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EVALUATION OF ANTI-MONEY
LAUNDERING MEASURES AND THE
FINANCING OF TERRORISM
(MONEYVAL)

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Report on Fourth Assessment Visit – *Executive Summary*

Anti-Money Laundering and Combating the Financing of Terrorism

MALTA

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LIST OF ACRONYMS USED

AG	Attorney General
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BA	Banking Act
C	Compliant
CBM	Central Bank of Malta
CC	Criminal Code
CPA	Certified Public Accountants
CDD	Customer Due Diligence
CFT	Combating the financing of terrorism
CIS	Collective Investment Schemes
CO	Criminal Offence
CSP	Company Service Providers
DNFBP	Designated Non-Financial Businesses and Professions
DDO	Dangerous Drugs Ordinance (Chapter 10, Laws of Malta)
EEA	European Economic Area
EAW	European Arrest Warrant
EC	European Commission
ECDD	Enhanced Customer Due Diligence
EJN	European Judicial Network
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FIAU	Financial Intelligence Analysis Unit
FT	Financing of Terrorism
FIA	Financial Institutions Act (Cap. 376 of the Laws of Malta)
FSRB	FATF Style Regional Bodies
GDP	Gross Domestic Product
GPW	Gross Premium Written (by companies)
IFSP	Institute of Financial Services Practitioners
IMF	International Monetary Fund

INVCO	Investment Company with Fixed Share Capital
ISA	Investment Services Act (Cap. 370 of the Laws of Malta)
IT	Information Technology
LEA	Law Enforcement Agency
LGA	Lotteries and Gaming Authority
MER	Mutual Evaluation Report
MFSA	Malta Financial Services Authority
MIA	Malta Institute of Accountants
MKPO	Medical and Kindred Professions Ordinance (Chapter 31, Laws of Malta)
MLA	Mutual Legal Assistance
ML	Money Laundering
ML/FT	Money Laundering and Financing of Terrorism
MLRO	Money Laundering Reporting Office
MOU	Memorandum of Understanding
N/A	Non applicable
NAV	Net Asset Value
NC	Non compliant
NPO	Non-Profit Organisation
OLAF	European Anti-Fraud Office
PC	Partially compliant
PEP	Politically Exposed Persons
PIF	Professional Investor Funds
PMLA	Prevention of Money Laundering Act (Cap. 373 of the Laws of Malta)
PMLFTR	Prevention of Money Laundering and Funding of Terrorism Regulations
R	Recommendation
SR	Special Recommendation
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SICAV	Investment Company with Variable Share Capital
SWIFT	Society for Worldwide Interbank Financial Telecommunication
UCITS	Undertakings for Collective Investments in Transferable Securities
UN	United Nations
UNSCR	United Nations Security Council Resolution

EXECUTIVE SUMMARY

1. Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in Malta at the time of the 4th on-site visit (29 May to 4 June 2011) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of assessments is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which Malta received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round report. This report is not, therefore, a full assessment against the FATF 40 Recommendations and 9 Special Recommendations but is intended to update readers on major issues in the AML/CFT system of Malta.

2. Key findings

2. The Maltese authorities explained that the money laundering and financing of terrorism risk to which the jurisdiction is exposed has not changed considerably since the last evaluation report. No specific national AML/CFT risk assessment has been undertaken since then. However, the Police and the FIAU have identified a number of risks and vulnerabilities, derived mainly from drug trafficking and economic crimes, such as fraud and misappropriation. Representatives of the financial sector emphasised the risks related to foreign investment, possibly for tax evasion purposes and the distinct risk of inward investment by foreign PEPs from Eastern Europe and North Africa. The overall economic loss from crime is not routinely quantified. The authorities consider the TF risk to be low.
3. Malta has a comprehensive legal structure to combat money laundering. The money laundering offences are broad, fully covering the elements of the Vienna and Palermo Conventions. The evaluation team welcomes the significant progress made by the Maltese authorities in extending the mental element of money laundering to cover ‘suspicion’ and in the effective application of the legal provisions emphasised by the convictions achieved in practice, both in self and autonomous money laundering cases since the third round.
4. The legislative base for the financing of terrorism is largely in place. FT is broadly in line with the international standards. However, the material element of the terrorism financing described in the Maltese legislation could leave room for interpretation in respect of financing of “legitimate” activities furthering terrorism and on direct and indirect financing of terrorism. Also, the financing of offences covered in the annex to the TF Convention has, in the Maltese law, an additional mental element not required by the TF Convention. The existing legislative framework has not been tested so that the effectiveness of the system is difficult to assess.
5. The legal requirements for provisional measures and the confiscation regime are carefully constructed in Malta. However, the lack of information on freezing and confiscation orders made in proceeds-generating predicate offences generally, coupled with lack of evidence of use of attachment orders in proceeds generating cases, raise doubts as to the effectiveness of the freezing and attachment regime, and indeed the confiscation regime overall.

