



FINANCIAL INTELLIGENCE AGENCY (FIA)

Presented by:

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Presentation Outline

1. Money Laundering, Terrorism Financing & Proliferation Financing
2. Financial Intelligence Agency (FIA) and its Mandate
3. Real Estate Operations and Vulnerabilities
4. AML/CFT & CFP Obligations of Real Estate entities/professionals as per the FI Act 2019.
5. AML/CFT & CFP Obligations of REAC (Supervisory Authority)
6. National Updates (NRA, MER and FATF-ICRG Action Plan)

Background to the Financial Intelligence Agency (FIA)

- ❖ In 2007, the World Bank carried out a Mutual Evaluation assessment for Botswana.
- ❖ Some deficiencies were identified in the country's AML/CFT regime and recommendations were made.
- ❖ One of the recommendations was to establish the Financial Intelligence Agency hence, the birth of FIA.

Establishment of the FIA

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Financial Intelligence Agency (FIA) is a Department under the Ministry of Finance and Economic Development, established in 2009 **in terms of Section 3(1) of the Financial Intelligence Act (FI Act), 2009 and continued under Section 4 FI Act 2019**, with an aim of combating money laundering and terrorist financing.

Functions of the Agency Section 6 FI Act, 2019

Requesting, Receiving, Analysing disclosures of financial information from accountable institutions

AND

Disseminating the product

TO

Investigatory authorities, Supervisory Authorities or Comparable bodies.

Functions of the Agency

- To receive Suspicious Transaction Reports (STRs), Currency Transaction Reports (CTRs) and Electronic Funds Transaction Reports (EFT) from reporting entities.
- To analyze reports and to seek additional information in this respect.
- To disseminate information concerning reports to Law Enforcement Agencies wherever there is an element of Money Laundering or Terrorist Financing.

Additional Functions of the FIA

- Supervisory functions(section 2); Car Dealers, Semi –previous metal dealers
- Give guidance to Specified Parties and Supervisory Authorities
- Coordination of national AML/CFT efforts: Mutual Evaluation Review, National Risk Assessment etc.

Real Estate Profession

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- ▶ Real estate refers to immovable property together with any improvements thereon
- ▶ Real estate agent refers to a person engaged in the purchase , sale, letting or hiring of real estate as an agent or broker for another person
- ▶ Real Estate Professional means a person registered by the Council as an Agent, property valuer, manager, auctioneer
- ▶ All real estate practitioners must be registered in terms of S.20 of the Act

Section 2 of the Real Estate Act, of 2003

Why is this Sector Important for ML/TF

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- ▶ Investment in real estate sector offers advantages for both law abiding citizens and criminals
- ▶ Real Estate appreciates in value
- ▶ Many countries offer incentives to buyers. e.g government subsidies and tax reduction.
- ▶ It may provide for obscuring the true source of funds and identity of ultimate beneficial owner
- ▶ Therefore it is of extraordinary importance to the economy in general and the financial system

Basic Techniques

Techniques, methods mechanisms and instruments are used to misuse the real-estate sector are both legal and illegal and these are;

- I. **The role of Non-Financial Professionals:** money launderers seek out experience of professionals such as lawyers, notaries, tax advisors, accountants, financial advisors etc. in order to create structures to move illicit funds

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- ▶ **Obtain Access to Financial Institutions through Gate Keepers:**
 - ▶ Bank accounts and contracting and other financial products are opened in the names of gate-keepers to facilitate transactions on their behalf. Use of notaries to purchase real estate.
 - ▶ **Trust Accounts:** Funds are held by a third party on behalf of two parties

- ▶ **Use of Legal Arrangements:** these include trusts and can be used to conceal the identities of the true beneficiaries in addition to the source/destination
- ▶ **Property Management Companies:** property maybe bought or constructed using illegally obtained funds and subsequently rented out to provide an apparently legal source of income.

Cont...

- ▶ **Over- valuation or under valuation** : buying or selling of property at a price above or below its market value
- ▶ **Successive sales and purchases**: the property is sold in a series of subsequent transactions, each time at a higher price. It also involves the reclassification of agricultural land as building land

- ▶ **Mortgage Loans and Interest Payments:** Illicit actors obtain mortgage loans to buy properties and subsequently use illicit funds to pay off the principal loan or interest.
- ▶ **Investment in Hotel Complexes, Restaurants and similar developments:** buying property allows criminals to invest in property while giving it the appearance of financial stability. These investment are highly cash incentive

Red Flag Indicators

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For Natural Person:

- ▶ Transactions involving persons residing in tax havens or risk territories
- ▶ Transactions carried out on behalf of minors, incapacitated persons or other persons who appear to lack the economic capacity to make such purchases
- ▶ Transactions involving people who are being tried or have been sentenced for crimes or who are publicly known to be linked to criminal activities e.g. illegal enrichment cases.

