the FATF Recommendations, a country may decide not to apply certain AML/CFT requirements, or to reduce or simplify the measures being taken, on the basis that there is low or little risk of money laundering or financing of terrorism. The Maltese legislation does not provide for a risk-based approach. This issue is under consideration for the proposed amendments to the Regulations[15].

d. Progress since the last mutual evaluation

192. The last on site visit took place in January 2002. In general Malta's crime situation has not changed since the second round. Fraud and drug trafficking are still considered as the main sources of illegal proceeds. In recent years illegal immigration and trafficking in human beings have increased among profit-generating activities.

193. The results in terms of convictions and confiscations for money laundering at the time of the on-site visit remain disappointing. The lack of convictions for money laundering means that there is currently a lack of jurisprudence to assist prosecutors and investigators on issues of proof. There need to be more cases successfully brought before the courts so that jurisprudence on money laundering is developed and open issues of proof are clarified. A greater willingness by the courts to draw inferences from objective facts and circumstances in establishing the elements of a money laundering offence is encouraged. Consideration should be given to specific legislative provision on this point if this remains problematic in money laundering cases. The Maltese authorities have indicated that the change of the money laundering offence into an "all crimes" one was a legislative measure aimed towards facilitating the making of inferences from the

[15] A risk-based approach element has now been included in the February 2006 revisions.

evidence. They have also indicated that they are ready to consider other legislative measures should this prove necessary.

194. On the criminal side, money laundering is still criminalised by a number of laws: while the PMLA criminalises money laundering offences in general, now based on any criminal offence (see below), two earlier ordinances (Dangerous Drugs Ordinance, and Medical and Kindred Professions Ordinance) criminalise drug-related money-laundering, with deterrent penalties.

195. Since the last evaluation there have been several improvements to the legal basis for fighting money laundering and now terrorist financing. The examiners welcome the extension in 2005 of the wider money laundering criminal provision under the Prevention of Money Laundering Act to any criminal offence, including the offence of terrorist financing. The PML Regulations remain to be harmonised to provide for reporting of suspicious transactions related to the financing of terrorism[16]. The examiners look forward to the consequent early lifting of the relevant Maltese reservations to the 1990 Strasbourg Convention. The Strasbourg Convention (CETS 198) on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism was signed in May 2005 but is not yet ratified.

196. Negligent money laundering has still not been criminalised. Some differences remain in the physical and mental elements of the various money laundering offences. The language in the offence under Prevention of Money Laundering Act on these aspects most closely reflects the international standards. Drug money laundering can be prosecuted on the basis of suspicion as well as knowledge, whereas the "all crimes" money laundering offence requires knowledge that the proceeds are derived from criminal activity. While the extension of the predicate base under the Prevention of Money Laundering Act offence to "all crimes" may make the knowledge standard easier to prove under the general money laundering offence, the introduction of the suspicion standard also in this offence would assist the prosecutorial effort. Such an amendment could be particularly helpful, given that there are still no plans to introduce the negligence standard in any of the money laundering offences.

197. Since the second evaluation the Maltese authorities have introduced corporate liability generally, which would also assist in money laundering investigation and prosecution. Corporate liability applies, however, only upon the conviction of a natural person to be seen responsible for the legal entity, Overall therefore the legal base to prosecute money laundering is now generally quite sound but effective implementation is lacking. The examiners were nonetheless encouraged to note that currently 10 cases are before the courts – all as yet involving only natural persons. These prosecutions include both "own proceeds" and third party laundering. So far as the examiners are aware only one case is based on foreign predicates.

198. Mandatory confiscation orders can now be made in relation to all offences carrying imprisonment for more than one year. The examiners particularly welcome the extension of the reverse onus provisions in the Dangerous Drugs Ordinance to offences under the Prevention of Money Laundering Act.

199. Since the second round, separate criminal offences of terrorist financing were introduced in June 2005. At the same time the Prevention of Money Laundering Act was amended to extend its scope to the financing of terrorism, although the Prevention of Money Laundering Regulations have not so far been harmonised to formally provide for reporting suspicious transactions related to financing of terrorism[17]. The criminalisation of terrorist financing is largely inspired by the

[16] February 2006 revisions to Regulations provide for financing of terrorism.

[17] Reporting of transaction suspected to be related to the financing of terrorism is now provided for under the February 2006 revisions for the PMLR.

1999 UN Convention for the Suppression of the Financing of Terrorism and these detailed provisions appear comprehensive. They also provide for confiscating terrorist funds from natural and legal persons upon conviction. At the time of the on-site visit these provisions have not been tested in any investigations or prosecutions.

200. The MFSA as the single financial regulator for credit and financial institutions assists and acts on behalf of the FIAU in ensuring that the financial sector maintains adequate anti-money laundering controls. Subject persons in the financial sector are required to have in place systems and controls that meet the Prevention of Money Laundering Regulations ("the Regulations") and the supplementing Guidance Notes for credit and financial institutions. Failure to maintain systems and procedures by subject persons is a criminal offence, and the examiners were advised that failure to report suspicious transactions will be included as an administrative offence in forthcoming revised Regulations[18]. The current (2003) Regulations provide high level requirements for identification, record keeping, reporting of suspicious transactions, internal controls and training. The current revisions of the Regulations will *inter alia* incorporate the 3rd EU Directive and extend the preventive regime to terrorist financing.

201. The examiners also welcomed that customer due diligence, record keeping and reporting obligations in respect of suspected money laundering for the DNFBP have been introduced since the last evaluation.

202. The examiners noted with satisfaction that recent legislative amendments in the area of nominees and trusts have resulted in robust regulation of the sector by the MFSA. The new legislation has increased significantly access to information on beneficial owners. This is a material improvement in Malta's anti-money laundering framework and is very much welcomed by the examiners.

203. The evaluators also very much welcome the establishment of the Financial Intelligence Analysis Unit (FIAU) since the last evaluation. The FIAU is an administrative FIU. The Unit has a director, two financial analysts and a support officer. It has rapidly gained the confidence of the financial sector.

204. As far as the reporting of STRs is concerned, the examiners noted that since the Unit was established there has been an increase in STRs. The majority of STRs are from the credit and financial sector.

205. Since the last evaluation a small unit within the police Economic Crime Division dedicated to the investigation of money laundering reports received from the FIAU and other money laundering cases (and which would investigate terrorist financing as necessary) has been established. The police have the right to apply a range of special investigative techniques in investigations for money laundering and these techniques are used as and when deemed necessary and appropriate, including in the investigation of the predicate offence, but these techniques are still not widely used.

[18] Administrative charge for failure to report has been included.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of money laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1

206. Malta has signed and ratified both the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the United Nations Transnational Organised Crime Convention (the Palermo Convention).

207. Money laundering is subject to punishment under three principal laws: The Prevention of Money Laundering Act (PMLA); the Dangerous Drugs Ordinance (DDO); the Medical and Kindred Profession Ordinance (MKPO).

208. The DDO consolidates the law relating to the importation, exportation, manufacture, sale and use of opium and other dangerous drugs. The MKPO regulates psychotropic substances or their precursors. The money laundering offences provided for in these Ordinances are cast in similar terms. A person is guilty of an offence against the ordinance who "uses, transfers the possession of, sends or delivers, acquires, receives, keeps, transports or transmits, disposes of or otherwise deals with, in any manner or by any means, any money, property whether movable or immovable or any proceeds of any such money or property with intent to conceal or convert that money or property or those proceeds and knowing or suspecting that all or a part of that money or property, or of those proceeds was obtained or received directly or indirectly, as a result of the commission of (selling or dealing in substances covered by the Ordinance).

209. The two relevant drug money laundering offences are S.22 (1) (c) of the Dangerous Drugs Ordinance 1939, as amended, and S.120 A (1) (ID) Medical and Kindred Professions Ordinance.

210. The relevant Chapters of the Criminal Code covering these offences specifically include as criminal offences conspiracy to commit such offences.

211. The money laundering provisions in the PMLA can additionally be applied to the drugs offences under the DDO and the MKPO.

212. Money laundering is criminalised generally under S.3 PMLA. S.2 of the PMLA defines money laundering in language more congruent with the Vienna and Palermo Conventions, i.e.: (i) the conversion or transfer of property knowing that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity; (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity; (iii) the acquisition of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity; (iv) retention without reasonable excuse of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity; (v) attempting any of the matters or activities defined in the foregoing sub-paragraphs (i), (ii), (iii) and (iv); (vi) acting as an accomplice (aiding, abetting, facilitating and counselling the

commission of money laundering) in respect of any of the matters or activities defined in the foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v).

213. Conspiracy to commit an offence is sanctioned under Article 48A of the Criminal Code, whilst the promotion, constitution, organisation or financing of an organisation of two or more persons with a view to commit criminal offences as well as belonging thereto, is criminalised under article 83A of the Criminal Code. Thus both provisions apply also to the offence of money laundering.

214. Criminal activity means any activity, whenever or wherever carried out, which, under the laws of Malta or any other law, amounts to: (a) a crime or crimes specified in Article 3 (1) (a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on the 19th December 1988 in Vienna reproduced (in the English language only) in the First Schedule to this Act; or (b) any criminal offence. By means of Legal Notice 176 of 2005 the "all crime approach" was introduced, where all proceeds-generating "criminal offences" can be predicate offences to money laundering. All the designated categories of offences under the Glossary to the FATF Recommendations are covered (Annex I).

215. Turning to Criterion 1.2, whilst the DDO speaks of "property" under S.2 (1) as being either movable or immovable, the PMLA is more detailed. Under this Act, "property" means property of every kind, nature and description, whether movable or immovable, tangible or intangible and, without derogation from the generality of the foregoing, shall include - (a) any currency, whether or not the same is legal tender in Malta, bills, securities, bonds, negotiable instruments or any instrument capable of being negotiable including one payable to bearer or endorsed payable to bearer whether expressed in Maltese Liri or any other foreign currency; (b) cash or currency deposits or accounts with any bank, credit or other institution as may be prescribed which carries or has carried on business in Malta; (c) cash or items of value including but not limited to works of art or jewellery or precious metals; and (d) land or any interest therein.

216. For purposes of forfeiture which is awarded in addition to the penalty consequent upon a finding of guilt for money laundering, S.3 (5) of the PMLA defines "proceeds" as meaning "any economic advantage and any property derived from or obtained, directly or indirectly, through criminal activity and includes any income or other benefit derived from such property".

217. The PMLA helpfully and explicitly provides in S.2 (2) (a) that a person may be convicted of a money laundering offence under the PMLA "even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity". However, currently there is a lack of jurisprudence as to how this provision should work in practice, including the amount of evidence the Court would be satisfied with to establish the underlying criminal activity as an element of the money laundering offence. This provision does not apply to the offences charged under the Drugs Ordinances alone, though the Maltese authorities indicated that they could prosecute jointly under the PMLA if there was a need to benefit from the provisions in S.2 (2) (a).

218. Turning to Criterion 1.5, in terms of the DDO, Article 22 (1C) (a) clearly states that a person is guilty of an offence against the Ordinance if he uses, transfers etc. any proceeds of any such money or property with intent to conceal or convert that money or property or those proceeds and knowing or suspecting that all or a part of that money or property, or of those proceeds, was obtained or received, directly or indirectly, as a result of any act of commission or omission in any place outside these Islands which if committed in these Islands would constitute an offence under the Ordinance.

219. Under the PMLA the requisite "criminal activity" means any activity wherever carried out which, under Maltese or any other law, amounts to a crime or crime specified in Article 3 (1) (a)

of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on the 19th December 1988 in Vienna, or any criminal offence.

220. Turning to Criterion 1.6, a person can be separately charged and convicted of both a money laundering offence under the PMLA [see S.2 (2) (b) PMLA] and of an underlying criminal activity from which the property or the proceeds derived in respect of which he is charged with money laundering. There are no such explicit provisions in the Drugs Ordinances, but the Maltese authorities consider that money laundering prosecutions can be brought in respect of the author of the relevant predicate drug offences. Several cases currently are pending on this basis.

221. Turning to Criterion 1.7, the crime of conspiracy was, in 2002, extended to all crimes carrying a punishment of imprisonment. Similarly acting as an accomplice in terms of Article 42 of the CC, is sufficient to be prosecuted for an offence of money laundering. Under Article 42 a person shall be deemed to be an accomplice in a crime if he

> (*a*) commands another to commit the crime; or (*b*) instigates the commission of the crime by means of bribes, promises, threats, machinations, or culpable devices, or by abuse of authority or power, or gives instructions for the commission of the crime; or (*c*) procures the weapons, instruments or other means used in the commission of the crime, knowing that they are to be so used; or (*d*) not being one of the persons mentioned in paragraphs (*a*), (*b*) and (*c*), in any way whatsoever knowingly aids or abets the perpetrator or perpetrators of the crime in the acts by means of which the crime is prepared or completed; or (*e*) incites or strengthens the determination of another to commit the crime, or promises to give assistance, aid or reward after the fact.

Additional elements

222. The PMLA defines "criminal activity" as any activity whenever or wherever carried out which, under the law of Malta or any other law, amounts to a predicate offence. Thus, whilst it is necessary for the laundering of the proceeds deriving from that criminal activity to take place in Malta, the fact that the predicate activity is not an offence in the country where it took place is irrelevant for the purpose of prosecuting a money laundering offence in Malta so long as the laundering activity took place in Malta, and the predicate activity was a crime under Maltese Law (and sufficient evidence of it can be established). Thus the additional element is also to be satisfied.

Recommendation 2

223. In terms of the PMLA both natural as well as legal persons are liable for money laundering. Article 3 of the PMLA provides the relevant provisions:

> "Any person committing any act of money laundering shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding Lm1,000,000 (one million Liri), or to imprisonment for a period not exceeding fourteen years, or to both such fine and imprisonment."

224. Article 3 (2) and (4) PMLA deals with offences under the PMLA susceptible to corporate liability (see below). Should the Maltese authorities wish to bring a prosecution in respect of a corporation for drug money laundering (which otherwise might be prosecuted under the DDO or the MKPO) such proceedings would need to be brought under the PMLA.

225. The required intentional element is set out in the definition of laundering in the PMLA (Art.2(1) (i)-(vi):

> (i) the conversion or transfer of property *knowing* that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation

in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

(ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, ***knowing*** that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iii) the acquisition of property ***knowing*** that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iv) retention without reasonable excuse of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(v) attempting any of the foregoing;

(vi) complicity in any of the foregoing.

226. While the DDO and MKPO have both knowledge and suspicion as mental elements of the money laundering offence in connection with drugs offences, the PMLA mental element requires knowledge.

227. Negligent money laundering is not a punishable offence under Maltese law, and the evaluators were informed that there are no plans to introduce the negligence standard in any of the money laundering offences.

228. Criterion 2.2 requires that the law should permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances. The Maltese authorities indicated that under general principles of the criminal law the intentional element of any criminal offence, including the offence of money laundering, may be inferred from objective factual circumstances. Article 3 (3) of the PMLA makes Article 22 (1) (C) (b) of the DDO applicable to money laundering offences. Thus, in proceedings for a money laundering offence, where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money property or proceeds was not money, property or proceeds described in the said paragraph (i.e. laundered money or property), the burden of showing the lawful origin of such money property or proceeds shall lie on the person charged or accused. The Maltese authorities explained that this provision is of probative value and creates a rebuttable presumption that an underlying predicate offence has been committed. It was understood that this provision had been used in practice by the prosecution to establish this element in a money laundering case. Notwithstanding this, it was conceded by the Maltese authorities that a greater willingness to make inferences from circumstantial evidence, especially in money laundering cases, was necessary.

229. The concepts of "*possession and use*" were explained as being covered by S. 2 (1) b (iv) PMLA formulation of "*retention without reasonable excuse of property ...*". The Maltese authorities considered that the notion of possession is fully included in this formulation and that, while the word "possession" is not explicitly used, it would not limit appropriate prosecutions for possession or use.

230. Since the second evaluation, the Maltese authorities have introduced corporate liability with regard to specific offences. Article 3(4) of the PMLA provides that where a person who is an officer of a body corporate is found guilty of the money laundering offence and the offence was committed for the benefit, in part or in whole of that body corporate, the body corporate shall be liable to a fine of not less than Lm500 (Euros 1,200) and not more than Lm500, 000 (Euros 1.2

million). Article 3 (2), PMLA provides that where an offence against the provisions of the Act is committed by a body of persons, whether corporate or incorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

231. Since the criminal action against a body corporate is separate and distinct from all other proceedings, the Maltese authorities advised that there is no bar to the institution of other procedures which may be warranted. Indeed Article 3, CC distinctly states that "Every offence gives rise to a criminal action and a civil action". Since all persons are subject to criminal prosecution, to the extent they are liable and since a legal person is distinct from the natural person, the criminal liability of a legal person does not preclude prosecution against any other person.

232. The sanctions provided for under the PMLA are found in Article 3. A natural person, if found guilty, is liable to a punishment of a fine not exceeding one million Liri (2.329,000 Euros) or to imprisonment not exceeding fourteen years imprisonment or to both such fine and imprisonment (Article 3.1). The applicable maximum penalty under the DDO and the MKPO is life imprisonment (when tried in a criminal Court). The Attorney General can direct whether cases are tried in a criminal court or in the Magistrates Court (where the sentence cannot be less than 6 months but not exceed 10 years).

233. Where the person found guilty of an offence of money laundering under the Act is an officer of a body corporate or is a person having a power of representation or having such authority as is referred to in that article and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of the Act be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than 500 Liri and not more than 500,000 Liri[19] (Article 3.4).

234. Moreover and without prejudice to the general provisions dealing with forfeiture which are found under the Criminal Code, Art.23, the court shall, in addition to any punishment to which the person convicted of an offence of money laundering under the Act may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of sub article (4), order the forfeiture in favour of the Government of the proceeds or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said sub article (4) and any property of or in the possession or under the control of any person found guilty as aforesaid or of a body corporate as mentioned in this sub article shall, unless proved to the contrary, be deemed to be derived from the offence of money laundering and liable to confiscation or forfeiture by the court (Article 3.5).

Statistics

235. At the time of the visit the evaluation team were informed that the Attorney General's Office had introduced a computerised data-base which retains data on domestic money laundering investigations, prosecutions, convictions and confiscated property, which come to the AG's Office attention either because it is communicated to the office or due to the fact that investigation, attachment, freezing orders and foreign confiscation orders necessitate AG intervention. Moreover the same system records all incoming letters of request, including those relating to money laundering offences. Thus records held by the Attorney General's Office relate

[19] 1 Euro is equal to Lm0.4293

to letters of request communicated to the Office, investigation and attachment or freezing orders which would have been filed through his Office.

DOMESTIC MONEY LAUNDERING MEASURES					
	2001	**2002***	**2003**	**2004**	**2005** (as at 31 July)
Negative	**3**	**1**	**1**	-	**1**
Investigation still pending	**1** (under Magisterial Inquiry since 2001	**2** (Under Magisterial Inquiry)	**4** (1 Under Magisterial Inquiry) (3 under pending Police investigations)	**5** (Pending Police investigations)	**3** (Pending Police investigations)
Prosecutions	-	**2** (1 for Money Laundering against 3 persons) (1 for Fraud, Forgery, Misappropriation and other offences)	**1** (led to prosecution against 2 persons (& international arrest warrant for another))	-	-
Attachment Orders	-	**1** (still in abeyance)	-	**3** (still in abeyance)	-
Investigation Orders	**4**	**6** (2 also issued together with Attachment Orders)	**6**	**5** (3 issued with Attachment Orders)	**4** (3 issued with Attachment Orders)
* In 'Police vs Paul Borg' a conviction on money laundering charges was obtained and confiscation of monies ordered but an appeal resulted in an acquittal.					

236. The evaluators were informed that the data base offers the facility to record any punishment awarded. At the time of the visit, there were no final convictions or confiscations in respect of money laundering. Neither had there been a formal foreign request for a confiscation order (see beneath).

237. Information on the types of predicate offences that the money laundering cases involved was not available in respect of the statistics above. Some information was provided that money laundering cases, which came to the attention of the Attorney General's Office, frequently involved drug crimes and fraud.

238. However, a further and more comprehensive table was provided at the time of the on-site visit with case synopses of the money laundering proceedings which were before the courts and were *sub judice* at that time. This table is set out beneath. It will be seen that all cases involved only

natural persons. In 9 out of the 10 cases the predicate crime was domestic (drug trafficking, theft, fraud, armed robbery, and one case of human trafficking). One prosecution was based on a foreign predicate (also theft). The money laundering prosecutions include “own proceeds” and third party laundering and under Art. 22 DDO occasionally and where warranted cases were prosecuted under both legislations.

CASE SYNOPSES in pre-trial stage

Charge	***Predicate Offence***	***Foreign/Domestic***	***Own/Third Party***	***Result***	***Comment***
Money laundering	Drug trafficking	Domestic	Own	Sub judice	These three subjects were c/w/h laundered the proceeds of drug trafficking
Money laundering	Drug trafficking	Domestic	Third Party	Sub judice	
Money laundering	Drug trafficking	Domestic	Third Party	Sub judice	
Money laundering	Theft	Domestic	Third Party	Sub judice	Subject was c/w/h laundered the proceeds of her husband's crimes
Money laundering	Theft	Domestic	Third Party	Sub judice	Subject was c/w/h laundered the proceeds of her father's crimes
Money laundering	Theft	Foreign	Third Party	Admitted to charges	Subject was c/w/h laundered the proceeds of crimes committed abroad (ID theft and theft from bank accounts in Switzerland). Subject also provided false invoicing to cover the money movements.
Money laundering	Theft	Domestic	Own	Sub judice	Subject was c/w/h laundered the proceeds of crime (theft)
Money laundering	Theft	Domestic	Third Party	Sub judice	Subject was c/w/h laundered the proceeds of crime (fraud to the detriment of the Water Services Corporation)
Money laundering	Armed Robbery	Domestic	Own	Sub judice	Subject was c/w/h laundered the proceeds of crime (armed robbery) through Western Union to Nigeria. Reversal of burden of proof invoked in this case.
Money laundering	Trafficking of Human Beings	Domestic	Own	Sub judice	Subject was c/w/h laundered the proceeds of crime (trafficking in Human Beings)

Explanatory note:
The case relating to drug trafficking was prosecuted under both the PMLA and the DDO so that the more favourable provisions, in particular the provision relating to third party ownership, could be enforced in the event of an order of confiscation.

2.1.2 Recommendations and comments

239. As the previous examiners pointed out, drug money laundering is criminalised in three different ways. It was explained at that time that the Attorney General has the discretion as to which of the three provisions he proceeds on in the light of the facts and the circumstances. The possibility of longer sentences for money laundering under the Ordinances and the easier to prove mental element of suspicion may be crucial factors. All the various criminal provisions were being utilised in the drug money laundering cases which were *sub judice* at the time of the on-site visit. It is of course undeniable with the range of options open to the prosecution that drug money laundering (as a designated category of offence) is comprehensively addressed. If the money laundering offences under the Ordinances are to be retained in the longer term, it would be worthwhile considering bringing their wording on the physical elements of the offence more into line with the Palermo Convention.

240. The general money laundering offence under the PMLA is, in respect of the physical aspects, congruent with the language of the Palermo Convention. It is welcome that "acquisition" is included. While the formulation does not literally use the words "possession" or "use", the evaluators accepted the view of the Maltese authorities that appropriate and proper prosecutions for possession or use of laundered proceeds could be and have been initiated under Art. 2 (1) b (iv) PMLA.

241. It is very welcome that the Maltese authorities have removed the list approach to predicate crime and have moved since the second evaluation to an all crimes approach. All the "designated categories of offences" in the Glossary to the FATF Recommendations are covered in Maltese Criminal Code, as required by the Methodology. With an all crimes money laundering-offence, coupled with the helpful probative provision in Art. 3 (3) PMLA applying Art. 22 (1) (C) (b) DDO, the problems of proving the underlying money laundering-offence in autonomous prosecutions should be lessened. It is understood that the cases listed in the case synopses in the table above are all autonomous money laundering-prosecutions.

242. On the mental element of the offence(s), firstly the extension of the predicate base to all crimes under the PMLA may make the knowledge standard easier to prove. Similarly the extension of the reverse onus provisions in Article 22 (1 c) of the DDO to the proof of offences under the PMLA is also a very welcome development. It remains to be seen whether these provisions will ultimately lead to the courts becoming more willing to draw the necessary inferences from objective facts and circumstances in such cases. Consideration should be given to specific legislative provision on this point if this remains problematic in money laundering cases on the issue of knowledge / intention.

243. Although the mental element of knowledge in the PMLA is compliant with the relevant international standards, the Maltese authorities may wish also to consider an alternative mental element, which has proved useful in other jurisdictions – the mental element based on suspicion (also found in Article 22 (1C) (a) of the DDO). Whether or not the utility of this has been established in the DDO, it may be an asset for the prosecution in PMLA cases, and its consideration is encouraged, particularly as there are no current plans to introduce the negligence standard in any of the money laundering offences.

244. Unfortunately still no final money laundering convictions had been secured since the second evaluation although the legal basis to prosecute money laundering is already quite sound. However it lacks effective implementation so far. The examiners were nonetheless encouraged to note that ten cases are currently before the courts. The examiners look forward to their early resolution. While one case invokes a foreign predicate, the Maltese authorities may nonetheless wish to consider in future affording more priority to the investigation and prosecution of money laundering based on foreign predicates given the level of domestic profit generating offences. In

this respect there appeared to be some lack of financial expertise and a hesitation to address this time and cost-intensive field of money laundering (see the law enforcement section)[20].

245. Since the form of criminal liability of legal entities, introduced in 2002 for serious offences including money laundering, appears only to occur upon the conviction of a natural person, criminal sanctions for a criminal activity of a legal person do not apply even in the case of clear evidence. The consequence of this conviction-based concept of corporate liability is that the confiscation of enrichment or the forfeiture of assets cannot occur in such cases either. While it may be too early to evaluate the effectiveness of the implementation of this provision, the Maltese authorities are urged to consider whether criminal liability for corporations not based solely on vicarious liability might prove to have greater utility. At the very least, it would be helpful to provide for the confiscation of assets of a legal entity where it is shown to have benefited from money laundering.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**Largely compliant**	• Although there is a broad and firm legal basis to enable successful prosecutions of money laundering, no final convictions have been secured. • A greater willingness to draw inferences from objective facts and circumstances appears necessary to secure money laundering convictions (effectiveness issue).
R.2	**Largely compliant**	• A greater willingness to draw inferences from objective facts is required for the intentional element. • The evaluators have concerns regarding the concept and the effectiveness of corporate liability provisions.

[20] The Maltese authorities indicated that a judgment was delivered by the Criminal Court in March 2007 concerning a Maltese national, convicting her for money laundering and falsification of documents, sentencing her to 6 years and ordering the confiscation of all her assets, subject to the defendant's right of application to the civil courts to establish that certain of her assets were not criminally obtained and should not be subject to the confiscation order.

2.2 Criminalisation of terrorist financing

2.2.1 Description and analysis

246. Malta ratified in November 2001 the 1999 International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention). The Maltese authorities pointed to the binding nature of this Convention together with Act VI of 2005, which introduced a new sub-title in the Criminal Code that deals with "Acts of Terrorism, Funding of Terrorism and Ancillary Offences" and amended the PMLA to vest the FIAU with powers and functions over transactions suspected to involve funding of terrorism.

247. **Article 328 A (1)** defines an act of "terrorism" as any act listed in sub-article 2 (see below) committed wilfully, which may seriously damage a country or an international organisation where committed with the aim of:

(a) seriously intimidating a population or

(b) unduly compelling a Government or international organisation to perform or abstain from performing any act, or

(c) seriously destabilising or destroying the fundamental political, constitutional, economic, or social structures of a country or an international organisation.

248. Acts of terrorism as defined under **Article 328 A (2)** appear to cover Article 2 (1) (a) and (b) of the Terrorist Financing Convention. They are:

(a) taking away of the life or liberty of a person;
(b) endangering the life of a person by bodily harm;
(c) bodily harm;
(d) causing extensive destruction to a state or government facility, a public transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss;
(e) seizure of aircraft, ships or other means of public or goods transport;
(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons;
(g) research into or development of biological and chemical weapons;
(h) release of dangerous substances, or causing fires, floods or explosions endangering the life of any person;
(i) interfering with or disrupting the supply of water, power or any other fundamental natural resource endangering the life of any person;
(j) threatening to commit any of the acts in paragraphs (a) to (i).

249. The Maltese authorities advised the evaluators that all the offences in the treaties in the Annex to the Terrorist Financing Convention are fully covered.

250. **Article 328 A (3)** provides as follows:

> *"Whosoever commits an act of terrorism shall be guilty of an offence and shall be liable on conviction to the punishment of imprisonment from five years to life."*

251. Although the Maltese authorities do not argue that financing of terrorism is covered solely on the basis of aiding and abetting, attempt or conspiracy, they pointed out that another grave offence is if a person renders himself an accomplice in acts of terrorism, as defined in the general provisions governing complicity, pursuant to Article 42 of the Criminal Code, then he would also be liable to the punishment reserved for the principal/s.[21] Moreover, Article **328D provides "***Whosoever incites, aids or abets any offence under the foregoing articles of this sub-title shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence incited, aided or abetted."*

252. A terrorist group is defined in Article **328 B (1)** as a structured group of more than two persons established over a period of time and acting in concert to commit terrorist offences. The definition of terrorist organisations in Article 328 B (1) is inspired by the Palermo Convention. The mere fact of belonging to such an organisation is also punished under Article 83A (2) Criminal Code where the membership of a criminal group is generally subject to punishment.

253. Since June 2005 the offence of financing of a terrorist group is expressly penalised by Article **328B (3)** of the Criminal Code, which provides as follows:

> *"Whosoever promotes, constitutes, organises, directs, finances... a terrorist group knowing that such participation or involvement will contribute towards the criminal activities of the terrorist group shall be liable –*
>
> *(a) where the said participation or involvement consists in directing the terrorist group, to the punishment of imprisonment not exceeding thirty years:*
>
> *Provided that where the activity of the terrorist group consists only of the acts mentioned in article 328A(2)(j)[22] the punishment shall be that of imprisonment for a period not exceeding eight years;*
>
> *(c) in any other case, to the punishment of imprisonment not exceeding eight years.*

[21] A person shall be deemed to be an accomplice in a crime if he -
(*a*) commands another to commit the crime; or (*b*) instigates the commission of the crime by means of bribes, promises, threats, machinations, or culpable devices, or by abuse of authority or power, or gives instructions for the commission of the crime; or (*c*) procures the weapons, instruments or other means used in the commission of the crime, knowing that they are to be so used; or (*d*) not being one of the persons mentioned in paragraphs (*a*), (*b*) and (*c*), in any way whatsoever knowingly aids or abets the perpetrator or perpetrators of the crime in the acts by means of which the crime is prepared or completed; or (*e*) incites or strengthens the determination of another to commit the crime, or promises to give assistance, aid or reward after the fact.

[22] (j)Threatening to commit any of the following "acts of terrorism":
(*a*) taking away of the life or liberty of a person;
(*b*) endangering the life of a person by bodily harm;
(*c*) bodily harm;
(*d*) causing extensive destruction to a state or government facility, a public transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss;
(*e*) seizure of aircraft, ships or other means of public or goods transport;
(*f*) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons;
(*g*) research into or development of biological and chemical weapons;
(*h*) release of dangerous substances, or causing fires, floods or explosions endangering the life of any person;
(*i*) interfering with or disrupting the supply of water, power or any other fundamental natural resource endangering the life of any person;

254. **Article 328F** (described as funding of terrorism) provides:"(1) *Whosoever receives, provides or invites another person to provide, money or other property intending it to be used, or which he has reasonable cause to suspect that it may be used, for the purposes of terrorism shall, on conviction, and unless the fact constitutes a more serious offence under any other provision of this Code or of any other law, be liable to the punishment of imprisonment for a term not exceeding four years or to a fine (multa) not exceeding five thousand Liri or to both such fine and imprisonment.* (2) *In this article a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether for consideration or not*."

255. In **Article 328E(1)**, CC "terrorist property" is defined as -

(a) money or other property which is likely to be used for the purposes of terrorism, including any resources of a terrorist group,
(b) proceeds of the commission of acts of terrorism, and
(c) proceeds of acts carried out for the purposes of terrorism.

256. The terms "*money or other property*" are broadly defined. In Article 23B (3) "*Property*" means "*assets of every kind whether corporal or incorporal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets*". While this definition does not fully embrace all the language of Article 1 (1) of the Terrorist Financing Convention defining "funds" for the purposes of the Convention, it is assumed that, in the light of the ratification of the Terrorist Financing Convention, the courts would interpret Article 23B (3) in sufficiently broad terms to cover all the further detail in Article 1 (1) of the Convention.

257. The same article provides that

(a) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), and
(b) the reference to a group's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the group.

258. It is not a requirement under the provision cited that the funds were actually used to commit or to attempt to commit terrorist acts, nor is it a legal requirement that a link be established to a specific terrorist act. The only requirement is of use of the funds (Article 328F, CC: *"…..money or other property intending it to be used or which he has a reasonable cause to suspect that it may be used for the purposes of terrorism."*

259. The all-crimes predicate coverage of the money laundering offence in Article 2 (1) (b) Prevention of Money Laundering Act also includes the offence of financing terrorist activity.

260. It is irrelevant where the terrorist activity occurs or is supposed to occur as long as the courts in Malta have jurisdiction over the act of financing itself. Moreover, Article 328M (e) Criminal Code provides the jurisdiction over the offence under Article 328B or Article 328D in the case of involving a terrorist group even if the terrorist group is based or pursues its criminal activities outside Malta.

261. Corporate criminal liability applies under the specific provision of Art. 328J (2) CC.

262. Provisions for the confiscation of the funds used or intended to be used for terrorist acts, even not mandatory, are in place, independently if the offence is committed by a natural person or a body corporate (Article 328L). Since Article 328B is not covered by the confiscation provisions in Article 328L of the Criminal Code, it is not clear if the funding of a terrorist group is also part of the confiscation regime even if this is so understood by the Maltese authorities.

263. There are thus autonomous offences of financing of terrorism in Malta. There have not been any investigations of financing of terrorism or cases brought before the Court. Thus there is no case-law or practice on the exact scope of the current provisions.

2.2.2 Recommendations and comments

264. Separate criminal offences of terrorist financing were introduced in June 2005. The criminalisation of terrorist financing is largely inspired by the 1999 UN Convention for the Suppression of the Financing of Terrorism and detailed provisions appear reasonably comprehensive. They also provide for confiscating terrorist funds from natural and legal persons upon conviction. It was unclear why the definition of acts of terrorism in the Terrorist Financing Convention relating to the intimidation of a population has been refined to seriously intimidate a population, but whether that would have any real practical consequences is debatable.

265. As to the terrorist financing offence itself, in Article 328 (F) the provision or collection of funds is covered, though it would be helpful if it was clarified that this can be done directly or indirectly with the knowledge that they may be used in full or in part for the purposes of terrorism. Subject to this qualification, it appears that this offence would cover the provision or collection of funds in the knowledge that they are to be used by individual terrorists, and for terrorist acts.