6. Malta has implemented the UN Security Council Resolutions (UNSCRs) by domestic and EU legislation. However there is not any clear and publicly known procedure for de-listing and unfreezing in appropriate cases in a timely manner. While there is a system in place for freezing the assets of EU internals, there is no evidence that designations of EU internals have been made under the Maltese legal framework. The evaluation team found insufficient guidance and communication mechanisms in respect of DNFBP and insufficient monitoring of compliance in respect of DNFBP.
7. The FIU of Malta (FIAU) is an independent government agency falling within the structure of the Ministry of Finance, the Economy and Investment. Although, the FIAU has limited direct access to databases, the AML/CFT legislation provides indirect gateways to financial, administrative and law enforcement information. However in respect to law enforcement and administrative information no reference is made in law or guidance which expressly provides for law enforcement and administrative authorities to respond to the FIAU on a timely basis.
8. Overall progress has been made to strengthen the preventive AML/CFT system. The Prevention of Money Laundering and Financing of Terrorism Regulations introduced the concept of the risk-based approach and includes, inter alia, provisions catering for simplified and enhanced customer due diligence measures. Although the reporting obligation for suspicions of terrorism financing is now in place in Malta, the level of reporting STRs for both ML and TF suspicions remains relatively low. The PLMFTR oblige subject persons to determine whether an applicant for business is a politically exposed person. There were some difficulties by some categories of subject persons in the implementation of effective measures when dealing with PEPs, especially in relation to the identification of clients who acquire the status of a PEP in the course of the business relationship. The FATF requirements regarding correspondent relationships and professional/banking secrecy are fully implemented.
9. The ongoing practice of joint inspections carried out by MFSA and FIAU is a welcome step that has certainly contributed towards strengthening the supervisory regime. However, the number of the on-site visits remains low and not commensurate with the size of the financial market. In addition, the absence of a national risk assessment to identify the most risky areas for ML/FT give rise to concerns with regard to the effective implementation of risk based supervisory activity.
10. The current Maltese legislation provides for broad measures in terms of powers of sanctioning of subject persons for non compliance. There is a range of sanctions in the Law which are potentially effective, proportionate, and dissuasive (both criminal, and administrative). However, the evaluators consider that they have not been sufficiently used, and that the financial penalties that have been imposed were not necessarily dissuasive. No sanctions have been imposed on the financial institutions. The lack of publicity of sanctions imposed is considered as a backward step from the 3rd round report.
11. With regard to DNFBP, a clear increase in the volume of reports is noticeable since the last MER, due mainly to the modification of the legal provisions on reporting obligations and to the efforts made in awareness-raising by the FIAU and some of the supervisory authorities. However, the uneven level of awareness of reporting obligations and procedures between different parts of this sector could negatively impact on the overall reporting behaviour of DNFBP. Enhancement of the resources involved for the oversight process is needed, together with a formalised risk based approach in order to leverage effectiveness.
12. The Maltese mutual legal assistance framework allows the judicial authorities to give sufficient assistance in money laundering and terrorism financing cases, including the

execution of foreign criminal seizure or confiscation orders related to laundered property, proceeds, instrumentalities and equivalent value assets. The legal provisions regulating the mutual legal assistance appear to be effectively applied in practice by Maltese authorities.

13. Significant progress has been achieved since the 3rd round report, in order to address FATF requirements related to NPOs on the legislative side, by the adoption of the Voluntary Organisations Act. However, the registration of the NPOs is still not compulsory in Malta. No specific risk assessment has been undertaken to identify possible vulnerabilities to misuse of NPOs for terrorist financing purposes. No awareness raising measures have been put in place and public access to NPO information is impeded by the lack of an electronic form of the register. The office of the Commissioner for Voluntary Organisations is understaffed for the fulfilment of its obligations under this standard.

