

The crime of Money Laundering in Malta



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“Money laundering is, by its very nature, difficult to prove, for if the money launderers have already done their job the money appears to be clean.”

Justice Kennedy

US Supreme Court Justice Kennedy

Introduction

- The Prevention of Money Laundering Act (PMLA), Chapter 373 of the Laws of Malta by virtue of Act XIX of 1994
- Prior to this Act, ML was not considered as a criminal offence and criminals were only prosecuted for the predicate offences, for example drug trafficking, prostitution and gambling
- By means of LN 176 of 2005, any criminal offence could be considered as a predicate offence to ML (prior to this amendment there was a list of serious offences which could be considered as a predicate offence).
- On the 13th August 2003 the Prevention of Money Laundering and Funding of Terrorism Regulations were promulgated.
- On 12th March 2021, LN 98 of 2021 brought into force the Proceeds of Crime Act.

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- Malta is a member of the Council of Europe Select Committee of Experts on the Evaluation of Anti- Money Laundering Measures (MONEYVAL). MONEYVAL formally known as PC-R-EV, established in 1997.
 - The aim of MONEYVAL is that of ensuring that its MS do have in place effective systems to counter money laundering and the financing of terrorism and that each member complies with the relevant international standards in this field.
 - This standard, which each MS needs to comply with, emanates from various conventions such as the 1988 United Nations Convention against Transnational Crime as well as from the recommendations provided by the FATF, including the Special Recommendations on Financing of Terrorism and Terrorist Acts.

Definition of Money Laundering under Maltese Law

- **‘Conversion or transfer of property’** refers to those instances whereby proceeds originating from criminal activity are converted from one form, such as for example cash, into another, such as immovable property.
- **‘Knowing or suspecting’** indicates that the conversion or transfer of the proceeds of crime must be carried out with the intention of ‘concealing or disguising the origin of the property’.
- **‘Concealment or disguise’** which is in its own sense very broad must also include the intentional element, whereby the person attempting to hide the origin of the proceeds of crime must have the knowledge or suspicion that such proceeds originated from criminal activity.
- **‘Acquisition’** is referring to the purchase of property originating from criminal activity with the scope of legitimising the criminal property, whereas ‘possession’ is referring to the actual physical element or use of the proceeds, such as being in possession of an amount of cash which originated from prostitution.
- **‘Retention’**, one is possibly referring to someone assisting the person/s engaged in generating the proceeds of crime in the pursuance of their criminal activity.
- **‘Attempt’** and **‘Complicity’** are also included within the definition of money laundering and are applicable in the same way as to other criminal offences.

An 'All crimes' Approach

- Maltese law goes beyond what is conveyed under EU and international conventions, particularly when it comes to **suspicion**, which on its own is sufficient and does not require to be accompanied by actual knowledge of the underlying criminal activity. This could be dangerous since not every suspicion could be qualified as a reasonable suspicion especially when one considers that Malta is still very much a cash-based economy.
- Furthermore, Malta's anti-money laundering regime follows what is referred to as the 'all crime regime' and goes beyond EU and international conventions as these follow a serious crime approach. Perhaps the legislator should look at this aspect of the law to bring us in line with the current position in other European member states namely those which follow the serious crime approach.

Money Laundering Investigations

Investigations in Malta are carried out by the Executive Police. These usually commence:

- Upon receipt of an intelligence report from the FIAU, upon their own motion following suspicion that natural and/or legal persons may be involved in ML
- Upon receipt of information from any individual and/or other authority or upon receipt of information from foreign law enforcement or competent authorities.

Financial Intelligence Analysis Unit

- The FIAU was established by virtue of Article 15 of the PMLA in 2001 and is the competent authority in Malta with handling financial intelligence in relation to ML.
- It is tasked with the receipt of STRs and financial intelligence from the various subject persons, other supervisory and other domestic competent authorities as well as any other person, which following an analysis by the FIAU seeks to determine whether a 'reasonable suspicion' of ML subsists, and if so disseminates the intelligence to the Malta Police.
- One may add that the FIAU is therefore considered a 'filter' between the subject persons and the Malta Police/Attorney General

Money Laundering Prosecutions

There are three types of money laundering prosecutions, namely:-

- Self-laundering;
- Stand-alone (or autonomous) money laundering; and
- Third-party laundering

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- In **self-laundering prosecutions**, proving the link to the predicate offence is often seen as less difficult as it is most likely that the offender is charged in Court together with the crime that generated the illicit funds hence the link to the predicate offence is evident.
 - **Stand-alone** (or autonomous) **money laundering** or **third-party laundering** is prosecuted, the link to the predicate offence may not be so evident and therefore the prosecution has a bigger challenge in linking the money with the predicate offence, if we are to assume that a link to a predicate offence must necessarily be found as there are conflicting judgments in this regard .

Prima Facie

- The legislator introduced less stringent requirements in the law, whereby the prosecution is only required to prove *prima facie* the link between the money or property and the predicate offence.
- This '*prima facie*' requirement is an approach which has not been adopted with consistency by the Maltese Courts, as there were instances where the Court reiterated that no link to a predicate offence is required, whereas on other instances the Court required a link between the money and the predicate offence.

Case-law

- Police v. Sharon Camilleri – CMCJ, 13/07/2016
- Police v. Vincent Etienne Vella – CMCJ, 30/11/2016
- Republic of Malta v. John Vella – CC, 9/11/2017
- Police v. Alfred Delia – CMCJ, 23/05/2013

Onus of Proof

- This **shift in the burden of proof** was introduced, as money laundering is a very difficult crime to prove as was acknowledged on several occasions by the Maltese Courts. It is therefore probably the reason why the legislator introduced this provision in the PMLA to put both parties on a more level playing field.
- This is explained in detail by the Court of Criminal Appeal in **Police v. Carlos Frias Mateo** – CCA, 19-01-2012

Ne bis in idem

- The argument here is when a person is arraigned in court to face charges in relation to a predicate offence should the money laundering charge always be included or can Money laundering be prosecuted at a later stage?
- **Republic of Malta vs Christian Grech –CCA, 12-12-13**

In genere Investigations

- The magisterial inquiries and the appointment of foreign experts
- The expenses involved to the detriment of the state
- The Magistrate heading the *In genere* as opposed to the Inquiring Magistrate
- The repetition of laborious work

Problems encountered during Court Proceedings

- Lack of Administrative Staff
- Lack of Transcribers
- Lack of Local Specialised Experts
- The distribution of work
- Conflicting judgments which lead to legal uncertainty
- Prosecutors who lack experience
- Administrative fines given by the FIAU prior to court proceedings

Investigative Tools

- Monitoring Order
- Investigation Order
- Attachment Order

Asset Freezing during Trial

- Initial request before the Courts of Magistrates
- The effect of a Freezing Order
- The maximum amount – € 13, 976.24
- *Bona fide* creditors
- Extra unforeseen expenses
- Request for variations
- **Sharozova v. Malta** – App. No. 51853/19 (ECtHR, 03/03/2022)

The Administrator

- Commercial going concern subject to an Attachment Order
- Functions of the Administrator
- Payment due for the services of an Administrator

Thank you



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