266. The offence in Article 328 B covers financing of terrorist groups. However, given that the mental element is knowledge that the involvement will contribute "towards the criminal activities of the terrorist group", the evaluators consider it is unclear if this is wide enough to properly cover contributions used for any purpose (including a legitimate activity) by a terrorist group (such as supporting families while a member of the group is in prison). This is how the Maltese authorities envisage that the provisions would be interpreted. While the courts may interpret the provision widely, it would assist if this is clarified in order that the prosecution is in a position to prosecute this type of activity in the context of terrorist groups with the possibility of the lengthy sentences available under this provision.

267. It is noted in the same context also that A.328F CC, introduced at the same time, arguably could be used to prosecute a person who provides money or other property for legitimate activities which further "terrorism" generally. Unlike "acts of terrorism", "terrorism" is not defined. If the courts are prepared to accept a purposive approach to this offence, they may be more willing to interpret A.328F widely to render funding for "legitimate" activities which support terrorism prosecutable (with the penalties available under this section, which are lower than in respect of prosecutions under A.328B). At this time the evaluators are not in a position to comment with certainty on how the provision would be interpreted.

268. No prosecutions or investigations of the funding of terrorist activities have taken place yet. Given that there is no jurisprudence, it is unclear how willing the courts will be to draw the necessary inferences in respect of the intentional element of the terrorist financing offence. The Maltese authorities consider that the courts would draw such inferences in these cases.

269. Even if there are general provisions of confiscation in Article 23B Criminal Code, the Maltese authorities should consider whether the confiscation of property used or to be used under Article 328B and F should be expressly stated, given that in terrorist financing, property involved may be from both legitimate and illegitimate sources. When the criminal offences of terrorist financing were introduced in June 2005, the PMLA was amended to extend its scope to

the financing of terrorism, although the PML Regulations remain to be harmonised to provide for reporting suspicious transactions related to the financing of terrorism[23].

270. As the new offences had only been introduced in June 2005, it is too early to assess their effectiveness.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**Largely compliant**	• As the Art. 328B offence requires knowledge that the involvement will contribute towards the criminal activities of the terrorist group, it is unclear whether it is wide enough to properly cover the provision or collection of funds for any purpose (including a legitimate activity) of the terrorist group. • Uncertain also whether courts will interpret A.328F to cover "legitimate" activities furthering terrorism. • Unclear if provision or collection of funds can be done directly and indirectly. • As terrorist financing offences have only been introduced in June 2005, it was too early to assess their effectiveness.

[23] The reporting of knowledge or suspicion of terrorist financing was introduced in the 2006 revisions to the PMLR.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and analysis

271. The four main laws providing for confiscation, freezing and seizing of proceeds of crime are: the DDO; the PMLA; the MKPO; and S.23 and 23B Criminal Code. The DDO, and the MKPO deal with proceeds from drugs related offences. The PMLA deals with proceeds from any criminal offence and proceeds from offences defined under Article 3 (1) (a) of the 1988 Vienna Convention. The Criminal Code deals with proceeds and instrumentalities from all crimes and in particular terrorism-related offences. The language of the confiscation / forfeiture provisions under the PMLA, DDO, and Criminal Code is mandatory. The forfeiture provisions in the Criminal Code refer to all crimes liable to a punishment of imprisonment for a term of one year or more.

272. In the Criminal Code (Article 23B (3)) property is defined as "assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents or instruments, evidencing title to or interest in, such assets. There is a broader definition of property in the PMLA (see S.2 (1)) which expressly includes:

- currency, securities, bonds, negotiable instruments;
- cash or currency deposits;
- cash or items of value;
- land or any interest therein.

273. The DDO speaks of property as being either movable or immovable. Thus, "proceeds" are defined in the various legislative instruments in generally broad terms. S.23 B (3) Criminal Code defines proceeds as any economic advantage and any property derived from or obtained, directly or indirectly through the commission of the offence and includes any income or other benefits derived from such property. "Proceeds" is similarly defined in the PMLA and the definitions are wide enough to include substitute assets and investment yields.

274. The general confiscation regime is regulated by Articles 23 and 23B Criminal Code (CC):

> *Art. 23 (CC): "The forfeiture of the corpus delicti, of the instruments used or intended to be used in the commission of any crime, and of anything obtained by such crime, is a consequence of the punishment for the crime as established by law, even though such forfeiture be not expressly stated in the law, unless some person who has not participated in the crime, has a claim to such property".*
>
> *Article 23B (CC)**: "**(1) Without prejudice to the provisions of article 23 the court shall, in addition to any punishment to which the person convicted of a relevant offence may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of article 121D, order the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said article 121D."*

275. Article 3 (5) of the PMLA provides that an additional sentence of forfeiture of the proceeds and in the context of the PMLA (as with the DDO) any property of or in possession of, or under the control of any person found guilty shall be deemed to be derived from money laundering and be liable to confiscation or forfeiture by the Court.

276. Presumably the laundered property in an autonomous prosecution for money laundering (which would not be proceeds) would be forfeited as the *corpus delicti* under Article 23 CC.

277. Equivalent value confiscation is applied when confiscation of the proceeds is in any way impossible (Article 23b CC and Article 3 (5) PMLA). Where a value confiscation order will be required in a prosecution for drugs money laundering it will be necessary to prosecute under the PMLA to ensure that such orders can be made.

278. Turning to Criterion 3.1.1 (b) it is clear that the standards on confiscation / forfeiture apply to defendants who are convicted and the property to be confiscated / forfeited is in their possession. S.23 B (CC) and S.3 (5) PMLA both refer to property of the person found guilty. S.22 (3A) (d) DDO makes specific provision for forfeiture orders to be made in favour of "all moneys or other movable property and of the entire immovable property of the person found guilty even if the immovable property has, since the offender was charged, passed into the hands of third parties". Art. 120A (2B) MKPO contains a similar provision and there is reference in the PMLA to confiscation/forfeiture under the "control" of the person found guilty (applicable only in money laundering cases; Art. 3 (5) PMLA). So far as the examiners are aware, there are no other provisions in the Criminal Law which specifically deal with property which has been passed into the hands of third parties.

279. The Maltese authorities stated that there are no formal provisions in the law dealing with the issue of what constitutes control of property by the suspect / defendant which is at the time the court has to consider the matter transferred into the hands of third parties. The courts would determine the issue on a case by case basis and it would be an evidential matter for the court to decide in the circumstances of each individual case. While there is no case law on this issue, the Maltese authorities indicated that there are cases being investigated at present where the courts may be required to decide on this issue.

280. It is noted that the rights of *bona fide* third parties are arguably protected by the procedure set out in Article 7 of the PMLA whereby the person found guilty and any other person having an interest (in the property) may bring an action for a declaration that property is not proceeds, but how this all works in practice was not entirely clear.

281. As mentioned earlier, there are particular provisions covering assets related to the funding of terrorism in Article 328 L.

Seizure, freezing, etc.

282. Under Maltese Law seizure as an interim measure is obtained by means of an attachment order, whilst upon arraignment, the measure employed to block a suspect's funds and other property is referred to as a freezing order.

The Attachment Order

283. An attachment order may be issued upon an application of the Attorney General to that effect. Upon being issued, the order attaches in the hands of third parties (garnishees) all moneys and other movable property (including negotiable instruments, cash or currency deposits or accounts with any bank, credit or other institution) due or pertaining or belonging to the suspect and prohibits the suspect from transferring or otherwise disposing of any movable or immovable property. The order is obtained *ex parte* without prior notice. Once granted, this order is served on both garnishees and suspect, and is valid for a period of 30 days. A new attachment order may be issued for another 30 days if new evidence comes to light. If the suspect is away from Malta the period is held in abeyance.

284. When an investigation or an attachment order has been made or applied for, whosoever knowing or suspecting that such an order has been made or applied for, makes a disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it, shall be guilty of an offence which carries a punishment of imprisonment of up to 12 months

and/or a fine of five thousand liri (ca. 12,000 Euros) (Article 435A Criminal Code; Section 4 Prevention of Money Laundering Act; Section 24A Dangerous Drugs Ordinance).

The Freezing Order

285. When a suspect has been arraigned the prosecution may request that all property owned or under the suspect's control and possession is frozen and this freezing order will remain in force until final judgment is pronounced. The freezing order is requested upon arraignment in proceedings in which the defendant is present.

286. The powers to identify and trace property that is or may become subject to confiscation or is suspected of being the proceeds of crime primarily turn on Article 4 of the PMLA (additional powers of investigation). Under this provision, where for information received, the Attorney General has reasonable cause to suspect that a person is guilty of an offence of money laundering, he may apply to the court for an "investigation order" requiring the person named in the order who appears to be in possession of material which is likely to be of substantial value to the investigation of, or in connection with the suspect shall produce or grant access to such material. An attachment order can be requested at the same time (also Article 4 PMLA and Article 24 A DDO). The evaluators were advised that Article 23B CC, which since 2002 extends forfeiture to any offence subject to one year or more of imprisonment also empowers the police to seek attachment orders in all such cases (as well as money laundering cases). However, this was not being applied by the Police at the time of the on-site visit, and on 25 October 2005 the Attorney General's Office wrote to the Police reminding them of this power. Investigation orders also apply to all offences capable for imprisonment of more than one year.

287. In respect of the criterion which requires there to be authority to take steps to prevent or void actions whether contractual or otherwise where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation, the Maltese authorities pointed to S.6 of the PMLA and Article 22B DDO and their legal consequences. Both provisions create offences where a person acts in contravention of freezing orders i.e. court orders – once a person is arraigned. There are also provisions in respect of attachment orders taken at the behest of the prosecution in the investigative stage. S.4 (6A) PMLA makes it an offence liable to a fine or imprisonment to make "any disclosures likely to prejudice the effectiveness of the order of the investigation", and S.24 A (10) DDO if an offence to act in contravention of an investigative attachment order. Though the language is different in both offences (it is not easy to see how making a disclosure will always equate with prejudicing the authorities in their ability to recover property subject to confiscation), the Maltese authorities maintain that once a person is convicted of these offences any act made in contravention of such orders is null and void, and without effect in law. There are similar criminal provisions for acting in contravention / making disclosures contrary to attachment orders made in general confiscation (in respect of any offence carrying over one year's imprisonment) in 435A Criminal Code. A transfer made in breach of an attachment order (without any other prejudicial disclosure) would simply be considered to be null and voidable without necessarily recourse to any prosecution for the offences described above.

Additional elements

288. The Law does not make provision for the forfeiture of property of organisations found to be primarily criminal in nature unless forfeiture is operative under some applicable provisions of the Law – e.g. if the property obtained by the offence is an instrumentality.

289. Civil forfeiture separate from a conviction is not provided for by law. Forfeiture / confiscation is always conviction based.

290. The PMLA and DDO, as noted, do helpfully require an offender to demonstrate the lawful origin of property which the prosecution aver is subject to confiscation.

Statistics

291. The statistics provided are kept by the Police and set out in the table beneath. They show attachment orders – of which there were 7 between 2002 and 2005.

Year	*Attachments*	*Value (MTL)*	*Value (Euro)*
2002	3	1,034,822	2,410,488
2003	2	1,176,817	2,741,245
2004	1	334,208	778,496
2005	1	237,752	553,814
Total	***7***	***2,783,600***	***6,484,043***

292. The Maltese authorities indicated they were in respect of money laundering and drugs offences, and valued 6,484,043 Euros. Some attachment orders were suspended as the suspect was away from the Maltese Islands.

293. Statistics were provided in respect of freezing orders requested at the arraignment stage in court by the Money Laundering Unit and the Drugs' Squad (involving both money laundering and drugs offences):

Requests for Freezing Orders on Arraignment					
Year	2002	2003	2004	2005	Total
Drug Sq/MLO	28	9	17	5	59

294. At the time of the on-site visit, there had been no convictions in money laundering cases, and thus no final confiscation orders.

295. In respect of confiscation in non-money laundering or non-drugs cases, there were no statistics on confiscations. This was disappointing as the evaluation team had made specific recommendations on the need for better statistics in this area in the second round report. It was understood at the time of this on-site visit that, though the Police can use attachment orders now in such cases to secure property liable to confiscation, this was rarely done. The more general practice appears to be that the list of property frozen is compiled by a court appointed expert, who after making the necessary research, draws up a detailed and comprehensive list which is presented to the presiding Magistrate or Judge of property which is liable to forfeiture / confiscation. Though the Maltese authorities stated that confiscation in non-money laundering cases under Art. 23 CC occurs, they have not been able to provide statistical information on the number, volume or range of such property or value based orders for the period under evaluation.

2.3.2 Recommendations and comments

296. The confiscation regime appears to be legally quite sound. It is expressed in generally mandatory terms. It now applies to all offences subject to over one year's imprisonment. Property and proceeds are widely defined. The *corpus delicti* (i.e. laundered proceeds) can be

forfeited in autonomous money laundering prosecutions. Value confiscation is provided for and there are now reverse *onus* provisions requiring the defendant to demonstrate the lawful origin of alleged proceeds. These are all very positive features. There are statutory provisions which make reference to property under the control of third parties to whom property has been transferred, possibly to defeat confiscation or for undervalue. The Maltese authorities advised that decisions would be made on a case by case basis by the courts as to whether control is actually retained by the accused. The Maltese authorities were not able to point to examples in practice of the courts making such decisions in the case of any third party transfers. The Maltese authorities advised the evaluators that they have not come across a situation as yet where the issue of transferring assets to third parties would need to have been raised during confiscation proceedings.

297. The prosecution would seek to establish that the property remained under the control of the accused. The Maltese authorities may wish to consider more detailed provisions covering these issues or at the least clear prosecutorial guidance on this point.

298. The confiscation regime is, as noted, generally quite sound. Despite this the number of confiscation orders for all proceeds-generating offences is unknown. No confiscations had been achieved at the time of the on-site visit in money laundering cases and the actual number of attachment orders in these cases was unclear.

299. At the time of the on-site visit, the statistics provided showed that only very limited use is made of attachment orders at the investigative stage for all offences carrying more than one year's imprisonment. Attention should be paid to this by police prosecutors in the Magistrates Courts to ensure that there are proceeds available for confiscation upon conviction. The 30 day attachment order itself appears to the evaluators to be too short to deal with e.g. with a transnational dimension where the suspect is within Malta, particularly for money laundering offences dealing with foreign predicates. The Maltese authorities indicated in that situation that they could, in good faith, charge the defendant and proceed with the enquiry under court supervision. There is also the possibility of applying for a new attachment order on the basis of new evidence. The evaluators have not been provided with information on the numbers of new attachment orders following the lapse of the original order that were made during the period under evaluation. In the circumstances the evaluators concluded that the possibility of new orders was underused.

300. There was insufficient data on which to base a judgement on the effectiveness of confiscation generally in proceeds generating predicate offences.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**Largely compliant**	• Practice on third party confiscation has not been developed. • The 30 day attachment orders appear underused and their adequacy to prevent assets being dissipated or transferred in enquiries with a transnational dimension appears questionable. • There was insufficient data on which to base a judgement on the effectiveness of confiscation generally in proceeds generating predicate offences.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and analysis

301. The UNSC Resolutions were implemented in Malta originally via the National Interest (Enabling Powers) Act and Regulations made thereunder. This legislation pre-dated European Union entry, and remains on the Statute book. Under this legislation, whenever the United Nations Security Council calls upon member States to apply any measures to give effect to any decision of the Security Council, the Prime Minister may make such Regulations as are necessary for the implementation of required action. These Regulations are effected by Legal Notices, and are published in the Government Gazette. Where a Regulation enacted under the National Interest (Enabling Powers) Act requires a person or an entity to carry out the identification of funds or assets or where the Regulation requires the freezing or blocking of the funds of any person or entity the activities of whom or which are subject to a licence (e.g. banks), they are required without delay to communicate in writing any relevant information about the accounts/assets to its licensing authority. The licensing authority is then bound to pass the relevant information to the "Sanctions Monitoring Board" established under the Act. The relevant UNSC lists are sent by the Ministry of Foreign Affairs, which is also responsible for the updating of lists, to the MFSA and the Central Bank of Malta. The Ministry of Foreign Affairs, in this respect, acts simply as a channel of communications. The MFSA, as part of its responsibilities, as the single financial regulator issues an internal circular to all credit and financial institutions in Malta. The lists are also published on the MFSA website. The Foreign Office, in its communications role, has a reporting duty to the United Nations. At least 2 reports have been made to the United Nations. The FIU has the responsibility of ensuring compliance with these obligations and the evaluators were advised by the MFSA that checks are made on this as part of their supervisory visits.

302. At the time of the on-site visit these measures had not resulted in any freezing of funds. Where a regulation is made under the National Interest Enabling Powers Act, the regulation itself freezes assets of the named person. Once specific assets are identified in Malta this would allow for a court based freezing order without prior notice on the basis that the Article 328E definition of "terrorist property" (referred to at paragraph 257 in 2.2. above, and see paragraph 301 beneath) would encompass assets of persons designated in the UNSC Resolutions.

303. At the time of the on-site visit and in the replies to the questionnaire no reference was made to the procedures which now govern implementation within the European Union, which takes a harmonised approach to implementation. Since European Union accession the Maltese authorities would rely on European Union regulations in respect of non- European Union listed persons. Where European Union internals appear on the UN list further regulations would be made to cover them under the National Interest (Enabling Powers) Act. The decision to make such further regulations would be taken by the sanctions monitoring board which has the function to monitor the operation of regulations under the Act.

304. Within the European Union both Resolution 1267 and 1373 are enforced by Council Regulations, which are binding in their entirety and are directly applicable.

UNSC Resolution 1267 (1999)

305. The European Union has implemented UNSC Resolution 1267 (1999) and its successor resolutions under European Union Council Regulation (EC) N° 881/2002, which provides for measures against Al-Qaeda and the Taliban. The European Union Regulation has, as noted, direct force of law in Malta and requires the freezing of funds and economic resources belonging to persons making funds or economic resources available to such listed persons. These lists are updated regularly by the European Union (over 61 times), and at this point assets are required to be frozen. The European Union list of designated persons under Resolution 1267 is the same as

the United Nations list and is drawn up upon designations made by the United Nations Sanctions Committee. Malta has the power to sanction for breaches of European Union Regulations. European Union Regulations require Malta to lay down the rules on penalties applicable to infringements of Regulations and to take all measures necessary to ensure that they are implemented. The penalties provided for are effective, proportionate and dissuasive. Malta can sanction immediately from the point of European Union listings, which sometimes can go beyond formal transposition of UN Security Council Resolutions to create EU restrictive measures and autonomous listings.

UNSC Resolution 1373 (2001)

306. Unlike Resolution 1267, where designations are made by the relevant United Nations Committee, Resolution 1373 requires a designation body as countries have a discretion as to designations. The designated authority is the Prime Minister under the National Interest (Enabling Powers Act (CAP. 365). Whenever the Government receives a request for cooperation to take appropriate measures under the UN Security Council Resolution 1373, the Attorney General may, with the concurrence of the Prime Minister authorize the taking of the said measures by the competent authorities subject to such conditions as may be agreed between the authorities and the Attorney General with the concurrence of the Prime Minister. Malta implements concurrently both, the UN and the EU system of listings, exercising utmost vigilance. The UN Resolution listings and the EU Regulation listings are coordinated by the Ministry of Foreign Affairs and sent to all Ministries and entities concerned. The Sanctions Monitoring Board is also copied with all updates. There is an established administrative practice and procedure for all the other requests for listing and delisting.

307. With regard to Resolution 1373 (2001), the obligation to freeze the assets of terrorists and terrorist entities in the European Union is through Council Common Positions 2001/930/CFSP (Common Foreign and Security Policy) and 2001/931/CFSP. The resulting European Union Regulation is Council Regulation 2580/2001. It requires the freezing of all funds and economic resources belonging to persons listed in the Regulations and the prohibiting or making available of funds and economic resources for the benefit of those persons or entities. The authority for designating persons or entities lies with the Council of the European Union. Any member State or any third Party State can propose names for the list. The Council, on a proposal from the Clearing House, establishes, amends and reviews the list. The list as it applies to the freezing of funds or other assets, does not include persons, groups, and entities having their roots, main activities and objectives within the European Union (European Union internals). European Union internals are still listed in an Annex to the Common Position 2001/931/CFSP, where they are marked with an asterisk, showing that they are not covered by the freezing measures but only by an increased police and judicial co-operation by the member States. National legislation is required to deal with European Union internals.

308. Under the National Interest (Enabling Powers) Act, Malta still retains its capacity to announce such decisions in cases where the (European) Council has not acted and made subject to a common position or single action, or where international sanctions are directed against European Union internals. Thus, the Clearing House problem in relation to European internals need not necessarily be an issue in Malta as Malta could under its own existing legislation require the freezing of funds not covered by the European Union, or in response to other requests by third States for freezing terrorist funds. The Maltese authorities advised the evaluators that separate regulations pursuant to 1373 had been made since European Union accession.

309. As understood by the examiners the Maltese authorities do not examine and give effect to actions initiated under the mechanisms of other jurisdictions [under 1373], but would respond to requests for mutual legal assistance to freeze assets of terrorists in the same way that they would respond to a mutual legal assistance request to freeze assets in Malta of an offender being

proceeded against for criminal proceedings in third countries. No such case has arisen so far. The Maltese authorities would give effect to letters of request in the case of criminal proceedings being taken in a third country and on the basis of investigations upon a reasonable suspicion.

Generally

310. Regarding Criteria III.4, measures to freeze assets under the United Nations Resolutions must apply to funds or other assets owned or controlled wholly or jointly, directly or indirectly by the persons concerned etc., and to funds or other assets derived or generated from funds or other assets owned or controlled by such persons. The two European Regulations make no mention of the elements underlined. Therefore the definitions of terrorist funds and other assets subject to freezing and confiscation contained in the regulations do not cover the full extent of the definitions given by the Security Council (or FATF) – in particular the notion of control of the funds does not feature in Regulation 881 / 2002, in particular, the European Union Regulations implementing S /RES/1267(1999) simply direct the freezing of all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated on the list [Article 2 (1)]. However, it is prohibited to make funds available directly or indirectly to or for the benefit of a natural or legal person, or group, or entity designated on the list [Article 2 (2)].

311. The Evaluators considered that the Maltese definition of terrorist property is sufficiently broad to cover the full notion of assets under the control of listed persons as set out in the UN Resolutions. For these purposes, Maltese Law defines terrorist property as (a) money or other property which is likely to be used for the purposes of terrorism, including any resources of a terrorist group, (b) proceeds of the commission of acts of terrorism, and (c) proceeds of acts carried out for the purposes of terrorism. The same article provides that (a) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), and (b) the reference to a group's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the group. The Maltese authorities once alerted of any matches indicated that they would rely on the definition of terrorist property in Article 328 of the Criminal Code in seeking, as relevant, either an attachment order or a freezing order.

312. Turning to Criteria III.5 and III.6 requiring countries to have effective systems for communicating actions taken under the freezing mechanisms to the financial sector and/or the general public immediately, the system appears incomplete. Publication on the MFSA website and in the Government Gazette of names, followed by circulation by the MFSA of relevant information to the financial institutions was described to the evaluators. It was unclear whether there was any communication by the authorities direct with or to DNFBP, or to other persons and the public at large, on their obligations in this area.

313. The Maltese authorities indicated that the MFSA, besides placing on its website for the attention of all financial institutions, all information on UN / EU measures, sanctions, and lists related to terrorism, also sends circulars to financial institutions and provides the necessary guidance on their duties, including the duty to report funds belonging to targeted persons. There were no Guidance Notes issued to the DNFBP or to other persons and the public at large on their obligations in this area. Systems of communications to the DNFBP were not in place.

314. Criteria III.7 requires countries to have in place effective and publicly known procedures for unfreezing (in the case of mistakes and namesakes). Formal de-listing procedures exist under the European Union mechanisms, both in relation to funds frozen under S/RES/1267 (1999) and S/RES/1373 (2001). For 1267 (European Commission) No. 881/002 provides that the Commission may amend the list of persons on the basis of a determination by the United Nations Security Council or the Sanctions Committee (Article 7). For 1373 (EC) N 2580 / 2001 provides

that the competent authorities of each member State may grant specific authorisations to unfreeze funds after consultations with other member States and the Commission (Article 6). In practice, therefore a person wishing to have funds unfrozen in Malta would have to take the matter up with the Maltese competent authorities (the Prime Minister) who, if satisfied, would take the case up with the Commission and / or the United Nations. No such cases have occurred as there have been no freezing orders. The same procedure should apply to persons or entities inadvertently affected by freezing upon verification that the person is not a designated person. However such procedures are not clearly articulated and publicly known in Malta. It is important that the authorities establish the procedures which need to be followed in these situations. The Maltese authorities indicated that they considered that the delisting procedures are publicly known and are the same as the listing procedures (i.e. by regulations). As this is an academic issue at present, it is understandable that procedures may not be clearly established.

315. Turning to Criteria III.9, there are no specific provisions in EC No. 881/2002 for authorising access to funds frozen in accordance with S/RES1267 (1999). As no funds under 1267 have been frozen as being related to Osama Bin Laden or members of Al-Qaeda or the Taliban or associated individuals or entities, there has been no need to consider how release could be effected in line with S / RES / 1452 (2002). It is none-the-less important that the Maltese authorities advise the financial sector and DNFBP and other members of the public of the necessary procedures in this type of case.

316. There is a specific procedure in EC No. 2580/2001 (implementing S/RES 1373) for release of basic expenses and related costs and application must be made to the competent authority of the member State in whose territory the funds have been frozen (Article 5). For the reasons already explained, no application for access to funds has been made. Again the procedures for such cases should be given wider currency so they are publicly known. Persons dissatisfied with actions taken to freeze their assets or funds can also apply to domestic courts for review.

Freezing, seizing and confiscating in other circumstances

317. If a person is being prosecuted for terrorist financing, the Maltese authorities indicated that they would follow the provisions described earlier in respect of freezing, seizing and confiscating. Attachment orders would apply during the investigative stage, with all the attendant difficulties of the 30 day period before extension on the basis of new evidence. On arraignment freezing orders could be obtained. So far as confiscation / forfeiture is concerned, given that terrorist funds may be from a lawful origin, it is insufficient that there is in place a system to confiscate "proceeds" as the term is defined in Maltese Law. If the funds were not proceeds, then the Maltese authorities indicated that they would rely on Article 23 (1) CC which requires forfeiture of the *corpus delicti*, or the instruments used or intended to be used in the commission of any crime. For the forfeiture of funds from a legal entity, there would still need first to be a prior conviction of a natural person as forfeiture from legal entities require the conviction of a natural person. Assets in possession of a terrorist and terrorist organisations in a criminal prosecution for terrorism can also be forfeited.

318. A *bona fide* third party has available civil remedies including those for damages if he feels aggrieved by any measure taken.

Monitoring

319. Maltese authorities indicated that there is a mechanism for sanctioning breaches of the relevant legislation in Maltese legislation. It has never been used. The examiners were advised that the Sanctions Monitoring Board monitor compliance with the relevant legislation which provides for criminal sanctions in cases of breach. The examiners were advised, as noted earlier, that the MFSA incorporates control of SR.III issues in supervision.

Additional elements

320. Turning to the issues covered in the Best Practices Paper, it was too early for these issues to have been seriously addressed at the time of the on-site visit. There were, as noted earlier, plans for a coordinating Committee to look at issues of implementation and monitoring. Consolidated lists in user friendly form are not provided and contact points and support mechanisms are not in place. There has been no real outreach beyond the banks on this issue, and implementation by other parts of the financial sector and DNFBP is uncertain. Pre-notifications etc. have not been considered.

2.4.2 Recommendations and comments

321. Implementation of SR.III appears to be formally in place, and Malta has basic legal provision for implementing action against European Union internals under domestic procedures though it is unclear whether they have done so. There is a sanctioning mechanism for breaches of Regulations issued under SR.III.

322. The two European Union Regulations (881 / 2002 and 2580 / 2001), which are now directly applicable in Malta, have definitions of terrorist funds and other assets subject to freezing and confiscation which do not fully cover the complete extent of the definitions given by the United Nations Security Council and the FATF, especially regarding the notion of control of funds in 881 / 2002.

323. Specifically the authorities need to give the non-financial institutions, DNFBP and the general public guidance as to the obligations under these provisions. The mechanisms for unfreezing and for dealing with basic living expenses, which exist within the European Union framework, need explanation. One body, perhaps the Ministry of Finance or the MFSA, should have overall responsibility for providing support and guidance to those that have to implement the obligations. It would also assist if there was a reporting obligation to the Ministry of Finance in respect of listed clients of financial institutions other than banks.

324. In the absence of jurisprudence, it is difficult to assess whether freezing orders can be sustained or maintained for any length of time in the absence of criminal proceedings against the person whose assets are frozen. While the Best Practices Paper contemplates the adoption of judicial, as well as executive or administrative procedures for freezing funds under the UNSCRs, the Maltese authorities may wish to consider, as they develop these procedures and in the light of experience with the court based system, the merits of a more general administrative procedure for handling SR.III in its entirety, subject to proper safeguards (especially with regard to *bona fide* third parties).

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**Largely compliant**	• Unclear whether Maltese authorities have taken domestic action on behalf of other jurisdictions. • They need to develop guidance and communication mechanisms with the non-financial sector and DNFBP. • A clear and publicly known procedure for de-listing and unfreezing needs to be developed.

2.5 The Financial Intelligence Unit and its functions (R.26, 30 and 32)

2.5.1 Description and analysis

Recommendation 26

325. The Financial Intelligence Analyses Unit (FIAU) was established by Act XXXI of 2001 which amended the Prevention of Money Laundering Act (PMLA), Chapter 373 of the Laws of Malta and in October 2002 through the publication of Legal Notice No: 297 of 2002 the FIAU became fully operational. The FIAU is an agency under the Ministry of Finance for budgetary purposes but the law recognises the Unit's independence from the Ministry in its operations. The Maltese financial intelligence unit (the FIAU) has an important central role in the anti-money laundering and anti-terrorist financing system in Malta.

326. The FIAU is composed of the Board of Governors and the Director. Financial analysts and other staff support the Director in carrying out the operations and activities of the Unit as established by the PMLA. A Police official is detailed to act as a liaison officer with the Unit. The PMLA provides for a maximum of six members of the Board, two of whom are appointed as Chairman and Deputy Chairman respectively. In accordance with the provisions of the PMLA, the current four members of the Board have been nominated by the Attorney General's Office, the Central Bank of Malta, the Malta Financial Services Authority and the Malta Police respectively. The Chairman of the Board of Governors currently is the Attorney General of Malta. The Board of Governors discharge their duties on the basis of their own judgment and, by law, they are not in any way subject to the direction or control of the authority which nominated them. The permanent staff of the FIU is appointed by the Board, through a selection process following a public call for applications.

327. The permanent staff of the FIAU, at the time of the on-site visit, consisted of the Director, two analysts and one support staff.

328. The FIAU is the national centre for receiving, collation (collecting), processing, analysing and disseminating disclosures of suspicious transaction reports with a view to combating money laundering and funding of terrorism. Suspicious transactions are being sent to it by the subject persons which fall under Prevention of Money Laundering Regulations (PMLR) and which include financial and non-financial institutions and entities such as real estate agents, dealers of precious stones and metals or works of art as well as professionals such as auditors, external accountants, tax advisers, lawyers, notaries and independent legal professionals.

329. The FIAU is also tasked with ensuring compliance with the law by subject persons and with co-operating with their supervisory authorities. Moreover the FIAU has the authority to order the postponement of the execution of suspicious transactions for twenty four hours. This power has been used twice since its establishment and the time of the onsite visit. Under Articles 16, 30 and 30A of the PMLA, the FIAU also has very comprehensive powers to demand information from individuals, legal persons and other authorities and entities.

330. In 2003 the FIAU and the Malta Financial Services Authority have reviewed the various Guidance Notes and issued Guidance Notes for Credit and Financial Institutions, Insurance Brokers and sub-agents, Investment Services and Stockbrokers. These Guidance Notes provide financial institutions with guidance regarding the manner of reporting, and which include the specification of the reporting forms and the procedures to be followed when reporting. All these Guidance Notes, together with the suspicious transaction reporting form (for banks), are also published on the FIAU public website. In accordance with the provisions of Regulation 14 of the PMLR, the FIAU is in the process of revising, updating and consolidating the present Guidance Notes in the

light of the extensive changes brought about in recent years through the amended FATF Recommendations and the EU Directives as transposed/being transposed in the domestic legislation.

331. According to the PMLA, Chapter 373 Article 16 (1) (g) the FIAU has the responsibility for issuing guidelines relevant to the prevention and detection of money laundering or funding of terrorism offences. However, at the time of the evaluation there were no guidelines issued by the FIAU for DNFBP. Moreover, there were no reporting forms for other entities except banks published on the FIAU website. However, the Maltese authorities indicated that the FIAU through the joint committee had advised the non-financial members (DNFBP) of the committee to adopt the current guidance notes and to use the same form as is used for financial institutions to file STRs as appropriate to their activity. Indeed STRs received from the non-financial sector have been filed on this template, adapted accordingly.

332. During the on-site visit the evaluators were informed that Guidance Notes for lawyers and accountants were under preparation and Guidance Notes for all other DNFBPs were being drafted.

333. The FIU has access, on a timely basis, to all relevant financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STRs. Specifically, it has direct access to the Register of Companies database in relation to information regarding companies registered in Malta. Article 24 of the Prevention of Money Laundering Act provides for a police liaison officer to enable the Unit to gain access to police information and intelligence. On the basis of Article 30(1) of the Prevention of Money Laundering Act, Chapter 373, in connection with a suspect of money laundering or funding of terrorism, the FIAU can demand information, on a timely basis from the following if the FIAU has reason to believe that any of these is or could be in possession of information that is valid or could contribute to the work of the FIAU: Law Enforcement Agencies (incl. Tax authorities); any subject person; any Government Ministry, department, agency or other public authority; any other person, physical or legal or any supervisory authority.

334. Articles 30(1)(2) and 30A(1)(2) of the Prevention of Money Laundering Act, Chapter 373 empower the FIAU to demand information from reporting parties (subject persons) directly. When additional information is required, information can also be demanded from any other entity which in the opinion of the FIAU possesses information which is relevant to its functions. There appear to be no sanctions provided for failure to respond to an FIAU demand but, apparently, this has never happened so far. Moreover, evaluators were told that a draft of secondary legislation introducing the possibility of administrative sanctions for abovementioned cases was under preparation at the time of the visit[24].

335. Article 31(1)(2)(3)(4) of the Prevention of Money Laundering Act, Chapter 373, authorise the FIAU to disseminate financial information to the Malta Police for their investigation if, following the analysis of a suspicious transaction report and of the information in its possession relevant to the report, it is of the opinion that a reasonable suspicion of money laundering or of funding of terrorism arises.

336. The FIAU is an independent and autonomous Unit free from any undue influence or interference. As noted, according to the Prevention of Money Laundering Act, Chapter 373, the Unit consists of a Board and a Director. The Board shall be responsible for the policy to be adopted by the Unit and to be executed and pursued by the Director and to ensure that the Director carries out the policies adopted accordingly. As noted, the members of the Board shall discharge their duties on the basis of their own individual judgments and they are not subject to the direction or control of any other person or authority.

[24] These sanctions have been now introduced by means of amendments to the PMLR in February 2006.