3. Legal Systems and Related Institutional Measures

14. At the time of the fourth round on-site visit, money laundering continued to be criminalised under the same principal laws as described in the 3rd MER: Prevention of Money Laundering Act, (PMLA), the Dangerous Drugs Ordinance (DDO) and the Medical and Kindred Professions Ordinance (MKPO). The AML Law explicitly provides that a person might be convicted of a ML offence even in the absence of a judicial finding of guilt in respect of the underlying criminal activity. In addition, the Maltese authorities have introduced further statutory provision, in line with the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention), that it is also unnecessary to establish precisely the underlying criminal activity. Since the last MER (where there were no final convictions), eight money laundering cases were brought to court involving nine persons and resulting in seven convictions. The majority of investigations and convictions of ML, relate to self laundering, but recently a number of autonomous ML cases have been prosecuted too. The Maltese authorities indicated that the completed cases with money laundering convictions should encourage prosecutors to pursue serious autonomous ML cases more frequently.
15. The offences that might be considered as “*terrorism financing*” are provided in a series of articles of the Criminal Code. Due to the broad language used, it is clear that the terrorism financing offence covers any funds whether from a legitimate or illegitimate source. The material element of the terrorism financing described in the Maltese legislation could leave room for doubt in respect of two elements required by the Terrorism Financing Convention. In fact is not totally clear if the provisions cover legitimate activities furthering terrorism and if direct and indirect financing is covered. Also, a difficulty arises from the language of Article 328A which limits the financing of terrorism acts covered by the annex to the TF Convention, because of the three specific intentions set out in Article 328 A (1) a), b) and c). Financing the specific offences covered in the annexes should not require any other intention under Article 2 (1) (a) of the TF Convention. Due to the absence of cases before the prosecutors or the courts, it is not possible to assess the effectiveness of the provisions. Although the legislative base is largely in place, for the avoidance of any doubt, the Maltese authorities have indicated that they proposed amendments to legislation to make it unambiguous.
16. Malta has a generally comprehensive provisional measures and confiscation regime. The main laws providing for the attachment, freezing and confiscation of proceeds of crime are the Prevention of Money Laundering Act, Dangerous Drugs Ordinance, Medical and Kindred

Professions Act and the Criminal Code. Seizure as a preventive 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. Confiscation and forfeiture can be enforced upon conviction. 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. However, a proper overall assessment of the effectiveness of the freezing and confiscation regime is considerably impeded by the lack of statistics. Moreover, the continued adequacy and effectiveness of a court appointed expert to search for property and other assets is questioned.

17. The UNSCRs are implemented in Malta by domestic and EU legislation. UNSCR 1267 and 1373 are enforceable in Malta by virtue of Legal Notice 214 of 1999 and Legal Notice 156 of 2002 respectively. They are also enforceable by virtue of the European Union Council Regulations 881/2002 and 2580/2001 which are binding in their entirety and are directly applicable. As regards EU internals, the evaluators received no sufficient evidence that the designation of EU internals have been converted into the Maltese legal framework. No freezing measure has been applied in Malta in the context of combating FT. At the same time the authorities pointed out onsite that assets had been frozen on the basis of other EU financial sanctions not involving UNSCRs 1267 and 1373. No clear and publicly known procedure for de-listing and unfreezing is in place. Freezing measures at the request of another party relies on judicial proceedings. In terms of supervision, the Sanctions Board and the MFSA are responsible for the compliance with Special Recommendation III. The Maltese authorities indicated that there is a mechanism for sanctioning breaches of the relevant legislation; however it has never been used. The evaluation team found insufficient guidance and communication mechanisms and insufficient monitoring of compliance in respect of DNFBP.
18. The FIAU was established as an administrative FIU in 2002 and is composed of the Board of Governors, the Director and its permanent staff. The Prevention of Money Laundering Act Part II provides for the powers and functions of the FIAU. The core function is the collection, collation, processing, analysis and dissemination of information with a view to combating money laundering and funding of terrorism. At the time of the on-site visit, the FIAU had direct access to a very limited number of databases. Consequently the authorities should consider extending the direct availability of information for the FIAU. The law provides indirect access to information, but the access to law enforcement and administrative information is not guaranteed by law or guidance on a timely basis. The supervisory function of the FIAU has been significantly broadened by law since the 3rd evaluation, in the sense that the number of entities subject to the PMLFTR has increased, thereby increasing the FIAU's compliance oversight. The FIAU exercises supervisory functions over all reporting entities in the AML/CFT field.

4. Preventive Measures – financial institutions

19. The scope of preventive measures in the AML/CFT area covers all financial institutions in Malta. An important development since the last mutual evaluation report is that the PMLFTR introduced the concept of the risk-based approach into the Maltese AML/CFT regime. The 2008 Regulations now include, *inter alia*, provisions catering for simplified and enhanced customer due diligence measures and provisions for exemptions from certain customer due diligence measures, where financial activity is conducted (amongst others) on an occasional

or very limited basis. The PMLFTR was amended to expressly prohibit subject persons from maintaining anonymous accounts or accounts in fictitious names.

