



**AML/CFT TRAINING FOR THE REAL ESTATE
SECTOR**

ESWATINI FINANCIAL INTELLIGENCE UNIT

Presentation Content:

- Governing Legislation
- Legislative Framework and Regulatory Environment
- Accountable/Reporting Institutions
- EFIU (functions and powers)
- Obligations of Accountable Institutions
- Sanctions for non-compliance
- Money Laundering
- Terrorist Financing
- Typologies the Real Estate Sector
- AML/CFT Techniques in Real Estate Sector

BASIS FOR AN AML/CFT REGIME

There are couple of International Instruments forming the basis of AML/CFT regime

- UN Convention against Illicit Traffic in Narcotic drugs and Psychotropic Substances (1988)
- International Convention for the Suppression of the Financing of Terrorism (1999)
- UN Convention Against Transnational organized Crime (2000) (Palermo Convention)
- UN convention Against Corruption (UNCAC)(2003)
- UN Security Council Resolutions
- FATF 40 recommendations

FINANCIAL ACTION TASK FORCE (FATF)



- Intergovernmental body Formed in 1989 by the G7 Heads of State, European Commission and 8 other countries.
- It sets standards and promotes effective implementation of legal, regulatory and operational measures for combating ML/TF
- In 1990, FATF came up with 40 Recommendations to deal with ML
- 2001, the mission of FATF was widened to include TF. FATF came up with 8 Special recommendations to deal with TF.

FINANCIAL ACTION TASK FORCE (FATF)



- 2004 FATF published 40 + 9 Recommendation on ML and TF.
- 2012 Revised to 40 Recommendations on ML and TF (aka The Standards)
- Eswatini is a member of FATF and the regional body, the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).
- <http://www.fatf-gafi.org>

Legislative Framework and Regulatory Environment

Local legislation in place by parliament:

1. Money Laundering and Terrorist Financing (prevention) Act, 2011 (as amended).
 - incorporated terrorist financing
 - introduced the risk-based approach
2. United Nations Security Council Resolution (2016) Regulations.
3. Suppression of Terrorism Act, 2008.
4. Prevention of Organized Crime Act, 2018
5. Criminal Matters (Mutual Legal Assistance) Act

Definition of Accountable Institution (AI)

For purposes of the REAL ESTATE sector, schedule 3 (u) provides as follows-

“Accountable Institution” means any person who carries on the business or activity ofdealing in immovable property when the persons dealing are involved in transactions for their client concerning the buying and selling of real estate”.

Eswatini Financial Intelligence Unit

An entity established in compliance with FATF Recommendation #29

- *“Countries should establish a financial intelligence unit (FIU) that serves as a national Centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake”*
- Established under section 19 of the Money Laundering and Financing of Terrorism Prevention Act, 2011 as amended in 2016.
- *“A financial intelligence unit to be known as the ESwatini Financial Intelligence Unit (“EFIU”) is hereby established which shall be an autonomous central national agency responsible for receiving, requesting, analyzing and disseminating to competent authorities' disclosures of financial information as required under this Act in order to counter money laundering and financing of terrorism”*

Basic Functions of the EFIU

- **RECEIVE:** Suspicious transactions from accountable Institutions, supervisory authorities and / any legal person.
- **ANALYSE:** Investigate information submitted by accountable institutions/supervisory entities to determine if there is reasonable ground for the suspicion.
- **DISSEMINATE:** Provide intelligence to law enforcement agencies, supervisory agencies and international counterparts in order to facilitate the legal action deemed necessary.

