AML/CFT TRAINING FOR LEGAL PRACTIONERS

ESWATINI FINANCIAL INTELLIGENCE UNIT

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)
- Recommendations cover 6 main aspects, affecting various stakeholders - LEAs, Supervisory Authorities, Reporting Entities
- 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

DOMESTIC REGULATORY INSTRUMENTS

- Money Laundering and Financing of Terrorism (Prevention) Act, 2011 (As Amended)
- Suppression of Terrorism Act of 2008
- Prevention of Organized Crime Act of 2018
- Criminal Matters (Mutual Assistance) Act, 2001

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, analysing 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

- Authority to collect any information considered relevant to an unlawful activity, money laundering activities or financing of terrorism, stored in commercially available databases or government databases;

- Authority to request information from accountable institutions, any supervisory agency and any law enforcement agency for purposes of AML/CFT;

- Authority to carry out examinations (inspections) of accountable institutions;

- To send intelligence derived from any information received to the appropriate law enforcement and, supervisory authorities if on the basis of its analysis and assessment, EFIU has determined that there is an element of money laundering or financing of terrorism;

Powers of the EFIU…Continued

- Authority to instruct any accountable institution to take such steps as may be appropriate in relation to any information or report received by the EFIU, to enforce compliance with the Act or to facilitate any investigation anticipated by the EFIU;

- Disseminate information within Swaziland or elsewhere, as well as make recommendations arising out of any information received;

- 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

Powers of the EFIU…Continued

- may require police and other investigative or prosecutorial bodies to report progress and outcomes on matters referred to them; and
- may educate the public and create awareness on matters relating to money laundering and financing of terrorism;
- Powers to Enforce Compliance with the MLFTP Act of 2011 as amended.

Money Laundering

What is Money? Dirty Money Vs Clean Money

“Anything of value that can be used to facilitate trade”

Legitimate sources (Clean)	Illegitimate Sources (Dirty)
❖ Salary; ❖ Prizes from competitions; ❖ Inheritance; ❖ Insurance policy; ❖ Interest from banks; ❖ Legitimate business; ❖ Sale of farming produce; ❖ Legitimate fundraising; ❖ Etc…… Etc…..	❖ Drug trafficking; ❖ Bribery & Corruption; ❖ Extortion; ❖ Fraud; ❖ Robbery; ❖ kidnapping; ❖ Human trafficking; ❖ Smuggling (Arms, People, Goods); ❖ Counterfeiting & Forgery; Tax evasion; ❖ Etc…. Etc….

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” (Interpol)