20. The beneficial owner is defined in the Regulation 2 of the PMLFTR and the expansion of the definition provides further details for identifying the beneficial owner in case of a body corporate or a body of persons and also the case of legal entity or legal arrangement which administers and distributes funds (and in the case of a life-insurance policy).
21. All financial institutions in Malta appeared to be generally aware of the identification obligations. They also appeared well aware of their obligation to retain the relevant documentation and the importance of a quick response to the authorities in case of a request for documentation. A series of effectiveness issues have been identified, including difficulties in managing the risk based approach, in fully understanding the distinction between CDD and ECDD and in a clear perception of the concept of “*reputable jurisdictions*”.
22. PMLFTR requires subject persons to develop and establish customer acceptance policies and procedures that are, *inter alia*, conducive to determine whether an applicant for business is a politically exposed person (including domestic PEPs). In practice, only banks are applying measures for establishing the source of wealth and source of funds of PEPs.
23. The FATF standard concerning cross-border correspondent banking relationships with respondent institutions is fully met in Malta.
24. Financial institution secrecy laws do not appear to inhibit the implementation of the FATF Recommendations.
25. PMLFTR requires reporting entities to have record-keeping procedures in place and provides details on their implementation, including procedures for keeping records: information relating to the business relationship and to all transactions (irrespective of whether these are domestic or international) carried out by that person in the course of an established business relationship or occasional transaction. The Regulation states that such records shall be kept for a period of five years commencing on the date on which all dealings taking place in the course of the transaction in question were completed. Records must be kept longer if requested by a competent authority in specific cases and upon proper authority.
26. Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15th November 2006 provides rules on transactions related to domestic or cross-border money transfer or remittance, in amounts of €1,000 or more. This Regulation is directly applicable as domestic law in view of Malta’s membership of the European Union. National implementation is therefore limited to establishing an appropriate monitoring, enforcement and penalties regime and to applying certain derogations allowed for in the EU Regulation. The monitoring of the implementation of the standard by money remittance businesses is checked by the MFSA during the on-site inspections. Although the level of fines appears to be proportionate and dissuasive, the lack of sanctions applied does give rise to concerns over effective application.
27. A mandatory obligation for subject persons to report suspicious transactions of ML as well as FT (without any threshold for reporting) is in place and in the PLMFTR. The subject persons should report suspicious transactions related to ML or FT regardless of the nature of the underlying criminal activity which is defined as any criminal offence. There are no provisions in the AML/CFT legislation that could prohibit the STR reporting on grounds that tax matters are involved. The evaluators considered the level of reporting to be relatively low compared with the size of the financial market. It has to be emphasised that no national risk assessment has been conducted in Malta and the authorities were not in the position to quantify the approximate economic loss or damage from criminal offences of an economic nature.

Therefore, Maltese authorities are invited to carry out a comprehensive assessment on the general adequacy of the level of reporting, the scope of reporting obligation in respect of TF and the practice followed by subject persons.

28. As regards the scope of reporting obligation the uncertainty as to whether financing of legitimate activities are covered in the definition of terrorist financing might limit the reporting obligation under R13, R16 and SRIV.
29. The reporting of suspicious transactions related to financing of terrorism regime is identical to the one for ML and it is provided for by the same Regulation. The examiners were concerned that, in pursuance of their obligation to identify and report FT suspicions, most interlocutors of the financial industry referred to UNSCR 1267 and 1373 as the sole indicator for suspicion. Given the size of the financial market in Malta, the number of STR on FT submitted to the FIAU seems to be insufficient and questions arise regarding the effectiveness of reporting system. Specific training and guidance should be provided to subject persons on terrorist financing suspicious transactions reporting, including red flags/indicators of suspicion and case studies.
30. The prohibition for the credit institutions from entering into, or continuing correspondent banking relationships with a shell bank was introduced in PMLFTR following the recommendations of the 3rd evaluation report. Though the requirement itself is now present in the legislative acts, the evaluators noted an insufficient understanding among market participants as to how they can be able to verify that their correspondent banks are not servicing shell banks.
31. The requirement to pay special attention to countries which do not, or insufficiently apply the FATF Recommendations is provided in Malta by PMLFTR that make reference to the concept of “*reputable jurisdiction*” and require subject persons to pay special attention to countries that do not meet the criteria of “*reputable jurisdiction*”. According to the said provision, subject persons shall pay special attention to business relationships and transactions with persons, companies and undertakings including those carrying out relevant financial business or a relevant activity from a jurisdiction that does not meet the criteria of a reputable jurisdiction. Following the on-site interviews, the evaluators are of the opinion that not enough practical assistance on the application of the concept of non-reputable jurisdiction is provided to financial institutions and hence the risk arises that appropriate counter-measures would not be applied.
32. The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations is in place. At the time of the on-site visit, there were no branches of Maltese banks outside Malta.
33. The licensing and supervision of the financial institutions is mainly regulated by means of a number of legislative acts and subsidiary legislation issued thereunder. All financial institutions must be licensed and supervised by MFSA. The AML/CFT supervision powers are entrusted to the FIAU for all subject persons. This includes the authority of the FIAU to conduct on-site inspections and carry out off-site compliance monitoring. The FIAU has a newly established compliance department in charge of the supervisory activity of the unit, ranging from off-site supervision to on-site visits. In 2010, 14 on site visits were performed by the FIAU in cooperation with other supervisory authorities (MFSA and the Lottery and Gaming Authority). At the time of the on-site visit the FIAU did not have a written methodology for supervisory activity (off site or on-site).