CORE POWERS & FUNCTIONS

- Requesting and analyzing information obtained from accountable institutions
- Carrying out examinations of institutions in terms of s35
- Sending out reports to the appropriate law enforcement agency
- Instructing accountable institutions to comply on the basis of its analysis and assessment
- Entering into agreements with any domestic government regarding exchange of information
- Requiring police and other investigative or prosecutorial body to report progress and outcomes
- May disclose any report to foreign agency with similar functions

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- Issue guidelines to accountable institutions not under the jurisdiction of supervisory authorities in relation to customer identification, record keeping and, reporting obligations and the identification of suspicious transactions;
- Provide training programs for accountable institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;
- may educate the public and create awareness on matters relating to money laundering and financing of terrorism;

Money Laundering



Money Laundering

- “Processing of criminal proceeds to *disguise* their illegal origin” (FATF)
- “The process by which proceeds from a criminal activity are *disguised* to conceal their illicit origin” (IMF)
- “It is any act or attempted act *to conceal or disguise* the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources”

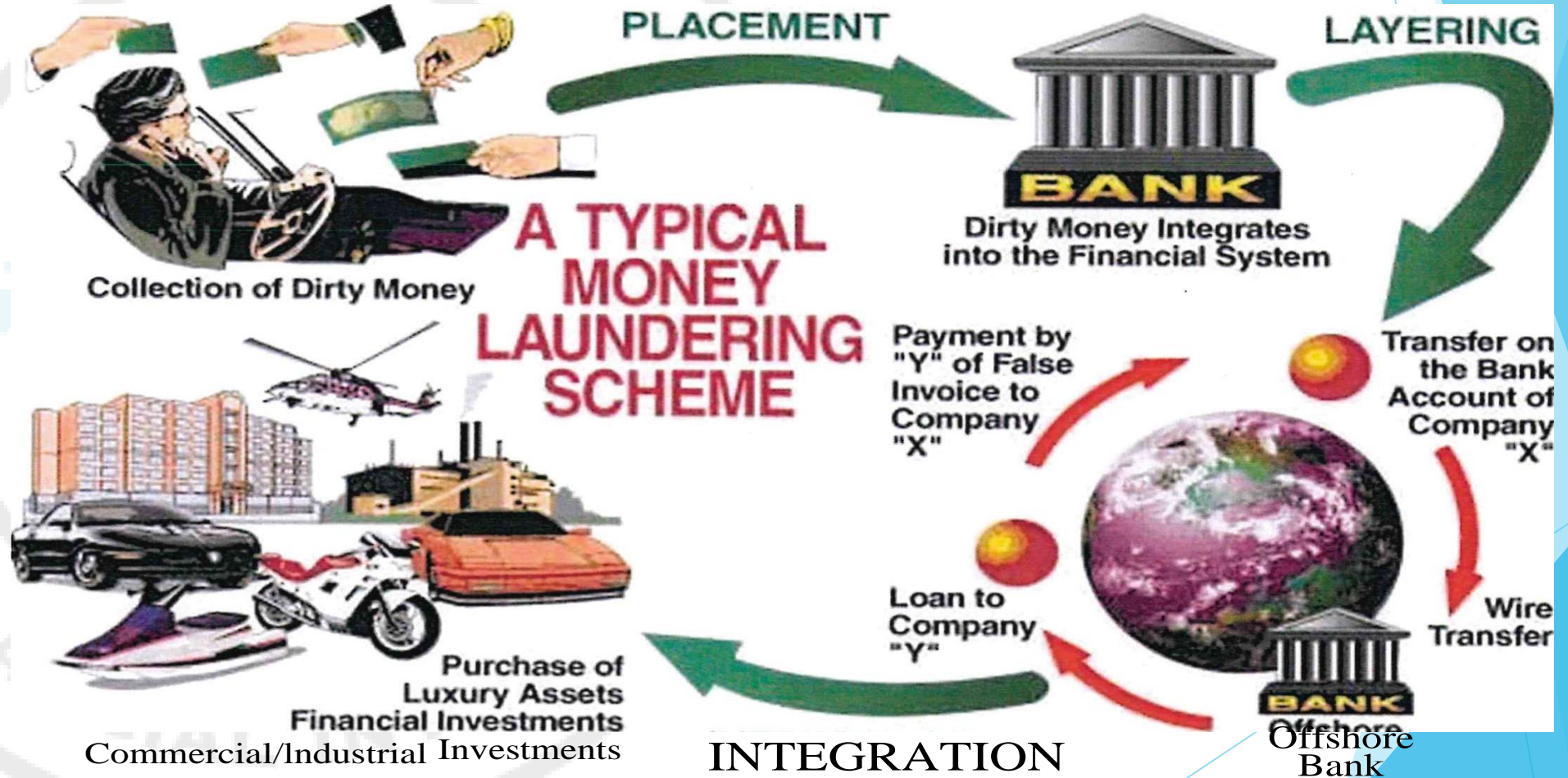
Making dirty money appear clean.”