337. All information held by the FIAU is securely protected and disseminated according to law. Article 34(1)(a)(b)(c), (2), (3)(a)(b)(c), (4)(a)(b)(c) of the Prevention of Money Laundering Act, Chapter 373 specifies confidentiality binding the Unit, its officers and agents, whether still in the Unit or not, and also lays down procedures, circumstances, and conditions of when information/documents can be disclosed to a competent authority in Malta or outside Malta. Further to the above article 31(1),(2), (3), (4) of the Prevention of Money Laundering Act, Chapter 373 specifies/determines when the FIAU can transmit information and copies of documents to the Police for investigations. Furthermore, the Unit's staff and its Board of Governors are subject to the provisions of the Professional Secrecy Act, Cap 377. Also, the physical security requirements for FIAU premises appear to be met. At the time of the on-site visit, the FIAU was situated in a dedicated, detached office building, and other persons had no free access to it. Also, the FIAU database and other IT components are properly secured.

338. The FIAU every year releases its Annual Report. As well as information on the operations of the Unit, the report contains such statistics, trends and typologies as may be available. The report is also presented to the Parliament. Furthermore, the FIAU has a public internet website www.fiumalta.org where the information about FIAU as well Annual Reports are available.

339. The FIAU has been a member of Egmont since June, 2003 and is connected to the Egmont Secure Web. When exchanging information with its foreign counterparts (foreign FIU's) the FIAU follows the Egmont Principles for Information Exchange between Financial Intelligence Units for Money Laundering cases.

340. Article 16(k) of the Prevention of Money Laundering Act Chapter 373 empowers the FIAU to exchange information with any foreign body, authority or agency which it considers to have functions equivalent or analogous to its own functions and with any supervisory authority in Malta or outside Malta subject to conditions and restrictions as it may determine, including prior conclusion, if it is deemed necessary, of any memorandum of understanding or agreement, to regulate any such exchange of information. Although the FIAU can exchange information without having an MoU in place, it has signed four MoUs (Belgium, Latvia, Cyprus, Monaco). The FIAU is in the process of entering into MOUs with other countries (to date the FIAU the FIAU has received 12 requests).

341. As noted above, the FIAU is composed of the Board of Governors and the Director. The permanent staff of the FIAU consists, in addition to the Director, of two analysts and one support staff member. Also, a Police official is detailed to act as a liaison officer with the Unit. The current structure of the FIAU is adequate to fulfil its responsibilities in the analysis of STRs. However, the PMLA imposes upon the FIAU the responsibility to ensure compliance by subject persons with the provisions of the Regulations. In this regard, during 2004 the FIAU has taken measures to strengthen its compliance monitoring role. Thus the FIAU has continued to strengthen and implement its co-operation agreements with other regulatory authorities which, in terms of the provisions of the PMLA, are obliged to act as its agents for ensuring compliance. An agreement with the Financial Supervision Authority on compliance reporting and executing on-site inspections had been signed and an agreement with the Gaming Authority was being prepared at the time of the on-site visit. Conscious of the extensive work that ensuring compliance entails, particularly in the field of new subject persons outside the financial sector (mainly the legal and accounting professions, real estate and others), the FIAU embarked on a process of off-site monitoring through the use of compliance surveys and questionnaires. Although the Unit intends to intensify its compliance monitoring by including on-site compliance visits, over all those sectors that have been added to the anti-money laundering regime and which fall within its direct responsibility for compliance monitoring, this has not taken place due to the lack of staff and financial resources. Additionally, the FIAU does not have any modern analysis software (Analyst Notebook, i2 etc). In this regard, although the structure and technical resources of FIAU seem to be adequate, the FIAU does not seem to be adequately staffed and funded in order to

effectively perform all its functions. The Maltese FIAU is involved in the ongoing discussions within the EU regarding the future of the FIU-NET project. Malta has in principle agreed to be connected to this system.

342. The staff of the FIAU are of high integrity and appropriately skilled. Article 23 of the Prevention of Money Laundering Act, Chapter 373 lays down that the Director and other officers and staff of the Unit shall be appointed or recruited by the Board on such terms and conditions and in such numbers as the Board may determine. With regard to confidentiality Articles 24, 33 and 34 of the same Act lay down that :

i. The Police liaison officer detailed to act as liaison officer with the Unit shall be bound to keep secret and confidential any information which may come to his knowledge as a result of his duties and shall not disclose such information to any person other than those members of the Unit except in circumstance as specified by the Act or specifically and expressly required to do so under the provision of any law.

ii. Any official or employee of the Unit who, in any circumstance other than those provided for in Article 24(2) of the act, discloses to any information concerning any investigations being conducted by the Unit, on conviction can be fined up to Lm50,000 fine, or to five years imprisonment or to both such fined and imprisonment.

343. The Unit, its officers, employees and agents, whether still in the service of the Unit or not, shall not disclose any information relating to the affairs of the Unit or of any other person, physical or legal, which they have acquired in the performance of their duties except under those circumstances or instances allowed in the Act or specifically and expressly required to do so under the provision of any law.

344. The examiners were advised that all members of the Unit receive adequate and relevant training for combating money laundering and terrorist financing. It has to also be pointed out that some of the members of the Unit have had training in combating money laundering and terrorist financing in their previous jobs (in credit institutions or in the Police.) Nevertheless the Unit needs some additional training, especially in relation with its compliance supervision role.

STR reporting to FIAU

345. The FIAU maintains comprehensive annual statistics on the number of STRs received. This includes also a breakdown of the type of financial institution or DNFBP or other business or person filing the STR, also the number of STRs analysed and disseminated. Nevertheless the collected statistics do not include the breakdown of information received from law enforcement authorities (Customs).

Breakdown by Subject Persons filing Suspicious Transaction Reports						
	Oct 02–Dec 03		2004		Jan-Sept 2005	
	Reports	Cases	Reports	Cases	Reports	Cases
Credit Institutions:	62	48	33	30	29	28
Non-Banking Financial Institutions:	4	4	8	8	10	4
Investment Services:	5	4	2	2	-	-
Insurances:	2	2	-	-	9	9
Regulatory Authorities:	10	10	1	1	7	7
Professionals:	2	1	1	1	-	-
Nominees & Trustees	1	1	-	-	1	1
Casinos:	-	-	1	1	-	-
Total:	86	68	46	43	56	49

346. All reports received were analysed by the FIAU. The FIAU maintains statistics concerning STRs which were referred to the Police for investigations. Whenever the Police charge any person/s with money laundering or for any other offence which emanated from any report referred to them by the FIAU, the latter is informed.

	Oct 02–Dec 03		2004		Jan-Sept 2005	
	Reports	Cases	Reports	Cases	Reports	Cases
Not Related to Money Laundering:	4	4	-	-	-	-
Referred to Police for their Investigation:	17	13	23	20	10	10
Inconclusive Information:	30	25	33	26	24	22
Ongoing analyses:	35	28	25	25	47	42

2.5.2 Recommendations and comments

347. Separate criminal offences of terrorist financing were introduced in June 2005. At the same time the Prevention of Money Laundering Act was amended to extend its scope to the financing of terrorism, giving the FIAU the responsibility for receiving STRs on funding of terrorism.

348. Guidance notes on the reporting form have been provided to the financial institutions by the FIAU in conjunction with the MFSA and published on the FIAU website. This complies with the essence of criterion 26.2, at least as far as the financial institutions are concerned. As far as the DNFBP are concerned, they have been directed to adapt to these guidance notes and use the relevant reporting forms for their STRs. Formal specific guidance on the reporting form for DNFBP should be issued by the FIAU.

349. Comment is made at 3.7 on the extent and spread of suspicious transaction reporting. The number of cases which have been passed to the police by the FIAU is broadly acceptable.

350. The Unit has a wide range of responsibilities but focuses on its analytical function. The Unit has started to provide some training to the industry. The examiners encourage the Unit to do more of this, both in a formal and informal way. The provision of training is an area where the Unit can help the industry to gain a better understanding of its risks. In addition, the Unit should carry out (as it plans to do) more on-site compliance monitoring. In order for the Unit to carry out its functions fully it needs additional staff and IT resources.

351. The FIAU has sufficient legal powers. It can access relevant information from subject persons but it does not have any power to impose sanctions when information is not provided. This does not appear, so far, to have had an impact on the Unit's effectiveness. The Maltese authorities are encouraged to implement measures that allow the Unit to impose sanctions for non-compliance with its requests for information[25].

352. With regard to the 2nd EU AML Directive, the Unit has the power to prevent a transaction proceeding for 24 hours and this power has been used on 2 occasions. The Maltese authorities may wish to consider whether the 24 hour period is adequate.

2.5.3 Compliance with Recommendations 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**Compliant**	

[25] Amendments introduced in February 2006 enable the FIAU to impose sanctions when information is not provided.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30, and 32)

2.6.1 Description and analysis

Recommendation 27

Prosecution and Judiciary

353. The Attorney General (AG) is the principal law officer and the legal adviser of the Republic. As such he is also the Public Prosecutor in the superior criminal courts, although he also exercises functions in connection with pre-trial investigations and advises police on investigations they may be conducting.

354. According to Article 91 of the Constitution, the Attorney General is appointed by the President upon advice of the Prime Minister. He may not be removed from his office except by the President, upon request of the House of Representatives supported by a two-third majority of its members, on the grounds of proven inability to perform his functions or proved misbehaviour. The AG is assisted by a Deputy and his Office, which has recently been designated an Agency, is composed of twelve lawyers, including three legal procurators. The AG encourages the participation of lawyers in seminars and international fora. The Office's budget is negotiated with the Minister for Justice. The AG is free to decide how to handle cases and is not subject to directives or policy guidelines laid down by the Minister of Justice or any other authority.

355. The Attorney General is also the central judicial authority under international co-operation treaties. As part of the Office of the Attorney General, all legal officers appear to enjoy independence from external influences in the exercise of their functions. The International Co-operation in Criminal Matters Unit, which deals with money laundering cases and international co-operation, has been assigned another lawyer to deal with the increasing workload, and further strengthening of the unit is envisaged upon recruitment of further personnel within the Office.

356. The DDO, the PMLA and the CC vest the Attorney General with powers to request interim and confiscation measures. As noted, the interim measures are: the Investigation Order (which enables access to material which is likely to be of substantial value to the investigation), the Attachment Order (a measure the ultimate goal of which is the freezing or seizure of proceeds of crime in the investigative phase) and the Freezing Order (having the effect of freezing all the property of the accused pending trial and until final judgment).[26] These measures are ordered by the Court upon application of the Attorney General or upon request by the Police during the Inquiry stage of a Court case (concerning the freezing of assets).

357. If the 'investigation order' or 'attachment order' is granted then it will prevail over any obligation of confidentiality or professional secrecy and the provisions applicable to a domestic investigation order or attachment order apply.

358. In general, where the Attorney General communicates to a magistrate a request made by the judicial prosecuting or administrative authority of any place outside Malta for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or

[26] The said measures apply with regard to offences which carry a sentence of imprisonment of more than 1 year, hereafter referred to as 'relevant offences'. They are not applicable to trading in influence (Article 121A CC) and accounting offences (Article 121B of the CC), as these offences carry a sentence of imprisonment of three months to one year.

otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.

359. The Attorney General's Office has assigned money laundering cases, organised crime and international co-operation in criminal matters to a unit which provides for specialisation in these fields. The Unit is made up of a Senior Counsel to the Republic and a lawyer. Both are also involved in the European Judicial Network as contact point and substitute respectively. The Unit is also responsible for receiving, transmitting and processing European Arrests Warrants. Under the major judicial co-operation conventions, the Attorney General is the designated central judicial authority. To date no cases of financing of terrorism have been encountered, although letters of request and an extradition request relating to terrorism acts and funding, were dealt with by this Unit.

Police

360. It was explained to the team that criminal proceedings are always instituted by the Police, regardless of whether the case is to be tried through summary proceedings, i.e. before the Court of magistrates or indicted before the Criminal Court. There is no obligation for the Police to prosecute every criminal offence. In this sense, the Maltese system is, in principle, discretionary. If the Police decide not to institute criminal proceedings and the case involves a serious criminal offence (as opposed to a misdemeanour), the person having reported or complained to the Police is entitled to apply to the Court of Magistrates. If, after a hearing, the Court considers that there is a prima facie case, it will order the Commissioner of Police to prosecute. The Maltese criminal procedure distinguishes between offences liable to pecuniary punishments or to punishments of less than six months' imprisonment and offences liable to the punishment of imprisonment exceeding six months. With respect to the former it is for the Police to investigate and institute criminal proceedings before the Court of magistrates. The latter, after summarily hearing the evidence, will deliver its judgement. Only the person sentenced and AG, upon the request of the Police, may appeal. The grounds of appeal are limited on points of law. If the offence is punishable with more than six months imprisonment, the Police will investigate, but may ask the magistrate to hold a magisterial enquiry whenever there is evidence to preserve and secure.

361. The Malta Police has the Money Laundering Unit to investigate Money Laundering crimes. The Unit is made up of two Investigating Teams, each staffed with one inspector and two constables. Money Laundering investigations are initiated by the Money Laundering Unit following a suspicious transaction report from the FIAU or from other sources, such as the general public, the Attorney General or other police sources. Following the initial investigations, where the investigators see that there is a prima facia case of money laundering, a request to the Attorney General is made to analyse the request made by the Police for an investigation order. If the Attorney General considers that there are sufficient grounds for this order to be issued, he files a request in the Criminal Court before a Judge, who decrees and issues the investigation order and/or the attachment order as the case may be.

362. The staff of the money laundering investigation unit have a general understanding of the evidence required for a money laundering case but they would benefit from training in modern financial investigative techniques. Such training should increase the number of money laundering investigations generated by the police independently of the STR regime. An increase in the resources of this Unit should be considered in order to generate more money laundering cases in the courts, which now should be a high priority for Malta.

363. This attachment order is valid for thirty days and can be extended for a further thirty days on presentation of new evidence. The Investigation order has no time limit. Information at sources considered to be of a confidential nature, such as banks, nominee services, fiduciary services and accountants is not readily available to the Police investigator and can only be obtained on the basis of an investigation order. There have been 25 investigation orders requested and none were refused.

364. When cases are successfully concluded, the investigating officers arraign the suspects in court and prosecute them during the pre trial (compilation of evidence) stages of the case. During the arraignment, the court is requested to appoint an independent legal expert to draw up a list of all the assets held by the suspect and at times, even by members of his family and present it to the court. The prosecution would also request the Court to order the freezing of the suspect/s' assets. This freezing order is then valid for the whole duration of the Court proceedings. The evaluators were told that asset forfeiture is to be a standard procedure.

365. With regard to Criterion 27.2, the Maltese authorities advised that the PMLA renders applicable to money laundering investigations under the Act, article 30B of the Dangerous Drug Ordinance, which provides for controlled deliveries of drugs. The use of controlled delivery was restricted to drugs but the Maltese authorities indicated that this had now been extended to include cash and other assets. Presumably the ability to conduct controlled delivery allows competent authorities to waive the arrest of suspected persons and/or the seizure of money for these purposes. It was explained that arrest is a discretionary exercise of Police powers in Malta, and that Maltese law does not oblige and dictate how (or when) an arrest should be made where evidence has been obtained. The Maltese authorities consider that this gives the Police a wide latitude in exercising the power to postpone or waive an arrest. Though not immediately relevant to Criterion 27.2, the Maltese authorities advised also that the most widely used interim measure designed to trace assets and other property belonging to suspects or over which suspects have some title, is, as indicated earlier, the investigation order. Specific financial investigations – aiming at identifying, tracing and freezing proceeds of crime or monitoring a suspect's property - may also be conducted concurrently with the investigation into the predicate offence. Where appropriate, the investigation may be referred to the Maltese Financial Intelligence Unit (the FIAU), which may suspend suspicious transactions, or to the criminal investigations department or the anti-money laundering unit of the Police.

366. Controlled delivery and purchase of drugs are provided for under the ordinances and require the prior consent of either the Attorney General's Office or a magistrate. These techniques can be used by the Police in money laundering investigations.

Additional elements

367. There are legislative tools that provide law enforcement or prosecution authorities with diverse special investigative techniques. There are general provisions and specific provisions.

368. The general provisions are found in the Criminal Code, Chapter 9 of the laws of Malta, and the most general of all is Sec 346 which places the obligation on the police to gather information, preserve same and refer to the adjudicating authority. As regards special techniques, these are listed separately under section 435E (1) (2), as regards controlled deliveries, and under the Security Services Act (Chapter 391) as regards telephone tapping. Such other techniques as surveillance (whether visual or recorded), undercover operations using local Police Officers are normal policing operations. In the case of undercover operations using foreign Police officers these are specifically dealt with under Sec 435 E (3) of the Criminal Code. They have not been used in practice.

369. Special techniques are permitted to be used in investigations regarding money laundering, financing of terrorism and underlying predicate offences. The Maltese authorities indicated that they had been used in particular criminal cases without specifying which. As the law reads the special investigative techniques allowed under the Criminal Code are allowed to be used for all criminal offences. Those catered for under the Security Services Act are in respect of offences categorised under Sec 2(3) and 3(3) of the said SSA.

370. The Police can however keep a suspect or his property under surveillance as long as his fundamental rights and freedoms are not breached. This means that the police may effect surveillance at a distance but not intrusive surveillance.

371. Serious cases involving money laundering are usually the concerns of a Magisterial inquiry wherein the Inquiring Magistrate has the power (and usually exercises such power) to convene the necessary experts to investigate the matter. Once a prosecution is initiated the Court has also the power to appoint experts to assist in the investigation, seizure, freezing and confiscation of the proceeds of crime. As noted earlier, no statistics on non money laundering freezing orders and confiscations were provided.

372. Co-operative investigations with appropriate competent authorities in other jurisdictions are allowed in Malta and have been undertaken by the Police consulting as necessary the AG's office. Permanent or temporary groups specialised in the investigation, freezing and seizing and confiscation of the proceeds of crime have not been set up domestically for particular cases. However, the evaluators were advised that the Police from time to time consult with the MFSA, the FIAU and the Central Bank of Malta on financial aspects of particular investigations.

373. With regard to the review of money laundering and financing of terrorism methods and techniques and trends by law enforcement, the FIU and other competent authorities, the Maltese authorities advised that meetings are held on a regular basis in the Joint Committee on Money Laundering. Any issues related to money laundering or financing of terrorism are discussed in this forum by the experts sitting on this Committee. This Committee is made up of Delegates from the Law Enforcement, FIAU, the Banking Sector including the Central Bank of Malta, Financial Services Providers, the Chamber of Advocates, the Chamber of Notaries, Accountants and the Malta Stock Exchange, the MFSA. This forum discusses any issue as explained above and also may propose amendments to legislation concerning money laundering and financing of terrorism. They can discuss and propose policies and regulations to enforce or improve any present practice. Since the FIAU and the Money Laundering officers participate in this forum, they also discuss and inform their staff of the discussions held during these meetings, subject to confidentiality.

Statistics

374. No statistics concerning the usage of special investigative powers and controlled deliveries in money laundering investigations were provided to the evaluators.

375. All STR's received from the FIAU are being investigated by the Money Laundering Unit. The following is a table of the reports received:

STR's		ML related cases
2002	28	8
2003	11	6
2004	21	6
2005	1	2
TOTAL	61	22

376. Of the 29 persons that are being prosecuted, 18 are the result of STR's received from the FIAU. None of those facing charges are linked to terrorist activity. There have been two convictions to date both resulting from FIAU reports although these are not for the act of money laundering 'per se'. A third case was concluded and awaiting sentence at the time of evaluation.

Recommendation 28

377. Upon information that an offence carrying over one year imprisonment (i.e. "a relevant offence" in terms of Article 23A of the CC, thus also including FT) or a money laundering offence has been committed, the Attorney General, may file an application to the Criminal Court requesting the production of material which is likely to be of substantial value to the investigation. This order enables the police to override all confidentiality and professional secrecy provisions (barring privileged communications covered by lawyer-client confidentiality and that between the penitent and his confessor). This is what distinguishes the investigation order from the search warrant which the police can obtain from a Magistrate and exercise in terms of Article 355AH or the powers police have in terms of Article 355P of the CC which allows the police to seize anything on any premises if they have reasonable grounds to believe that it has been obtained as a result of an offence or that it constitutes evidence in relation to an offence and that its seizure is necessary to prevent it from being concealed, lost, damaged, altered or destroyed.

378. The Criminal Court will issue such orders if it concurs with the AG that there is reasonable cause to suspect the commission of a relevant offence and that the material to which the application applies is likely to be of substantial value to the investigation for the purpose of which the application is made.

379. The persons on whom the order will be served must produce or grant access to such material to the person or persons indicated in the order (normally a police officer); and the person or persons so indicated shall, by virtue of the investigation order, have the power to enter any house, building or other enclosure for the purpose of searching for such material.

380. Any person who, having been ordered to produce or grant access to the indicated material shall, without lawful excuse (the proof whereof shall lie on him) wilfully fail or refuse to comply with such investigation order, or who shall wilfully hinder or obstruct any search for such material, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand liri or to imprisonment not exceeding twelve months, or to both such fine and imprisonment

381. In the course of any investigation of an offence against Article 3 PMLA, the Executive Police may request a magistrate to hear on oath any person who they believe may have information regarding such offence; and the magistrate shall forthwith hear that person on oath, and that magistrate shall

for this purpose have the same powers as are by law vested in the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as a court of criminal inquiry as well as the powers mentioned in article 554 of the Criminal Code; provided that such hearing shall always take place behind closed doors.

382. Article 4 (14) PMLA states explicitly that it shall not be lawful for any court to issue a warrant of prohibitory injunction to stop the execution of an investigation order.

383. Any statement taken in the course of a Magisterial Inquiry or in the compilation of evidence when the court is acting as a Court of Criminal Inquiry (pre-trial phase) or before any other Court, is an integral part of the records of the proceedings and thus serve as evidence against the suspect/accused. Moreover statements taken by the police are primarily to be used as an investigative tool and may exceptionally be used in criminal proceedings, when the witness presents himself as a hostile witness, absconds or passes away.

2.6.2 Recommendations and comments

Recommendation 27

384. There are 2 units of 3 Persons each within the Police Economic Crime Division dedicated to the investigation of money laundering reports received from the FIAU and other money laundering cases (and which would investigate terrorist financing as necessary). The numbers are, in the evaluators' view, too small to tackle the lengthy investigations involving e.g. foreign predicate offences which arise in this type of crime.

385. The Maltese authorities explained that they have measures in place that allow competent authorities investigating money laundering cases to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering. It was noted by the Maltese authorities that controlled delivery is permitted according to the Article 30B of the Dangerous Drug Ordinance and that this has also been implemented in practice and this provision also covers money laundering because it is made applicable to money laundering by Art 4A PMLA.

386. So far as the additional elements are concerned, there appears to be an adequate legal base for use of special investigative techniques in investigations for money laundering but these techniques are still not widely used. As the evaluators in the Second Round Evaluation recommended that a wider use of special investigative techniques by the Police should be used in order to improve the rate of successful money laundering investigations, it was disappointing to see that the situation has remained unchanged. Also, it is recommended that the Police should keep statistics on special investigative techniques used in money laundering and other major proceeds-generating investigations.

387. The staff of the money laundering investigation unit have a general understanding of the evidence required for a money laundering case but they would benefit from training in modern financial investigative techniques. Either this unit (or another unit of certified financial investigators) would assist the law enforcement effort in all major proceeds-generating offences. In the last report, Malta was encouraged to develop such specialised officers. A more asset oriented approach by law enforcement in the case of serious proceeds-generating crimes has, as yet, not been developed. Such training in modern financial investigation techniques should increase the number of money laundering investigations generated by the police independently of the STR regime. A more asset oriented approach to investigation of major proceeds-generating predicate offences is required and more Police generated money laundering cases need to be pursued.

388. As to the review of trends and techniques and the dissemination to staff of competent authorities resulting information, the examiners noted that the trends and other issues related to money laundering and terrorist financing are periodically analysed and discussed at the meetings of The Prevention of Money Laundering Joint Committee under the chairmanship of the FIAU. Equally it was noted that the FIAU periodically publishes its annual report which also describes the money laundering trends. Nevertheless it seemed that there was a lack of real strategic analysis of money laundering and terrorist financing trends by the Police. Therefore, while the examiners are satisfied that in general terms the trends of money laundering are disseminated to law enforcement etc., the examiners consider still more could be done by the way of strategic analysis to focus clearly on the immediate threats in the Malta system.

Recommendation 28

389. The competent authorities appear to have all necessary powers in order to investigate money laundering, terrorist financing and other underlying predicate offences effectively. The MA indicated that the powers specified in Recommendation 28 were often used in investigations into money laundering, terrorist financing and other predicate offences. No statistics were provided to the evaluators.

Recommendation 30

390. One part of the Recommendation 30 deals with resources. The examiners consider that more trained financial investigators are required either in the Money Laundering Investigation Unit or separately for major enquiries. In any event, an increase in the resources of the Money Laundering Unit should be a priority. As indicated, the numbers are inadequate for the lengthy and in depth enquiries needed in many of these cases, particularly where foreign predicate offences are involved. An increase of properly trained staff in this Unit should generate more money laundering cases in the courts, which now should be a high priority for Malta.

391. The competent authorities (The Attorney General and Money Laundering Unit within Police) clearly have proper operational independence, and staff of high professional integrity. The staff of the Money Laundering Unit has received some training both at domestic and international level. There appeared, however, to be no special training or educational programmes provided for judges and courts concerning money laundering and terrorist financing offences. It is important that the Judges should be further sensitised to money laundering and confiscation issues.

392. The competent authorities (namely the Attorney General) may also wish to consider whether more guidance on money laundering investigations and prosecutions should be given in writing. A Guidance Note which sets out the ways in which the elements of the offence may be capable of proof in autonomous prosecutions would be, in the examiners' view, very timely. If widely disseminated to law enforcement, more progress on this issue might be achieved.

Recommendation 32 - *Statistics – investigations, prosecutions and convictions*

393. It is recommended that statistics be kept about the number of special investigative techniques used in money laundering investigations. A requirement to keep and report statistics on the use of investigation and attachment orders in proceeds generating cases generally might encourage a greater use of these provisions by the competent authorities.

2.6.3 Compliance with Recommendations 27 and 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**Largely compliant**	• There is a reserve on the effectiveness of money laundering investigation given that there are no convictions.
R.28	**Compliant**	

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and analysis

Special Recommendation IX

394. In January 2005 the Minister responsible for finance, through Legal Notice 531 of December 2004, brought into force the Regulations on the reporting of cash movements across the Maltese borders through the External Transactions Act (*Cap 233*), ("ETA"). The Regulations were issued in the form of secondary legislation under Legal Notice 463 of November 2004, based on the then draft EU Regulation which has since been approved by the European Parliament on 8 June 2005. The term 'cash' in the Reporting of Cash Movements Regulations includes physical cash and other monetary instruments as defined in the ETA. The ETA defines 'monetary instruments' as including: *cheques, drafts or travellers' cheques, any anonymous or bearer certificates of a financial or monetary nature which are convertible into cash, irrespective of the issuer, and in particular, negotiable and other securities and instruments, whether denominated in Maltese lira or foreign currency.*

395. The Reporting of Cash Movements Regulations oblige any person entering or leaving Malta carrying a sum equal to or in excess of Lm5,000 (approx EUR11,600) to declare that sum to the Comptroller of Customs. Such declaration is made by filling the Declaration Form appearing in the Schedule to the Regulations and forwarded to Customs officials. Apart from the details of the person crossing the border and making the declaration, the declaration requires also information on the identity of the owner of the funds; a description of the funds, whether cash or monetary instruments; the purpose of the intended use of the funds and the route that the traveller will be taking. The completion of the declaration form in the required circumstances is mandatory.

396. Regulation 3(1)(2)(3)(4)(5) of the Reporting of Cash Movements Regulations 2004 (which emanate from The External Transactions Act, Chapter 233) lays down that:

i. Any person entering or leaving Malta and carrying a sum equivalent to Lm5000 (approximately €11.5K) or more in cash (tender currency notes or coins) and monetary instruments shall be obliged to declare it to the Customs.

ii. The obligation to declare any sum as indicated in (i) above shall not be fulfilled unless the incoming/out going person has completed the form and handed it to the Customs official.

iii. Any person who make a false declaration or who does not fulfil the obligation to declare shall be guilty of an offence and on conviction be liable to a fine (multa) equivalent to 24% of the value represented by the cash carried, but in any case in excess of Lm24000 (approx €55.5K)

iv. Where any cash has not been declared, the Customs shall seize the undeclared cash in excess of Lm5000 (approximately € ll.5K) or the whole amount if the cash is indivisible.

v. The Court shall, besides the punishment to which it may sentence the person convicted, order the forfeiture of the undeclared cash in excess of Lm5000 (approximately €11.5K), or the whole amount when the cash is indivisible.

397. Failure to declare cash or other monetary instruments, or making a false declaration upon entering or before leaving Malta to the Customs will amount to a crime. The Customs Officials are empowered by law to detain any person who has committed or is suspected of having breached the Customs Ordinance or of any other law connected/related to Customs duties within a Customs area until the arrival of the Police, who are empowered at law to obtain any further information from the carrier.

398. Should the police suspect money laundering or terrorist financing they are empowered to stop and retain currency etc to investigate the suspicion. In terms of regulation 3(4) of the Reporting of Cash Movements Regulations, the Comptroller of Customs is empowered to seize the undeclared cash in excess of Lm 5,000 or the whole amount if the cash is indivisible.

399. Since criminal investigations and prosecutions in Malta are carried out by the Police, the Customs inform the Police of any breaches of regulations they encounter. The Police would then arrest suspects for investigations. The Police would inform the duty Magistrate of the case and commence investigations under the direction of the Magistrate.

400. In addition, regulation 3(5) empowers the Court to order the forfeiture in favour of the Government of the undelivered cash in excess of Lm5,000 or of the whole amount if the cash is indivisible.

401. The Regulations require the Comptroller of Customs to pass to the CBM all the records of declarations made under the Regulations on a weekly basis. The CBM is then required to compile and maintain a database of such declarations. In terms of the provisions of the External Transactions Act (*Cap 233*) all information held in the database shall be made available to the appropriate authorities in the cases where there are false declaration or where there is suspicion of money laundering or terrorist financing activities. It was understood that false declaration are sent directly to the Police. The FIAU, through a specific provision in the Prevention of Money Laundering Act, has a right to demand information held in the database at any time it deems appropriate for the purposes of fulfilling its responsibilities under the Act.

402. In terms of Article 30A of the Prevention of Money Laundering Act (*Cap 373*) the FIAU may demand from any subject person, the police, any government ministry, department, agency or other public authority, or any other person, physical or legal, and from any supervisory authority, any information it deems relevant and useful for the purposes of fulfilling its functions under the Act. By virtue of this provision, as already detailed under IX.4 above, the FIAU can have access to the information held on the database. In terms of these provisions the FIAU has entered into arrangements with the CBM whereby the data collected by Customs and retained by the CBM on a database is regularly made available to the FIAU. Although today there is no obligation for the FIAU to be notified of suspicions in cross-border transportation incidents, amendments to the Regulations have been prepared to create such obligations.

403. For these last years the Customs Department has been receiving requests for mutual assistance and exchange of information to help in investigations carried out by various European customs organisations under the Brussels Convention for Mutual Assistance.

404. Since 1997 Mutual Administrative Assistance has been requested under the CE Regulation No.515/97.

405. Even before joining the European Union, Malta was a full member of MAR/YACHT INFO SUD. It receives and exchanges information on seizures and the *modus operandi* in the contraband of cigarettes, the illegal trafficking of drugs, precursors, counterfeit goods and the movement of suspect vessels and yachts.

406. Customs have taken part in various joint exercises which primarily promote joint targeting and the exchange of information on goods discharged at and transiting in our ports and airports. Information is exchanged through AFIS Mail.

407. Customs receive alerts and exchange information with various EU Customs Organisations such as; OLAF, RILO WE, ZKA Koln, ODYSSUD, EUROPOL, RIF and CEN.

408. One of the priorities is to increase personal contacts in Customs Intelligence Units to deal with fast exchange of information when needed.

409. Pursuant to Regulation 3(3) of the Reporting of Cash Movements Regulations, false declarations or non-disclosures constitute an offence and are subject to a fine equivalent to 25% of the value represented but not exceeding Lm20,000 (Euro 46,500). Undeclared cash is also subject to seizure by Customs officials.

410. The Court shall, in terms of regulation 3(5), order the forfeiture in favour of the Government of the undeclared cash in excess of Lm5,000 (Euro 11,650) or of the whole amount if the cash is indivisible.

411. If an investigation regarding a false declaration gives rise to a suspicion, and subsequently a conviction, of money laundering and terrorist financing committed by a body or association, a person acting in the capacity of a director, manager, secretary or other similar officer shall be personally liable for an offence being committed in terms of article 3(2) of the Prevention of Money Laundering Act (*Cap 373*). Such person shall be liable to a fine of not less than Lm500 (Euro 1,200) and not more than Lm500,000 (Euro 1.2 million) in accordance with article 3(4).

412. The Customs Department is not obliged to file any report to the FIAU concerning suspect terrorist financing.

413. Forfeiture also applies to the transportation of currency and other monetary instruments related to money laundering and terrorist financing. Maltese regulations requiring the freezing of assets of persons designated under UN resolutions apply also in this situation.

414. The cross border regulations do not apply to gold, precious metal or precious stones since currently they are only applicable to the cross border movement of cash or monetary instruments. However, there is nothing which precludes the Customs Authorities from notifying the authorities of the countries from which the items originated and /or to which they are destined and to further co-operate with them.

Additional elements

415. In accordance with Regulation 4 of the Reporting of Cash Movements Regulations, the Comptroller of Customs shall pass to the CBM on a weekly basis the records of the declarations made under the said Regulations, which are compiled and maintained in a database by the CBM.

416. This information is passed on to the FIAU on a regular basis and is used for financial intelligence purposes as part of the Unit's responsibilities of analysing financial and other data.

417. Article 30A of the Prevention of Money Laundering Act (*Cap 373*) empowers the FIAU to have access to the information contained in the said CBM database.

418. According to Regulation 4 of the Reporting of Cash Movements Regulations, any information exchanged between the CBM and the Comptroller of Customs shall be subject to the duty of professional secrecy. Furthermore, the ETA itself restricts the use of such data to the appropriate authorities only. Information obtained by the FIAU is subject to professional secrecy – article 34(1)(a)(b)(c) of the Prevention of Money laundering Act, Chapter 373 refer.

419. Moreover, any personal data within the Declaration Form shall be processed in accordance with the requirements of the Data Protection Act (*Cap 440).*

Recommendation 32

420. The Reporting of Cash Movements Regulations (LN 463 of 2004) came into force on 1 January 2005. Since then, the CBM has received declarations as indicated in the table below:

	Number of Declarations	Lowest Amount	Highest Amount	Total	Type of Instrument
Import (arrivals)	116	Lm5,230 EUR12,183	Lm164,609 EUR383,436	Lm2,752,307 EUR6,411,151	Banknotes, cheques, other monetary instruments
Export (departures)	6	Lm8,619 EUR20,077	Lm35,417 EUR82,499	Lm93,111 EUR216,890	Banknotes
Total	122			Lm2,845,418 EUR6,628,041	Banknotes, cheques, other monetary instruments

2.7.2 Recommendations and comments

421. The essential criteria of SR.IX are broadly met. The examiners noted that the Customs have no investigative powers and it is assumed no general police powers. Thus, if they formed a suspicion of money laundering or terrorist financing (and there was no breach of the Cash Movements Regulations) there are no clear powers to stop the person and restrain currency etc. until the Police arrive. This issue should be addressed.