34. To ensure compliance monitoring and supervision the FIAU can enter into arrangements with other supervisory authorities (such as the MFSA and the LGA) to carry out on site examinations regarding AML/CFT issues on its behalf. The monitoring process is carried out both off-site and on-site to assure that the AML/CFT procedures of the subject persons are being complied with appropriately. Should the MFSA find any AML/CFT breaches during their supervisory work, the matter shall be referred to the FIAU in order to impose the respective sanction. The absence of a national risk assessment to identify the most risky areas for ML/FT, together with a low level of identified compliance infringements, give rise to concerns with regard to the effective implementation of the supervisory activity.
35. The sanctioning regime is contemplated under the PMLFTR. The offences and penalties are applicable to all types of subject persons and range from a fine not exceeding €50,000 or to imprisonment for a term not exceeding two years, to administrative penalties of not less than €1,200 and not more than €5,000. A subject person who fails to comply with the provisions of customer due diligence set out under Regulation 7 or the provisions of Regulation (EC) No. 1781/2006 shall be liable to an administrative penalty of not less than €250 and not more than €2,500. The number of sanctions applied in practice by FIAU for infringements of PMLFTR is quite low in proportion to the number of entities subject to this law. The level of the fines is not at all dissuasive. Moreover the imposed sanctions are not published on the FIAU website. The evaluators recommend that the FIAU should be given power to publish sanctions which it imposes.
36. The recently adopted Implementing Procedures Part I that replace the former Guidance Notes issued by the prudential supervisory authorities or SROs, provide guidance to both financial and non-financial sectors and are meant to assist subject persons in implementing, understanding, interpreting and fulfilling their obligations under the PMLFTR. Specific feedback is not provided to the reporting entities spontaneously. Upon request, the FIAU is required by the Law and, in practice, does provide case by case feedback. There is no formal and transparent methodology on procedures for this feedback. The specific guidelines do not contain feedback on general practical issues related to ML/TF such as methods, trends, examples and typologies.

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

37. The AML/CFT reporting obligations regarding financial institutions in Malta apply equally to DNFBP. The reporting obligation set out in Recommendation 13 applies also to DNFBP which are defined as subject persons carrying out relevant activity. “Relevant activity” is defined in the PMLFTR as the activity of the following legal or natural persons when acting in the exercise of their professional activities and covers: auditors, external accountants and tax advisors, real estate agents, notaries and other independent legal professionals, trust and company service providers, nominee companies holding a warrant under the Malta Financial Services Authority Act, any person providing trustee or any other fiduciary service, casino licensee and other natural or legal persons trading in goods whenever payment is made in cash in an amount equal to fifteen thousand euro (€15,000) or more whether the transaction is carried out in a single operation or in several operations which appear to be linked. Due to the amendments to the legal provisions, a clear increase in the reporting volume of the DNFBP is noticeable since the last MER. However, the uneven level of awareness of reporting obligations and procedures among different parts of the DNFBP sector could negatively impact on the overall reporting behaviour of the DNFBP.

38. The LGA is responsible for licensing, regulating and supervising the activity of casinos in Malta (including the ones that operate on the internet) and in accordance with the arrangement between the LGA and the FIAU in terms of Article 27 of the PMLA, it acts as the agent of the FIAU regarding these entities in order to assure that they comply with their AML/CFT obligations. The FIAU has the necessary powers under the PMLA to carry out compliance monitoring functions, including the power to impose sanctions. The compliance department within the FIAU carries out both on and off-site monitoring of the entities and in the case of casinos a specific questionnaire has been drafted in order to assist the compliance staff in assessing the compliance of the entities. Without prejudice to the steps undertaken to increase the monitoring capabilities of the FIAU, the authorities are encouraged to consider involving SROs in the oversight process while at the same time formalising a risk based approach in order to leverage the available resources.