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DEFINITION UNDER THE MLFTP Act, 2011

Money Laundering is defined as the conversion or transfer of property, knowing or having reason to believe that the property is derived directly or indirectly from unlawful source with the aim of concealing or disguising the illicit origin of the property or aiding any person involved to evade the legal consequences of those acts or omission.

Money Laundering Scheme



Effects of Money Laundering

Legitimate sources (Clean)	Illegitimate Sources (Dirty)
<ul style="list-style-type: none">❖ Salary;❖ Prizes from competitions;❖ Inheritance;❖ Insurance policy;❖ Interest from banks;❖ Legitimate business;❖ Sale of farming produce;❖ Legitimate fundraising;❖ Etc..... Etc.....	<ul style="list-style-type: none">❖ Drug trafficking;❖ Bribery & Corruption;❖ Extortion;❖ Fraud;❖ Robbery;❖ kidnapping;❖ Human trafficking;❖ Smuggling (Arms, People, Goods);❖ Counterfeiting & Forgery; Tax evasion;❖ Etc.... Etc....

OBLIGATIONS OF AIs

- CUSTOMER IDENTIFICATION AND VERIFICATION PROCEDURES.
- ONGOING DUE DELIGENCE
- GOVERNANCE
- KEEPING AND MAINTAINING RECORDS
- REPORTING OF SUSPICIOUS TRANSACTIONS
- EMPLOYEE SCREENING AND TRAINING
- SANCTION SCREENING
- NEW S6 ON RISK BASED APPROACH.

What is AML/CFT Screening

- It is the process of learning whether any new or existing relationship including both **individuals** and **legal persons** are part of any blacklists or law enforcement lists to conclude the risk rating of the customer.
- Most common types of AML/CFT screening are **adverse media, Politically Exposed Persons (PEPs) and Sanctions**

Main Sanction Regimes in the World

- European Union- **EU**
- United States Office of Foreign Asset Control- **OFAC**
- Office of Financial Sanctions Implementation- **OFSI**
- United Nations Security Council- **UNSC**

SCOPE OF SCREENING

Parties to whom screening should be performed:

- Natural or Legal persons being on-boarded
- Shareholding entities
- Beneficial Owners
- Key personnel e.g., senior management
- Associated counterparties wherever applicable

CUSTOMER DUE DILIGENCE

What is CDD?

- Simply put- KYC
- Know who (natural and juristic) you are dealing with
- No fictitious names;
- No shell or shelf companies.

ELEMENTS OF CDD

- CUSTOMER IDENTIFICATION
- CUSTOMER PROFILE
- CUSTOMER ACCEPTANCE
- RISK RATING
- MONITORING
- INVESTIGATE AND EXIMINE UNUSUAL CUSTOMER OR ACTIVITY
- DOCUMENTATION

Ongoing Due Diligence

- Identification and verification should not be a once off.
- Documents must be kept for minimum stipulated period.
- Documents updated- **Remediation Process**

Appointment of AMLO (S18)

- Accountable institution to appoint an AMLCO to ensure compliance with the MLFTP Act. Inter alia to;
- Develop and implement AML/CFT policies and establish systems to deter and detect ML/TF.
- Know risks to which the business is exposed through performing an AML/CFT risk assessment so that accountable institution can identify, analyze and assess AML/CFT risks

Record keeping

- Identity of Person (photo ID)
- Transactions and correspondence relating to transactions.
- Reports made to the SFIU.
- Enquiries made to it by the SFIU.
- Records to be kept for **FIVE YEARS or MORE** after business relationship has terminated.
- Kept in electronic format.

Suspicious Transaction Reporting

- Accountable institutions must report suspicious transactions and not attempt to investigate.
- Within two working days of forming suspicion on transaction or activity.
- Report both attempted and consummated suspicious activity or transaction.
- Suspicion is subjective. However, the standard of a **reasonable man** is used to test compliance.
- Anonymity requirement must always be observed.