422. The Customs information available to the FIU is indirect. There are no clear gateways between Customs and the FIU. The cross border disclosures are available to the FIU through the Central Bank. The identities of persons making false disclosures were passed to the FIU through the Central Bank database. The Maltese authorities may wish to consider whether the Central Bank gateway for the FIU to Customs data is adequate in practice, and whether making Customs an obliged entity under the AML Law would assist the Maltese AML/CFT framework.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**Largely compliant**	• No clear power to stop and restrain where suspicions of money laundering below the reporting threshold or in the case of suspicions of terrorist financing below the reporting threshold. • Gateways to Customs information for the FIU need reviewing.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Generally

423. The Maltese Prevention of Money Laundering legislation is based on two tiers, namely the Prevention of Money Laundering Act, 1994 (PMLA), which has been amended several times since the first round evaluation. The PMLA is supplemented by the Prevention of Money Laundering Regulations, 2003 (PMLR)[27] which further elaborate the preventive obligations under the Maltese anti-laundering regime. S12 of the PMLA specifically provides that the Minister may make rules or regulations generally for the better carrying out of the provisions of this Act and in particular...provide for the regulation and control of banks, credit and other financial institutions to provide *inter alia* for procedures and systems for training, identification, record-keeping, internal reporting, and reporting to supervisory authorities for the prevention of other funding of terrorism. They require subject persons to establish and to maintain specific systems and procedures both for one-off transactions and for on-going business relationships to guard against their business and the financial system from being abused for the purpose of money laundering.

424. Section 34(3) of the Banking Act 1994 and Section 25(3) of the Financial Institutions Act 1994 provide that credit and financial institutions may be required to comply with any guidelines that may be issued by the Competent Authority in carrying out their obligations under the Prevention of Money Laundering Regulations 1994. Any person who breaches the Provisions of S.3(1) of the Regulations (dealing with identification, record keeping, internal reporting and training) commits a criminal offence carrying imprisonment up to 2 years or a fine up to Lm 20,000, or both.

425. The Regulations are supported by more detailed Guidance Notes. There are Guidance Notes for credit and financial institutions (issued by the MFSA in 2003), for money or value transfer service operators, for insurance firms, investment firms and trustees. These provide instructions on the steps subject persons should take to comply with the Regulations. Each set of Guidance Notes covers the same topics but the amount of detail in the Guidance Notes is not the same. Consolidated Guidance Notes were being prepared at the time of the on-site visit and the examiners anticipate that the implementation of these will reduce the risk of inconsistency across the sectors. These 2003 Guidance Notes have not been amended since the on-site visit.

426. The 2003 Guidance Notes for credit and financial institutions issued by the supervisory authorities of the financial sector and the FIAU (Annex 4) thus provide the third level in the hierarchy of anti money laundering provisions in Malta. The Guidance Notes are issued under statutory requirements by the MFSA in concurrence with the FIAU under Art. 16 of the MFSA Act and Regulation 14 of the PMLR. The fact that they were issued jointly by the FIAU and the MFSA was minuted in 2003 by the Prevention of Money Laundering Joint Committee. Non-compliance or breach of the guidance notes is specifically subject to administrative sanctions under the MFSA Act. They aim to enhance compliance with the obligations under the PMLR in the financial sector. The purpose of these Guidance Notes is "to evaluate the obligations of the subject persons pursuant to the Regulations and to establish standard procedures of communication between subject persons, the competent authorities, the FIAU and the Enforcement Authority". Moreover, a court shall, under A.3(3) of the PMLR, consider them in determining whether a person is in compliance in proceedings for an offence under A.3(1) of the Regulations. Thus, the Guidance Notes must be considered in legal proceedings under the PMLR. In the examiners' view the Guidance Notes are "enforceable means".

[27] These Regulations were being revised at the time of the on-site visit and revisions were brought into force in February 2006 by Legal Notice 199 of 2003, as amended by Legal Notice 42 of 2006. The implementation of the amended Regulations was more than 2 months after the on-site visit.

427. The Prevention of Money Laundering Regulations (PMLR) first issued in 1994 and amended in 2003 are addressed to persons, whether natural or legal (Regulation 2) who carry out a "*relevant financial business*" and "*relevant activity*" to introduce systems to prevent money laundering. These persons are referred to as subject persons.

428. The Regulations identify four cases where the obligations of subject persons come in force: negotiations with the applicant with a view to forming a business relationship, handling of a suspicious transaction; handling of a single large transaction (minimum Lm 5,000 equivalent to appr. 11.646 Euro); and handling of a large series of smaller transactions.

429. "Relevant financial business" is defined by the regulation to include:

(a) any business of banking or any business of an electronic money institution, carried on by a person or institution who is for the time being authorised, or required to be authorised, under the provisions of the Banking Act;

(b) any activity carried on by a person or institution that is for the time being authorised, or required to be authorised, under the provisions of the Financial Institutions Act;

(c) life assurance business carried on by a person or institution that is for the time being authorised, or required to be authorised, under the provisions of the Insurance Business Act or the Insurance Brokers and Other Intermediaries Act;

(d) investment business carried on by a person or institution licensed, or required to be licensed, under the provisions of the Investment Services Act;

(e) a collective investment scheme licensed, or required to be licensed, under the provisions of the Investment Services Act;

(f) any activity carried on by a person pursuant to a valid stockbroker's licence issued under the provisions of the Investment Services Act;

(g) any activity carried on by a person pursuant to a valid licence of a Recognised Investment Exchange issued under the provisions of the Financial Markets Act;

(h) any activity which is associated with a business falling within paragraphs (*a*) to *g*);

The definition of "relevant financial business" covers the whole of the definition of "financial institution" in the Methodology.

430. "Relevant Activity" refers to DNFBPs. (see beneath)

431. For the purposes of the Regulation a supervisory authority is considered to be that authority responsible to monitor, verify or regulate the business and records of a subject person.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism:

432. The obligations under the PMLR, 2003 do not currently address a risk based approach. The issue was to be addressed in the amended version of the Regulations. Some exemptions from customer identification are provided for in Regulation 8.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5

Anonymous accounts and accounts in fictitious names

433. Criterion 5.1 of the Methodology is marked with an asterisk. This means that it belongs to the basic obligations that should be set out in a law or regulation. In this context, "Law or Regulation" refers to primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. Separate to laws or regulation are "other enforceable means" like Recommendations, guidelines, instructions or other documents or mechanisms that set out enforceable requirements, with sanctions for non-compliance, and which are issued by a competent authority (e.g. a financial supervisory authority) or an SRO. In other words: according to the Methodology, obligations set out in law or regulation as well as in other means have to be enforceable. In addition, the law or regulation has to be issued or authorised by a legislative body. For the purposes of this report an obligation marked with an asterisk in the 2004 Methodology, which appears in the PMLA or in the PMLR (in force at the time of the on-site visit) meets the methodology requirements in this regard as such obligations, if they are sanctionable.

434. Customer Identification requirements are governed by the Prevention of Money Laundering Regulations, 2003 (Annex 2) which, *inter alia* require that no business relationship is established or any transaction undertaken between two parties one of whom is a "subject person" unless there is a proper and effective customer identification process in place and implemented.(Regulations 3 and 5-7)

435. In terms of the identification, this implies that financial institutions cannot keep anonymous accounts or other types of accounts where the owner or the beneficial owner is not identified and known. Although there is no explicit prohibition of anonymous accounts or accounts in fictitious names in the Regulations, the Maltese authorities consider that it is a logical consequence of the PMLR that anonymous/fictitious accounts cannot be kept. However, there is no explicit prohibition of anonymous accounts or accounts in fictitious names in the Regulation.[28] The examiners were advised that numbered accounts have not been used in Maltese banks, though there is no explicit prohibition on this point.

[28] Regulation 5(1) of the Regulations which came into force in 2006 contains an express prohibition on the keeping of anonymous accounts or accounts in fictitious names such that the true beneficial owner is not known.

When CDD is required

436. Criterion 5.2 of the Methodology has an asterisk too. It requires all financial institutions to undertake CDD:

a) When establishing business relations

437. Persons carrying out financial business in Malta are bound by Regulation 3 to maintain appropriate identification procedures. Such procedures are described by Regulation 5 and include a general obligation of production by the applicant for business of satisfactory evidence of his/her identity. Identification is mandatory before establishing a business relationship or conducting a one-off transaction equal to or in excess of Lm 5,000 or a series of structured transactions below the minimum Lm 5,000 or when there is suspicion.

438. In Regulation 1 in the PMLR, it is stated that: *"applicant for business" means a legal or natural person, whether acting as principal or agent, who seeks to form a business relationship or carry out a transaction with a person who is acting in the course of either relevant financial business or relevant activity"*

439. The PMLR requires that no business relationship can be established or transaction undertaken unless there is a proper identification process in place.

440. Regulation 5 requires a subject person to seek satisfactory evidence of identity of a prospective customer, defined as an applicant for business, at the time of establishing a business relationship irrespective of any thresholds or carrying out a one-off or occasional transaction. The Guidance Notes underline that in this respect, credit and financial institutions are expected to follow the procedures set out in the documents issued by the Basle Committee on Banking Supervision entitled *Customer Due Diligence for Banks* and *General Guide to Account Opening and Customer Identification.*

441. Paragraph 52 of the Guidance Notes for Credit and Financial Institutions provide that unless satisfactory evidence of identity is obtained as soon as it is *reasonably practical after contact is first made*, the business cannot proceed or can only proceed in accordance with any direction of MFIAU or on condition that it is reported in accordance with the procedures set out in Section VI on *Recognition and Reporting of Suspicious Transactions in the Guidance Notes.* Paragraph 53 in the Guidance Notes provides that "As a rule credit and financial institutions are therefore to obtain the evidence of identity prior to entering into commitments with the applicant for business." Article 70 provides that "Under no circumstances therefore should an institution open non-resident accounts without prior positive identification".

b) When carrying out occasional transactions above the applicable designated threshold (€ 15 000.-), including where the transaction is carried out in a single operation or in several operations that appear to be linked.

442. Identification is mandatory in accordance with Article 5 of the Regulations (Case 3) before conducting a one-off transaction equal to or in excess of Lm 5,000 (appr. 11.646 Euro).

443. Identification is correspondingly mandatory in accordance with Article 5 of the Regulations (Case 4) for a series of structured transactions below the minimum of Lm 5,000.

c) When carrying out occasional transfers that are wire transfers in the circumstances covered by the Interpretative Note to SR.VII

444. Although identification requirements for occasional wire transfers are caught under Regulation 5 of the PMLR, yet the Regulation does not specify the lower limit of MTL 430 (EURO 1000). Malta applies the general identification limit of MTL 5000 (EURO 11 650).

d) When there are suspicions of money laundering or financing of terrorism

445. Regulation 5 makes the identification procedure mandatory in cases 1 to 4, i.e. including case 2 – where there is suspicion. Moreover, where the identification procedures cannot be satisfactorily completed, then the Regulation requires that the business in question does not proceed or, shall proceed only under the direction of the FIAU.

446. Where to refrain is impossible or is likely to frustrate efforts of investigation, the business shall proceed on condition that an STR is filed immediately.

e) When the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

447. The identification procedures in accordance with the Regulations (Reg 5 (4)) should be repeated when doubts have arisen or changes have occurred in the circumstances surrounding that established business relationship. This identification obligation applies to all business relationships and one-off transactions.

448. The Guidance Notes (Paragraph 55) moreover add that the identification process in accordance with the Regulations should be an ongoing process and, once the identification is obtained, such identification has to be periodically renewed. The identification obligation applies to business relationships and one-off transactions.

Required CDD measures

449. Criteria 5.3 and 5.4 (a) are both marked with an asterisk. Under 5.3 financial institutions are required to identify permanent or occasional customers (whether natural or legal persons or legal arrangements) and verify the customers' identity using reliable independent source documents, data or information. In the case of customers that are legal persons and arrangements, criterion 5.4 (a) provides that financial institutions should be required to verify that any person purporting to act on behalf of the customer is so authorised and verify the identity of that person.

450. The Regulations require credit and financial institutions to seek satisfactory evidence of identity at the time of establishing a business relationship or carrying out a one-off transaction. It follows from the Regulations that evidence of identity is deemed satisfactory if it establishes that the applicant is the person who he claims to be. Therefore, evidence should be in such a form as to be able to provide undoubted identification should an investigation be undertaken at any future time. There is, however, no clear rule in an act of primary or secondary legislation concerning verification using reliable and independent source documents. The Guidance Notes set out the details of how the requirements of the Regulations should be met for personal customers (by reference to a valid identification document with a photograph – the best source being a valid ID card or a passport). Non resident personal accounts can be applied for by post but verification details must also be sought from a reputable credit or financial institution in the applicant's country of residence (paragraph 69).The requirements for identification of legal persons are set out in Regulation 5 and 7 and complemented by the Guidance Notes. In summary the institution needs to obtain satisfactory identification of the principal (the company), directors, and all other officers representing the principal. The following must be obtained: original or certified copy of the Memorandum or Articles of Association, an official company registration number and a Resolution of the Board of Directors to open an account and conferring authority on those who

will operate it. The notion of "verification" in the Regulations may arguably be covered by the language of Regulation 5(1)(a) "the production...of satisfactory evidence of his identity", but even then there is no reference to the production of "satisfactory evidence" by means of "reliable independent source documents". The Guidance Notes for credit and financial institutions, by contrast, do use the term "verification" and provide the further clarification authorised above. They flag that, for non locally registered companies, the institution must obtain the above identification in accordance with the requirements for non-resident personal customers, and that institutions should bear in mind that standards applied to the confirmation of company data vary as between jurisdictions.

451. The concept of the beneficial owner is addressed in Regulation 7 of the 2003 Regulations – in particular in Regulation 7 (4) and (5). The Regulations require reasonable measures must be taken to identify the person on whose behalf the applicant for business is acting. This is in addition to identifying the applicant for business. The Regulations furthermore provide measures for the identification of the beneficial owner.

452. For life and other investment linked insurance, the beneficiary under the policy must also be identified and verified. There are no specific provisions in the Regulations for this. However, by an amendment to the Civil Code in 2005, insurance undertakings are required to identify who the beneficiary under the policy is but there is no requirement to verify the identity. The Maltese authorities indicated that Regulation 7 (5) (b) is interpreted to include the requirement to verify the identity of the beneficiary of an insurance policy.

453. Regulation 7 requires an applicant for business who is acting on behalf of a third party to produce evidence of authorisation and satisfactory evidence of identification of the principal. In the case where the principal is a legal person the Regulation further requires the identification of all directors and qualifying shareholders (with over 10%) are identified. The Regulations also require that the applicant for business discloses the identity of the beneficial owner or beneficiaries of the qualifying shareholding and produces relevant authenticated identification documentation. The Guidance Notes refer to the importance of identifying the beneficial owners of companies and state that firms should, as far as practicable, take steps to identify the individuals who ultimately own the company. The Guidance Notes set out the types of documents that firms should collect to verify who the directors and shareholders are. The assessors experience of the Maltese system is that the requirements result in financial firms identifying and verifying the natural persons who control and own companies.

454. Furthermore, Regulation 7 (5) (b) stipulates that where the applicant for business is acting as a nominee shareholder, trustee or under any other fiduciary arrangement, a Subject Person shall not undertake any business with or provide any service to such applicant for business unless that applicant for business discloses the identity of the beneficial owners of the shares held by him or of the trust beneficiaries or of his principal (including settlor), as the case may be, and produces the relevant authenticated identification documentation. This procedure shall also apply where there are changes in beneficial ownership, beneficiaries or principal.

455. Since the requirements under Regulation 7 (5) (b) in the case of trust arrangements make reference to the identification of the "trust beneficiaries or of his principal, as the case may be", the evaluators are of the view that the wording could lend itself to different interpretation in which case this could indicate an option to disclose either. The Maltese authorities view is that the provisions of Regulation 7 (5) (b) require identification of both settlor and beneficiary. The trustees have to be identified in the same way as any other applicant for business.

456. Regulation 8 sets out exemptions for obtaining evidence of identity:

1. Where there are reasonable grounds for believing that the applicant for business is a person or institution bound by the provisions of the Regulations or is a person

who is licensed or otherwise authorised from a reputable jurisdiction to carry out an activity that is equivalent to relevant financial business;

2. Where an applicant for business to carry out any transaction (other than account opening) is introduced by a person who is bound by the Regulations or is a person who is licensed or otherwise authorised under the laws of a reputable jurisdiction to carry out an activity that is equivalent to relevant financial business, there is no need to obtain evidence of identification as long as the introducer provides the name of the applicant and gives assurance that evidence as to the identity of the applicant has been obtained and can be made available to the relevant authorities; and
3. The same applies in the case of certain insurance policies defined in the said Regulation.
4. These exemptions do not apply when a transaction is considered suspicious.

457. Turning to criterion 5.6, there is no specific requirement in the Regulations for financial institutions to obtain information on the purpose and intended nature of the business relationship. The Maltese authorities indicated a specific provision in Regulation 5 (3) (a) where subject persons shall take into account the nature of the business relationship or transactions concerned in order to establish the business profile of the applicant for business. In their view this provision satisfies criterion 5.6, though the evaluators were unpersuaded.

458. For investment firms the requirement of criterion 5.6 is part of the suitability regime, and for credit and financial institutions the Guidance Notes state that firms should follow the Basle CDD paper, which states that it is necessary to establish the purpose and intended nature of the business relationship. For insurance companies there is no explicit requirement to understand the purpose and nature of the business. However, the insurance Guidance Notes dealing with suspicious reporting imply that firms should know their customer's business or personal activities.

459. Criterion 5.7 (ongoing due diligence) is marked with an asterisk. Regulation 5 (4) states that identification process shall be repeated where doubts have arisen or changes have occurred in the business relationship and Regulation 5(5) requires financial institutions to examine with special attention any complex or large transactions which are particularly likely to be related to money laundering. However, there is no further requirement in the Regulations for ongoing scrutiny of transactions or requirement to ensure the CDD-process is kept up to date.

460. The Guidance Notes refer to the importance of knowing enough about clients to recognise unusual transactions. Arguably, it is implicit in the Regulations and Guidance Notes that financial institutions should consider transactions on accounts to ensure that they are consistent with the profile of the customer and the use of the account. The examiners were advised that this was covered in practice by the checklists which the MFSA uses when visiting credit, financial and insurance institutions. By contrast, there is no reference to this in the on-site checklist for investment firms.

Risk

461. Criterion 5.8 requires financial institutions to perform enhanced due diligence for higher risk customers.

462. For prospective customers, who are not resident in Malta but who wish to open locally based bank accounts, the Guidance Notes emphasise that it is important that the identification procedures for local residents are applied. Furthermore it is stated that it is equally important that a copy of the identification document is held on file, together with references and a verification of the

prospective customer's permanent address obtained by the institution directly from referees and/or bankers indicated by the client. Where the request is made through the post or other electronic means, i.e. in non face-to-face transactions, verification details must be sought from a reputable credit or financial institution in the applicant's country of residence, and must cover the true name or names used, current permanent address, identity reference number if any and verification of signature and likeness (photograph). The Maltese Authorities advised that under no circumstances, therefore, should an institution open non-resident accounts without prior positive identification. In addition, banks are expected to follow the Basel CDD-paper.

463. In the situations described in Regulation 8 above the requirements of obtaining evidence of identification is not deemed necessary. Such procedures do not exonerate the subject person providing the service from obtaining a copy of documents of evidence as may be necessary.

464. Firms are not permitted to use simplified or reduced CDD measures.

Timing of verification

465. Recommendation 5 requires that financial institutions should be required to verify the identity of the customer and the beneficial owner, before or during the course of establishing a business relationship or conducting transactions for occasional customers.

466. Regulation 5 requires a subject person to seek satisfactory evidence of identity of a prospective customer, defined as an applicant for business, as soon as it is reasonably practicable after contact is first made for establishing a business relationship or carrying out a one-off transaction.

467. In determining what is reasonably practicable in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including, in particular:

i. the nature of the business relationship or transaction concerned such that a subject person is able to establish the business profile of the applicant for business;
ii. whether it is possible to obtain the evidence before commitments are entered into between the parties or before money is exchanged;
iii. (in relation to one-off transaction or a series of transactions)
the earliest stage at which there are reasonable grounds for presuming that the total amount payable by an applicant for business is LM 5,000 or more.

Failure to satisfactorily complete CDD

468. Regulation 5 (1) (b) states that unless satisfactory evidence of identity is obtained as soon as it is reasonably practical after contact is first made, the business cannot proceed or can only proceed in accordance with any direction of the FIAU or on condition that an STR is filed with the FIAU.

Existing customers

469. Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk. Some examples are given in the box in the Methodology of the times when this might be appropriate – e.g. when a transaction of significance takes place, when the institution becomes aware it lacks sufficient information about an existing customer. There is a reference in the Regulations stating that where, following the identification procedures, in an established business relationship doubts have arisen or changes have occurred in the circumstances surrounding that established business relationship, then the identification process shall be repeated. The examiners consider that financial institutions should be generally required to review the identification of clients on a selective basis (knowledge of customer, business and risk profile etc.) when a transaction occurs. The criteria for reviewing existing customers in line with 5.17 could be more clearly elaborated.

470. The examiners were informed that such requirements are covered by Regulation 5 (4). This is further supported as a result of financial institutions analysing transactions in compliance with the obligation under Regulation 5 (3) in understanding the business profile of their customers, and Regulation 5 (5) in examining large complex transactions.

European Union Directive

471. According to Article 7 of the European Union Directive, Member States shall ensure that financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the competent authorities. In addition, these authorities should have the power to stop the execution of a transaction that has been brought to their attention by an obliged person who has reason to suspect that such transaction could be related to money laundering.

472. Article 28 in the PMLA deals with delay of execution of a suspicious transaction:

> Under article 28 (1) in the PMLA, where any subject person is aware or suspects that a transaction which is to be executed may be linked to money laundering or funding of terrorism that subject person shall inform the MFIAU before executing the transaction giving all the information concerning the transaction including the period within which it is to be executed. Such information may be given by telephone but shall be forthwith confirmed by fax or by any other written means and the Unit shall promptly acknowledge the receipt of the information.

473. Article 28 (2) further provides that where the matter is serious or urgent and it considers such action necessary, the Unit may oppose the execution of a transaction before the expiration of the period referred to in sub article (1) and notice of such opposition shall be immediately notified by fax or by any other written means.

474. Under article 28 (3) opposition by the Unit shall halt the execution of the transaction for twenty-four hours from the time of the notification unless the Unit shall authorise earlier, by fax or otherwise in writing, the execution of the transaction.

475. Finally article 28 (4) indicates that where within the period referred to in sub article (1) no opposition has been made by the Unit as provided in sub article (2) the subject concerned may proceed to the execution of the transaction in question and where opposition has been made as provided aforesaid the subject person concerned may proceed to the execution of the transaction in question upon the lapse of the period referred to in sub article (3) unless in the meantime an attachment order has been served on the subject person.

476. Article 29 in the PMLA deals with actions after execution of suspicious transactions which could not be delayed:

> Where any subject person is aware or suspects that a transaction which is to be executed may be linked to money laundering or funding of terrorism but it is unable to inform the Unit before the transaction is executed, either because it is not possible to delay executing the transaction due to its nature, or because delay in executing the transaction could prevent the prosecution of the individuals benefiting from the suspected money laundering or funding of terrorism, the subject person shall inform the Unit immediately after executing the transaction giving the reason why the Unit was not so informed before executing the transaction.

477. Article 7 of the 2nd Directive appears fulfilled by Malta.

Recommendation 6

478. Malta has not implemented adequate AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs) for the non-banking sector. Malta intends to adopt new provisions in the context of the Third European Union Directive. The AML Law and the Act on Banks are silent on this issue.

479. Presently there is no definition of a PEP or any particular guidance on this type of customer with the exception of banks who are expected to follow the Basel CDD paper. Financial institutions, although not bound by the law, are presently monitoring for such persons on their own initiative[29].

Recommendation 7

480. Criteria 7.1 to 7.4 of the Methodology cover cross-border banking and other similar relationships (gather sufficient information about a respondent institution, assess the respondent institution's AML/CFT controls, obtain approval from senior management, document the responsibilities).

481. Correspondent banking relationships were not addressed under the regulation at the time of the on-site visit. In the replies to the questionnaire it is stated that banks generally have internal policies for correspondent banking relationships. It is further stated that banks undertake their due diligence process to ensure that banks with whom they intend to enter into correspondent relationships come from reputable jurisdictions and/ore are of good standing. Accordingly criteria 7.1 and 7.2 are largely not covered. The obtaining of approval from the senior management for the opening of a correspondent relationship, as required under criterion 7.3 is not provided for.

482. Criteria 7.4 and 7.5 are similarly not addressed by law, regulation or other enforceable means. In practice therefore it is difficult to assess how Maltese banks are handling their correspondent banking relationships.

483. Criteria 7.1 to 7.5 potentially apply to financial institutions other than banks. The Methodology contains one example of similar relationships being established for securities transactions and fund transfers. There is no guidance on this issue by the MFSA or other authority.

484. Overall, the Maltese authorities need at least to prepare enforceable guidance covering Criteria 7.1 to 7.5 in respect of all participants in the financial sector that may be involved in correspondent or similar relationships. The evaluators were advised that proposed amendments to the Regulations will take this issue into consideration.

Recommendation 8

485. Criteria 8.1 to 8.2.1 of the Methodology cover: policies to prevent the misuse of technological developments; policies regarding non-face to face customers including specific and effective CDD procedures to address the specific risks associated with such customers.

[29] Also the 3rd EU AML Directive requires institutions and persons covered to apply, on a risk sensitive basis, enhanced customer due diligence measures in respect of transactions or business relationships with politically exposed persons residing in another Member State or in a third country. Member States are required to bring into force laws, regulations and administrative provisions to comply with the Directive by 15 December 2007

The Commission has further adopted a Directive 2006/70/EC of 1 August 2006 laying down implementing measures for the 3rd Directive including the definition of "politically exposed person". The Commission's Directive also has to be implemented by 15 December 2007 at the latest.

486. The Regulations are applicable to any business of banking or any business of an *electronic money institution*, carried on by a person or institution that is for the time being authorised, or required to be authorised, under the provisions of the Banking Act. The licensing of institution undertaking electronic banking activities is also subject to the provisions of the MFSA Licensing Directive. As part of the licensing requirements, firms are required to explain to the MFSA how they will control any electronic banking business. The MFSA reviews these controls as part of the licensing process.

487. Regulation 6 of the 2003 Regulations directs financial institutions in the case of any non-face-to-face transactions. Financial institutions who receive instructions by post or by any electronic means must conduct the same CDD as per Regulation 5.

488. It is worth noting that although banks currently provide services over the internet, they do not allow the opening of accounts over the internet. There are no internet banks in Malta, and therefore no specific guidance or measures banks should take when accepting clients over the internet. The Maltese authorities told the evaluators that payments via internet to third party payments can only be made if the third party keeps an account at the same bank.

489. Regulation 6 states that where an applicant would normally be required to produce evidence of identity before entering into business, but it is reasonable in all circumstances for the payment to be sent by post or other electronic means, or for the details of the payment to be given by telephone or other electronic means, then if the payment is made by the applicant and debited from an account held in the applicant's name, identification requirements can be waived.

490. Any mechanism which avoids face to face contact between the institution and the applicant for business inevitably poses difficulties for customer identification. Particular care should be taken when dealing with applications to open accounts received through the post to ensure that, as a minimum, the procedures mentioned under *Identification Procedures – Account Opening* in the Guidance Notes for credit and financial institutions have been followed in all respects.

491. From the replies to the questionnaire it is stated that clearly in such situations photographic evidence is not appropriate. Credit institutions might however wish to consider such evidence if authenticated by the applicant's bank which is similarly regulated in its country.

492. As noted (and in line with Article 2 and 3 in the Regulations) E-money institutions are subjected to the PMLR in the area of client identification, beneficial owner identification, record keeping, internal procedures, providing employees with training and reporting to the MFIAU.

493. The evaluators were not presented with any guidelines on new technological developments from banks, although, as noted, CDD procedures for non-face to face customers are included in the Guidance Notes for credit and financial institutions, and compliance is assessed by MFSA. Guidance Notes for investment services and life assurance do cover the issue carefully (5.20-5.25).

3.2.2 Recommendations and comments

494. The PML Regulations provides for identification requirements in the financial sector and determination of ownership of funds and determination of whether the customer acts on his own behalf.

495. For life and other investment linked insurance, the beneficiary under the policy should be verified.

496. Ongoing due diligence throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their

business and risk profile, and where necessary, the source of funds should be provided for in law or regulation.

497. The general identification limit of MTL 5000 (EURO 11 650) applies to occasional wire transfers. Maltese authorities should introduce in Law or Regulation a limit which is in line with the Interpretative Note to SR.VII.

498. The Maltese authorities should introduce more guidance on high risk customers.

499. A specific requirement should be introduced for firms to understand the purpose and nature of business relationships.

500. The Maltese authorities should implement adequate measures concerning PEPs..

501. Correspondent banking relationships were not addressed under the regulation at the time of the on-site visit. In the replies to the questionnaire it was stated that banks generally have internal policies for correspondent banking relationships. When enacting the Third Directive correspondent banking will be addressed.

502. The evaluators assess that the implementation of the CDD requirements is effective in the financial sector. Firms have a good understanding of their obligations. The meetings with the industry suggested that these obligations are generally implemented. The industry's understanding and implementation appears to be the result of the focus given to AML by the MFSA.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**Largely compliant**	• The Regulations reference to trust principals and beneficiaries could lend itself to an interpretation that it is an option to identify either the trust beneficiary or the settlor (not both). • For life and other investment linked insurance, the beneficiary under the policy is identified but not verified; • The general identification limit of MTL 5000 (EURO 11 650) applies to occasional wire transfers which is higher than the exception for the purposes of SR VII (Euro 1000). • There is no requirement in the Regulations for ongoing scrutiny of transactions or requirement to ensure the CDD-process is kept up to date. • With the exception of non-face to face customers, there is no requirement in the non-bank sector for enhanced due diligence of further risk customers, business relationships or transactions; • No specific requirement to understand the purpose and intended nature of the business relationship.
R.6	**Partially compliant**	• Malta has not implemented adequate measures concerning PEPs, which are enforceable.
R.7	**Non compliant**	No law, regulation or enforceable guidance on cross-border correspondent relationships.
R.8	**Compliant**	

3.3 Third Parties and introduced business (Recommendation 9)

3.3.1 Description and analysis

503. Identification procedures for third parties and introduced business within the context of Recommendation 9 are addressed through Regulation 8 of the PMLR, 2003. Such provisions are only applicable for "relevant financial business" between financial institutions. The rules on third parties and introduced business apply equally for banks, insurance and securities.

504. The Regulations are clear that where clients are introduced, financial institutions can rely on the introducer to undertake CDD where there are reasonable grounds for believing that the introducer is a person who is licensed to undertake relevant financial business in Malta or in respect of whom there are reasonable grounds for believing that they are authorised to undertake relevant financial business under the laws of a reputable jurisdiction[30].

505. The introducer must provide the name of the third party they are introducing and give an assurance that they have obtained evidence of the identity of the third party. Financial institutions have to make sure that supporting identification documents are made available if required by the relevant authorities.

506. The responsibility for ensuring correct CDD rests with the firm undertaking the business not the introducer. The Guidance Notes for banks do not provide examples of the types of introduction certificate that may be appropriate (although the Guidance Notes for investment services and life assurance do include examples). However, the reliance on the use of introducers appears to be very limited and it may be that the there is insufficient demand to warrant provision of sample introduction certificates.

507. There is a requirement in the Regulations that where the applicant for business is acting on behalf of another, no business shall be provided unless the applicant for business discloses the identity of the beneficial owners. This requirement applies where there are changes in beneficial owners and where the applicant for business is acting as a nominee shareholder, trustee or under any other fiduciary arrangement.

508. The Regulation on third parties and introduced business do not apply in circumstances where, in respect of any transaction, any person handling the transaction knows or suspects that the applicant for business is, or may be, engaged in money laundering, or that the transaction is carried out on behalf of another person who is, or may be, engaged in money laundering.

3.3.2 Recommendation and comments

509. The requirements of Recommendation 9 are fulfilled.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**Compliant**	

[30] "reputable jurisdiction" means any country having appropriate legislative measures for the prevention of money laundering, taking into account that country's membership of, or any declaration of accreditation by, any international organisation recognised as laying down international accepted standards for the prevention of money laundering (PMLR 2)

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

510. Criterion 4.1 states that countries should ensure that no financial secrecy law will inhibit the implementation of the FATF Recommendations. Areas where this may be of particular concern are the ability of competent authorities to access information they require to properly perform their functions in combating money laundering or financing of terrorism; the sharing of information between competent authorities, either domestically or internationally; and the sharing of information between financial institutions where this is required by Recommendations 7 and 9 or SR.VII.

511. Specific legislation for financial services, such as the Professional Secrecy Act (Cap 377), the Banking Act (Cap 371), Financial Institutions Act, Investment Services Act and Insurance Business Act impose confidentiality and secrecy obligations. However, for the purpose of the fight against money laundering, the legislation provides specific gateways for the removal of such secrecy and confidentiality provisions – when money laundering is suspected or when so required under a court order.

512. The Banking Act article 34 (1) ensures that nothing in the Act authorises the Central Bank or the competent authority to enquire or cause an enquiry to be made in a credit institution into the affairs of any individual customer of a credit institution except e.g. for the purpose of ensuring compliance of the provisions of this or any other Act, including the PMLA. The Insurance Business Act has a similar provision in article 59 (1).

513. The Banking Act article 34 (3) ensures that when an officer of a credit institution has reason to believe that a transaction or a proposed transaction could involve money laundering, he shall act in accordance with regulations laid down under the Prevention of Money Laundering Act, and any guidelines provided by the competent authority. Compliance with the provisions of this sub article shall not constitute a breach of confidentiality. In article 59 (6) in the Insurance Business Act a similar provision ensures disclosure of confidential information if suspicion of money laundering arises. Article 26 Investment Services Act contains a similar provision.

514. Furthermore, Regulation 13 of the PMLR, 2003 specifically exonerates from the duty of professional secrecy any supervisory authority, subject person or their employees and directors for any bona fide communication or disclosure to the authorities for the purpose of reporting suspicious transactions and providing additional information. Furthermore, in terms of Regulation 13 the disclosing of such information shall not involve that supervisory authority or subject person or the directors or employees of such supervisory authority or subject person in any liability of any kind. Finally, in terms of Article 30 (2) and 30A of the PMLA, Cap 373, the FIAU can demand any information it requires and the provision of such information is not a breach of confidentiality.

3.4.2 Recommendations and comments

515. There are no reported practical restrictions in the Maltese legislative framework limiting competent authorities from implementing the FATF Recommendations and performing their anti-money laundering functions. The FIU is able, in analysing reports, to access further information from the reporting entity and other reporting entities.

