

Intelligence Factsheet:



**The misuse of
corporate vehicles
registered in Malta**

**- Focus on
Beneficial
Ownership
concealment -**

**Red flags and case
studies**



INTELLIGENCE FACTSHEET: STRATEGIC ANALYSIS ON THE MISUSE OF CORPORATE VEHICLES REGISTERED IN MALTA, WITH A FOCUS ON BENEFICIAL OWNERSHIP CONCEALMENT

The FIAU has recently carried out a strategic analysis on the misuse of Maltese-registered companies focusing on beneficial ownership concealment. The analysis was based on intelligence received during the first seven months of 2021 in which the involvement of at least one Maltese entity was observed. This document provides information extracted from the results of this strategic analysis.

The next paragraphs aim to provide subject persons with ML/FT indicators (or red flags), based on intelligence processed by the FIAU, which may be of assistance in detecting instances where there are attempts to conceal the actual beneficial owner/s (BO/s) of locally registered companies and which may potentially have to be reported to the FIAU due to their giving rise to suspicion of ML/FT.

Subject persons are encouraged to ensure beneficial information for their clients is accurate and kept up to date, to enquire when BO discrepancies compared to official registries are observed and to remain vigilant regarding the presence of such red flags in order to consider submitting a report to the FIAU when concealment is suspected.

The indicators to be used in goAML to report these instances should be marked depending on the main reason the possible concealment of ownership is suspected:

- **RS – 15: BO Concealment** - Proposed UBO/s changes after requesting identification details (initial BO does not want to be disclosed, persons change when CDD initiated etc.)
- **RS – 33: BO Concealment** - UBO disguise by involvement of third parties (strawmen, nominee shareholding not disclosed, signatory rights/power of attorney providing full rights to unrelated persons etc.)
- **RS – 37: BO Concealment** - Concealing Ownership (decision-making, instructions, correspondence etc.)

In addition to the red flags presented in this document, subject persons are also invited to refer to the FATF – Egmont Group report published in 2018 titled Concealment of Beneficial Ownership¹ for more red flags, case studies and other insights on this topic.

¹ <https://www.fatf-gafi.org/publications/methodsandtrends/documents/concealment-beneficial-ownership.html>

The red flags which follow need to be considered by the subject person on a case-by-case basis. An indication of a red flag does not certainly mean that ML/FT is occurring. Nevertheless, it should trigger further questioning or the undertaking of more rigorous due diligence measures, for example, by acquiring documentation to back up any claims provided by the customer. Subject persons should also keep in mind that not all the typologies and red flags are relevant to all subject persons.

Here below, the FIAU is providing a number of red flags. These red flags are indicators for the misuse of companies registered in Malta, as well as beneficial ownership concealment. Subject persons should not consider these red flags in isolation but viewed in the context of the customer's business and risk profile, as well as in connection to the existence of one or more other indicators, red flags or typologies.

Subject persons might notice that certain red flags, listed herewith, are also present in other FIAU publications which have been previously issued. The red flags might be considered to be similar in nature due to the fact that these indicators are conducive to a number of predicate offences. For example, the misuse of corporate vehicles and/or concealment of beneficial ownership might be applied by the perpetrator to evade tax. However, these indicators could lead to other predicate offences of ML/FT.

RED FLAGS

COMPANY STRUCTURE

- The absence or a limited local footprint. For example, the company would be registered in Malta, but involvements, including directors, are in other EU or non-EU-jurisdictions, with no bank accounts and/or properties held locally.
- Inexplicably intricate structures.
- Known BO lacks key knowledge of company's operations.
- Frequent changes to the company name.
- Simplistic documentation for shareholder loans, not signed by all those empowered with representing the company. No document to support sole representation.
- A holding company being used as a trading company.
- Instructions or decision are taken by a seemingly unrelated natural person.

SUBMISSION OF DOCUMENTATION

- Companies which repeatedly fail to comply with their statutory duty to file their BO-related declarations and/or financial statements to the Malta Business Registry.
- A company is kept active for many years, while recording no revenue, despite the high amounts passing through its accounts with credit and/or financial institutions.
- A company is registering substantial amounts of funds going through its accounts, particularly to specific counterparties, however it is registering a loss year after year, without any consideration or remediation being sought in this regard.
- Discrepancies between what is included in the accounts/financial statements submitted to the Malta Business Registry, and the turnover in the accounts/actual value of assets held.

TRANSFERS OF SHARES & TRANSFERS OF FUNDS

- Frequent transfers of shares between same or related parties.
- After a transfer of shares of a company, a subsequent transfer is made back to the initial holder, in a very short period after the initial transfer of shares.
- Use of means, other than declaration of dividends for profits, distributed to their owners.
- Loans which are interest-free or for which interest is inexplicably "waived".
- Shareholder loans without any justification for the absence of repayments.
- Commingling of personal and business accounts. Company's business accounts are used for personal expenses or to channel monies through transfers to the BO's accounts without legitimate reasons or documents to justify the transfers.
- Large amounts of transactions passed through linked companies justified as service agreements for consulting services or loans. In terms of consulting services, the justifications might not be credible since the service provider does not have the necessary resources to provide such services or it results that the company, providing the said services, only has inexplicably one or very few customers notwithstanding that it has a particularly high turnover.
- Third-party payments: Receiving or making payment on behalf of third parties, without carrying out relevant financial activity.
- Advance dividends payments without justification or supporting documentation.
- Outflows are generally targeted to seemingly unrelated natural person.