Employee Training and Due Diligence

- Establish processes and procedures of screening of employees before being employed (KYE).
- Ongoing screening of employees (conflict of interests, net worth).
- Conduct Employee Due Diligence.
- Train employees to recognize suspicious transactions.

Sanctions for Non-compliance (statutorily enshrined)

- Maximum fine amended to reach a high of E5M.
- Categorized in two folds:
 - Corporate Liability
 - Individual Liability

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Offence	Body corporate penalty	Individual penalty
<p>Money laundering Terrorist financing</p>	<p>Not less than two hundred and fifty thousand Emalangeni (E250,000) fine or loss of authority to do business or both.</p>	<p>imprisonment for 10 years or to a fine of not less than one hundred thousand Emalangeni (E 100,000) or both</p>
<p>Failure to establish and verify identity of persons and transactions, Failure to maintain records, Failure to maintain account in true name, Failure to report, Failure to formulate and implement internal rules, Failure to appoint compliance officer or provide training, and Opening account in fictitious, false or incorrect name</p>	<p>a fine of not less than one hundred thousand Emalangeni (E 100,000).</p>	<p>imprisonment for 1 year or to a fine of not less than thirty thousand Emalangeni (E30,000);</p>
<p>Providing false or misleading statements, Unauthorized disclosure of suspicious transaction reports and other information, Dealing with shell banks, Obstructing of official in performance of functions and Failure to comply with monitoring and restraint order</p>	<p>a fine of not less than one hundred thousand Emalangeni (E 100,000).</p>	<p>imprisonment for 5 years or to a fine of not less than fifty thousand Emalangeni (E50,000); and,</p>

What is Terrorist financing?

Terrorist financing came into the limelight after the terrorist attacks in the United States on the 11th September 2001



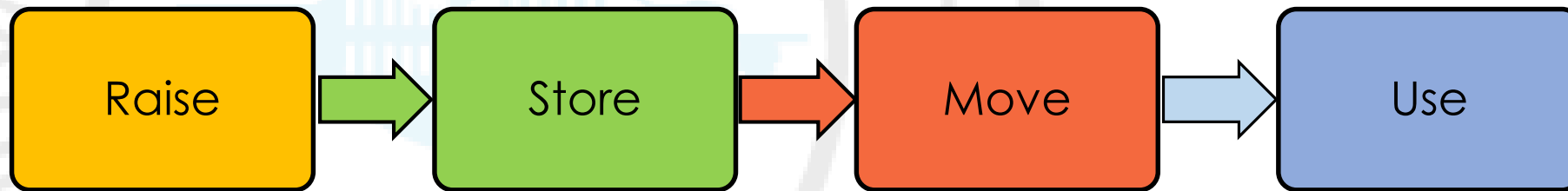
Terrorist Financing is the process by which terrorists fund their operations in order to perform terrorist acts.



Terrorists need financial support to carry out their activities and to achieve their goals. It may involve funds raised from:

- **Legitimate sources**, such as personal donations and profits from businesses and charitable organizations.
- **Criminal sources**, such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping and extortion.

Stages of terrorist financing



Methods used to disguise terrorist financing

- The terrorist group has to disguise the link between itself and the legitimate funding
- To move their funds, terrorists use similar methods to money laundering e.g.:
 - ✓ The formal banking system,
 - ✓ Informal value transfer systems (IVTS) or alternative remittance systems (ARS) e.g., Hawala system
 - ✓ Cash smuggling
 - ✓ Structuring / Smurfing
 - ✓ Purchase of monetary instruments
 - ✓ Wire transfers

Effects of terrorism

- Lives may be lost or permanently altered
- Destabilizes governments (e.g., associated rise in security costs and loss in productivity of the workforce through damages to labor and capital)
- Undermines economic and social development – reconstruction of destroyed structures costly; affects FDI (foreign direct investment); raised costs in conducting business
- Creates regional conflicts.
- Erodes internal security situation of a country and the region
- Very often terrorism goes hand in hand with organized crime, trafficking and general lack of control
- In worst cases, terrorist activities can lead to civil war