516. For the purpose of the fight against money laundering the legislation provides a specific exemption to remove such secrecy and confidentiality provisions.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**Compliant**	

3.5 Record keeping and wire transfer rules (R.10 and SR. VII)

3.5.1 Description and analysis

Recommendation 10

517. Recommendation 10 has numerous criteria under the Methodology which are asterisked, and thus need to be required in law or regulation. Financial institutions should be required by law or regulation:

- to maintain all necessary records on transactions, both domestic and international, for at least five years following the completion of the transaction (or longer if properly required to do so) regardless of whether the business relationship is ongoing or has been terminated;

- to maintain all records of the identification data, account files and business correspondence for at least five years following the termination of the account or business relationship (or longer if necessary) and the customer and transaction records and information;

- to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

518. Transaction records are also required under Criteria 10.1.1 (which is not asterisked) to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution. This needs to be required by other enforceable means (and be sanctionable).

519. Transaction records are covered in Regulation 9, which requires financial institutions to retain copies of identification documents and details of all transactions carried out by that person in the course of an established business relationship. The evidence of identity and the records containing transaction records must be kept for a period of "at least five years" after the relationship with the applicant for business has ended or the transaction in question was completed. In relation to records relating to a one-off transaction or a series of one-off transactions, the aforesaid period of at least five years shall commence with the date on which the one-off transaction or the last of a series of one-off transactions took place.

520. The Guidance Notes provide details of the types of transaction document to be kept (credit/debit slips, cheques, reports, client correspondence). In the Guidance Notes, article 103 states that where records relate to on-going investigations, these should be retained until it is confirmed with the FIAU or the Enforcement Authority that the case has been closed. This appears to cover the requirement to keep the records longer if required to do so by a competent authority in a specific case.

521. The Guidance Notes also state that the investigating or enforcement authorities need to be able to compile a satisfactory audit trail for suspected laundered money and to be able to establish a financial profile of any suspect account. Accordingly the Guidance Notes for credit and financial

institutions detail the following information which may be sought as part of an investigation into money laundering:

i. the beneficial owner of the account;
ii. the volume of funds flowing through the account;
iii. for selected transactions:
    a. the origin of the funds (if known);
    b. the form in which the funds were placed or withdrawn i.e. cash, cheques etc.;
    c. the identity of the person undertaking the transaction;
    d. the destination of the funds;
    e. the form of instruction and authority.

522. In the case of transactions undertaken on behalf of customers, Regulation 9(1)(b) requires credit and financial institutions to keep a record containing details of all business transacted (including any business transacted in the course of a business relationship). These will be records in support of entries in the accounts in whatever form they are used. Regulation 9(2)(b) requires that credit and financial institutions keep these records for a period of at least five years commencing with the date on which all dealings taking place in the course of the business in question were completed. In the case of records relating to a one-off or a series of one-off transactions, the period of five years commences with the date of the last or one-off transaction.

523. Although the Regulations prescribe periods of retention, the Guidance Notes add that financial institutions are to institute appropriate internal procedures to be able to retrieve relative information without undue delay. This is intended to assist institutions in providing any relevant information requested by the FIAU in terms of Article 30 (2) & 30 A of the PMLA, Cap 373.

524. The Maltese legislation provides for full access to all information by financial regulatory authorities. Once a STR is filed, the law enforcement authorities will have access to all information relating to that STR. The judicial authorities can have access to all information through court orders. Article 30 in the PMLA provides the FIAU with the power to demand all information that it deems useful for the purpose of integrating and analysing the report, notwithstanding anything in the Professional Secrecy Act and any obligation of secrecy or confidentiality in any other law.

SR.VII

525. Under Criterion SR.VII.1, the Methodology requires, for all wire transfers, that financial institutions obtain and maintain the following full originator information (name of the originator; originator's account number (or unique reference number if no account number exists) and the originator's address (though countries may permit financial institutions to substitute the address with a national identity number, customer identification number, or date and place of birth) and to verify that such information is meaningful and accurate. Under VII.2 full originator information should accompany cross-border wire transfers though under VII.3 it is permissible for only the account number to accompany the message (subject to conditions discussed below).

526. It is recognised by Malta that the extensive use of electronic payment and message systems by criminals to move funds rapidly to different jurisdictions can complicate the investigation trail. Investigations are at times even more difficult to pursue when the identity of the original ordering customer or ultimate beneficiary is not clearly shown in an electronic payment message instruction.

527. At the time of the on-site visit the requirements to carry out CDD measures in occasional transfers as covered by the Interpretative Note to SR.VII were addressed through Regulation 5 PLMR. However, the general identification limit of MTL 5000 (EURO 11 650) is higher than the exception for the purposes of SR VII (Euro 1000).

528. The Guidance Notes for credit and financial institutions require in article 108 that the fields for the ordering and beneficiary customers must be completed with either their respective names and addresses or their respective account number. This is adequate for domestic wire transfers but not for cross-border wire transfers which require name, address and account number.

529. The examiners were informed that the requirements of the Interpretative Note to SR VII are part of the current proposed amendments to the Regulations.[31]

530. Furthermore the Guidance Notes emphasise the importance to include this information for all credit transfers made by electronic means, both domestically and internationally, regardless of the payment message system used. The records of electronic payments and messages must be treated in the same way as any other records in support of entries in the account and kept for a minimum of five years.

531. To comply with SR VII countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on cross-border funds transfers and related messages. Financial institutions need only include the account number or a unique identifier for domestic wire transfers, provided that full and accurate originator information is made available within three business days. There is no obligation in the Guidance Notes to include full originator information nor do the Guidance Notes distinguish between domestic and cross-border transfers. However, the checklist used by the MFSA banking unit specifically considers whether firms are taking necessary measures to include name, address and account number.

532. The Interpretative Note to SR VII describes the roles and procedure of the ordering, intermediary and beneficiary financial institutions. No such roles or procedures are ensured by the Maltese authorities.

533. SR VII requires countries to take measures to ensure that financial institutions conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number). No such measures have been taken by the Maltese authorities.[32]

3.5.2 Recommendation and comments

534. Regulation 9 provides for the procedures to be followed by an obliged institution in retaining records of identification and transactions for a minimum period of five years after completing the transaction or terminating the business relationship. The enforceable Guidance Notes provide useful details of the kinds of introductions, copies of documents and references to be retained for the 5-year period. These record keeping rules apply to any business relationship or to one-off transactions and require that evidence of the person's identity is obtained in accordance with Regulation 5 and 7 and a record is made thereof. Representatives of the industry and discussions

[31] Regulation (EC) no. 178/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds entered into force on 1 January 2007. The Regulation which is directly applicable in Member States is considered to be the EU implementation of SR VII on wire transfer. The Regulation is consequently in force in Malta since 1 January 2007.

[32] Since the on-site visit Regulation (EC) no. 178/2006 of 15 November 2006 on information on the payer accompanying transfers of funds entered into force on 1 January 2007. The Regulation which is directly applicable in Member States is considered to be the EU implementation of SR VII on wire transfer. The Regulation is consequently in force in Malta since 1 January 2007.

with the FIAU indicated that adequate records were kept and could be made available at short notice.

535. For cross-border wire transfers there should be "full" originator information required.

536. Measures should be taken to ensure enhanced scrutiny of and to monitor for transfers which do not contain complete originator information.

537. Specific guidance should be given on batching.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**Compliant**	
SR.VII	**Partially compliant**	• The general identification limit of MTL 5000 (Euro 11 650) applies to occasional wire transfers which is higher than the exception for the purposes of SR VII (Euro 1000). • No "full" originator information required to accompany cross-border wire transfers. • No measures taken to ensure enhanced scrutiny of and monitor for transfers which do not contain complete originator information. • No guidance on batching.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 and 21)

3.6.1 Description and analysis

Recommendation 11

538. Regulation 5 (5) specifies that subject persons shall examine with special attention any complex or large transactions and any transactions which are particularly likely, by their very nature, to be related to money laundering.

539. The Regulations do not specifically cover the requirement for the findings of such examinations to be set out in writing or retained for competent authorities or auditors for at least 5 years. The examiners were informed that this will, however, be included in the revised version of the Regulations.

540. The Guidance Notes are addressing the recognition of suspicious transactions and gives examples of suspicious transactions in Appendix II.

Recommendation 21

541. Recommendation 21 requires financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not, or insufficiently apply, the FATF Recommendations. This should be required by law, regulation or by other enforceable means. It places an obligation on financial institutions to pay close attention to any country that fails or insufficiently applies FATF Recommendations and not just countries designated by FATF as non-co-operative (NCCT countries).

542. The Regulations define "reputable jurisdictions" in article 2 as any country having appropriate legislative measures for the prevention of money laundering, taking into account that country's membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering. There is, however, no specific mention in the legislation of the need for firms to pay special attention to business relationships and transactions from jurisdictions that do not, or insufficiently, apply the FATF recommendations. This issue is covered by the Guidance Notes and the examiners were informed that this issue will be covered in the revised Regulations.

543. Regulation 8 requires subjects to conduct full CDD for business relationships and transactions coming from jurisdictions which do not qualify as reputable. Neither the Regulations nor the Guidance Notes request the financial institutions to pay special attention in this regard.

544. There is no specific legislation or regular mechanism to ensure that firms are advised of concerns about weaknesses in the AML/CFT in other countries. Article 16 (1) (J) in the PMLA however, does require the FIAU to advise and assist persons to put in place and develop effective measures and programmes for AML/CFT. The Guidance Notes recommend that firms exercise due caution when dealing with jurisdictions with ineffective or deficient anti money laundering legislation, and if they are in doubt they should contact the MFSA. The industry appears to treat this as an obligation to pay special attention to high risk jurisdictions. In practice the firms were aware of high risk jurisdictions and work closely with the FIAU.

545. If a country does not apply the FAFT recommendations the MFSA can use its powers under Article 16 of the MFSA Act to require firms to terminate relationships with persons in that jurisdiction.

546. The examiners were advised that the current revision of the Regulations will cover the business relationship and transactions origination from "non" reputable jurisdictions.

3.6.2 Recommendations and comments

547. Regulation 5 (5) specifies that subject persons shall examine with special attention any complex or large transactions and any transactions which are particularly likely, by their very nature, to be related to money laundering. The industry was able to demonstrate that they had monitoring procedures in place to meet this requirement. The procedures vary according to the size and complexity of the firms. The Regulations do not specifically cover the requirement for the findings of such examinations to be set out in writing or retained and to be kept for a period of at least 5 years.

548. A requirement to pay special attention to business relationships and transactions with persons from countries that do not or insufficiently apply the FATF Recommendations should be introduced. To supplement this, country specific guidance should be considered for all financial institutions about those countries (other than NCCT jurisdictions) which might, in Malta's opinion, have weaknesses requiring such special attention. The background of transactions from such jurisdictions which appear to have no apparent economic or visible lawful purpose should be examined and written findings kept to assist competent authorities.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**Largely compliant**	• There are no specific requirements for financial institutions to set forth their findings in writing and to keep the findings available for at least five years.

R.21	**Partially compliant**	• No broad requirement to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations;

3.7 Suspicious transaction reports and other reporting (Recommendations 13, 14, 19, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13 and SR.IV

549. Essential Criteria 13.1, 13.2 and 13.3 are to be required by law or regulation.

550. Regulation 11 requires financial institutions that suspect or have reasons to believe that a transaction could involve money laundering or that a person has or may have been involved in money laundering to report to the FAIU. The report should be made as soon as is reasonably practicable. The Regulations through a 2003 amendment of the Money Laundering Act define money laundering to include laundering in relation to any criminal offence (tax matters are included for these purposes and are not excluded for STR reporting purposes). There is no financial threshold in relation to suspicious transaction reporting.

551. Regulation 11 covers both the transaction and facts (i.e. the person has or may have been involved in money laundering).

552. Criterion 13.2 requires that the obligation to make an STR should apply also where there are reasonable grounds to suspect that or they are suspected to be linked to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. Act No VI of 2005 amended the CC, Chapter 9 and the PMLA, Chapter 373 concerning acts of terrorism, funding of terrorism and ancillary offences. Through this amendment, the functions of the FIAU also include receiving reports of transactions suspected to involve funding of terrorism. At the time of the on-site visit the PMLR, which provides for the mandatory obligations for filing STRs had not been expanded to cover reporting to the FIAU of suspicious transactions linked to terrorism financing. The examiners were informed that the Regulations are due to be amended[33].

553. Art. 2 of the PLMA includes attempted money laundering in the definition of money laundering. Regulation 11 of the PMLR requires that where a supervisory authority or a subject person obtains any information and is of the opinion that the information indicates that any person has, or may have been, engaged in money laundering, the supervisory authority or subject person should, as soon as is reasonably practicable, disclose that information, supported by the relevant identification documentation to the FIAU. The PMLR is silent on the issue of reporting attempted suspicious transactions. Discussions with banks and the FIAU suggest that the practice is to report attempted transactions on the basis that attempted money laundering is included in the PMLA definition of money laundering. While this may be the case in practice, a distinction can be drawn in some cases between attempted money laundering and an attempted suspicious transaction. As this is an asterisked criteria the need for attempted transactions to be reported should be explicitly provided for in either the law or the Regulations.

[33] Reporting of transaction suspected to be related to the financing of terrorism is now provided for under the February 2006 revisions for the PMLR.

European Union Directive

554. Paragraph 1 of Article 6 of Directive 2001/308/EEC provides the reporting obligation to cover facts which might be an indication of money laundering, whereas FATF Recommendation 13 places the reporting obligations on suspicion or reasonable suspicion that funds are the proceeds of criminal activity. Regulation 11 clearly requires that the reporting obligation is activated by obtained information indicating that a person has or may have been engaged in money laundering, which is in line with EU legislation.

555. Article 7 of the Second Directive requires States to ensure that institutions and persons subject to the Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities (unless to do so is impossible or likely to frustrate efforts to pursue the beneficiaries). It is considered that Article 28 in the MLPA covers this.

556. The table showing suspicious transaction reporting is reproduced at 2.5 paragraph 346.

557. Since the FIAU was established there has been a steady number of STRs received. However, the majority of STRs are from the credit sector and the examiners would have expected to see more reporting from lawyers, accountants, nominees & trustees and casinos. Issuing the Guidance Notes for all categories of reporting entities is very important as this directly affects reporting of suspicious transactions. Therefore the evaluators urge FIAU in co-operation with other relevant authorities to issue the Guidance Notes for all reporting entities as soon as possible. The number of cases passed to the Police is broadly acceptable.

Safe Harbour Provisions (Recommendation 14)

558. Regulation 13 of the PMLR, 2003 specifically exonerates from the duty of professional secrecy supervisory authorities, subject persons (reporting institutions) and their employees and directors for any bona fide communication or disclosure. Such bona fide disclosure shall not involve such persons (legal/natural) in any liability of any kind. Furthermore articles 30 (2) and 30A (2) of the PMLA, Cap 373 lifts the obligations of secrecy on any person, legal or natural, when providing information required by the FIAU.

Tipping off (Recommendation 14)

559. Article 4 of the PMLA, Cap 373, prohibits, under sanctions, the disclosure that an investigation order has been issued or that an attachment order has been made or applied for. Furthermore, Regulation 10 (4) prohibits officers and employees of financial institutions, under a penalty of a fine (not exceeding Lm20,000) or imprisonment (for a term not exceeding 2 years, or to both), from disclosing to a person concerned or to a third party that an investigation is under way or that information has been transmitted to the FIAU.

Recommendation 19

560. The Maltese authorities have considered this issue.

561. There is no legal obligation to report all transactions above a fixed threshold to a national central agency. However, Article 4 of the Reporting of Cash Movements Regulations, 2004 provides that every week, the Comptroller of Customs has to submit to the Central Bank of Malta, details of all declarations concerning the movement of funds submitted to the Customs by incoming/outgoing passengers. The FIAU receives from Central Bank of Malta (which is a Supervisory Authority) records of the declarations mentioned above.[34]

[34] Regulation (EC) no.1889/2005 of 26 October 2005 on controls of cash entering or leaving the community will apply as from 15 June 2007. The Regulation implements SR IX and is directly applicable in all EU Member States.

Recommendation 25

562. The FIAU provides financial institutions with:

- **General feed-back**. This emanates from the Annual Report released by the Unit and through its official site on the internet.
- Information on current techniques, methods and typologies. This information is put forward by the FIAU during the Joint Committee meetings which are held monthly.
- **Feedback upon request** by a financial institution in terms of Article 32 of the PMLA, Cap 373, in which case such feedback would be on a case by case basis.

3.7.2 Recommendations and comments

563. At the time of the on-site visit there was no specific requirement in the Regulations to report terrorist financing. This reporting duty needs to be explicitly clarified in the law to include all funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. There have been no reports relating to the financing of terrorism, and no guidance issued.

564. The law and Regulations should be amended to specifically include the requirement to report attempted suspicious transactions.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**Partially compliant**	• Attempted transactions are not explicitly covered; • No reporting obligation on financing of terrorism.
R.14	**Compliant**	
R.19	**Compliant**	
R.25	**Compliant**	
SR.IV	**Non-compliant**	Mandatory obligation to report suspicious transactions of financing of terrorism is not in place.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15

565. Recommendation 15, requiring financial institutions to develop programmes against money laundering and financing of terrorism, can be provided for by law, regulation or other enforceable means.

566. Regulation 3 requires firms to establish procedures for identification, record keeping and internal reporting. The Guidance Notes provide further details of the steps firms are expected to take. These cover clear responsibilities and accountabilities for the appropriate internal controls. As part of the licensing requirements firms are required to have internal audit departments that review these controls.

567. In addition, the Regulations specify that firms must take the appropriate measures to keep their employees aware, and provide them with training, in the recognition and handling of suspicious transactions. The designated reporting officer must be empowered to disclose information to the FIAU and is exonerated from the duty of professional secrecy for this purpose.

568. Regulation 3 requires firms to provide relevant training to their employees that cover the Regulations and the firms' internal controls. Firms have discretion on the frequency with which they provide this training. The Guidance Notes require ongoing and refresher training. The examiners were advised that financial institutions train on an annual basis and this is the expectation of the supervisors.

569. Regulation 10 (1) sets the requirements for internal reporting procedures. These require that a designated reporting officer (MLRO) shall be appointed to receive any information or other matter which gives rise to a knowledge or suspicion that another person is engaged in money laundering. The Regulations require that consideration should be taken of such report by the reporting officer or designated person in the light of all other relevant information in order to establish whether or not the information or other matter contained in the report gives rise to a reasonable suspicion of money laundering. In order to complete this consideration reasonable access has to be given to the MLRO to any information held by the subject person which may be of assistance in determining the suspicion of the report. The Regulations stipulate that a procedure has to be in place whereby any suspected money laundering activity by the reporting officer or designated person is reported to the FIAU.

570. Due to the significant responsibilities of the MLRO, the Guidance Notes for all sectors recommend that financial institutions and supervisory authorities ensure that the MLRO is sufficiently senior to command the necessary authority. It is recognised that this will vary according to the size of the institution.

571. The authorities place a significant degree of importance on the role of the MLRO: prior to taking up their appointment MLROs are required to sign a letter confirming that they are fully aware of the obligations that the role of the MLRO has under the applicable legislation.

572. Financial institutions have their own recruiting procedures and requirements; however, it is common practice that a Malta Police Conduct Certificate is one of the recruitment requisites for designated reporting officers and the appointment must be approved by the MFSA. In addition, all investment advisors, portfolio managers, fund managers, persons arranging deals and / or stockbroking services are subject to MFSA’s due diligence process and individually approved by the MFSA (apart from MFSA’s approval of all qualifying shareholders (persons having over 10% control) and directors of Licence Holders.

Additional Elements

573. There is no specific requirement to ensure that the MLRO has the ability to bypass his/her next reporting level and report to senior management of the board of directors. The prominence given to the MLRO role by the Guidance Notes and the MFSA means that in practice the majority of MLRO's report directly to senior management.

Recommendation 22

574. There is no explicit requirement for firms to ensure that their overseas branches and subsidiaries follow AML/CFT procedures. However, as part of the approval process for foreign branches and subsidiaries the MFSA can require that overseas offices follow the MFSA requirements for AML/CFT.

575. The PMLR 2003 provides for the MLRO of an institution to share information with the MLRO of other group members, both domestic and foreign. In terms of the Banking Act, cross-border establishments, including representative offices, are subject to the consent of the regulator who, in giving its consent, ensures within its policies, that such establishments do not hinder the proper and effective supervision of the financial institution. Within such policies would also feature the observance of anti-money laundering measures.

576. The Insurance Business (Criteria of Sound and Prudent) Regulations, 1999 issued under the Insurance Business Act puts the obligation on insurance undertakings to ensure that foreign branches and subsidiaries carry out their activities in accordance with the applicable laws. Therefore if the foreign branches and subsidiaries carry out life business they are required to adhere to the anti-money laundering obligations to which the Maltese head office is subject, to the extent that host country laws permit. There is only one domestic insurance company with a foreign branch. This branch carries on non-life insurance business.

577. Save for the above, there is no general provision in either law, regulation or other enforceable means which would cover criteria 22.1, 2 (and 3) for financial institutions generally.

Additional elements

578. Financial institutions subject to the Core Principles are supervised on a consolidated basis by the regulator in terms of Banking Directive on Consolidated Supervision. Furthermore the provision of Regulation 10 in the sharing of information by MLROs within the group and the fact that some financial institutions have also approved a group MLRO is conducive to the conclusion that in practice, financial institutions do apply, and indirectly are required to perform, CDD measures on a group basis.

3.8.2 Recommendation and comments

Recommendation 22

579. There is no general provision in either law, regulation or other enforceable means which would cover criteria 22.1, 2 (and 3) for financial institutions generally. The private sector institutions with which the team met had policies and procedures in place which they were able to explain to the evaluation team.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**Compliant**	
R.22	**Non compliant**	• No general obligation for financial institutions which ensures their branches and subsidiaries observe AML/CFT measures consistent with Maltese requirements and the FATF Recommendations to the extent that host country laws and regulations permits;

		• There is no requirement to pay particular attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply FATF Recommendations; • Provision should be made that where minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.

3.9 Shell banks (Recommendation 18)

3.9.1 Description and analysis

Criterion 18.1

580. The Banking Act Section 7 (1) prevents the establishment of banks in Malta that do not have a physical presence in their place of operation and management with an independent board.

581. The approval of a banking licence in terms of the Banking Act is subject to the criteria established by the Act itself under Section 7 and other prudential criteria established and Banking Directive No 01 on the licensing procedures. Under these criteria no bank can be established in Malta without a physical presence of a place of operation and management with an independent board of directors.

Criteria 18.2 and 18.3

582. There appear to be no specific legally enforceable provisions prohibiting the financial institutions (including banks) from entering into, or continuing correspondent banking relationships with shell banks. Nor are there obligations requiring financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. The MFSA checks as part of its on-site work whether credit and financial institutions are operating accounts for shell banks.

3.9.2 Recommendations and comments

583. There is no specific legally binding prohibition on financial institutions on entering into or continuing correspondent banking relationships with shell banks. Nor is there any obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.

584. Malta should review their laws and regulations and procedures and implement a specific requirement that covers these obligations in all financial institutions.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**Partially compliant**	The requirements as per Banking Act Section 7 (1) restrict the establishment of shell banks in Malta. However, there is no specific legally binding prohibition on financial institutions on entering into or continuing correspondent banking relationships with shell banks. Neither is there any specific obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign

		country does not permit its accounts to be used by shell banks.

Regulation, supervision, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs / Role, functions, duties and powers (including sanctions) (R.17, 23, 29 and 30)

3.10.1 Description and analysis

Authorities' roles and duties, structure and resources – Recommendations 23 / 30

585. Criterion 23.1 requires that countries should ensure that financial institutions are subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF standards. Criterion 23.2 requires countries to ensure that a designated competent authority (or authorities) has responsibility for ensuring AML/CFT compliance.

586. The Prevention of Money Laundering Act authorises the FIAU to ensure that persons are complying with the AML laws (which includes the CFT issue).

587. The FIAU has sufficient operational independence and autonomy to undertake its responsibilities. The Board of Governors is responsible for the policies to be adopted by the Unit. The independence and autonomy of the Board of Governors of the FIAU is backed by legislation. Article19(5) of the Prevention of Money Laundering Act, Chapter 373 lays down that, members of the Board shall discharge their duties in their own individual judgement and shall not be subject to the direction or control of any person or authority. The Director and staff of the FIAU are responsible only towards the Board of Governors.

588. Members of the Unit have been given adequate and relevant training for combating money laundering and terrorist financing. It also has to be pointed out that some of the members of the Unit have had training in combating money laundering and terrorist financing in their previous jobs (in credit institutions or in the Police Force).

589. The FIAU has no sanctioning powers. If it encounters any potential or actual non compliance of Regulations, it can refer the case to the MFSA (or to the Lotteries & Gaming Authority if it concerns casinos) to investigate the case and apply sanctions where appropriate. The Malta Police may also be informed and, if appropriate, criminal charges can be brought.

590. The FIAU may require persons or firms covered by the Regulations to provide it with information or documents relating to internal procedures for compliance or any other documents as may be required by the FIAU in carrying out its functions. The MFSA, in fulfilling its supervisory responsibilities, can likewise require provision of documents/information as it deems necessary in fulfilling its responsibilities.

591. The FIAU can request any supervisory authority to do all or any part of AML/CFT supervision, providing it with supervisory information and statistics, and also conduct inspections (both on site/off site) on its behalf. The FIAU may authorise any of its officers or employees to accompany the supervisory authority in any on-site examination as may be required.

592. The FIAU and the MFSA have signed an agreement whereby the MFSA conducts on-site inspections on behalf of the FIAU and reports to it accordingly.

593. Financial institutions have to be licensed and regulated by the MFSA. All financial institutions are subject persons for the purposes of the Prevention of Money Laundering Regulations. All financial institutions are therefore subject to AML/CFT supervision in accordance with the provision of Article 26 and 27 of the PMLA and to the financial regulation and supervision of the MFSA.

594. The MFSA conducts on-site and off site inspections in connection with its financial supervision responsibilities which also include compliance with AML and CFT. The MFSA also undertakes on-site anti-money laundering examinations on behalf of the FIAU in accordance with the agreement between the MFSA and the FIAU in terms of article 27 of the PMLA.

595. The MFSA, as a supervisory authority is obliged by the Regulations to file STRs with the FIAU on suspicious transactions encountered in the course of its supervisory work.

596. The Act governing the MFSA ensures its independence from government and other bodies while assuring its accountability to Parliament. The strategic management of and public accountability for the MFSA is vested in its Board of Governors appointed by the Prime Minister. The Governors are obliged to report annually to Parliament and the organisation is also subject to scrutiny by the Public Accounts Committee, consisting of members of Parliament from government and opposition parties.

597. The Supervisory Council of the MFSA has responsibility for approving and issuing licences and other authorisations, imposing sanctions and making high level decisions on the supervision of persons and other entities licensed by the MFSA. The Board of Governors does not approve regulatory action or intervention by the MFSA.

598. The MFSA is funded from licence and registration fees as well as other money receivable by Authority, for example administrative penalties. The funds of the MFSA are sufficient to react flexibly and quickly.

599. The MFSA has in force an employment strategy to hire, train and maintain staff with appropriate qualifications and experience. The level of remuneration of staff is broadly above general government service and comparable to some but not all private firms.

600. Staff involved in supervisory and regulatory work hold a degree/diploma in accountancy/legal/management/insurance. Staff receive training in specialised areas on a regular basis.

601. MFSA staff are protected against legal prosecution for actions taken as part of their duties by legislation. The MFSA has established and enforces a code of conduct for its staff.

602. The confidentiality standards in the legislation are comprehensive. The MFSA Act, Section 17 obliges all employees of the authority to treat any information acquired in the discharge of their duties as confidential, and precludes them from directly or indirectly disclosing such information.

603. MFSA staff are also subject to the provisions of the MFSA Staff Handbook regarding confidentiality. The Handbook includes provisions concerning conflicts of interest and guidelines regarding gifts and hospitality. The officials and employees have, since beginning of 2003, been required to disclose their financial interest related to supervised entities.

604. The MFSA is entitled to outsource certain tasks to third parties – auditors, actuaries and other specialists in the field. These third parties are subject to the confidentiality rules that apply to the employees of the MFSA.

605. All MFSA employees are bound by strict confidentiality provisions in the MFSA Act. In this regard all records, information or documents are to be treated by MFSA staff in strictest confidence. This obligation continues even after the employment with the MFSA, for whatever reason, comes to an end.

606. The MFSA provides its staff with training and development opportunities on a regular basis. The MFSA has adequate trained staff to conduct AML/CFT examinations. There are 20 banking staff, 10 securities staff, 4 insurance staff and 4 trust business staff who are trained examiners. At the FIAU the director and one board member review MFSA inspection reports.

Recommendation 29

607. Criterion 29.1 requires that supervisors should have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and financing of terrorism.

608. As noted, the FIAU in Malta (like many other FIUs) is the primary designated authority responsible for ensuring that financial institutions adequately comply with AML/CFT requirements. The FIAU is empowered by the Prevention of Money Laundering Act, Chapter 373 and the Prevention of Money Laundering Regulations to supervise financial institutions and DNFBPs vis-à-vis anti money laundering and terrorist financing. However, the FIAU has no sanctioning powers. Therefore, if during any analyses it encounters any non observance of regulations, it can refer the case (and make recommendations) to the MFSA if it concerns any financial institution or to, the Lotteries & Gaming Authority if it concerns casinos. The MFSA has the power to investigate the case and apply sanctions where there is non-observance of regulations. In any other case the Malta Police is informed and if there is enough evidence Court action is taken.

609. Both the prudential supervisors and the FIU advised that they had all the powers set out in Criterion 29.2 in the exercise of their supervisory functions (including reviewing books and records and sample testing).

610. The powers of the FIAU to monitor and ensure compliance by financial institutions with Anti Money Laundering requirements are derived from Article 26 and 27 of the PMLA. The MFSA, as the financial services regulator, is also empowered to supervise those it licenses not only on regular compliance in the field of financial services but also on AML compliance.

611. The PMLA empowers the FIAU to:
- Monitor compliance by subject persons.
- Liaise with supervisory authorities to ensure compliance.
- Request any supervisory authority to provide it with information in its possession, including details of on-site and off site inspections.
- Carry out on-site inspections.

612. The MFSA conducts both on-site and off-site monitoring work and compliance testing. Compliance visits assist the MFSA in monitoring how closely license holders adhere to license conditions and to the standards required by law. An on-going compliance-testing program is in place. The purpose of these visits is three fold: to provide assistance to license holders; to identify issues which may give rise to regulatory concerns; and to ensure adherence to regulatory requirements.

613. During compliance visits to Licence Holders, MFSA Officers discuss prevention of money laundering issues with the MLRO, management and staff. Discussions are held to determine:

- The training given to staff members,
- Their awareness of the regulations and any recent changes;
- Whether the MLRO has written procedures, and
- To determine the attitude towards the regulation.

614. As part of its regulatory work the MFSA has established an on-going compliance programme which includes on-site visits of all its licence holders.

615. Such on-site visits are carried out either as part of its own supervisory programme or at the request of the FIAU in terms of the PMLA, Cap 373.

616. Inspections can be very extensive or only targeted at specific operations in particular where concerns are triggered through off-site monitoring. Routine on-site inspections cover all factors which may have an impact on the performance of the licence holder. These inspections broadly cover the main areas of the organisation. Inspectors carrying out on-site inspection have access to any document and information of the company. Broadly speaking compliance visits are carried out on licence holders on a bi-annual basis whereas targeted inspections are carried out as and when the need arises.

617. When problems are detected during an on-site inspection the MFSA, in consultation with the FIAU) investigates the reasons behind the problems. Subsequent to on-site inspections, the MFSA discusses its findings with directors/senior management. A follow–up letter detailing the MFSA's findings is sent to the directors (and forwarded to the FIAU) and they are requested to give feedback including a proposed plan of action where clarification or remedial action is requested. Directors are requested to reply to the letter within a given timeframe. On-site inspections are followed up through further exchanges of correspondence and/or verification through a follow up on-site. The FAIU is closely involved in the follow up work.

618. In terms of Article 26 of the PMLA, Cap 373, the FIAU may require subject persons to provide it with such information or documents relating to that subject person's internal procedures for compliance or any other documents as may be required by the Unit in the performance of its function under the Act. In terms of Article 30 and 30A the Unit may further demand from subject person or any other persons such information that it deems useful for the purpose of its function. The MFSA, in fulfilling its supervisory responsibilities, can likewise require license holders to provide it with all documents/information as it deems necessary in fulfilling such responsibilities. The powers are derived from the MFSA Act and the specific financial legislation.

619. There is no need for a court order to require Licence Holders to provide information or documents to the MFSA or for subject persons to provide information or documents to the FIAU in terms of the PMLA, Cap 373.

620. The FIAU has no sanctioning powers. However, the FIAU can refer any shortcomings encountered during any analyses to any regulator concerned or connected with AML irrespective whether the shortcoming concerns procedural matters or non-compliance with recommendations or regulations to combat money laundering or terrorist funding. Furthermore, non-compliance with the PMLR, 2003 is an offence as defined in the Regulations subject to fine and imprisonment or conviction. The FIAU therefore may refer such inconsistencies with the Police for further investigation and prosecution.

621. Article 16(g) of the Prevention of Money Laundering Act, Chapter 373 empowers the FIAU to make recommendations, issue guidelines and advise the Minister of Finance on all matters and issues relevant to the prevention, detection, investigation, prosecution and punishment of money laundering and funding of terrorism.

622. In terms of the relevant specific financial legislation, the MFSA may adopt a number of administrative and other measures against, a licence holder found to have breached relevant regulatory requirements, including non compliance with AML obligations.

Recommendation 17

623. The PMLA Article 12(1) empowers the Minister to make rules or regulations for the regulation of and control of the financial institutions to provide for *inter alia* procedures and systems for training, identification, record keeping, internal reporting and reporting to supervisory authorities for the prevention of money laundering and the funding of terrorism. Article 12 (3) states that the rules or regulations made by virtue of this same article may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine of Lm 20,000 (twenty thousand Liri) or imprisonment for a term not exceeding two years or both such fine and imprisonment.

624. In addition to this Regulation 3 (2) imposes criminal penalties for contravention of the provisions of the regulations on any subject person. The sanctions, on conviction, shall be a fine not exceeding twenty thousand Maltese Liri or imprisonment for a term not exceeding two years, or to both a fine and imprisonment.

625. Furthermore, non compliance with the PMLR or the Guidance Notes may be subject to sanctions by the MFSA under relevant sectoral financial legislation.

626. Subject persons refer to any legal or natural persons carrying out either relevant financial business or relevant activity. Regulation 4 further states that where an offence against the compliance provisions of Regulation 3 is committed by a body or other association of persons, be it corporate or unincorporate, every person who at the time of the commission of the offence who was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence. Thus sanctions could apply to directors and senior management.

627. While the FIAU has no formal sanctioning powers, in its supervisory responsibilities, as laid down in the PMLA, Cap 373, the FIAU has the power to order subject persons to comply with specific instructions in order to ensure compliance with the Regulations. The FIAU can also require (under Article 26 of the PMLR) periodic reporting on internal controls and procedures provided that requests relate to Anti Money Laundering issues. If it encounters any potential or actual non compliance with the Regulations it can refer the case to the MFSA to investigate. Further sanctions, including the withdrawal of licences or the restriction of the powers of officials or the replacement of officials can be imposed by the MFSA if, in their opinion, the non-compliance observations made by the FIAU call for such action. The FIAU can also refer cases of non-compliance to the Police, and, if appropriate, criminal charges can be brought.