INVOICING

- Multiple payments of the same invoice (no part-payments: total amount due paid several times over and justified with the same document).
- Invoices do not contain specific elements: do not refer to a particular agreement, do not include a breakdown of services provided, are expressed in round amounts, and do not include any taxes where these are expected (such as VAT).
- Significant payments made without any reference to a specific invoice or agreement.

CASE STUDIES

Case 1 – Simple Structure - Concealment of BO through shares held by a person on behalf of another individual

A report was filed with the FIAU in relation to a Maltese national who, though listed as a BO for a company, was suspected of in fact holding shares in the company on behalf of another individual. The said individual is a foreign national residing in Malta and has several international convictions.

The Maltese national is the sole shareholder and director of the Company, and the national's residential address is also listed as the registered address of the company.

During the initial meeting held with the domestic subject person, the subject person observed how the Maltese national was unable to answer any basic questions about the company's business and its finances, and all questions were answered by the foreign national. Suspicion was therefore raised that the foreign national was the actual BO of the company, and that the Maltese national he was appearing as BO in order to avoid in-depth scrutiny and monitoring due to past criminal record of the foreign national.

Case 2 – International Complex Structure - Transactional activity revealing the real BO

A subject person provided a suspicious report with additional information related to a case forwarded by the FIAU to the Police. The report covered more recent events. It concerned mainly three individuals, related to several companies registered in Malta, and others in the country of residence of the involved individuals.

Company A entered into a business relationship with a local credit institution in 2020 and Mr. X was disclosed as its BO both with the local bank as well as with the MBR. Mr. X is an EU national, residing in Malta.

At onboarding, Company A, incorporated in Malta, appeared to be acting as a holding company, with most of its assets invested: in several subsidiaries, in another company as minority shareholder (Company F), other financial instruments and providing loans to related parties. Company A held interests in Company B and Company C, Malta-registered entities, and interests in other companies abroad, including Company F.

The immediate parent company of Company A is a company incorporated in a third member state. This has changed many times since its incorporation several years before. In addition, multiple transfers of shares in the last five years have been made. Shares in Company A have been transferred from a local trustee to a local CSP and then to a non-EU company; and from the non-EU company to another entity in another EU member-state, its current parent company.

Last year, through its account in Malta, Company A processed several outward payments in round amounts, totalling approximately EUR 100,000 over six months. The payments were made to another individual, Mr. Z, who has the same nationality as Mr. X. These were allegedly repayments for goods, being paid back via monthly instalments. Documents confirming these purchases were submitted to the Maltese credit institution, as requested, since these items were not in line with the business profile of the company.

Following the transactions mentioned above, another set of transactions with round-amounts were made to the same individual over 4 months, up to 2021. The substantial amount remitted to Mr. Z through these transactions was justified as being part of the consideration for the acquisition of a holding interest in another company, Company D. However, the majority shareholding of the company was valued close to EUR 4 million, as per agreement provided to the credit institution. Explanations were provided stating that the payment of almost EUR 4 million would be made through these monthly instalments over a period of more than ten years.

Considering such acquisition, the credit institution requested a valuation of the new company, company D. Mr. X provided outdated documentation in this regard, showing that the total value of immovable assets owned by Company D amounted to EUR 30 million. This company was being sold 10 years later for EUR 4 million.

The credit institution was not satisfied with the documents provided and requested a more recent and adequate valuation. At this point Mr. X suddenly became uncooperative and was disinterested in the evaluation of the company being acquired.

Case 2 – International Complex Structure - Transactional activity revealing the real BO (cont.)

Upon more in-depth searches, it emerged that Mr. Z was sentenced to prison in his country for embezzlement .

In relation to the financial statements of the company, loans of approximately EUR 2 million had been granted and received from related parties, and were interest free. Other loans amounting to EUR 18 million and payable to third parties were unsecured and repayable on demand and the charged interest at 5% was “waived” for the year (approximately EUR 900,000 per year). Such waivers of amounts due appear quite unusual, as these third parties are expected to be interested to not only recover the amount they lent to Company A, but also receive the gain in the form of interest documented in the binding loan agreement.

The UBO, Mr. X, holds bank accounts with two Maltese credit institutions, accounts which highlight minimal transfers, as “salaries” “rent” and “refunds” amounting to around EUR 60,000 annually. However, Mr. Z, a supposedly unconnected individual, is receiving many times over this amount, through unusual transactions which are outside the transactional behaviour expected from the company based on its business and risk profile. In addition, as a beneficial owner, Mr. X was expected to be interested in the evaluation of a company he was buying, especially since he was willing to pay a substantial amount from his wealth for the acquisition of the majority shareholding from Mr. Z.

In this case, Mr. Z appears to have wanted to hide his involvement in Company A, as well as any connection between himself and his conviction, the origin of assets held in these companies and the transactions to channel these transactions back to himself, justified as business dealings.

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