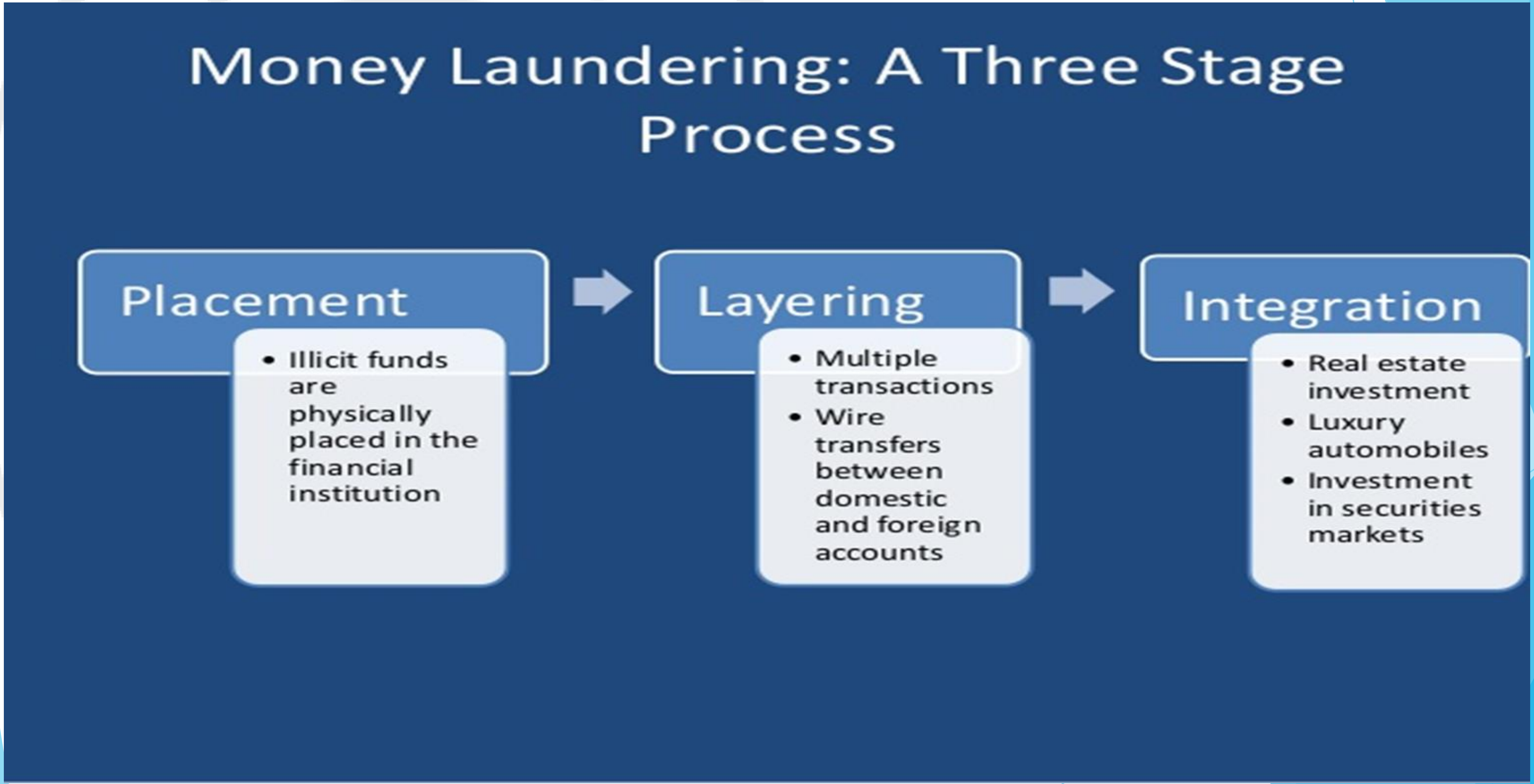
  OR: Simply…

  Making dirty money appear clean.”

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.

The Three Stages of Money Laundering



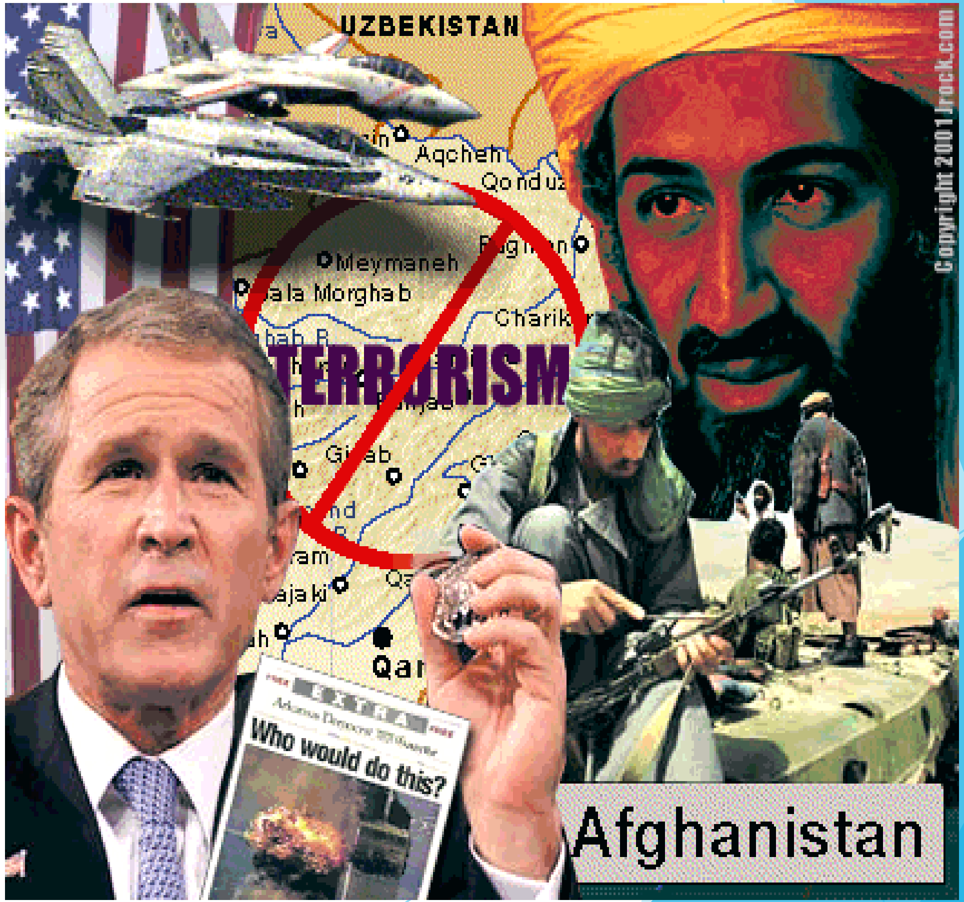
Effects of Money Laundering

- Increased exposure to organized crime and corruption;
- Undermines legitimate private sector (use of front companies, unfair advantage, distortion of investments);
- Economic distortion and instability (investment in activities not necessarily economically beneficial);
- Affects tax revenue;
- Increases reputational risks of countries, financial institutions & Businesses / professions;
- Political threat.