6. Legal Persons and Arrangements & Non-Profit Organisations

39. Since the 3rd round report, several steps have been taken in order to address FATF requirements described in SR VIII, the most important being the adoption of Voluntary Organisations Act, which regulates the procedure for enrolment of VO and establishes the position of Commissioner of VO, including his duties and functions. Despite the adoption of the new legislation, no domestic review of the activities, size and relevant features of the non-profit sector for the purpose of identifying the features and types of the NPOs that are at risk of being misused for terrorist financing was conducted by the authorities. Also, there are no clear rules for the registration procedure and no form for the constitutive deed and statute of an organisation is required (even no authorized signature is required). Any natural or legal person based in Malta or abroad can be a founder of a voluntary organisation. In practice, no awareness-raising programme has been initiated which is dedicated to the NPO sector covering the risks of terrorist abuse and the available measures to protect against them. By the time of the on-site visit, no training on AML/CFT issues was provided for the NPOs.

7. National and International Co-operation

40. The PMLA sets out internal cooperation functions of the FIAU as a central authority in the national AML/CFT system. The Board of Governors is composed of four members nominated from the Office of the Attorney General, the Central Bank of Malta, the Malta Police Force and the Malta Financial Services Authority respectively.
41. The PMLA also sets out the general responsibility of the FIAU to co-operate and exchange information with supervisory authorities, where that information is relevant to the processing or analysis of information or to investigations regarding financial transactions related to ML/FT. The definition of ‘supervisory authorities’ includes a wide range of entities such as the Central Bank of Malta, the MFSA, the Registrar of Companies or the LGA. Additionally, the FIAU is authorised to disclose any document or information relating to the affairs of the FIAU, or information on any person which the FIAU has acquired in the exercise of its duties or its functions under the PMLA to supervisory authorities, whether situated in Malta or outside Malta.
42. Co-ordination and co-operation with the relevant operators in the financial and non-financial sectors in the AML/CFT regime is further achieved through the Joint Committee for the Prevention of Money Laundering and Funding of Terrorism (Joint Committee). The Joint

Committee is an ad hoc committee set up to provide a forum for discussion and exchange of views relating to the prevention of money laundering and funding of terrorism with a view to developing common AML/CFT standards and practices in compliance with the PMLFTR.

43. Malta signed and ratified the Vienna Convention, the Palermo Convention and the Terrorist Financing Convention. The Council of Europe Convention on Laundering Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism was ratified on 30th January 2008 and came into force on 1st May 2008. Although the Palermo and TF Conventions are in force, there are still reservations about the effectiveness of implementation in some issues. The United Nations Security Resolutions are implemented through the subsidiary legislation by the National Interest Act (Enabling Powers). UNSC Resolutions 1267 and 1373 are enforceable in Malta by virtue of legal Notice 214 of 1999 and Legal Notice 156 of 2002. As mentioned under SRIII, the procedure of freezing of assets is still not implemented satisfactorily.
44. Malta has a comprehensive legal system to meet the requirements of the Recommendations for mutual legal assistance. The main laws referring to legal assistance are the Criminal Code, the Prevention of Money Laundering Act and the Dangerous Drugs Ordinance. The legal framework allows the judicial authorities to give sufficient assistance in practice in money laundering and terrorism financing cases, including the execution of foreign criminal seizure or confiscation orders related to laundered property, proceeds, instrumentalities and equivalent value assets. The system has proved to be effective so far and assistance has been granted in a timely manner.
45. The information exchange with foreign FIUs is regulated as one of the functions of the FIAU and as an exemption from prohibition of disclosure rules. Furthermore, the FIAU plays an active role in the field of overall international information exchange and can obtain financial, law enforcement and administrative information on behalf of foreign counterparts. In respect of law enforcement cooperation, the officers of the International Co-Operation in Criminal Matters Unit of the Attorney General are contact points within the European Judicial Network, and facilitate international co-operation. Personal contacts through participation in conferences and plenary meetings of the network also contribute to the strengthening of relations. The Maltese supervisory authorities can cooperate and exchange information with overseas regulators including those cases concerning AML issues but in practice it has never been the case that a foreign supervisory authority required AML/CFT related information from MFSA. Therefore, there are no statistics on the number of formal requests for assistance made or received by the MFSA or Central Bank relating to or including AML/CFT.

8. Resources and statistics

46. In general, the human, financial and technical resources allocated by Maltese authorities for AML/CFT matters are satisfactory. The need for analytical software in FIAU activity was apparent as well as the need of more human resources dedicated to supervisory activities.
47. With regard to statistics, the FIAU and the financial sector supervisors were able to provide meaningful and comprehensive statistical data. However a series of shortcomings were identified, especially in relation to the number of confiscation orders in general, criminal proceedings, provisional measures and confiscation in proceeds generating crimes other than ML.

Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to Malta. *It includes ratings for FATF Recommendations from the 3rd round evaluation report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating ¹
Legal systems		
1. Money laundering offence	C	
2. Money laundering offence Mental element and corporate liability	<i>Largely Compliant</i>	<ul style="list-style-type: none"> • 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	PC	<ul style="list-style-type: none"> • The lack of information on freezing orders made in proceeds generating predicate offences coupled with lack of evidence of use of attachment orders in proceed generating cases raises doubts as to the effectiveness of freezing and attachment regime. • The lack of information on confiscation orders on laundered property raises doubts about the effectiveness of the confiscation regime overall. • Effectiveness of attachment order regime is questioned in domestic cases.
Preventive measures		
4. Secrecy laws consistent with	C	

¹ These factors are only required to be set out when the rating is less than Compliant.

the Recommendations		
5. Customer due diligence	LC	<ul style="list-style-type: none"> • Effectiveness issues: <ul style="list-style-type: none"> a) The perception of the concept of “<i>reputable jurisdiction</i>” slightly differs across the financial sectors and sometimes seems not to be applied correctly in practice b) Weak awareness among some subject persons (financial institutions) on FATF statements regarding the countries listed as undergoing regular review. c) The risk management process needs improvement. d) Some financial institutions were not entirely clear on the distinction between CDD and ECDD while there was little recognition of reduced or simplified due diligence
6. Politically exposed persons	LC	<ul style="list-style-type: none"> • Not all types of financial institutions are entirely certain regarding the practical application of the requirement to identify the status of PEPs acquired in the course of a business relationship by an existing customer. • Not all types of financial institutions are applying measures for establishing the source of wealth and source of funds of PEPs.
7. Correspondent banking	C	
8. <i>New technologies and non face-to-face business</i>	<i>Compliant</i>	
9. <i>Third parties and introducers</i>	<i>Compliant</i>	
10. Record keeping	C	
11. <i>Unusual transactions</i>	<i>Largely Compliant</i>	<ul style="list-style-type: none"> • <i>There are no specific requirements for financial institutions to set forth their findings in writing <u>and</u> to keep the findings available for at least five years.</i>
12. <i>DNFBP – R.5, 6, 8-11</i>	<i>Largely Compliant</i>	<ul style="list-style-type: none"> • <i>The same concerns in the implementation of Rec. 5 apply equally to DNFBP.</i>

		<ul style="list-style-type: none"> • <i>No adequate implementation of Rec. 6.</i> • <i>The same concerns in the implementation of Rec. 11 apply equally to DNFBP.</i> • <i>Not all persons providing company services are covered by Maltese legislation.</i>
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • Deficiencies in the incrimination of TF might limit the reporting obligations • The scope of reporting requirements relates to money laundering only, not to proceeds from criminal activity • Low number of STRs including credit institutions gives rise to concerns on reporting regime (effectiveness)
14. <i>Protection and no tipping-off</i>	<i>Compliant</i>	
15. <i>Internal controls, compliance and audit</i>	<i>Compliant</i>	
16. DNFBP – R.13-15 & 21	PC	<ul style="list-style-type: none"> • Deficiencies in the incrimination of TF might limit the reporting obligations • The scope of reporting requirements relates to money laundering only, not to proceeds from criminal activity • Effectiveness issues <ul style="list-style-type: none"> a) Uneven level of awareness across different sectors regarding the obligation to file suspicious transaction reports. b) Uneven application of the internal auditing and inconsistent staff training by DNFBP; c) Not enough practical assistance on application of the concept of “<i>non-reputable jurisdiction</i>” and hence the risk that appropriate counter-measures would not be applied.
17. Sanctions	PC	<ul style="list-style-type: none"> • Low number of sanctions imposed in practice on subject persons • No pecuniary sanctions imposed on financial institutions

		<ul style="list-style-type: none"> • The sanctions have not been imposed in an effective and dissuasive manner • No sanctions imposed on FIs senior management
18. Shell banks	LC	<ul style="list-style-type: none"> • Effectiveness issue: Insufficient understanding among market participants in what way they can be able to verify that their correspondent banks are not servicing shell banks.
19. <i>Other forms of reporting</i>	<i>Compliant</i>	
20. <i>Other DNFBP and secure transaction techniques</i>	<i>Compliant</i>	
21. Special attention for higher risk countries	LC	<ul style="list-style-type: none"> • Not enough practical assistance on application of the concept of non-reputable jurisdiction and hence the risk that appropriate counter-measures would not be applied.
22. Foreign branches and subsidiaries	C	
23. Regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> • Low number of on-site inspections performed by the supervisors in relation to AML/CFT in the financial sector • No infringements identified at financial institutions as result of the on-site inspections
24. DNFBP - Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Insufficient resources devoted to AML/CFT supervision of compliance and reporting of lawyers, notaries, dealers in precious metals and stones and real estates agents. • The risk based approach concerning the oversight of all the DNFBP is not formalised
25. Guidelines and Feedback	PC	<ul style="list-style-type: none"> • No sector specific guidelines. • Difficulties in assessing the effectiveness of new provisions in the Implementing Procedures Part I due to recent adoption at the time of the on-site visit. • The feedback mechanism is not working effectively in practice.
Institutional and other measures		