3.10.2 Recommendations and comments

628. There is no requirement to report suspicion of terrorist financing and consequently no supervision of this issue.

629. There are currently no sanctioning powers under the Regulations for failing to report financing of terrorism transactions, despite the wide wording of A.12(1) PMLA which embraces funding of terrorism.

630. There are some proportionate and dissuasive sanctions in place. However, the imposition of public sanctions has not been used by the MFSA in respect of breaches of money laundering

requirements. The deterrent impact of the sanctioning regime would be enhanced by public action (where warranted) against firms or individuals.

3.10.3 Compliance with Recommendations 17, 23 and 29

	Rating	Summary of factors underlying rating
R.17	**Largely compliant**	Sanctions which may be proportionate and dissuasive are available for AML breaches by the FIU and the MFSA, but the effectiveness of the overall sanctioning regime, at present, is questioned because public sanctions have not been imposed for AML failings. The ability to sanction in respect of failure to report unusual business operations involving funds which may be linked or related to terrorism and financing of terrorism should be clarified.
R.23	**Largely compliant**	No requirement to report suspicion of terrorist financing and consequently no supervision of this issue.
R.29	**Largely compliant**	No requirement to report suspicion of terrorist financing and consequently no supervision of this issue.

3.11 Financial institutions - market entry and ownership/control (R.23)

3.11.1 Description and analysis

Recommendation 23 (criteria 23.3, 23.5, 23.7)

631. The law requires measures to ensure that the authorities are fully aware of the people behind as well as those running a financial institution. The relevant requirements are contained in the Banking Act and the Financial Institutions Act.

632. These laws require that the MFSA has a full understanding of the beneficial owners and directors as well as those running a financial institution. As part of the authorisation process, the MFSA is required to ensure shareholders, controllers and directors are suitable for the prudent management of the firm. There is also an assessment of persons with close links to the firm to ensure that they do not prevent it from exercising effective supervision of that company.

633. Following authorisation the MFSA must provide consent to changes in shareholding and directors of firms and may make an order requiring a person to cease to be a controller or restraining such a person from becoming a controller or director. The Banking Act specifically prevents persons who have been involved in money laundering or found guilty of a crime affecting public trust, theft, fraud, extortion or of knowingly receiving property obtained by theft or fraud from becoming officers of firms.

634. The rules are to be found in the Banking Act article 7 on licensing (qualifying shareholders and close links), article 13 on acquiring or increasing/decreasing a significant or a qualifying shareholding, article 13 (5) and on selling/merging/re-constructing a business, article 14 on controllers and directors of credit institutions, article 32 on prevention of persons who have been involved in money laundering or the like to be officers of credit institutions. The Banking Act is supplemented by directives.

635. The MFSA approval of new significant shareholdings (ie over 20%) applies where increases are such that they would cause it to equal or exceed 20%, 30%, 50% or 100%. Approval is also required for reductions of shareholders to below 100%, 50%, 30% or 20%, and for other sales of significant shareholdings.

636. The Financial Institutions Act contains provisions which are similar to those in the Banking Act. Similar legal requirements and procedures are in force in respect of market entrance in the securities and insurance sectors.

637. Criteria 23.3.1 requires directors and senior management of financial institutions subject to the Core Principles should be evaluated on the basis of "fit and proper" criteria including those relating to expertise and integrity.

638. In submitting a request for MFSA's approval of a new director or senior manager of a Licence Holder, such person is required to submit a 'Personal Questionnaire' which requires comprehensive details on the person's background, work experience, and qualifications, including the submission of a police conduct certificate. Extensive due diligence enquiries are conducted by the MFSA to past employers, banks, professional bodies and other regulators as applicable etc. with a view to ensuring that only persons of integrity and good repute who satisfy the 'fit and proper' test are approved.

639. Insurance Directive 2 of 1999 on Criteria of Fitness and Properness provides much more detailed provision on the testing and controls to be made.

640. The fitness and properness criteria are on-going requirements of an authorisation and are the responsibility of the company concerned, which is responsible to notify the MFSA of circumstances relevant to the fitness and properness of its key functionaries. In addition, the Insurance Act places a further obligation on approved auditors and actuaries who should immediately inform the MFSA, through the company's management, or if circumstances so warrant, directly of any matter which relates to and may have a serious adverse effect on the insured, the policyholder or any other interested person of the authorised company. For banks similar provisions are found in Articles 26 and 31 (9) of the Banking Act and for securities firms in Article 18 of the Investment Service Act.

641. Foreign exchange businesses. It is prohibited to operate Foreign exchange business without a licence. Natural or legal persons providing a money or value transfer service or currency changing service require a license to conduct such financial business in Malta. The Financial Institutions Act, Chapter 376 deals with this type of non-banking financial institutions.

642. The under mentioned articles of this legislation concern:

- Article 3(1)(2)(3) deal with the licensing requirements to conduct such a financial business.
- Article 4(1)(2)(3) specifies that there must be a written application to apply for a license under this law.
- Article 5(a to d)(2)(3)(4)(5) (6) deal with the issuing procedures of a license.
- Article 6(1)(a to e)(2) (a to g)(3)(a to d)(4)(5)(6)(7) concern the restrictions concerning the license and the revocation of the license.
- Article 7(1)(a & b)(2)(3) concern notification of any proposed variation of the license, restrictions or revocation of a license.

643. Money or value transfer service. All persons (natural or legal) providing a money- or value-transfer service or a money service must be licensed by the MFSA in terms of the Financial Institutions Act. All institutions so licensed under this Act are subject to the PMLR, 2003.

644. The Malta Financial Services Authority is the supervising authority dealing with the above indicated non-banking financial institutions.

645. Non-banking financial institutions require a license from the Malta Financial Services Authority to conduct their business in Malta. The following are the various legislations licensing/control of these non--banking financial services providers : Investment Services Act, Chapter 370; the Financial Institutions Act, Chapter 376; Insurance Brokers & Other Intermediaries Act, Chapter 404; and Special Funds (Regulation) Act., Chapter 450.

3.11.2 Recommendations and comments

646. The supervisory authorities have adequate legal structures to prevent criminals from controlling financial institutions. As far as the licensing procedures in the financial market are concerned, these are broadly in line with the relevant European Union legislation and FATF Recommendations.

3.11.3 Compliance with Recommendation 23 (Criteria 23.1, 23.3, 23.5, 23.7)

	Rating	Summary of factors underlying rating
R.23	**Compliant**	

3.12 AML / CFT Guidelines (R.25)

3.12.1 Description and analysis

647. Guidance Notes are in place for the various industry sectors. At the time of the on-site visit the Guidance Notes for credit and financial institutions, insurance brokers and sub-agents, insurance companies carrying on life business, investment services and stockbrokers had last been amended in 2004.These provide useful guidance for firms in implementing effective anti-money laundering controls.

648. In the replies to the questionnaire it is emphasised that in view of the recent inclusion of the DNFBP as subject persons in term of the PMLR, the Joint Committee is co-ordinating the development of new guidance notes for the various sectors. It is also intended to consolidate the respective guidance notes. These have not yet been amended.

649. There are no guidelines on CFT.

650. With regard to feedback (Criterion 25.2), as was noted earlier the FIAU publishes at least once a year a report on its activities in general to the Minister. Furthermore PLMA article 32 requires that the FIAU provides appropriate information upon request to a disclosing institution in order to establish the current status of a specific disclosure.

651. The Guidance Notes stress the importance of feedback as an important element in a developed system of communications. It follows from the Guidance Notes that financial institutions are expected to ensure that: Money Laundering Reporting Officers (MLRO) keep branch managers or similar officers informed of the development of reports filed internally through them; all contacts between branches and the FIAU or the Enforcement Authority is reported back to the MLRO; the institution's Senior Management is continuously updated and fully aware of any situation concerning suspicious transactions; the Competent Authority is kept informed of any developments on reports which had been copied to it for regulatory purposes.

652. It is pointed out in the Guidance Notes that where an investigation is dropped or a business relationship is terminated immediate written communication between the parties concerned is of utmost importance.

653. There were no general, annual reports on typologies and trends regularly made available (with, for example, sanitised examples of actual money laundering cases). What has been done is, in the examiners' view, not sufficient to satisfy Criterion 25.2 on general feedback. The FIU itself receives no feedback from law enforcement, and therefore appropriate case-specific feedback is impossible to provide and has not been addressed. The recommendations on general and on specific or case by case feedback in the FATF Best Practices Paper as of 2 June 1998 should be addressed. Many of the representatives of obliged institutions that the team met expressed major concerns about this issue.

3.12.2 Recommendations and comments

654. There is an absence of sector specific guidance for financial institutions on CFT issues. The examiners strongly recommend to the competent authorities that they urgently establish Guidelines that will assist financial institutions to implement and comply with their respective CFT requirements. These should be co-ordinated and consistent across the various sectors. The Malta authorities should consider reviewing the guidance notes for the various sectors to ensure that (where appropriate) the guidance provides similar amounts of detail. At present some industry sectors receive more detailed guidance than others.

655. At a minimum, guidelines should include a description of FT techniques and methods and any additional measures that financial institutions should take to ensure that their CFT measures are effective.

656. It is also recommended that the issue of adequate and appropriate feedback be addressed by the competent authorities in line with the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons and that this issue should be addressed by the competent authorities collectively (see Recommendation 31).

3.12.3 Compliance with Recommendation 25

	Rating	Summary of factors underlying rating
R.25	**Partially compliant**	CFT issues are not addressed in sector specific guidelines. The provision of feedback is not fully in line with the FATF Best Practice Guidelines on providing feedback.

3.13 Ongoing supervision and monitoring (R.23 [Criteria 23.4, 23.6 and 23.7])

3.13.1 Description and analysis

657. All licensed institutions are subject to on-going supervision by the MFSA. The major banks are assessed individually and supervisory visits conducted according to the different risks to which they are exposed. The different areas which are covered during separate inspections include credit, treasury, internal audit, risk management, deposit accounts, prevention of money laundering, verification of statutory/regulatory reporting corporate governance and representative offices, amongst others.

658. With regard to the other institutions whose business is more restricted and which do not take deposits from Maltese customers, top-down inspections are carried out, where all risks inherent in operations are analysed. Again, this is carried out mostly on a sample basis.

659. The supervisory cycle of all institutions is between 24 and 30 months.

660. All persons (natural or legal) providing a money or value transfer service or a money or currency exchange service must be licensed by the MFSA in terms of the Financial Institutions Act. All institutions so licensed under this Act are subject to the PMLR, 2003.

661. Such entities have to be licensed under the Financial Institutions Act 1994. As such they are therefore subject to regular supervision undertaken by the MFSA Banking Unit Inspectors. The supervisory cycle for these entities is similar to that for credit institutions licensed and supervised in terms of the Banking Act, that is, 24-30 months under normal circumstances. The main area of supervision in relation to such entities relates to PML issues.

662. Non-banking financial institutions require a license from the MFSA (Malta Financial Services Authority) to conduct their business in Malta. MFSA is the regulator and supervisory authority of all banking and non-banking financial institutions. All financial institutions in Malta are subject to AML supervision by the MFSA and the FIAU.

663. The MFSA has a programme of visits in place to asses AML controls in the subject persons that it regulates. The visits follow detailed checklists. However, some of the checklists (eg credit and financial institutions) contain more detail than the checklists used by other sectors. The examiners

recommend that the MFSA reviews the checklists and ensures that all sectors are adopting a consistent approach to assessing the AML/CFT risk. The on-site inspection visits follow a rolling programme and do not take account of firm specific risk. This is not currently a concern but should the resources of the MFSA reduce or the number of licensed subjects increase, the MFSA may need to consider applying a risk based approach to the inspection visit programme.

664. The MFSA has a general system of administrative sanctions. Sanctions however have as yet not been applied in respect of breaches of the Regulations but have been used in other areas where it has identified non-compliance. For example, sanctions have been imposed for market abuse, late submission of documents and breaches of conduct of business requirements.

665. With regard to statistics the MFSA keeps detailed statistics covering on site examinations of AML. Details of any sanctions taken by the MFSA are made public. As noted, to date the MFSA has not imposed sanctions for AML related issues.

666. There are no statistics covering CTF issues due to the absence of mandates to inspect financing of terrorism issues.

On.-site examinations AML/CFT

BANKING AND FINANCIAL INSTITUTIONS ON-SITE EXAMINATIONS				
Year		**Full Review (including AML)**	**AML Review**	**Specific Risk**
2001	Credit Institutions	5	1	6
	Financial Institutions *	5	-	-
2002	Credit Institutions	3	-	8
	Financial Institutions *	6	-	-
2003	Credit Institutions	6	-	5
	Financial Institutions *	7	-	-
2004	Credit Institutions	3	2	7
	Financial Institutions *	1	-	-
2005 (as at 30 Sept)	Credit Institutions	3	2	7
	Financial Institutions *	5	-	-
* Excluding institutions falling under the supervision of the Securities and Insurance Units				

	Insurance Companies			Insurance		
	Insurers	**Captive**	**Management**	**Agents**	**Brokers**	**Sub Agents**
2000	Nil	Nil	Nil	Nil	16	Nil
2001	5	1	Nil	Nil	9	1
2002	2	Nil	1	Nil	13	2
2003	Nil	Nil	Nil	1	3	13
2004	5	Nil	Nil	Nil	2	5
2005*	2	Nil	Nil	Nil	8	Nil

**Jan - Sep 2005*

On-site examinations - Securities

Year	Number of Visits
2000	32
2001	64
2002	54
2003	84
2004	62
2005 till end July	35

On-site examinations having an AML content carried out at nominees (now being phased out) and trustees

Year	*No of Visits*
2000	69
2001	120
2002	81
2003	124
2004	53
2005*	30
*up to 30th September	

667. Criterion 32.2 requires that competent authorities should maintain comprehensive statistics or matters relating to the effectiveness of systems for combating money laundering and financing of terrorism. In the absence of comprehensive statistics on on-site inspections on CFT issues (and the absence of mandates to inspect financing of terrorism issues), the examiners consider that

Criterion 32.2 is not fully satisfied with regard to AML/CFT on-site inspections, and sanctions for breaches.

3.13.2 Recommendations and comments

668. The arrangements for supervision on AML for all licensed institution are found to be satisfactory. No supervision of CTF is carried out as there is no mandate.

669. The MFSA keeps detailed statistics covering on site examinations of AML. No examinations of CTF and consequently no statistics on CTF.

3.13.3 Compliance with Recommendation 23 (Criteria 23.4, 23.6 and 27.7)

	Rating	Summary of factors underlying rating
R.23	**Largely compliant**	No regulatory or supervisory measures on CTF reporting.

3.14 Money or value transfer services (SR.VI)

3.14.1 Description and analysis

670. The Financial Institutions Act applies to these institutions. In terms of the Financial Institutions Act, MVT service providers must be appropriately licensed by the MFSA as a financial institution in terms of the Financial Institutions Act in order to provide such services. Once licensed, MVT services providers are subject to the regulatory and prudential provisions of the MFSA and are, consequently subject, to supervision by the MFSA.

671. All institutions licensed under the FIA are considered as "subject persons" for the purpose of the PMLR and hence subject also to anti money laundering supervision by the FIAU in terms of the provisions of the PMLA, Cap 373.

672. In terms of the FIA an MVT service provider cannot appoint agents except with the express authority of the MFSA as the financial service regulator.

673. Being "subject person" a financial MVT service provider is bound by the PMLR and sanctions as described under Recommendation 17 are also applicable to MVT service providers.

3.14.2 Recommendations and comments

674. Money remittance activities must be appropriately licensed by the MFSA in order to provide such services. Being "subject persons" the MVT service providers are bound by the PMLR, including the regulations on identification, record keeping and internal reporting procedures. MVT service providers are supervised by the MFSA. That said, there are deficiencies identified earlier in this report in respect of CDD, and especially in relation to SR VII which materially affects the compliance of the MVT service operators with the FATF Recommendations overall.

3.14.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**Compliant**	

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS NON-FINANCIAL BUSINESSES

Generally

675. Apart from being applicable to the financial sector, the provisions contained in PMLR, 2003, are also applicable to number of subject persons falling within the definition of "relevant activity" in Regulation 2.

676. DNFBP covered by "relevant activity", are the following legal or natural persons when acting in the exercise of their profession:

(a) auditors, external accountants and tax advisors
(b) real estate agents
(c) notaries and other independent legal professionals in relation to assisting in the planning or execution of transactions for their clients concerning the
  (i) buying and selling of real property or business entities
  (ii) managing of client money, securities or other assets, unless the activity is undertaken under a license issued under the provisions of the Investment Services Act
  (iii) opening or management of bank, savings or securities accounts
  (iv) organisation of contributions necessary for the creation, operation or management of companies
  (v) creation, operation or management of trusts, companies or similar structures

  or by acting on behalf of and for their client in any financial or real estate transaction

  Provided that where a natural person undertakes any of the above professional activities as an employee of a legal person, the obligations under these regulations shall apply to that legal person
(d) nominee companies and licensed nominees acting as nominee shareholders or trustees, authorised under the Malta Financial Services Authority Act
(e) dealers in precious stones or metals, or works of art or similar goods and auctioneers whenever payment is made in cash in an amount equal to Lm5,000 (five thousand Maltese Liri) or more
(f) any activity which is associated with an activity falling within paragraphs (a) to (e) above.

677. Furthermore, the Gaming Act Regulations, 1988 extend the PMLR, 2003 to casinos[35].

678. The DNFBP covered by the Prevention on Money Laundering Act, like financial institutions, are subject to CDD, record keeping, and internal reporting requirements. No specific guidance notes have yet been developed for DNFBP. Nevertheless, the evaluators were advised that there was an agreement through the Prevention of Money Laundering Joint Committee for DNFBP to apply the same guidance notes for financial institutions as appropriate. Nevertheless, the evaluators were advised that guidance for accountants and notaries had been under consideration.

679. Under Regulation 15 of PMLR 2003, it is stated that nothing in these regulations contained shall require a person who is carrying out a relevant activity (i.e. DNFBP) to maintain procedures in accordance with these regulations which require evidence to be obtained, in respect of any business relationship formed by him before the date on which these regulations come into force, as to the identity of the person with whom that relationship has been formed, and any such

[35] Casinos are now incorporated as subject persons under the 2006 revision of the PMLR 2003.

relationship shall be treated as if it were an established business relationship. An exemption to this position is in place where a doubt has arisen or changes have occurred in the circumstances surrounding the established business relationship the identification process shall be carried out in accordance with these regulations.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

680. Criterion 12.1 requires DNFBP to meet the requirements of Recommendation 5 in the circumstances specified in Criterion 12.1.

681. The Regulations are fully applicable to all DNFBP as defined under the term "relevant activity". Therefore, DNFBP as defined by the term "relevant activity" are subject to all the obligations under the PMLR, 2003 as are applicable to the financial sector.

682. As far as Casinos are concerned, the application of identification procedures is required by the Gaming Act Regulations:
   (a) when entering the casino (Reg 45)
   (b) whilst in the casino, when exchanging cash, cheques or through a credit or debit card in excess of Lm2000 (Euro 4,600) (Reg 46)
   (c) when exchanging chips or tokens after playing in the casino the value of which exceed Lm2000 (Euro 4,600) (Reg 46).

683. According to essential criteria 12.1, casinos should be required to comply with the requirements set out in R. 5 when their customers engage in financial transactions equal or above USD/EUR 3 000. According Directive 91/308/EEC(4) as amended casinos shall be deemed to have complied with identification requirement if they are under state supervision and identify their customers immediately on entry. (Art.3.6)

684. Real estate agents are covered as provided for by essential criterion 12.1(b).

685. Dealers in precious metals and dealers in precious stones are covered as provided for by essential criterion 12.1(c)

686. Lawyers, notaries, other independent legal professionals and accountants are covered by the Regulations (under the definition "relevant activity") in accordance with essential criterion 12.1(d).

687. As far as trust services providers are concerned, only nominee companies and licensed nominees acting as trustees, authorised under the Malta Financial Services Authority Act, are covered. Although the Trusts and Trustees Act had come in force shortly prior to the onsite visit, the MFSA had at the time not issued any licences under this Act. Moreover, the PMLR had not been amended to include such licence holders as subject persons.

688. As far as company service providers are concerned, the PMLR 2003 do not specifically cover those acting as a formation agent of legal persons, those providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement. Maltese authorities advised that most of these activities are done by lawyers and accountants and therefore fall under the scope of the definition "relevant activity" (paragraphs. "a" and "c"). Moreover, paragraph "f" covers these services when provided by any other person in connection with activities carried out under para. "a" to "e".

689. Under criterion 12.1 DNFBP should especially comply with the CDD measures set out in criteria 5.3 to 5.7 but may determine the extent of such measures on a risk sensitive basis depending on type of customer, business relationship or transaction. DNFBP in Malta are not allowed to apply the CDD measures on a risk sensitive basis.

690. Criterion 12.2 requires DNFBP to comply with the criteria set out under Recommendation 6 and 8-11.

691. *Applying Recommendation 6*. Criteria 6.1 states that financial institutions should be required, in addition to performing the CDD measures required under Recommendation 5, to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person (PEP). There is no such requirement concerning DNFBP in PMLR 2003 or in other relevant regulation or guideline. As far as DNFBP are concerned there are also no risk management systems in place. According to criteria 6.2 financial institutions should be required to obtain senior management approval for establishing business relationships with a PEP. There is no such requirement concerning DNFBP in PMLR 2003 or in other relevant regulations or guidelines. Cases where a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP are also not covered. According to criteria 6.3, financial institutions should be required to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs. There is no such requirement concerning DNFBP in PMLR 2003 or in other relevant regulations or guidelines. The situation is thus similar to that described in relation to the financial sector for Recommendation 6[36].

692. With reference to Recommendations 8-11 since the Regulations do not distinguish between DNFBP and financial business providers the same regulations apply for DNFBP.

693. *Applying Recommendation 8*. No specific enforceable guidance on measures to be put in place to avoid the risks associated with technological developments are in place. Regulation 6 directs subjects in the case of any non-face-to-face transactions. Subject persons who receive instructions by post or by any electronic means must conduct the same CDD as per Regulation 5. The use of electronic or internet banking does not provide for the opening of accounts.

694. *Applying Recommendation 9*. The legal structure is in place to cover the requirements of Recommendation 9. However, it is unlikely that any DNFBP would use third party introducers.

695. *Applying Recommendation 10*. Regulation 9 provides for all reporting subjects to store identification documentation for at least 5 years after the termination of contact.

696. *Applying Recommendation 11*. As already explained for financial institutions under Section 3, Recommendation 11 is partially provided for under Regulation 5 (5) which is applicable to DNFBP.

4.1.2 Recommendations and comments

697. Malta should implement Recommendations 5 (criteria 12.1 (d)), 8 and 11 fully and make these measures applicable to DNFBP.

698. Maltese authorities should adopt provisions covering all persons providing company services (criterion 12.1 (e)).

[36] This issue has been now addressed with the amendments of February 2006 to the PMLR.

699. The Recommendation made for financial institutions with regard to Recommendation 11 should be made applicable to DNFBP.

700. Generally the examiners believe that once additional formal provisions are in place, the effectiveness of implementation will be further developed through proper monitoring of implementation. The restructuring of the Prevention of Money Laundering Joint Committee to include DNFBP (through their associations) as for the financial sector should create awareness and ensure the continued willingness of DNFBP to apply AML/CFT requirements.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**Largely compliant**	• The same concerns in the implementation of Rec. 5 apply equally to DNFBP. • No adequate implementation of Rec. 6. • The same concerns in the implementation of Rec. 11 apply equally to DNFBP. • Not all persons providing company services are covered by Maltese legislation.

4.2 Monitoring of transactions and other issues (R. 16)

(Applying R.13 - 15 and 21)

4.2.1 Description and analysis

701. *Applying Recommendation 13*. Criterion 16.1 requires Essential Criteria 13.1 – 4 to apply to DNFBP. Criteria 13.1-3 are marked with an asterisk. The first two require reports to the FIU where the obliged entity suspects or has reasonable cause to suspect funds are the proceeds of criminal activity or has reasonable grounds to suspect or suspects funds are linked to terrorism etc or those who finance terrorism.

702. PMLR 11 clearly requires that the reporting obligation is triggered when information obtained indicates that a person suspects or have reasons to believe that a transaction could involve money laundering or that a person has or may have been involved in money laundering. The report should be made as soon as reasonable practicable. Tax matters are included for these purposes and are not excluded for STR reporting purposes. There is no financial threshold in relation to suspicious transaction reporting.

703. At the time of the on-site visit the PMLR, which provides for the mandatory obligations for filing STRs, had not yet been expanded to cover reporting to the FIAU of suspicious transactions linked to terrorist financing.[37] Attempted money laundering is included in the definition of money laundering in art. 2 of the PMLA, art. 28)delay of execution of a suspicious transaction) and art 29 (action after execution of suspicious transaction which could not be delayed) includes attempted transactions. The PMLR is silent on the issue of reporting of attempted suspicious transactions.

[37] Reporting of transactions suspected to be related to the financing of terrorism is now provided for under the February 2006 revisions of the PMLR.

704. As far as casinos are concerned they are required to report under conditions set out in the Gaming Act Regulations 1998. According to the evaluators' assessment, the respective provisions (Art. 50 – 51 GAR 1998) are closer to Recommendation 13 than those of Art. 11 PMLR 2003. That satisfies criteria 16.1 (a).

705. Real estate agents are required to report on the basis of the general condition, as the other subject persons. There is no exemption. This satisfies criteria 16.1 (a). Dealers in precious metals or stones are subject persons only when the payment is made in cash in an amount equal to five thousand Maltese Liri (11 500 EUR) or more. To the extent that art. 11 covers subject persons it is concluded that criteria 16.1 (b) is satisfied. Under subregulation 2 of Article 11, subject persons carrying out a relevant activity under paragraph (a) or (c) of the definition of relevant activity shall not be bound by the reporting obligation if the information is received or obtained in the course ascertaining the legal position for their client or performing their responsibility of defending or representing that client in judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

706. That exception appears to go beyond the exception allowed by Rec. 16 and criteria 16.1 (c) as far as it covers also tax advisers. The Maltese authorities explained that tax advisers were included in order to satisfy the requirements of the EU Directive. They further explained that in practice in Malta there is no profession per se of tax advisers. These activities are carried out by the accountant profession.

707. Trust and Company Service Providers are not fully covered by the reporting obligation under art. 11 of PMLR 2003. Subject persons carrying out a relevant activity under paragraph (d) of the definition of "relevant activity" are nominee companies and licensed nominees acting as nominee shareholders or trustees, authorised under the Malta Financial Services Authority Act.

708. Firstly, a Trust Service Provider could be any natural or judicial person (art.43, subparagraph 3 of Trust and Trustees Act) and not only a nominee company or licensed nominee. It appears under paragraph (d) of the definition of "relevant activity" that only nominee companies and licensed nominees acting as (a) nominee shareholders or (b) trustees are subject persons. The rest of Trust Services Providers remain uncovered.

709. Secondly, Criterion 16.1 (d) requires Trust and Company Service Providers to report when they prepare for or carry out a transaction on behalf of a client;

- acting as formation agent of legal person;
- acting as (or arranging for another person to act as) a director or secretary of a company;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

710. The aforementioned provisions of PMLR 2003 (definition of "relevant activity" and art. 11) impose reporting obligations when nominee companies and licensed nominees act as nominee shareholders. The first part of the last two bullet points "arranging for another person" does not appear to be covered by the Regulation.

711. In practice at the time of the onsite visit apart from nominee companies and licensed nominees acting as trustees there were sixteen trustees licensed under the Trusts and Trustees Act. The Maltese authorities have explained that these trustees were considered subject persons under

paragraph (f) of the definition of "relevant activity". In this respect all trustees in Malta were covered. With regard to company service providers in practice there is no such profession per se in Malta. These services are provided by accountants and lawyers who are subject persons under the Regulation.

712. Lawyers, notaries, other independent legal professionals and accountants do not report through self-regulatory organisation (SRO) but report directly to the FIAU, so criteria 16.2 is not applicable. Reporting requirements are extended to the complete range of the professional activities. The same is true of auditors and tax advisors.

713. *Applying Recommendation 14*. The safe harbour provision in Regulation 13 of the PMLR, 2003 also applies to DNFBP and the provision covers all civil and criminal liability. Tipping off is also covered. Regulation 10 (4) prohibits officers and employees of a subject (including DNFBP), under a penalty of a fine or imprisonment, from disclosing to a person concerned or to a third party that an investigation is under way or that information has been transmitted to the FIAU.

714. Applying Recommendation 15. Like financial institutions DNFBP are also expected to establish clear responsibilities and accountabilities and should institute the appropriate internal controls to ensure that the internal policies and procedures established through the MLRO in accordance with the provisions of the PMLR are maintained and adhered to by all concerned. The Regulations place a statutory obligation on all subject persons, including DNFBP to establish and maintain procedures for the purpose of preventing money laundering in the course of their business. Additionally the regulations specify that subject persons must take the appropriate measures to keep their employees aware and provide them with training in the recognition and handling of suspicious transactions. Regulation 3 deals with systems and training to prevent money laundering and Regulation 10 sets the requirements for internal procedures of subject persons, including DNFBP. There is no enforceable requirement for compliance officers to be at management level in so far as that is relevant in some DNFBP. Nor is there a requirement to maintain independent audit functions to test compliance. In Malta a large part of the DNFBP sector is made up by sole practitioners or small firms where in practice it is not possible to have fully fledged internal structures for compliance and audit.

715. There are some programmes against money laundering by some DNFBP, particularly casinos and a number of large accounting firms. As far as internet casinos, lawyers, notaries, other independent legal professionals and accountants such programmes do not exist or they are at different stages of development but not in place yet. Programmes and drafts do not cover terrorism financing. The evaluators consider that these deficiencies should be urgently addressed.

716. Applying Recommendation 21. Criterion 16.3 applies Recommendation 21 to DNFBP. There is no specific mention in the legislation for DNFBP to give special attention to business relationships and transactions with persons from countries insufficiently applying FATF standards. However, the Regulations define "reputable jurisdictions" in article 2 as any country having appropriate legislative measures for the prevention of money laundering, taking into account that country's membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering. This not withstanding there was no particular mechanism in place for alerting DNFBP to concerns about countries which insufficiently apply the Recommendations. This issue needs to be addressed.

4.2.2. Recommendations and comments.

717. The same deficiencies in the implementation of Recommendations 13 – 15 in respect of financial institutions apply equally to DNFBP. Specifically, it should clearly be reflected that attempted

transactions should be covered by the reporting obligation which should also cover reporting of terrorist financing.

718. Trustees licensed under the Trusts and Trustees Act and company service providers, irrespectively of the latter being provided by lawyers and accountants, should be expressly covered by the reporting obligation

719. Recommendation 15 should apply in relation to DNFBP. There are some programmes against money laundering by some DNFBP, particularly casinos. As far as internet casinos, lawyers, notaries, other independent legal professionals and accountants such programmes do not exist or they are at different stages of development but not in place yet. Programmes and drafts do not cover terrorism financing. These deficiencies should be remedied as a priority.

720. The issue of potential risks that may arise from business relationships and transactions with persons from countries which do not or insufficiently apply the FATF recommendations needs to be addressed in regard of the DNFBP.

721. The number of the reports coming from DNFBP is very small, which appears to indicate a low level of effectiveness of the AML regime in this area so far.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**Partially compliant**	• Attempted transactions are not explicitly covered. • No reporting obligation on financing of terrorism. • Trust Service Providers not being a nominee company or licensed nominee should be expressly covered. • While the reporting duty is generally in place there have been very few reports from DNFBP (effectiveness).

4.3 Regulation, supervision and monitoring (R.17, 24-25)

4.3.1 Description and analysis

Recommendation 17

722. Countries should ensure that effective, proportionate and dissuasive criminal, civil and administrative sanctions are available to deal with natural or legal persons covered by FATF Recommendations that fail to comply with national AML/CFT requirements.

723. Description and analysis for financial institutions concerning the criteria set out under Recommendation 17 are fully applicable to DNFBP.

Recommendation 24

724. In accordance with criteria 24.1 countries should ensure that casinos (including internet casinos) are subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations. The Lotteries and Gaming Authority, set up in 2001, is the regulatory and supervisory body that is responsible

for the governance of all forms of gaming in Malta including the licensing of casinos under the Gaming Act 1998.

725. Criteria 24.1.1 stipulates that countries should ensure that a designated competent authority has responsibility for the AML/CFT regulatory and supervisory regime

726. The FIAU has such powers under the general rules set up in PMLA . The FIAU can request any supervisory authority to do all or any part of AML/CFT supervision, providing it with supervisory information and statistics, and also conduct inspections (both on site/off site) on its behalf. The FIAU may authorise any of its officers or employees to accompany the supervisory authority in any on-site examination as may be required. The FIAU and the LGA have signed an agreement whereby the LGA conducts on-site inspections on behalf of the FIAU and reports to it accordingly. Article 12 in the PMLA and Regulation 3 in the PMLR, 2003 sets out the range of criminal sanctions available, and, as noted earlier, stipulate that obliged persons who violate their duties for identification, record keeping, and reporting of unusual transactions as defined in the Regulations commit offences.

727. A designated competent authority should license casinos according to criteria 24.1.2. The Lotteries and Gaming Authority is responsible for licensing of casinos under the Gaming Act 1998 (Art.6 (b) and (c) and Art. 14).

728. According to criteria 24.1.3 a competent authority should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino. Under Art. 6 (d) of Gaming Act 1998 the Lotteries and Gaming Authority is authorised to carry out inquires in suitability of casino owners and operators, licensees or persons nominated as proposed casino licensees, the employees, including the management and leaders, proposed to be engaged by the casino licensee. The Authority shall not issue such licence to a person unless that person is a company registered in Malta and unless it appears to the Authority that -(a) the relevant voting share capital of the proposed casino licensee is owned, directly or indirectly, by a person or persons of integrity; (b) the director or directors of the company or of any affiliate thereof are persons of integrity; (c) the proposed casino licensee has the financial means and expertise available to operate the casino and to fulfil all its obligations under this Act.

729. A casino licence remains in force for ten years and shall be subject to the annual payment of a licence fee. Subject to compliance with the provisions of this Act, the Authority, unless it is sooner surrendered or cancelled, may renew the licence. A casino licence shall, in all cases, be conditional to there being a concession by the Minister in favour of the licensee in accordance with the provisions of Part II of the Act.

730. In accordance with criteria 24.2 countries should ensure that the other categories of DNFBP are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. Subcriteria 24.2.1 requires a designated competent authority or SRO responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirement to have adequate powers to perform its functions, including powers to monitor and sanction and to have sufficient technical and other resources to perform its functions.

731. As stated above the PMLA imposed upon the FIAU the responsibility to ensure compliance by all subject persons with the provisions of the Regulations. It was explained to the evaluators that the FIAU had embarked on an offsite compliance questionnaire. There were no on site visits to check AML(CFT) compliance of DNFBP. The FIAU staff is insufficient to ensure effective monitoring of DNFBP and for the most of them there is not any supervisory or self-regulatory body with supervisory or monitoring powers to support the FIAU in its AML/CFT compliance monitoring function. In the absence of on-site visits where breaches could be discovered, and which could

lead to notifications by the FIAU to the Police for criminal sanctioning, it appears that criminal sanctioning will not occur. As the FIAU has no administrative sanctioning power it is difficult to see how administrative sanctions would ever be imposed on DNFBP. There is no power, in any event, to sanction for CFT breaches.