Terrorist Financing

Terrorist financing Background

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



Definition Terrorist financing

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.

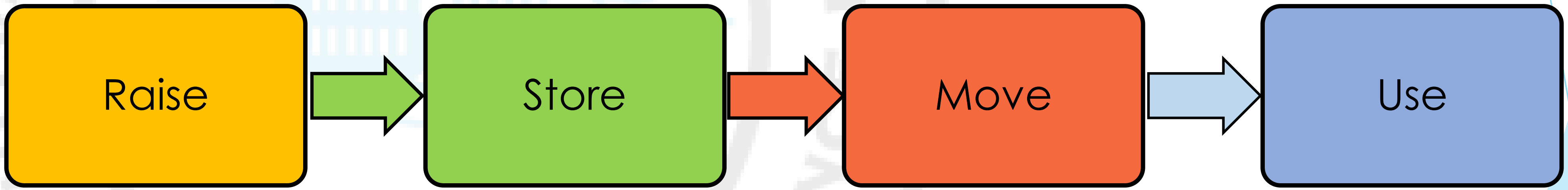
Examples of terrorist activities

- 1994 - genocide in Rwanda
- 11September 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

Other uses of terrorist financing

Terrorist Organizations need funds in order to operate

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

Countering terrorism

- Reducing the Flows (RAISE)
- Targeting the Transfer (MOVE)
- Targeting the Spending of funds (USE)

NGOs and NPOs

- Not reporting entities under the MLFTP Act, but recognize that they can 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

KEY OBLIGATIONS OF LEGAL PROFESSIONALSACCOUNTANTS IN TERMS OF THE ACT

- Record Keeping (beyond 5 years)
- Verifying the identity of their Clients & screening
- On-going monitoring of transactions
- Customer due diligence/Enhanced due diligence
- Reporting of Suspicious transactions
- Establishing internal controls
- Reporting of Suspicious transactions

ML RISK VULNERABILITY FOR LEGAL PRACTITIONERS

- The products and services legal practitioners provide that are **internationally recognized as more likely to be abused by criminals** in the money laundering process include:
- **Conveyancing: Legal** practitioners who are conveyancers may knowingly or unwittingly assist criminals by falsifying documents, drafting documents with overstated or understated value of the properties, facilitating the transfer of properties to third parties and establishing complex loans and financial arrangements.

VULNERABILITIES CONTINUES…

- **Business in a customer account**: legal practitioners may be requested to assist with an investment that never takes place or where the funds eventually end up in a third-party account.

- **Formation and management of legal entities:** legal practitioners may be requested to create and assist in managing fictitious entities, complex, legal structures or shell companies that are aimed at and result in the true ownership of assets being hidden through different layers or legal structures.

VULNERABILITIES CONTINUES…

- **The method of payment for services** provided by legal practitioners could, in some instances, also be a channel for money laundering, with the use of cash pointing to a higher likelihood of funds derived from criminal activities

- **Legal practitioners that perform the role of a trustee or a director of a company** are also required to obtain the necessary information about the nature of the transactions of the trust or company, the natural persons or legal persons that are parties to such transaction with the trust or company, whether the transaction makes economic or commercial sense, as well as the origin of the funds received by the trust or company, in order to make an informed decision about the ML/TF risks associated with such a transaction

RED FLAGS

- The legal practitioner to effectively act **as a financial intermediary** that is to handle the receipt and transmission of funds **through accounts,** they control in the act of facilitating a business transaction

- The clients deposit/transfer funds through the legal practitioner's trust account which funds are not tied to a transaction for which the legal practitioner is performing or carrying out activities

- The client requests financial transactions to occur outside of the legal practitioner's trust account (the account held by the legal practitioner for the client)(e g through the firm's general account and/or a personal or business account held by the legal practitioner himself / herself)

RED FLAGS…

- The legal practitioner to practice/represent or assure the client's standing reputation and credibility to third parties, without a commensurate knowledge of the client's affairs

- The legal practitioner is capable of concealing beneficial ownership from competent authorities

- Transfer of real estate or other high value goods or assets between parties in a time period that is unusually short for similar transactions with no apparent legal, tax, business, economic or other legitimate reason

- Payments received from unassociated or unknown third parties and payments in cash where this would not be a typical method of payment

Penalties for non-compliance

- Money Laundering- 10 years imprisonment or fine of not less than E100K (individuals); a fine not less than E250K or loss of business (corporate body)
- Failure to identify and verify persons/transactions: 1 year imprisonment or a fine of not less than E30K (individuals); a fine not less than E100K (body corporate),
- Providing false or misleading information- 5 years imprisonment or E50K fine (individuals); not less than E100K (body corporates)
- Administrative Penalty not exceeding E5 000 000

Thank you for your attention