26. The FIU	C	
27. <i>Law enforcement authorities</i>	<i>Largely Compliant</i>	<ul style="list-style-type: none"> • There is a reserve on the effectiveness of money laundering investigation given that there are no convictions.
28. <i>Powers of competent authorities</i>	<i>Compliant</i>	
29. Supervisors	C	
30. Resources, integrity and training	LC	<ul style="list-style-type: none"> • Lack of analytical software (FIAU) • FIAU staff not sufficient for effective AML/CFT supervision • Insufficient number of investigators in the Police Anti-Money Laundering Unit • Insufficient training for police and judges
31. National co-operation	C	
32. Statistics	LC	<ul style="list-style-type: none"> • No detailed statistic of the number of confiscations and confiscation orders in general. • Statistics for on-going supervision of financial institutions (other than credit institutions) not broken-up by category • Effectiveness of maintaining statistics on international exchange of information of supervisors impossible to assess due to the lack of requests • Insufficient review of the effectiveness of the Maltese AML/CFT system as a whole; The experience and seniority of the Board members is not fully exploited in this respect. • Insufficient statistical data is routinely collected on criminal proceedings, provisional measures and confiscation in proceeds generating crimes other than ML • Statistics on police to police response times not available • Statistics on customs to customs

		response to international requests for assistance not available
33. <i>Legal persons – beneficial owners</i>	<i>Compliant</i>	
34. <i>Legal arrangements – beneficial owners</i>	<i>Compliant</i>	
International Co-operation		
35. Conventions	LC	<ul style="list-style-type: none"> Although the Palermo and TF Conventions are in force, there are still reservations about the effectiveness of implementation in some issues (unclear provisions described under SRII)
36. Mutual legal assistance (MLA)	C	
37. <i>Dual criminality</i>	<i>Compliant</i>	
38. <i>MLA on confiscation and freezing</i>	<i>Compliant</i>	
39. <i>Extradition</i>	<i>Compliant</i>	
40. Other forms of co-operation	C	<ul style="list-style-type: none">
Nine Special Recommendations		
SR.I Implement UN instruments	LC	<ul style="list-style-type: none"> The regime for freezing funds not satisfactory implemented. There is a need for effective and publicly known procedure for unfreezing and de-listing.
SR.II Criminalise terrorist financing	LC	<ul style="list-style-type: none"> Unclear whether the interpretation of A328F covers financing of “legitimate” activities furthering terrorism No clear provision to cover direct and indirect financing of terrorism. The financing of offences covered in the annex to the TF Convention has, in the Maltese law, additional mental element not required by TF Convention for offences under A 2 (1) (a).
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> There is not any clear and publicly known procedure for de-listing and unfreezing. No evidence that designation of EU

		<p>internals have been converted into the Maltese legal framework</p> <ul style="list-style-type: none"> • Concerns over effectiveness of freezing system at the request of another country that relies on judicial proceedings. • Insufficient guidance and communication mechanisms with DNFBP (except Trustees) regarding designations and instructions including asset freezing. • Insufficient monitoring for compliance of the DNFBPs. • The effectiveness concerns on Recommendation 3 might affect the effective application of criterion III. 11 •
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • Deficiencies in the incrimination of TF might limit the reporting obligations • Low level of awareness and understanding on FT red flags and indicators among reporting entities; concerns related to the confusion among the reporting entities in relation to the implementation of SR III and the reporting obligations under SR IV • Low level of reporting (effectiveness issue)
SR.V International co-operation	C	
<i>SR.VI AML requirements for money/value transfer services</i>	<i>Compliant</i>	
SR.VII Wire transfer rules	C	
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> • The registration of VO according to the Voluntary Organisations Act is not compulsory. The only restriction in terms of non-registered VO is that they cannot benefit from donations from public sources (Maltese). • No risk assessment was conducted for

		<p>the sector.</p> <ul style="list-style-type: none"> • No awareness raising programmes have been adopted or implemented. • The public access to the data contained in the Register is impeded by the lack of electronic form of the register and by the current fee to be paid for every NPO accessed. • The system of supervising and monitoring hasn't been tested in practice yet. • The sanctions provided seem not to be dissuasive enough. • No controls and checks are envisaged on the source of funds of beneficiaries. • The office of the Commissioner is understaffed (effectiveness issue)
<p><i>SR.IX Cross Border declaration and disclosure</i></p>	<p><i>Largely Compliant</i></p>	<ul style="list-style-type: none"> • <i>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.</i> • <i>Gateways to Customs information for the FIU need reviewing.</i>