Examples of terrorist activities

- 1994 - genocide in Rwanda
- 11 September 2001- bombing of towers of the World Trade Center
- 21 September 2013 - attack of Westgate Mall in Kenya
- 2013 - Boko Haram attacks in Nigeria
- 2017 - Manchester attacks
- 2018 – 262 terror attacks on LEAs and political leaders in Pakistan – over 595 dead & 1,030 injured
- 2019 – Mogadishu, Somalia, car bomb exploded at restaurant – 15 dead – Al Shabab
- 15 March 2019 – New Zealand – 2 mosques – 50 dead

NGOs and NPOs

- NPOs are usual abused to serve as vehicles for raising funds destined for terrorism
- Vibrant sector providing numerous services
- Can exploit legitimate entities as conduits for TF
- Characteristics that make them vulnerable to misuse for TF:
 - Subject to little or no regulation or few obstacles to their creation
 - Enjoy public trust
 - Access to considerable sources of funds
 - Cash intensive
 - Frequently having a global presence, often in or next to areas exposed to terrorist activity.

DIFFERENCES BETWEEN ML & TF

	MONEY LAUNDERING (ML)	TERRORIST FINANCING (TF)
Motivation	Greed (self enrichment)	Ideology
Purpose	Hide origin of funds	Hide the end use of funds Donor may not know what the funds will be used for
Source of funds	Illegal	Both legal and illegal Mostly involves lesser amounts of money
Who benefits?	Money launderer wants to benefit	Donor does not expect benefits from the funds donated

TYOLOGIES OF MONEY LAUNDERING IN REAL ESTATE

Entity E was operating as an online peer-to-peer lending finance company in Country C until the authorities uncovered that it was conducting a large-scale Ponzi scheme. Among others, proceeds from Entity E's Ponzi scheme were intended to be used to purchase a private residential property in Singapore worth more than S\$23 million. An estate agent referred a foreign customer who was interested in purchasing a property in Singapore to a Singapore lawyer for conveyancing. The lawyer subsequently discovered that the foreign customer had been arrested in their home country in relation to Entity's E Ponzi scheme and was under investigation for fraud. The lawyer and real estate agent had suspected that the monies provided by the customer for the purchase of the property were illicit proceeds but did not file a Suspicious Transaction Report required under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act. Eventually the property and other relevant proceeds were seized, amounting to S\$27 million.

These proceeds have been successfully returned to Country C.

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In February 2021, a real estate attorney in Kentucky pleaded guilty to money laundering charges for purchasing real estate with the intention of using the purchases to disguise the proceeds of illegal sports betting. The attorney conspired with another individual engaged in illegal betting to disguise the illicit proceeds through investments in commercial real estate. As part of the scheme, the attorney used funds which he knew were derived from illegal betting to purchase companies that held real estate properties. When purchasing these properties, the attorney deliberately concealed the involvement and ownership of the individual involved in illegal gambling.

TECHNIQUES USED TO LAUNDER FUNDS THROUGH REAL ESTATE

- **Use of third parties:** Criminals can make a title deed on someone else while buying property
- **Use of credit and Mortgage:** Credit and Mortgage can be used as collateral for laundering crime proceeds. Refunds can be used to mix illegal funds with legitimate funds
- **Manipulation of Property Value:** Criminals may cooperate with third parties such as real estate agents to underestimate or exaggerate a property's value
- **Configuring cash deposits to purchase real estate:** criminals deposit cash below the reporting threshold between different Banks to avoid triggering transactions reports
- **Rental Income legitimizes illegal funds:** Criminals rent their property by providing illegal funds to cover rent payments to tenants to legitimize illegal funds
- **Real estate purchase facilitates other criminal activities:** Criminals can purchase property using illegal funds to engage in criminal activities such as drug production. The revenue obtained is used to hide the source of funds.
- **Use of front companies:** Property owned in the name of shell companies established overseas allows criminals to move away from the property

RULES TO MITIGATE RISK IN REAL ESTATE

- Checking beneficiaries
- Screening for politically Exposed persons
- Performing sanction screening
- Verifying the origins of client's funds
- Submission of suspicious reports
- Training



THANK YOU