732. The regulation of casinos (including Internet casinos operating from Malta) appears to be of high standard. The lotteries and Gaming Authority has put in place a comprehensive regulatory framework and supports this through on site visits and its authorisation procedures.

733. Recent legislative amendments in the area of nominees and trusts have resulted in robust regulation of the sector by the MFSA. The new legislation has increased significantly access to information on beneficial owners. This is a material improvement in Malta's anti-money laundering framework and is very much welcomed by the examiners.

734. The MFSA is the licensing and supervisory authority for trustees under the Trust and Trustees Act. It is authorised to carry out off-site and on-site inspections on behalf of the FIAU to check their compliance with AML/CFT requirements. Although this MFSA function was not fully developed at the time of the evaluators visit, it is considered to be of importance.

735. The DNFBP sector is inevitably fragmented and it was unclear to the examiners exactly what the strategic plan was for monitoring DNFBP, given the resources of the FIAU, and bearing in mind that some areas may be lower risk (Criterion 24.2).

736. No risk-base approach had been used to identify low risk sectors. However, the evaluators did not find reason to treat DNFBPs sector in Malta as low risk for the ML/TF sector. Under these circumstances it would be difficult to conclude that effective systems for monitoring and ensuring DNFBPs compliance with AML/CFT requirements are in place.

737. Insufficient supervision and lack of guidance for some sectors (lawyers, accountants and notaries) may be contributing to a level of STRs that is lower than the examiners would expect, given the size of the sector. The professional bodies and the FIAU should continue to work together to consider what steps need to be taken to improve awareness in the sector.

738. Criterion 25.1 requires competent authorities to issue guidelines that will assist DNFBP to implement and comply with their respective AML/CFT requirements. For DNFBPs, such guidelines may be established by SROs. The evaluators were told that no such guidelines were issued for DNFBPs by the FIAU which is competent authority to do so or by self-regulatory bodies.

4.3.2 Recommendations and comments

739. The FIAU is the supervisory authority of DNFBP. The examiners consider that more work is required to create an effective system for monitoring and ensuring compliance with AML/CFT standards throughout this sector. Given the limited resources of the FIU, the further development of a more risk based approach to monitoring may be helpful, or perhaps seeking the assistance of relevant SROs in this effort.

4.3.3 Compliance with Recommendations 17 (DNFBP), 24 and 25 (Criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.5 underlying overall rating
R.17	**Partially**	The same comments concerning the implementation of Rec. 17 apply equally to obliged Financial Institutions and DNFBP (see Section

	compliant	3.10.3 of the report). The level of monitoring given the size of the sector is considered tiny and it is difficult to see how sanctioning for AML breaches would be imposed. No power to sanction for CFT.
R.24	**Partially compliant**	More resources needed for monitoring and ensuring compliance by DNFBPs other than casinos.
R.25	**Partially compliant**	Sector specific guidelines are missing.

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

740. Criterion 20.1 states that countries should consider applying Recommendations 5, 6, 8 to 11, 13 to 15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing.

741. In terms of Article 12(2) of the PMLA, the Minister responsible for finance may by regulations extend the provisions of the Act in whole or in part to categories of undertaking or professions which engage in activities which, in the opinion of the Minister, are particularly likely to be used for money laundering or the funding of terrorism.

742. Auditors, tax advisors, dealers of works of art and auctioneers are also covered by the PMLR, 2003. The extension of professions and businesses meets the obligations under Art. 2a, (3) and (6) of the second EU Directive (which does not specifically cover terrorist financing). It does not seem that this extension of the provisions of PMLA is as a result of special consideration and risk-based approach. The risk of terrorist financing does not appear to have been taken into account as an issue separate from the risk of money laundering in the context of Criterion 20.1. The absence of separate consideration and evaluation of the risks of terrorist financing is a consequence of the decision taken by the Maltese authorities to postpone the adoption of measures aimed at the implementation of the international standards specifically dealing with the fight against terrorism financing, until the completion of the third European Union Directive on (the prevention) of money laundering and terrorism financing.

743. Criterion 20.2 specifies that countries should take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML. Examples of techniques or measures that may be less vulnerable to ML provided in the Methodology include; reducing reliance on cash, not issuing very large denomination of banknotes and secured automated transfer systems.

744. In the replies to the questionnaire it is emphasised that the Central Bank, for a number of years, has been encouraging the further use of direct debit and credit systems, while the banks have been developing electronic systems for transfer of funds. The use of debit/credit cards is also strongly encouraged by the banks. The highest denomination in the Maltese currency is the Lm20 (Euro 47) note.

4.4.2 Recommendations and comments

745. The examiners noted Malta has taken some steps to meet Criterion 20.1 and has considered applying the relevant Recommendations to other DNFBP. Partly this is as a result of the specific

obligations of the 2nd EU Directive Article 2a (3) [auditors and tax advisors] and (6) [works of art and auctioneers], and as a result of Article 12 of the First EU Directive, which required countries to ensure extended coverage to professions and categories of undertakings other than those in Article 2a of the Directive likely to be used for money laundering purposes. The examiners recommend that in the context of FATF Recommendation 20, consideration needs also to be given to extending coverage to those DNFBP that are at risk of being misused for terrorist financing as well as money laundering. Equally the DNFBP coverage should be kept under review to ensure that all non-financial businesses and professions that are at any given time at risk of being used for ML are regularly being considered for coverage in the PMLR.

746. It is noted at this point, in the context of evaluation of compliance with the 2nd EU Directive, that with the exception of clear references to Company Service Providers (other than inferentially in the context of persons who provide legal assistance) the range of coverage is, broadly in line with the 2nd EU Directive.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**Largely compliant**	DNFBP coverage has been extended beyond that required by Recs 12 and 16 in the context of money laundering risks but not of terrorist financing risks (Criteria 20.1).

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

747. Recommendation 33 requires countries to take legal measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing by ensuring that their commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons. Competent authorities must be able to have access in a timely fashion to beneficial ownership and control information, which is adequate, accurate and timely. Competent authorities must be able to share such information with other competent authorities domestically or internationally. Bearer shares issued by legal persons must be controlled.

748. Companies and other commercial partnerships are registered with the Registrar of Companies. The Registrar is a public official appointed by the Minister of Finance in terms of the Companies Act 1995. Malta has one national registry of companies and this is situated within the MFSA.

749. The Companies Act 1995 is the law, which regulates the registration of companies and other commercial partnerships. (articles 13 – 16, 52, 55, 68, 69, 76 and 77). Upon registration of the company or commercial partnership, the names, addresses and official identification document numbers of all shareholders, partners, directors and company secretaries are submitted to the Registrar of Companies as part of the Memorandum of Association or deed of partnership as the case may be. In the case of legal entities acting as shareholders, partners or directors, the name, registered address, registration number and also a copy of the certificate of registration or certificate of good standing is submitted to the Registrar of Companies. All transfers of shares, changes in shareholders, directors, company secretaries and legal representation occurring throughout the lifetime of a company or partnership are also notified to the Registrar of Companies by means of prescribed forms or notices, within time limits prescribed by law (normally 14 days). The Maltese authorities indicated to the evaluators that they considered their system of company register to be robust. Further to the documentation mentioned above, all companies are required to submit annually to the Registrar of Companies a return confirming the accuracy of information held by the Registrar. The MA confirmed that the compliance rate with this requirement is very high (within 80 to 90 %). Non-compliance is subject to administrative penalties which are and have been regularly imposed by the Registrar. In this way the Maltese authorities considers that the information publicly available on the register is accurate.

750. Copies of official identification documents are also submitted to the Registrar of Companies. All information and documentation registered with the Registrar of Companies is publicly available both from the Registry premises and also on-line through the Registry web site. In this way necessary transparency is ensured.

751. Lawyers and accountants, who in practice provide company services, are subject persons to the PLMR and as such required to obtain, verify and retain records of the beneficial ownership and control information on the companies they form. Companies can only access the financial sector by providing this information. Furthermore, this information is available to the authorities on a timely basis (there is no requirement for a court order). Although there is no direct monitoring by supervisors, the fact that lawyers and accountants are obliged to submit a declaration concerning CDD on beneficial owners and the fact that all documentation has to be presented in order to access the financial system, is a check on their activities.

752. Where trustees or other fiduciaries hold shares, the Registrar of Companies does not hold information on the identity of beneficial owners of a company. This information is held by the authorised trustees or other fiduciaries themselves (who are subject persons under the PMLR 2003) and by any other subject persons who provide a service to such a company. Subject persons are required by regulation 7 of the PMLR 2003 not to enter into a business relationship with a company unless they obtain the identity and identification documentation of the beneficial owners of a qualifying shareholding (10% or more). This is a continuing obligation and applies also where there are changes in the beneficial ownership. Licensed trustees and fiduciaries are supervised by the MFSA.

753. Criterion 33.2 requires competent authorities to be able to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons. Both the Regulations and the Prevention of Money Laundering Act 1994 provide for the disclosure of this information (including beneficial ownership) to the FIAU either by way of an STR (regulation 11) or upon simple request, without the need of a court order (Article 30 of the PML Act).

754. Maltese private companies are not able to issue bearer shares.

5.1.2 Recommendations and comments

Recommendation 33 is fulfilled and appears to be effectively implemented.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	Compliant	

5.2 Legal Arrangements – Access to beneficial ownership and control information

5.2.1 Description and analysis

755. Recommendation 34 requires countries to take measures to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that commercial trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.

756. Malta recognises foreign trusts and is party to the Hague Convention of the Law Applicable to Trusts and on their Recognition. However, foreign trustees are not allowed to hold shares in Maltese companies and should they wish to access the financial system or obtain any other service from any subject person in Malta, they are obliged to disclose the identity of the settlor or trust beneficiaries. In practice, both the settlor and trust beneficiary are disclosed.

757. Trusts, trustees and other fiduciary relationships are regulated by the Trusts and Trustees Act. Persons providing trustee or other fiduciary services require an authorisation from the MFSA under the said Act and are supervised by the MFSA.

758. MFSA has issued Guidance Notes to provide information for prospective applicants regarding the statutory provisions of the Trusts and Trustees Act, Cap.331. It should be noted that the MFSA

has also published a Code of Conduct, as provided for under the Act. The Code provides guidance on the duties, requirements, procedures, standards and sound principles to be observed by persons carrying on trust business.

759. The supervision of trust business consists of off-site and on-site supervision. After a trustee's annual financial statements and compliance certificate have been received and reviewed, the MFSA may contact the trustee to arrange for a suitable time for a discussion. Anti-money laundering issues form part of this discussion. On-site visits involve structured visits to a trustee's office where, typically, the MFSA interviews members of the management and staff and reviews a selection of individual files. A review of compliance with "know your customer" and record keeping requirements, in relation to the PMLA, the PMLR and the Guidance Notes form part of such visits.

760. All subject persons are required by the PML Regulations not to enter into a business relationship with any person unless they obtain the identity and identification documentation of the applicant for business. Where an applicant for business appears to be acting on behalf of another Regulation 7 requires subject persons to obtain the identity and identification documents of principals, settlors, beneficial owners or trust beneficiaries. This is a continuing obligation and applies also where there are changes.

761. Under criteria 34.2 competent authorities should be able to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal arrangements, and in particular the settlor, the trustee, and the beneficiaries of express trusts.

762. Information on the identity of beneficial owners, principals, settlors and trust beneficiaries held by trustees or other authorised fiduciaries and by other subject persons providing services to trusts or other legal arrangements is available to the FIAU either when an STR is filed (regulation 11) or upon request (Article 30 of the PML Act), without the need of a court order. The MFSA, as the supervisory authority authorising trustees, is also empowered to request any information and documentation it may deem necessary from trustees (Article 47 of the Trust and Trustees Act). Trustees and fiduciaries are supervised by the MFSA on these issues.

5.2.2 Recommendations and comments

763. Recommendation 34 is fulfilled.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	Compliant	

5.3 Non-profit organisations (SR VIII)

5.3.1 Description and analysis

764. NPOs established in Malta are mainly organisations operating on a national level and are mostly involved in social, educational, missionary, religious, sporting, educational, and philanthropic work. In most cases they are administered by administration committees involving well known personalities or fall under the umbrella of the Catholic Church. Often their work is recognised by the Government, which may also contribute to their fund raising activities by direct donations or

by means of other types of assistance. NPOs keep financial records and prepare financial statements in which may also be made public.

765. Public fund-raising activities by non-profit organisations are regulated by the Public Collections Act Cap 279. The operation of these activities is subject to a license issued by the Commissioner of Police, who may refuse to grant or revoke a license which can be subject to conditions, such as the publication of a statement showing the name of the promoter, the purpose of the collection, the total proceeds collected, and the total amount of the expenses incurred. Non-compliance is a criminal offence. A return of the funds collected and expenses incurred must be submitted to the Commissioner of Police.

766. The replies to the Questionnaire regarding NPO's were incomplete. Moreover, the evaluation team could not acquire any other relevant information to the unanswered questions by the time of onsite visit. Although the evaluators were advised that charity organisations are commonly known and have a good reputation, the number of NPO's remained unclear.

767. There seems to be no legislation in place in Malta on NPO's which include specific provisions to prevent covert terrorism financing.

768. No special supervision of the operation of associations is envisaged by law. There appeared to be no basic annual reporting to a licensing body on their activities or clear policies on financial transparency of NPOs. There appeared to be no procedure for verifying that NPOs had used their funds in the ways advertised or planned.

769. It appears that there has been no review (since the Special Recommendation was introduced) of the adequacy of laws and regulations that relate to non-profit organisations that can be abused for the financing of terrorism, as required by Criterion VIII.1. As will be seen from the previous paragraphs there are very limited measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations or that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorists or terrorist organisations, as required by Criteria VIII.2 and VIII.3. What there is in place does not appear, at present at least, to amount to effective implementation of the Special Recommendation.

770. Additional elements. Most, if not all, of the measures in the Best Practices Paper for SR VIII have not been implemented

5.3.2 Recommendations and comments

771. Although Maltese authorities advised that NPOs established in Malta are mainly organisations operating on a national level, the adequacy of the laws and regulations in respect of entities that can be abused for financing of terrorism has not been reviewed since SR.VIII was introduced.

772. It is recommended that, having first undertaken a formal analysis of the threats posed by this sector as a whole, the Maltese authorities should review and if necessary adopt a clearer legal framework, both for charities and NPO's, which covers registration/licensing and requires financial transparency and reporting to a designated authority on their activities, at least annually.

773. Consideration should also be given in such a review to effective and proportional oversight of the NPO sector and charities sector (after registration), the issuing of guidance to financial institutions on CDD and STR issues in relation to this sector and consideration of whether and how further measures need taking in the light of the Best Practices document for SR.VIII. In particular programme verification and direct field audits should be considered in identified vulnerable parts of the NPO sector. Consideration might usefully be given as to whether and how any relevant

private sector watchdogs (if such exist) could be utilised. It would be helpful also to raise awareness of SR VIII within the Police, as the Commissioner is currently the licensing authority.

5.3.3 Compliance with SR.VIII

	Rating	Summary of factors underlying rating
SR.VIII	**Non compliant**	• No special review of the risks in the NPO sector undertaken. • No general guidance to financial institutions as to the risks (in the light of Best Practice Paper for SR VIII). • Insufficient legal regulation of NPO sector. • No specific measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1 Description and analysis

774. Recommendation 31 (and Criterion 13.1) is concerned with co-operation and coordination between policy makers, the FIU, law enforcement, supervisors and other competent authorities.

775. The main piece of legislation that ensures national (and to some extent, international) co-operation on AML/CFT issues is the Prevention of Money Laundering Act (PMLA) and the regulations made thereunder with the Financial Intelligence Analysis Unit (FIAU) being the primary co-ordination unit in the field.

776. The law provides that the principal bodies engaged or involved in the development of AML/CFT policies and/or operations are brought together in the FIAU. Thus the law requires that on the governing body of the FIAU, which is the Board, there must be a person nominated by each of the bodies in question namely the Attorney General, the Central Bank, the Malta Financial Services Authority (MFSA) and the Police. In addition, the law also provides for a police liaison officer in order to give access to the Unit to police information on a day to day basis.

777. Co-ordination and co-operation with the relevant operators in the financial and non-financial sectors covered by the AML/CFT regime is further achieved by the Joint Anti Money Laundering Committee which is an informal forum originally set up and chaired by the Central Bank of Malta, but today chaired by the FIAU, and which brings together representatives of the subject persons covered by the AML/CFT regime as well as representatives from the Attorney General and the Police. The primary objective of the Committee is to provide a forum for discussion and exchange of views relating to prevention of money laundering with a view to developing common anti-money laundering standards and practices in compliance with the Prevention of Money Laundering Regulations and/or any other directives, including any amendments thereto, as may be issued from time to time.

778. The Committee is not a policy making or a decision taking body but shall discuss matters of interest in the development of the anti-money laundering regime and shall make relevant recommendations to the FIAU who shall act accordingly either on its own initiative (if the recommendation is within its powers) or by referral to the relevant authorities as may be appropriate. The matters discussed and recommendations of this Committee shall be taken into consideration by the relevant authorities and associations which are members of the Committee, in issuing, approving or adopting any guidance or procedures for the implementation of prevention of money laundering regulations.

779. The Committee's main objective at the time of the on-site visit was that of consultation prior to the updating and consolidation of the guidance notes to the financial services industry and the issue of new guidance notes to the non-financial subject persons.

780. As regard to AML/CFT policy co-operation, the initiative is taken by the FIAU. The FIAU performs the consultation cycle with different organs and after consultation proposes certain ML policies and possible changes in legislation to the Ministry of Finance.

781. Co-operation on an operational level is a day to day matter between the Office of the Attorney General and the Police since the Attorney General is the channel through which the Police may obtain a number of important and judicial orders (investigation and attachment orders) which

enables the police to obtain quick access to financial and other information while overriding any professional secrecy or confidentiality rules.

782. The Customs authorities have also been brought into the AML/CFT effort by being charged by law with the monitoring of cross-border transport of cash and monetary instruments with Customs having an obligation to pass, on a weekly basis, the records of declarations made under the regulations to the Central Bank which information is then made accessible to the FIAU under the PMLA.

783. Moreover, the Sanctions Monitoring Board within the Ministry of Foreign Affairs is responsible for the implementation of UN resolutions concerning CFT and it co-ordinates its efforts in this regard with the MFSA, being the single regulator of the financial sector, which communicates relevant measures to institutions falling under its remit. It also liaises with the AG office which vets any implementing regulations before publication.

784. The Prevention of Money Laundering Act, Chapter 373 enables/allows the FIAU to co-operate domestically with any supervisory authority. It is understood that national cooperation is good among the supervisory bodies.

785. With reference to the law enforcement authorities Article 24 of the PMLA assigns the Commissioner of Police to detail a police officer not below the rank of Inspector to act as a liaison officer to liaise with the Unit. The article further elaborates on the co-operation functions and duties of this officer. Therefore the co-operation at operational level between the FIAU and the police is assured.

786. Also, the Association of Licensed Financial Institutions and its representatives have had several meetings with FIAU discussing reporting and co-operation issues (in particular the MLRO's role), and also the implementation of AML measures.

787. The evaluators consider that Malta complies with the Recommendation 31.

Additional Elements

788. This covers mechanisms in place for consultation between the competent authorities and the financial and other sectors, including DNFBP that are subject to AML/CFT Laws, Regulations, and Guidelines. The examiners did not receive information about any formal mechanisms in place for consultation with the private sector. There were sporadic meetings, but no systematic mechanisms for consultation, and the provision of feedback.

6.1.2 Recommendations and comments

789. The Maltese authorities have undertaken commendable work in bringing together the competent authorities in Malta anti-money laundering framework. The evaluators none-the-less urge the Maltese authorities to allocate more human resources to FIAU in order to carry out its tasks as main AML policy co-ordination body more effectively.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**Compliant**	

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.1)

6.2.1 Description and analysis

790. The main law to implement anti-terrorist-financing measures required by UN resolutions is the National Interest (Enabling Powers) Act of 1993. Under this law all the sanctions or measures adopted by the United Nations Security Council are also being implemented in Malta.

791. The 1988 United Nations Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) was already acceded to before the First Round Evaluation. The Methodology requires assessors to check whether Articles 3-11, 15, 17 and 19 of the Vienna Convention are covered. The 2000 United Nations Convention against Transnational Organised Crime (Palermo Convention) has been ratified in September 2003. The Methodology requires assessors to check whether Articles 5-7, 10-16, 18-20, 24-27, 29-31 and 34 are implemented**.** The comments made earlier in respect of the physical elements of the offence apply here also. S.3 PMLA is more congruent with the Vienna and Palermo Conventions on the physical aspects of the offence (see para. 213). Conspiracy is covered. While the confiscation regime is quite sound, third party provisions need developing and there are reservations in respect of the thirty day attachment orders in enquiries with a transnational dimension (see para. 297 and 300) . The broad preventative measures set out in the Palermo Convention are generally covered but greater specificity on the concept of beneficial owner would improve compliance with A.7 of that Convention.

792. The 1999 United Nations International Convention for the Suppression of the Financing of Terrorism has been ratified in November, 2001. Financing of Terrorism is quite broadly criminalised. The comments made under SR II apply here as well (see para. 266-268). There is a provision (A.328 J(2)) in the 2005 amendments to the Criminal Code dealing with corporate liability in respect of financing terrorism. The general provision in A.121D which, in the view of the evaluators, requires a prior conviction of a natural person, before corporate liability applies, has been supplemented by the aforementioned provision in A.328 J(2). The latter provision only requires the commission of an act of financing of terrorism to the benefit of the body corporate as a result of a lack of supervision or control by a person referred to in A.121D, without requiring the conviction of that person. Mutual legal assistance and extradition procedures are broadly sufficient. While licensing of MVT service providers is in place, given the absence of complete provision on SR.VII it is difficult to say that A.18 of this Convention on this issue is fully implemented (see the comments regarding the implementation of SR VII in the context of international wire transfers).With respect to SR I reference is also to be made to the comments under SR III page 66 and 67.

793. The conventions were transposed into national law by various provisions, mainly in the Criminal Code, Dangerous Drug Ordinance (DDO), Medical and Kindred Professions Ordinance (MKPO), Prevention of Money Laundering Act (PMLA) and the Extradition Act (see descriptions of the legal system above).

Additional elements

794. The 1990 Council of Europe Convention on Laundering Search Seizure and Confiscation of the Proceeds from Crime (ETS 141 - Strasbourg Convention) was ratified on the 19th November 1999 and came into force on the 1st March 2000. Reservations were made under Articles 2, 6, 14, 21, 25 and 32.

795. Subsequent to the on-site visit Malta has signed but yet not ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of Terrorism (CETS No 198).

6.2.2 Recommendations and comments

796. The Vienna and Palermo Conventions are broadly implemented. However, the implementation of the Terrorist Financing Convention and the UNS Resolutions are not complete, as described above and earlier in the report.

797. The evaluators look forward to the early lifting of Maltese reservations to the Strasbourg Convention which are being reviewed for withdrawal.

6.2.3 Compliance with Recommendation 35 and Special Recommendation 1

	Rating	Summary of factors underlying rating
R.35	**Largely Compliant**	Though the Palermo, Vienna and TF Conventions have been brought into force there are still reservations about the effectiveness of implementation in some instances, particularly terrorist financing criminalisation and some aspects of the provisional measures regime.
SR.1	**Largely compliant**	• A comprehensive system to freeze funds is not yet fully in place. • Lack of development of guidance and communication mechanisms with the non-financial sector and DNFBP. • A clear and publicly known procedure for de-listing and unfreezing needs to be developed. • Preventive obligations under A.18 TF Convention not fully implemented (eg the implementation of SR.VII in the context of international wire transfers).

6.3 Mutual legal assistance (R.32, 36-38, SR.V)

6.3.1 Description and analysis

Recommendation 36 and SR.V

798. The Attorney General's Office has been designated as the central judicial authority in all major agreements dealing with mutual legal assistance. This is also the case for purposes of the receipt and implementation of European Arrest Warrants

799. Malta is party to the 1990 Strasbourg Convention and to several bilateral mutual legal assistance agreements. .

800. Malta is in the position to provide the widest possible range of judicial assistance. It was already mentioned in the previous report that Malta has a comprehensive legal system to meet the requirements of the Recommendations for mutual legal assistance.

801. Legal assistance is mainly provided by national laws, namely:
the Criminal Code (Articles 435 B - E, 628 A - B, 649),
the PMLA (Articles 9 - 11) and
the DDO (Articles 24 B - D).

On the basis of these provisions the assistance ranges from the service of summons and documents to enforcement of confiscation orders, from the hearing of witnesses to search and seizure, from the production of documents to video conference. By means of investigation orders or following testimony on oath) wherein one is exempted from confidentiality/professional secrecy obligations), any bars to the production of documents or the rendering of testimony which would otherwise be bound by confidentiality are overridden.

802. By virtue of these laws requests by a foreign judicial, prosecuting or administrative authority is made pursuant to, and in accordance with, any treaty, convention, agreement or understanding between Malta and the country from which the request emanates or which applies to both such countries or to which both such countries are a party, can be executed.

803. Even without a treaty, convention, agreement or understanding, Malta may still extend mutual assistance on the basis of reciprocity, as provided for in A.649 CC or provided that domestic law provisions are satisfied. Moreover as regards regional and international co-operation in the fight against international terrorism and transnational organised crime, Malta has concluded a number of bilateral agreements with other States relating to co-operation in the fight against drugs and organised crime.

COUNTRY	*Signed*	*Entry into force*
United States of America	16 June 2004	Awaiting ratification
Albania	19 February 2002	19 February 2002
China	22 October 2001	22 October 2001
Cyprus	16 September 1999	18 March 2000
Egypt	23 February 1997	22 March 1998
France	9 March 1998	1 July 1998
Greece	Co-operation between the Ministry of Home Affairs of Malta and the Ministry of Public Order of the Hellenic Rep. On matters of their competence. 24 May 2001	Awaiting ratification
Hungary	18 May 2000	18 December 2000
Israel	28 May 1999	1 August 2000
Italy	28 February 1991 Amendments through Exchange of Notes signed on 22 August 1996 and on 3 September 1996	28 February 1991 3 September 1996
Libya	26 April 1995	29 August 1996
Russia	21 April 1993	21 April 1993
Slovakia	16 May 2001	16 May 2001
Spain	28 May 1998	27 November 1998
Sweden	10 May 2001	10 May 2 001
Tunisia	6 April 2001	6 April 2001
Turkey	29 November 1999	28 February 2000
United Kingdom	9th January 2003	9th January 2003

804. The majority of the more recent bilateral agreements cover money laundering and terrorist financing cases, though the earlier ones do not necessarily explicitly cover money laundering or terrorist financing, although organised crime issues are featured.

805. The legal framework allows the judicial authorities to give sufficiently broad assistance in money laundering and terrorism financing cases, including coercive measures and the execution of

foreign criminal seizure or confiscation orders related to laundered property, proceeds, instrumentalities and equivalent value assets.

806. But there is no legal basis to execute a foreign civil *in rem* confiscation order as the underlying conduct has to be qualified as a criminal offence under Maltese law.

807. Basically the dual criminality principle applies. This is deemed satisfied if under Maltese law the conduct underlying the offence is punishable irrespective of how the offence is qualified. Due to Maltese law the description of the offence in the request is not regarded as material if the offence is substantially of the same nature as in the domestic law. This requirement is interpreted by the office of the Attorney General as central authority of the processing of requests for mutual assistance as well as by the courts in Malta very broadly. So far all legal assistance requests have been satisfied by the Maltese authorities in a timely manner.(see the list beneath para. 812 and 829). Assistance in the absence of dual criminality is only possible when there is no need for coercive measures.

808. Mutual legal assistance is granted when the offence also involves fiscal aspects. Secrecy and confidentiality are lifted by the courts when granting the request and are not an inhibiting factor.

809. The Criminal Code does not prohibit the transfer of the procedure or prosecution but there are no specific provisions regulating this procedure. The Maltese authorities have indicated that they are prepared to discuss with other authorities, if the need arises, on a case by case basis, the question as to what the most suitable venue for a prosecution should be, although such discussions have not happened yet.

810. Seizure and confiscation actions are normally coordinated by the Attorney General in his role of central authority due to the provisions in the Criminal Code and in Strasbourg Convention matters. Sharing seems to be possible by arrangement on a case by case basis, but to date there has been no need to consider the issue.

811. While there are no concrete plans at this moment to establish an asset forfeiture fund, the issue is under consideration.

812. When mutual legal assistance requests are being executed, foreign officials can be present from the requesting party and evidence can be taken in accordance with procedures required by the requesting State, provided that they are not contrary to Maltese public policy.

813. The Attorney General provided the following statistics:

JUDICIAL CO-OPERATION **Requests for Mutual Legal Assistance 2001-2005**					
	2001	**2002**	**2003**	**2004**	**2005** (as at 30 Sept. 05)
Malta as the Requesting State	-	2	4	1 (and 3 supplementary requests relating to letters of request sent in '03)	- (as at 31 July 05)
Malta as the Requested State In General (i.e. not only ML/FT related)	18	25	34	35	26
Requests dealing with Money Laundering (Malta as the Requested State)	7	7	3	5 (1 also dealt with FT)	4
Requests dealing with FT or Aiding of Terrorism (Malta as the Requested State)	-	2 (1 - an extradition to Italy)	1	2	2

MONEY LAUNDERING MEASURES REQUESTED OF MALTA UNDER MUTUAL LEGAL ASSISTANCE (INVESTIGATION ORDERS)			
	2001	**2002**	**2003**
Investigation Orders	**1**	**4**	**3** (2 Attachment Orders also issued. 1 Investigation Order was refused (originally 4 applications had been filed) 2 Attachment Orders still in abeyance (pending ongoing foreign investigations)

814. According to the AG's explanation all requests were granted. Requests dealing with ML in the statistics above means that assistance in ML was expressly named in the request. The other requests may also have been in the context of money transfers and related to ML or a predicate to ML.

815. The average time frame to fulfil the requests was less than two months. The nature of the requests varied between the gathering of banking information and public records, the service of summons and the notification of judicial documents, the taking of evidence, search and seizure and the issue of investigation orders. There were two attachment orders for money laundering, but none for terrorist financing.

6.3.2 Recommendations and comments

816. It has already been stated in the previous report of the Second Round Evaluation that Malta has been receiving many more judicial assistance applications that it has sent abroad itself. Therefore it was recommended that an analysis be carried out. That was not done, neither by the Attorney General's Office nor by the FIAU (the latter does not see a copy of the requests) nor by the Money Laundering Unit at the police. Such an analysis is recommended again, as it may assist those co-ordinating policy development in Malta.

817. Requests for judicial assistance from abroad – related to the transfer of assets to/from Malta - have triggered money laundering investigations in Malta by the police. One case was currently pending before the Maltese courts and one was subject to a magisterial enquiry[38].

818. The mutual legal assistance framework, both in money laundering and in terrorism financing cases, is quite comprehensive. It has been effective so far and assistance has been granted in a timely manner.

819. There have been no requests to Malta to execute/enforce a confiscation/forfeiture order (under A.435D CC). There are legal provisions to do so, subject to the fact that there needs to be a conviction of a person (which can also be a legal person). The Maltese authorities indicated that a foreign request under A.435C for a freezing order in respect of a legal person, being proceeded against for a "relevant offence", could be obtained regardless of whether a legal person can be subject to imprisonment. In the context of mutual legal assistance the Maltese authorities indicated that whether the request related to a "relevant offence" would be examined in the abstract without considering the nature of the penalty which could be imposed.

820. The establishment of an asset forfeiture fund is being given consideration by the Maltese authorities.

[38] This case was, at the time of the adoption of this report, charged in the Maltese courts.

821. Art. 435C of the Criminal Code provides a broad enough basis to freeze property used for terrorist financing which is not of illegitimate origin with regard to a foreign request for such an order.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**Compliant**	
R.37	**Compliant**	
R.38	**Compliant**	
SR.V	**Compliant**	

6.4 Extradition (R.32, 37 and 39, SR.V)

6.4.1 Description and analysis

822. Extradition in Malta is based on the Extradition Act and on the European Arrest Warrant (EAW).

European Arrest Warrant (EAW)

823. European Arrest Warrant legal notice 320 (LN320) of 2004 regulates proceedings based on the European Arrest Warrant between member states. This implements the Council Framework Decision on the European Arrest Warrants and the surrender procedures between member states. Both the criminal offences of ML and TF fit into categories of criminal offences for which the principle of Dual Criminality is abolished within the European Union. The fact that a person is a national shall not be a ground for refusing execution of a European Arrest Warrant. Simplified surrender is made dependent on consent of the person subject to surrender.

824. The EAW should be sent in the form set out in the Framework Decision and must contain;
- the name and nationality of the person sought;
- details of the issuing judicial authority;
- details of the offences, the dates, times and circumstances and the degree of involvement of the person sought;
- whether the person has been convicted, sentenced or is liable to detention or whether a warrant for the person's arrest has been issued; the penalty to which the person would be liable if convicted or to which he or she is liable, having already been convicted, or the penalty imposed.

825. The EAW procedure has not been applied, as yet, in a money laundering case (or in the case of terrorist financing)

Extradition Act

826. Money laundering is an extraditable offence. In terms of the Extradition Act, money laundering is extraditable since it is an offence which carries a punishment of over 1 year imprisonment, whilst under LN 320 money laundering is an extraditable offence for which the requisite of dual criminality has been abolished.

827. Article 11 of the Extradition Act gives the Minister for Justice the authority to refuse extradition in cases where the requested person is a Maltese citizen. This discretion to refuse to extradite solely on the ground of the Maltese citizenship has never been applied so far. In the case of

refusal, the Maltese courts have jurisdiction over the offence committed by the Maltese citizens (under A.5).

828. Absence of dual criminality provides a is ground for refusing extradition. However, the condition of dual criminality can be satisfied if Malta makes the conduct underlying the offence subject to punishment, irrespective of how the offence is qualified. In the case of the European Arrest Warrant dual criminality does not apply for a number of offences listed.

829. Extradition requests are handled with urgency. Extraditions requests are transmitted in line with relevant treaties/arrangements in force, and in cases of urgency, requests via Interpol or to the Attorney General's Office even by facsimile are also allowed.

830. The Attorney General's Office provided the following extradition statistics:

JUDICIAL CO-OPERATION **Requests for Mutual Legal Assistance 2001-2005**					
	2001	**2002**	**2003**	**2004**	**2005** (as at 30 Sept. 05)
Extradition Requests made to Malta	-	4 (1 dealing with terrorism)	2	1	2 EAWs

Special Recommendation V

831. Since terrorist acts and financing of terrorism are crimes under Maltese law punishable by over 1 year imprisonment, and thus are in terms of law extraditable offences, extradition for such offences of any person, irrespective of nationality, may be granted.

6.4.2 Recommendations and comments

832. The extradition provisions appear comprehensive and in compliance with international standards. The office of the Attorney General as central authority for the processing of requests for extradition and mutual assistance as well as the courts interpret the element of double criminality very broadly. So the uncertainty mentioned with regard to the extent of the terrorist finance offence domestically, involving terrorist groups (in respect of contributions for any purpose) should not be an impediment to mutual assistance in cases, where dual criminality is required.

