



# The Money Laundering Reporting Officer and Outsourcing

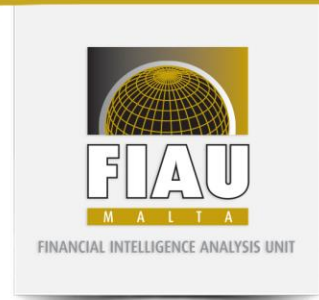
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The Revised Implementing Procedures Part I – 18 October 2019



## Core MLRO Functions

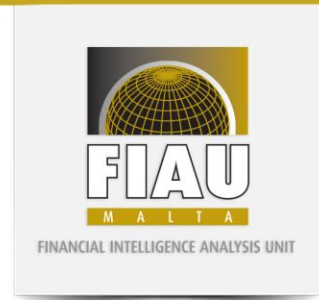
- a. Receiving reports of knowledge or suspicion of ML/FT or that a person may have been, is or may be connected with ML/FT from the subject person's employees;
- b. Considering such reports to determine whether knowledge or suspicion of ML/FT subsists or whether a person may have been, is or may be connected with ML/FT;
- c. Reporting knowledge or suspicion of ML/FT or of a person's connection with ML/FT to the FIAU; and
- d. Responding promptly to any requests for information made by the FIAU.



# Minimum Key Requirements for MLROs

## a. An Officer of the Subject Person

- An officer in employment with or an executive director of a Subject Person:
  - Knowledge of the day to day activities of the Subject Person
  - The non-disclosure obligation arising from Regulation 16 of the PMLFTR
- Employment relationship – need not be exclusive or full-time **BUT** one needs to consider:
  - i. The number of appointments held;
  - ii. The nature of the subject person’s activities;
  - iii. The time and resources that the MLRO can dedicate to each; and
  - iv. Possible conflicts of interest.



# Minimum Key Requirements for MLROs

## a. An Officer of the Subject Person

- Can hold additional functions/roles within the Subject Person **BUT** have to avoid conflicts of interest:
  - Situations where the individual has different but contrasting interests which may potentially:
    - i. Improperly influence the performance of one's duties and responsibilities; and/or
    - ii. Compromise one's impartiality, objectivity or independence.
  - Conflicts of interest can arise because of economic interests - Beneficial owner(s); Qualifying shareholder(s); Client-relationship managers; and Employees with target-based remuneration packages.



# Minimum Key Requirements for MLROs

## a. An Officer of the Subject Person

- Location of the MLRO is left to the Subject Person to determine as long as effectiveness is not undermined:
  - What is the nature and structure of the Subject Person's operations?
  - Does the MLRO have access to all the records and systems necessary to fulfil his functions effectively, efficiently and in a timely manner?
  - What technological means are available to the MLRO to fulfil his duties?



# Minimum Key Requirements for MLROs

## b. Sufficient Seniority and Command

- Ability to exercise effective influence on the Subject Person's operations; and
- Determination as to whether to file an STR or otherwise.

What does this imply?

- The MLRO must be sufficiently knowledgeable about AML/CFT;
- There is to be no vetting or double checking of the MLRO's decision; and
- No undue influence exercised on or threats made against the MLRO.

## Outsourcing – What is Outsourcing?

- Engaging a third party to carry out an activity, process or service that would otherwise be carried out by the Subject Person.
- Excluded from being considered as outsourcing are:
  - Acquisition of software or database licences;
  - Reliance arrangements; and
  - Agency arrangements.

## Outsourcing – Responsibilities of the Subject Person (1)

- Carry out and document an assessment of any ML/FT risks outsourcing being considered, and monitor any risks identified.
- Monitor how the engaged third party is applying the implementation of the outsourced measures and procedures to ensure that:
  - They are being carried out in terms of law;
  - In line with the subject person's own controls and policies; and
  - The terms of the outsourcing agreement.
- Have in place contingency plans to ensure continuation in case of sudden termination of the outsourcing arrangement.

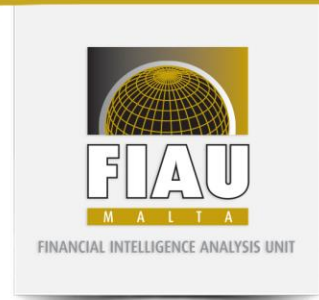


## Outsourcing – Responsibilities of the Subject Person (2)

- Outsourcing is permissible only with respect to the implementation of:
  - Risk assessment procedures
  - Customer Due Diligence procedures
  - Record keeping obligations
- Outsourcing of the MLRO function is only possible in specific circumstances that are expressly provided for.
- Whether to on-board a customer and continue to pursue a business relationship remains the responsibility of the subject person.

## Conditions for Outsourcing

- Assess the quality of the third party being engaged:
  - No negative impact on compliance with the law and supervision
  - Resources, skills, qualifications and authorisations
  - Proposed implementation is in line with legal and regulatory requirements
  - The third party is in good standing and there is no adverse information
  - The outsourcing can take place in full respect of any data protection, confidentiality and professional secrecy obligations to which the subject person is subject.
- Outsourcing to result from an agreement in writing.



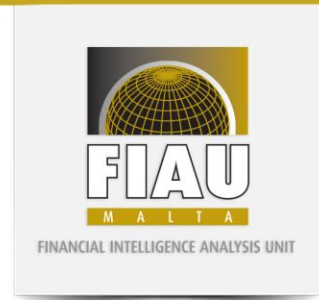
## Outsourcing Agreement (1)

- What is being outsourced and how is it to be carried out
- How is the performance of the service provider to be monitored and what actions can the subject person take to rectify any shortcomings
- Access to records, information and data in a manner that the subject person can comply with its obligations at law, especially with regards to filing STRs and responding to requests for information

### **IMPORTANT**

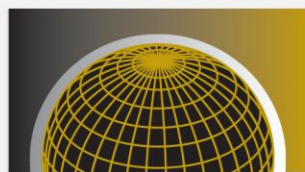
**NO DISCLOSURE THAT THERE HAS BEEN A REQUEST FOR INFORMATION OR THAT ONE IS TO FILE A STR**

- Segregation of data, information and documentation collected on behalf of the subject person



## Outsourcing Agreement (2)

- The circumstances leading to termination and how termination is to be carried out
- Ownership of data, information and documentation
- Processing of data, information and documentation in line with data protection, confidentiality and professional secrecy obligations and requirements
- Sub-contracting has to be agreed to beforehand between the subject person and the third party
- Access by FIAU officials and its agents to premises of the service provider and to data, information and documentation collected on behalf of the subject person



**FIAU**

**M A L T A**

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