6.4.3 Compliance with FATF Recommendations

	Rating	**Summary of factors relevant to Section 6.4 underlying overall rating**
R.37	**Compliant**	
R.39	**Compliant**	
SR.V	**Compliant**	

6.5 Other forms of international co-operation (R.32 and 40 and SR.V)

6.5.1 Description and analysis

833. Co-operation on an informal basis, usually on the basis of reciprocity but also without reciprocity, takes place on a day to day basis between the office of the Attorney General and other corresponding foreign authorities as well as between the FIAU and other FIUs or foreign supervisory authorities having analogous functions as well as between the Central Bank and the MFSA and corresponding foreign authorities.

834. The FIAU has been a member of the Egmont Group since 2003.

835. National and international co-operation by the FIAU is governed and controlled by the Prevention of Money Laundering Act, Chapter 373. This law provides when and with whom the Unit can exchange information both locally and internationally and, if applicable, under which condition/s.

836. The FIAU is only legally authorised to exchange information with:
- The Malta Police when it passes reports for investigation.
- Any supervisory authority in Malta.
- Any Supervisory authority outside Malta which it deems to have equivalent or analogous functions as a supervisory authority in Malta.
- Any Unit or agency which it considers to have functions equivalent or analogous to its own.
- Anything outside the above indicated circumstances is not permitted by law.
- In terms of articles 16, 30 and 30A of the PMLA it is possible for the FIAU to obtain from other competent authorities or other persons relevant information requested by a foreign counterpart FIU.

837. The FIAU is legally empowered to provide international co-operation to any of its overseas counterparts or to any overseas supervisory authority which it considers as having equivalent or analogous functions to a supervisory authority in Malta. The FIAU always provided the fullest of co-operation and assistance to foreign FIUs and authorities. In 2003 the Unit received 21 requests from 10 countries. In 2004, the number had risen to 33 requests from 22 countries.

838. The Attorney General's Office, both as central authority as well as through the International Co-Operation in Criminal Matters Unit, enjoys good relations with its foreign counter parts. The fact that two of the officers working in the Unit are contact points within the European Judicial Network facilitates international co-operation. Personal contacts through participation in conferences and plenary meetings of the network also contribute greatly to the strengthening of relations. The Attorney General's Office, whose officer is represented in Eurojust, is also called upon to assist other Eurojust national members in matters involving the coordination and facilitation of organised crime cases of mutual concern.

839. Another common form of co-operation, often of an informal nature, is that by the police via Interpol, Europol and Sirene. Such police to police co-operation is often supplemented by formal international requests for assistance being filed when the information or evidence thus obtained is required to be used in judicial proceedings.

840. Domestic legislation as a rule does not preclude the exchange of information on an informal basis without the need of treaty basis. Usually such exchange would be based on reciprocity but sometimes assistance can also be without a promise of reciprocity. Usually not even an MOU is required but if the counterpart requires an MOU then such an MOU can usually be entered into by

the relevant Maltese competent authority. Co-operation through various agencies such as Interpol, Europol, Egmont Group, EJN, Eurojust, OLAF, etc. takes place on a day to day basis.

841. It is the practice that in cases where it is known that the information in hand by the Maltese authorities is of interest to foreign judicial or investigating authorities, that information is communicated. Subsequently and if more information is requested which may necessitate the sending of a formal letter of request, the said judicial or investigating authorities are advised as how best to proceed. Thus the AG's office not only executes incoming letters of requests but collaborates effectively by advising on how foreign authorities ought to proceed in a bid to assist their investigations and prosecutions.

842. According to Criterion 40.4 countries should ensure that all their competent authorities are authorised to conduct inquiries on behalf of foreign counterparts. Article 649 in the Criminal Code provides:

> **"**(1) Where the Attorney General communicates to a magistrate a request made by the judicial, prosecuting or administrative authority of any place outside Malta for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.
>
> (2) The provisions of sub article (1) shall only apply where the request by the foreign judicial, prosecuting or administrative authority is made pursuant to, and in accordance with, any treaty, convention, agreement or understanding between Malta and the country from which the request emanates or which applies to both such countries or to which both such countries are a party. A declaration made by or under the authority of the Attorney General confirming that the request is made pursuant to, and in accordance with, such treaty, convention, agreement or understanding which makes provision for mutual assistance in criminal matters shall be conclusive evidence of the matters contained in that certificate. In the absence of such treaty, convention, agreement or understanding the provisions of sub article (3) shall be applicable.
>
> (3) Where the Minister responsible for justice communicates to a magistrate a request made by the judicial authority of any place outside Malta for the examination of any witness present in Malta, touching an offence cognisable by the courts of that place, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, notwithstanding that the accused be not present, and shall take down such testimony in writing."

843. On the basis of the information supplied by the foreign FIU, if there are reasonable grounds to suspect ML/FT, the FIAU can initiate new analysis/enquiries, the results of which would be passed to the requesting FIU under such conditions the FIAU deems appropriate.

844. The FIAU is authorised to search its own database and to request a search on the data base of other departments/agencies on behalf of foreign counterparts.

845. The law enforcement authorities are able to conduct investigations on behalf of foreign counterparts in appropriate circumstances and where permitted by domestic law other competent authorities will also conduct such investigations upon request.

846. The exchange of information is not subject to disproportionate or unduly restrictive conditions and this takes place in accordance with international standards as has been highlighted above.

847. The main AML allows the FIAU to pass documents or information to an organisation outside Malta which in the opinion of the FIAU has functions similar to those of the Unit and which has similar duties of secrecy and confidentiality as those of the Unit or to a supervisory authority outside Malta which in its opinion has duties similar to those of a supervisory authority in Malta.. Vide article 34(2) of the Prevention of Money Laundering Act, Chapter 373.

848. The FIAU may refuse to disclose any document or information if:

- Such disclosure could lead to causing prejudice to a criminal investigation in course in Malta.
- Due to exceptional circumstances, such disclosure would clearly disproportionate to the legitimate interest of Malta or of a national or legal person.
- Such disclosure would not be in accordance with the fundamental principles of Maltese law.

849. Such refusal shall be clearly explained to the body or authority requesting the disclosure.

850. Co-operation is not refused on the sole ground that the request is also considered to involve fiscal matters but treaty conditions may apply especially in relation to extradition.

851. When the Attorney General transmits information, this is transmitted either directly to requesting authorities or to authorities indicated by them. In all cases the said material is transmitted under strict confidentiality.

852. The FIAU, besides being legally authorised to exchange information with foreign FIUs, can also exchange information with overseas supervisory authorities which it deems to have equivalent or analogous functions as a supervisory authority in Malta.

853. Various different laws assign extensive legal powers to the MFSA for collaboration and exchange of information with local and foreign supervisory, judicial and enforcement authorities. Two of the principal laws in this respect are:

854. The Malta Financial Services Authority Act, which particularly in Article 4(2) and Articles 17 and 18, highlights the instances where the law allows and in some cases obliges the MFSA to exchange confidential information with other bodies. These articles had been drawn up with the intention of creating a framework for very wide collaboration and exchange of information, as well as for the exercise of powers on behalf of foreign regulatory agencies. The MFSA Act provisions apply to all sectors of financial services under the supervision of the MFSA. Additionally, other sector-specific financial service laws, such as the Investment Services Act contain further powers and relevant provisions in this respect.

855. Another important Act is the Prevention of Financial Markets Abuse Act 2005, which in article 20 again assigns extensive powers to share information and exercise powers in favour of foreign authorities for the prevention, investigation and detection of offences under the Act (insider dealing and market manipulation).

856. As a member of the EU, Malta is an active member of the CESR MoU and of CESR-pol which deals with precise forms of collaboration between securities supervisors within the EU, and other EU-wide multilateral MoU's relating to insurance and banking. Malta is also a signatory of the important IOSCO Multilateral MoU (Malta was the 30th member to be accepted).

857. Malta has concluded various bilateral MoU's with foreign regulators and these are listed and regularly updated on a specific area of the MFSA website. Also on the website are copies of the law mentioned above. In practice, the MFSA advised that exchanges of information occur on a regular basis both formally in response to MoUs which have been entered into between

supervisory authorities, and informally. Is it understood that such exchanges of information are possible spontaneously and upon request and in relation to money laundering and the underlying predicate offences.

858. Moreover, the PMLA, as already established, provides wide and adequate powers to the FIAU to cooperate and exchange information with its counterparts and other supervisory bodies which, in the opinion of the FIAU, reflect those domestic supervisory authorities identified under the Act.

859. The FIAU can exchange and pass information upon request or on its own to any foreign body, authority or agency, which it considers as authority outside Malta which it considers as having equivalent or analogous functions to a supervisory authority in Malta.

6.5.2 Recommendation and comments

860. The FIU has a broad capacity to exchange information and no major obstacles are in the way of constructive information exchange. The average response time for information exchange between FIUs is 17 days for each request. The capacity to exchange information between the supervisory authorities is firmly in place and while (as with most countries) there are no statistics on exchange of information between supervisory authorities, the examiners were satisfied that this was happening in practice on a regular basis.

861. So far as police to police co-operation is concerned, statistics were not available in relation to response times. The Maltese authorities indicated that police resources are, in practice, diverted from domestic work to respond properly and promptly to international requests from other police forces. The evaluators nonetheless advise that police response times are kept in order to demonstrate their speedy handling of international co-operation requests. No information was provided by other countries which indicated any problem in this area so far as Malta is concerned.

6.5.3 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to Section 6.5 underlying overall rating
R.40	**Compliant**	
SR.V	**Compliant**	

7 OTHER ISSUES

7.1 Resources and Statistics

862. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains the boxes showing the rating and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	**Largely compliant**	• More resources needed for FIAU for monitoring and ensuring compliance by DNFBPs other than casinos. • Police Anti-Money Laundering Unit should have more investigators. • More training for the Police and judges.
R.32	**Largely compliant**	• More detailed statistics should be kept by the Maltese authorities on the amounts of property frozen and confiscated relating to money laundering, and criminal proceeds, as well as on the number of persons or entities.. • More detailed statistics should be kept covering use of special investigative techniques in money laundering investigations. • Statistics on police to police response times not available.

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

Forty Recommendations	Rating	Summary of factors underlying rating[39]
Legal systems		
1. Money laundering offence	**Largely compliant**	• Although there is a broad and firm legal basis to enable successful prosecutions of money laundering, no final convictions have been secured. • A greater willingness to draw inferences from objective facts and circumstances appears necessary to secure money laundering convictions (effectiveness issue).
2. Money laundering offence Mental element and corporate liability	**Largely compliant**	• A greater willingness to draw inferences from objective facts is required for the intentional element. • The evaluators have concerns regarding the concept and the effectiveness of corporate liability provisions.
3. Confiscation and provisional measures	**Largely compliant**	• Practice on third party confiscation has not been developed. • The 30 day attachment orders appear underused and their adequacy to prevent assets being dissipated or transferred in enquiries with a transnational dimension appears questionable. • There was insufficient data on which to base a judgement on the effectiveness of confiscation generally in proceeds generating predicate offences.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**Compliant**	
5. Customer due diligence	**Largely compliant**	• The Regulations reference to trust principals and beneficiaries could lend itself to an interpretation that it is an option to identify either the trust beneficiary or the settlor (not both). • For life and other investment linked insurance, the beneficiary under the policy is identified but not verified;

[39] These factors are only required to be set out when the rating is less than Compliant.

		• The general identification limit of MTL 5000 (EURO 11 650) applies to occasional wire transfers which is higher than the exception for the purposes of SR VII (Euro 1000). • There is no requirement in the Regulations for ongoing scrutiny of transactions or requirement to ensure the CDD-process is kept up to date. • With the exception of non-face to face customers, there is no requirement in the non-bank sector for enhanced due diligence of further risk customers, business relationships or transactions; • No specific requirement to understand the purpose and intended nature of the business relationship.
6. Politically exposed persons	**Partially compliant**	Malta has not implemented adequate measures concerning PEPs, which are enforceable.
7. Correspondent banking	**Non compliant**	No law, regulation or enforceable guidance on cross-border correspondent relationships.
8. New technologies and non face-to-face business	**Compliant**	
9. Third parties and introducers	**Compliant**	
10. Record keeping	**Compliant**	
11. Unusual transactions	**Largely compliant**	There are no specific requirements for financial institutions to set forth their findings in writing and to keep the findings available for at least five years.
12. DNFBP – R.5, 6, 8-11	**Largely compliant**	• The same concerns in the implementation of Rec. 5 apply equally to DNFBP. • No adequate implementation of Rec. 6. • The same concerns in the implementation of Rec. 11 apply equally to DNFBP. • Not all persons providing company services are covered by Maltese legislation.
13. Suspicious transaction reporting	**Partially compliant**	• Attempted transactions are not explicitly covered; • No reporting obligation on financing of terrorism.
14. Protection and no tipping-off	**Compliant**	
15. Internal controls, compliance and audit	**Compliant**	
16. DNFBP – R.13-15 & 21	**Partially compliant**	• Attempted transactions are not explicitly covered. • No reporting obligation on financing of terrorism. • Trust Service Providers not being a nominee company or licensed nominee should be expressly covered. • While the reporting duty is generally in place there have been very few reports from DNFBP (effectiveness).

17. Sanctions	**Largely compliant**	• Sanctions which may be proportionate and dissuasive are available for AML breaches by the FIU and the MFSA, but the effectiveness of the overall sanctioning regime, at present, is questioned because public sanctions have not been imposed for AML failings. • The ability to sanction in respect of failure to report unusual business operations involving funds which may be linked or related to terrorism and financing of terrorism should be clarified. • The same comments concerning the implementation of Rec. 17 apply equally to obliged Financial Institutions and DNFBP (see Section 3.10.3 of the report). The level of monitoring given the size of the sector is considered tiny and it is difficult to see how sanctioning for AML breaches would be imposed. No power to sanction for CFT.
18. Shell banks	**Partially compliant**	The requirements as per Banking Act Section 7 (1) restrict the establishment of shell banks in Malta. However, there is no specific legally binding prohibition on financial institutions on entering into or continuing correspondent banking relationships with shell banks. Neither is there any specific obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.
19. Other forms of reporting	**Compliant**	
20. Other DNFBP and secure transaction techniques	**Largely compliant**	DNFBP coverage has been extended beyond that required by Recs 12 and 16 in the context of money laundering risks but not of terrorist financing risks (Criteria 20.1).
21. Special attention for higher risk countries	**Partially compliant**	No broad requirement to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations;
22. Foreign branches and subsidiaries	**Non compliant**	• No general obligation for financial institutions which ensures their branches and subsidiaries observe AML/CFT measures consistent with Maltese requirements and the FATF Recommendations to the extent that host country laws and regulations permits; • There is no requirement to pay particular attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply FATF Recommendations; • Provision should be made that where minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.
23. Regulation, supervision and monitoring	**Largely compliant**	• No requirement to report suspicion of terrorist financing and consequently no supervision of this issue. • No regulatory or supervisory measures on CTF reporting.

24. DNFBP - Regulation, supervision and monitoring	**Partially compliant**	More resources needed for monitoring and ensuring compliance by DNFBs other than casinos..
25. Guidelines and Feedback	**Partially compliant**	• CFT issues are not addressed in sector specific guidelines. • The provision of feed back is not fully in line with the FATF Best Practice Guidelines on providing feedback. • Sector specific guidelines are missing.
Institutional and other measures		
26. The FIU	**Compliant**	
27. Law enforcement authorities	**Largely compliant**	There is a reserve on the effectiveness of money laundering investigation given that there are no convictions.
28. Powers of competent authorities	**Compliant**	
29. Supervisors	**Largely compliant**	No requirement to report suspicion of terrorist financing and consequently no supervision of this issue.
30. Resources, integrity and training	**Largely compliant**	• More resources needed for FIAU for monitoring and ensuring compliance by DNFBPs other than casinos. • Police Anti-Money Laundering Unit should have more investigators. • More training for the Police and Judges.
31. National co-operation	**Compliant**	
32. Statistics	**Largely compliant**	• More detailed data should be kept by the Maltese authorities on the amounts of property frozen and confiscated relating to money laundering and criminal proceeds, as well as on the number of persons or entities. • More detailed statistics should be kept covering use of special investigative techniques in money laundering investigations. • Statistics on police to police response times not available.
33. Legal persons – beneficial owners	**Compliant**	
34. Legal arrangements – beneficial owners	**Compliant**	
International Co-operation		
35. Conventions	**Largely Compliant**	Though the Palermo, Vienna and TF Conventions have been brought into force there are still reservations about the effectiveness of implementation in some instances, particularly terrorist financing criminalisation and some aspects of the provisional measures regime.

36. Mutual legal assistance (MLA)	**Compliant**	
37. Dual criminality	**Compliant**	
38. MLA on confiscation and freezing	**Compliant**	
39. Extradition	**Compliant**	
40. Other forms of co-operation	**Compliant**	
Nine Special Recommendations		
SR.I Implement UN instruments	**Largely compliant**	• A comprehensive system to freeze funds is not yet fully in place. • Lack of development of guidance and communication mechanisms with the non-financial sector and DNFBP. • A clear and publicly known procedure for de-listing and unfreezing needs to be developed. • Preventive obligations under A.18 TF Convention not fully implemented (eg the implementation of SR.VII in the context of international wire transfers).
SR.II Criminalise terrorist financing	**Largely compliant**	• As the Art. 328B offence requires knowledge that the involvement will contribute towards the criminal activities of the terrorist group, it is unclear whether it is wide enough to properly cover the provision or collection of funds for any purpose (including a legitimate activity) of the terrorist group. • Uncertain also whether courts will interpret A.328F to cover "legitimate" activities furthering terrorism. • Unclear if provision or collection of funds can be done directly and indirectly. • As terrorist financing offences have only been introduced in June 2005, it was too early to assess their effectiveness.
SR.III Freeze and confiscate terrorist assets	**Largely compliant**	• Unclear whether Maltese authorities have taken domestic action in relation to European Union internals and on behalf of other jurisdictions. • They need to develop guidance and communication mechanisms with the non-financial sector and DNFBP. • A clear and publicly known procedure for de-listing and unfreezing needs to be developed.
SR.IV Suspicious transaction reporting	**Non-compliant**	Mandatory obligation to report suspicious transactions of financing of terrorism is not in place.
SR.V International co-operation	**Compliant**	
SR.VI AML requirements for money/value transfer services	**Compliant**	

SR.VII Wire transfer rules	**Partially compliant**	• The general identification limit of MTL 5000 (Euro 11 650) applies to occasional wire transfers which is higher than the exception for the purposes of SR VII (Euro 1000). • No "full" originator information required to accompany cross-border wire transfers. • No measures taken to ensure enhanced scrutiny of and monitor for transfers which do not contain complete originator information. • No guidance on batching.
SR.VIII Non-profit organisations	**Non compliant**	• No special review of the risks in the NPO sector undertaken. • No general guidance to financial institutions as to the risks (in the light of Best Practice Paper for SR VIII). • Insufficient legal regulation of NPO sector. • No specific measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations.
SR.IX Cash Couriers	**Largely compliant**	• No clear power to stop and restrain where suspicions of money laundering below the reporting threshold or in the case of suspicions of terrorist financing below the reporting threshold. • Gateways to Customs information for the FIU need reviewing.

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

FATF 40+9 Recommendations	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 and 2)	• More emphasis should be placed on securing final convictions on money laundering. • A greater willingness to draw inferences from objective facts and circumstances appears necessary to secure money laundering convictions (effectiveness issue). • The evaluators advise to set out in legislation or guidance that knowledge (the intentional element) can be inferred from objective factual circumstances. • More priority should be considered to the investigation and prosecution of money laundering based on foreign predicates given the level of domestic profit generating offences. • To provide for the confiscation of assets of a legal entity at least where it is shown to have benefited from money laundering.
Criminalisation of Terrorist Financing (SR.II)	• Clarify that Article 328 B offences cover contributions used for any purpose ((including a legitimate activity),by a terrorist group. • Clarify if provision or collection of funds can be done directly and indirectly. • Assess the effectiveness of the recently (June 2005) introduced terrorist financing offences.
Confiscation, freezing and seizing of proceeds of crime (R.3)	• Practice on third party confiscation should be developed. • Consider prolongation of the 30 days attachment order to deal with a translational dimension where e.g. the suspect is within Malta, particularly for money laundering offences dealing with foreign predicates. • More statistics on provisional measures and confiscation is needed.
Freezing of funds used for terrorist financing (SR.III)	• Clarify that domestic action in relation to European Union internals and on behalf of other jurisdictions have been taken. • Guidance and communication mechanisms with the non-financial sector and DNBF need to be developed. • Development of a clear and publicly known procedure for de-listing and unfreezing is needed.

The Financial Intelligence Unit and its functions (R.26, 30 and 32)	
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 and 32)	• More emphasis should be placed on Police generated money laundering cases by proactive financial investigation in major proceeds-generating cases. • More officers should be trained in modern financial investigation. • Focused money laundering training should be provided. • An increase in the resources of the Money Laundering Unit should be a priority. • More trained financial investigators are required either in the Money Laundering Investigation Unit or separately for major enquiries. • Special training or educational programmes provided for judges and courts concerning money laundering and terrorist financing offences should be provided. • Statistics be kept about the number of special investigative techniques used in money laundering investigations.
3. Preventive Measures– Financial Institutions	
Risk of money laundering or financing of terrorism	
Financial institution secrecy or confidentiality (R.4)	
Customer due diligence, including enhanced or reduced measures (R.5, R.7)	• The requirements under Regulation 7 (5) (b) make reference to the identification of the "trust beneficiaries or of his principal, as the case may be". Clarification is needed to ensure that identification of both settlor and beneficiary is required. • For life and other investment linked insurance, the beneficiary under the policy should be verified. • Specific requirement should be provided in the Regulations for financial institutions to obtain information on the purpose and intended nature of the business relationship. • The Maltese authorities should introduce requirement in the Regulations for ongoing scrutiny of transactions or requirement to ensure the CDD-process is kept up to date. • Enhanced due diligence for higher risk customers, business relationships or transactions should be introduced. Non-face to face customers are already

	covered by the regulation. • It is recommended that Malta implements legislation to deal with cross-border correspondent banking relationships.
Politically exposed persons(R.6)	• The Maltese AML/CFT system should introduce enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).
New technologies and non-face to face business(R.8)	
Third parties and introducers (R.9)	
Record keeping and wire transfer rules (R.10 and SR.VII)	• The general identification limit of MTL 5000 (EURO 11 650) applies to occasional wire transfers. Maltese authorities should introduce in Law or Regulation a limit which is in line with the Interpretive Note to SR VII. • "Full" originator information (name, address and account number)should be required to accompany cross-border wire transfers. • Malta should take measures to ensure that financial institutions conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information. • Guidance on batching should be issued.
Monitoring of transactions and relationships (R.11 and 21)	• There should be a specific requirement to set forth the findings of financial institutions on complex, large and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, in writing and to keep these findings available for at last 5 years. • There should be a specific requirement on the financial institutions to examine the background and purpose of transactions (with persons from or in countries which do not or insufficiently apply FATF Recommendations) which have no apparent economic or visible lawful purpose, and set out their findings in writing and to make them available for the competent authorities.
Suspicious transaction reports and other reporting (R.13 and 14, 19, 25 and SR.IV and SR.IX)	• The AML law or Regulation should clearly provide for attempted suspicious transactions to be reported. • The reporting obligation should also cover financing of terrorism. • The issue to empower the customs to stop the person and restrain currency etc. until the Police arrive should be addressed. • To consider whether the Central Bank gateway for the FIU to Customs data is adequate in practice.
Internal controls, compliance,	• Malta should implement an explicit obligation to

audit and foreign branches (R.15 and 22)	require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the Maltese requirements and FATF recommendations. It should add provisions to clarify that particular attention has to be paid to branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations and that the higher standard has to be applied in the event that the AML/CFT requirements of the home and host country differ.
The supervisory and oversight system – competent authorities and SROs Roles, functions, duties and powers (including sanctions) (R.17, 23, 29 and 30)	• Sanctioning powers should be introduced for failing to report financing of terrorism transactions. • A general power across the financial sector to supervise reporting of unusual business operations involving funds which may be linked or related to terrorism and financing of terrorism should be enacted.
Shell banks (R.18)	• Malta should implement provisions with regard to a prohibition on financial institutions to enter or continue correspondent banking with shell banks. • Financial institutions should be obliged to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.
Financial institutions – market entry and ownership/control (R.23)	
Ongoing supervision and monitoring (R23, 29)	• Regulatory and supervisory measures on CFT need to be provided.
AML/CFT Guidelines (R.25)	• Sector specific guidance CFT needs to be provided. • The provision of feedback should be fully in line with the FATF Best Practice Guidelines on providing feedback.
Money or value transfer services (SR.VI)	• See the changes recommended under R5 and SR VII.
4. Preventive Measures – Designated Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• The changes recommended for Recommendation 5, 6 and 11 for financial institutions should be applied also to DNFBP. • All persons providing company services need to be covered by Maltese legislation.
Monitoring of transactions and relationships (R.12 and 16)	• Trust Service Providers not being a nominee company or licensed need to be covered.
(R.13)	• Requirements under Recommendation 13 should apply to DNFBP, subject to the qualifications in Recommendation 16.
Regulation, supervision and	• Sanctioning powers should be introduced also for

monitoring (R.17, 24-25)	DNFBP for failing to report financing of terrorism transactions. • It is recommended that more resources are needed for monitoring and ensuring compliance by DNFBPs other than casinos.. • Sector specific guidance needs to be provided.
Other designated non-financial businesses and professions (R.20)	• The examiners recommend that consideration needs also to be given to extending coverage to those DNFBP that are at risk of being misused for terrorist financing as well as money laundering. • Equally the DNFBP coverage should be kept under review to ensure that all non-financial businesses and professions that are at any given time at risk of being used for ML are regularly being considered for coverage in the PMLR.
3. Legal Persons and Arrangements and Non-profit Organisations	
Legal Persons–Access to beneficial ownership and control information (R.33)	
Legal Arrangements–Access to beneficial ownership and control information (R.34)	
Non-profit organisations (SR.VIII)	
6. National and International Co-operation	
National Co-operation and Co-ordination (R.31)	
The Conventions and UN Special Resolutions (R.35 and SR.I)	• Confiscation third party provisions need developing and there are reservations in respect of the thirty day attachment orders in enquiries with a transnational dimension. • The broad preventative measures set out in the Palermo Convention are generally covered but greater specificity on the concept of beneficial owner would improve compliance with A.7 of that Convention. • The evaluators look forward to the early lifting of Maltese reservations to the Strasbourg Convention which are being reviewed for withdrawal. • A clear and publicly known procedure for de-listing and unfreezing needs to be developed. • Preventive obligations under A.18 TF Convention need fully implementation (e.g. the implementation of SR.VII in the context of international wire transfers).
Mutual Legal Assistance (R.32,	

36-38, SR.V)	
Extradition (R.32, 37 and 39, and SR.V)	
Other forms of co-operation (R.40 and SR.V)	

10 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION

Relevant sections and paragraphs	Country Comments
Section 3: Preventive Measures – Financial Institutions **3.2 Customer due diligence, including enhanced or reduced measures Paragraphs 483 to 487, 504 and compliance rating for Recommendation 7**	The Maltese authorities are of the view that the essential criteria for Recommendation 7 were largely met at the time of the on-site visit as a result of an enforceable and sanctionable requirement in the Prevention of Money Laundering Guidance Notes (accepted as 'other enforceable means' by the evaluators and confirmed by the Plenary), whereby Maltese credit and financial institutions should follow the procedures set out in the paper issued by the Basle Committee on Banking Supervision entitled *Customer Due Diligence for Banks* dated October 2001. Section 2.2.7 of the Basle CDD paper deals with correspondent banking and to a very large degree covers the essential criteria for Recommendation 7. Thus non-observance by Maltese credit and financial institutions of the related procedures set out in the Basle CDD paper constitutes a breach of the Guidance Notes and is subject to administrative sanctions by the Malta Financial Services Authority. It is also relevant to point out that in February 2006, in order to further strengthen Malta's AML / CFT measures and compliance with Recommendation 7, a specific provision on the establishment of correspondent banking relationships was introduced in the Prevention of Money Laundering and Funding of Terrorism Regulations. This provision is in addition to the enforceable requirement relating to correspondent banking in the Guidance Notes. The Maltese authorities therefore disagree with the "non-compliant" rating for Recommendation 7, which in their view does not represent a correct assessment of Malta's level of compliance with the essential criteria of the Recommendation in question at the time of the on-site visit. The Maltese authorities are of the view that a "largely compliant" rating would be a correct assessment of Malta's level of compliance with Recommendation 7.
Section 3: Preventive Measures – Financial Institutions **3.9 Shell banks Paragraphs 582 to 586 and compliance rating for Recommendation 18**	The Maltese authorities are of the view that the essential criteria for Recommendation 18 were largely met at the time of the on-site visit. In addition to the provisions of the Banking Act which require banks to have a physical presence and a place of operation and management in Malta (shell banks therefore cannot be established in Malta), the enforceable and sanctionable Prevention of Money Laundering Guidance Notes (accepted as 'other enforceable means' by the evaluators and confirmed by the Plenary), require Maltese credit and financial institutions to follow the procedures set out in the paper issued by the Basle Committee on Banking Supervision entitled *Customer Due Diligence for Banks* dated October 2001. Section 2.2.7 of the Basle CDD paper deals with correspondent banking relationships, including with shell banks, and to a very large degree covers essential criteria 18.2 and 18.3 for Recommendation 18. Therefore, non-observance by Maltese credit and

	financial institutions of the procedures set out in the Basle CDD paper constitutes a breach of the Guidance Notes and is subject to administrative sanctions by the Malta Financial Services Authority. The Maltese authorities therefore disagree with the "partially compliant" rating for Recommendation 18, which in their view does not represent a correct assessment of Malta's level of compliance with the essential criteria of the Recommendation in question at the time of the on-site visit. The Maltese authorities are of the view that a "largely compliant" rating would better reflect Malta's level of compliance with Recommendation 18.
<u>Section 3: Preventive Measures – Financial Institutions</u> **3.8 Internal controls, compliance, audit and foreign branches Paragraphs 576 to 581 and compliance rating for Recommendation 22**	The Maltese authorities are of the view that the essential criteria for Recommendation 22 were substantially met in practice at the time of the on-site visit. In terms of the Banking Act and other sectoral financial services legislation, the establishment and acquisition of foreign branches and subsidiaries of Maltese credit and financial institutions requires prior approval by the Malta Financial Services Authority. Approval by the MFSA is subject to its internal policies which would include an assessment of various issues, amongst which the AML / CFT standards applied by the country where it is intended to establish the branch or subsidiary. Approval is furthermore subject to such conditions as the MFSA may deem appropriate, including those set out in essential criteria 22.1, 22.2 and 22.3. It is also relevant to point out that at the time of the on-site visit no Maltese credit institution had a foreign branch or subsidiary while one insurance company had a subsidiary in another EU Member State, subject to conditions in line with Recommendation 22. In February 2006, in order to further strengthen Malta's AML / CFT measures and compliance with Recommendation 22, a specific provision on the establishment of foreign branches and subsidiaries was introduced in the Prevention of Money Laundering and Funding of Terrorism Regulations. This provision is in addition to the relevant provisions in the Banking Act and MFSA approval policies and procedures. The Maltese authorities therefore disagree with the "non-compliant" rating for Recommendation 22, which in their view does not represent a correct assessment of Malta's level of compliance with the essential criteria of the Recommendation in question at the time of the on-site visit. The Maltese authorities are of the view that a "largely compliant" rating would better reflect Malta's level of compliance with Recommendation 22.

V. ANNEXES

Annex I

Details of all bodies met on the on-site mission – Ministries, other government authorities or bodies, private sector representatives and others.

- Attorney General, Ministry of Justice, Ministry of Foreign Affairs
- Malta Financial Services Authority
- FIAU
- Judiciary
- Ministry of Finance
- Malta Stock Exchange
- Central Bank of Malta
- Malta Police Force
- Malta Institute of Accountants
- Accountancy Board
- Association of Licensed Financial Institutions and representatives
- Malta Insurance Association and representatives
- Customs Department
- Malta Security Service
- Lotteries and Gaming Authority
- Malta Bankers Association and representatives
- Chamber of Advocates/College of Notaries
- Institute of Financial Services Practitioners
- Registry of Companies – MFSA
- Malta Financial Services Authority

Annex II

Designated categories of offences based on the FATF Methodology	**Offence by the Criminal Code of Malta (unless otherwise noted)**
Participation in an organised criminal group and racketeering;	*Participation in an organised criminal group*: Art. 83A *Racketeering*: the criminal conduct which is understood to be covered by "racketeering" would be fall under a variety of possible offences known to Maltese law, often aggravated, such as fraud, theft, bribery, trafficking in persons for the purpose of exploitation (sexual, labour etc), illegal gaming, threats, prostitution, counterfeiting etc and when a group is involved in the committing of such offences the offence under article 83A would also apply.
Terrorism, including terrorist financing	Aggravated theft as per Art. 271(h) CC; Arts. 311-314, 314A, 314B, 315-318, 320, 328A to 328K CC
Trafficking in human beings and migrant smuggling;	*trafficking in human beings*: Art 248A to 248E *migrant smuggling:* Art 32(1)(a) Immigration Act, Cap. 217; Art. 337A CC
Sexual exploitation, including sexual exploitation of children;	Art. 197, 203, 203A, 204, 205, 208A CC *Arts. 2, 3,5,7 to 12 of the White Slave Traffic (Suppression) Ordinance Cap 63*
Illicit trafficking in narcotic drugs and psychotropic substances;	Medical and Kindred Professions Ordinance Cap. 31 and Dangerous Drugs Ordinance Cap. 101
Illicit arms trafficking	Art. 19 to 21, 51(3)(4)(7), 59 Arms Act Cap. 480
Illicit trafficking in stolen and other goods	Art. 334, 334A CC
Corruption and bribery	Arts. 112 to 121B, and 121D CC
Fraud	Arts. 293 to 310A CC
Counterfeiting currency	Arts. 39 to 49F Central Bank Act, Cap 204
Counterfeiting and piracy of products	Arts. 298, 298A, 298B, 304 to 306, 310A CC
Environmental crime	Environmental Protection Act, 2001, Cap 435 (Art. 9(2)(h)) and numerous sets of regulations made thereunder: vide, e.g. in **2001:** LN 11 and 12, 128, 212 to 222, 225 to 229, 335 to 343 in **2002**: LN 1, 64, 158 to 173, 288 to 292, and numerous others in **2003 to 2007**
Murder, grievous bodily injury	*murder* Arts. 211 to 213 CC *grievous bodily harm* Arts. 214 to 220 CC
Kidnapping, illegal restraint and hostage-taking	Arts. 86, 199, 210 CC
Robbery or theft	Arts. 261 to 289

Smuggling	Arts. 60 to 64 Customs Ordinance Cap 37
Extortion	Arts. 87(1)(e)(f), 112 to 114, 261(a), 262, 276
Forgery	Arts. 166 to 190
Piracy	would constitute aggravated theft under Arts. 261 to 282 CC and could involve other offences
Insider trading and market manipulation	Arts. 6, 8, 24 of the Prevention of Financial Markets Abuse Act, Cap 476