Legal persons

- ▶ Transactions involving recently created legal persons, when the amount exceeds company assets

Continued...

- ▶ Transactions involving foundations , cultural or non-profit making entities in general and the transaction doesn't match the activities of the entity
- ▶ Legal persons owned by foreign nationals
- ▶ Formation of legal person to hold properties with the sole purpose of placing a front man between the property and its true owner
- ▶ Transactions performed through intermediaries

Continued

- ▶ Transactions involving payments in cash or in negotiable instruments
- ▶ Transactions relating to the same property or rights that follow in rapid succession and may significant increase or decrease in the price compared with compared with the purchase price
- ▶ Transactions that disregard contractual clause penalizing the buyer with loss of deposit



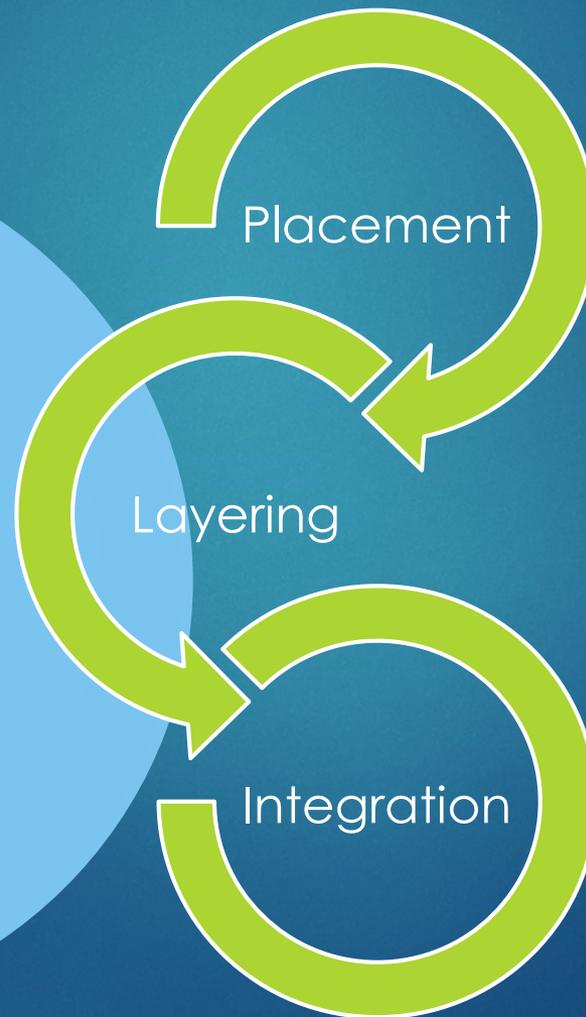
WHAT IS MONEY LAUNDERING



Definition: 'Money Laundering' is the process by which illegal funds and assets are converted into legitimate funds and assets.

Stages of Money Laundering

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Stages of Money Laundering

A TYPICAL MONEY LAUNDERING SCHEME

1. PLACEMENT



Dirty Money Integrates into the financial System

Collection of dirty Money



2. LAYERING



Transfer funds between various Offshore / Onshore Banks

3. INTEGRATION



Purchase of Luxury Assets
Financial Investments
Commercial / Industrial Investments

Wire Transfer

Terrorism

Terrorism refers to the use of violent action in order to achieve some objective(s). The objective may be to intimidate a population or to compel a government to do something.

Counter Terrorism Act of 2014, under Section 3, prohibits and criminalizes terrorism activities. Section 5 creates the offence of Terrorism Financing.



Terrorism & Financing of Terrorism

- ❖ **Terrorism** refers to the use of violent action in order to achieve some objective(s). The objective may be to intimidate a population or to compel a government to do something.
- ❖ Counter Terrorism Act of 2014, under Section 3, prohibits and criminalizes terrorism offence.
- ❖ Section 5 of Counter-Terrorism Act criminalises the **financing of terrorism**. The offence attracts a sentence of life imprisonment upon conviction.

Financing of Terrorism

Terrorism financing refers to the provision of funds to support terror activities. It provides funds for terrorist activities.

The funds may be raised from:

legitimate sources, such as personal donations and profits from businesses and charitable organizations.

criminal sources, such as drug trade, fraud and kidnapping.



Terrorist Financing vs Money Laundering

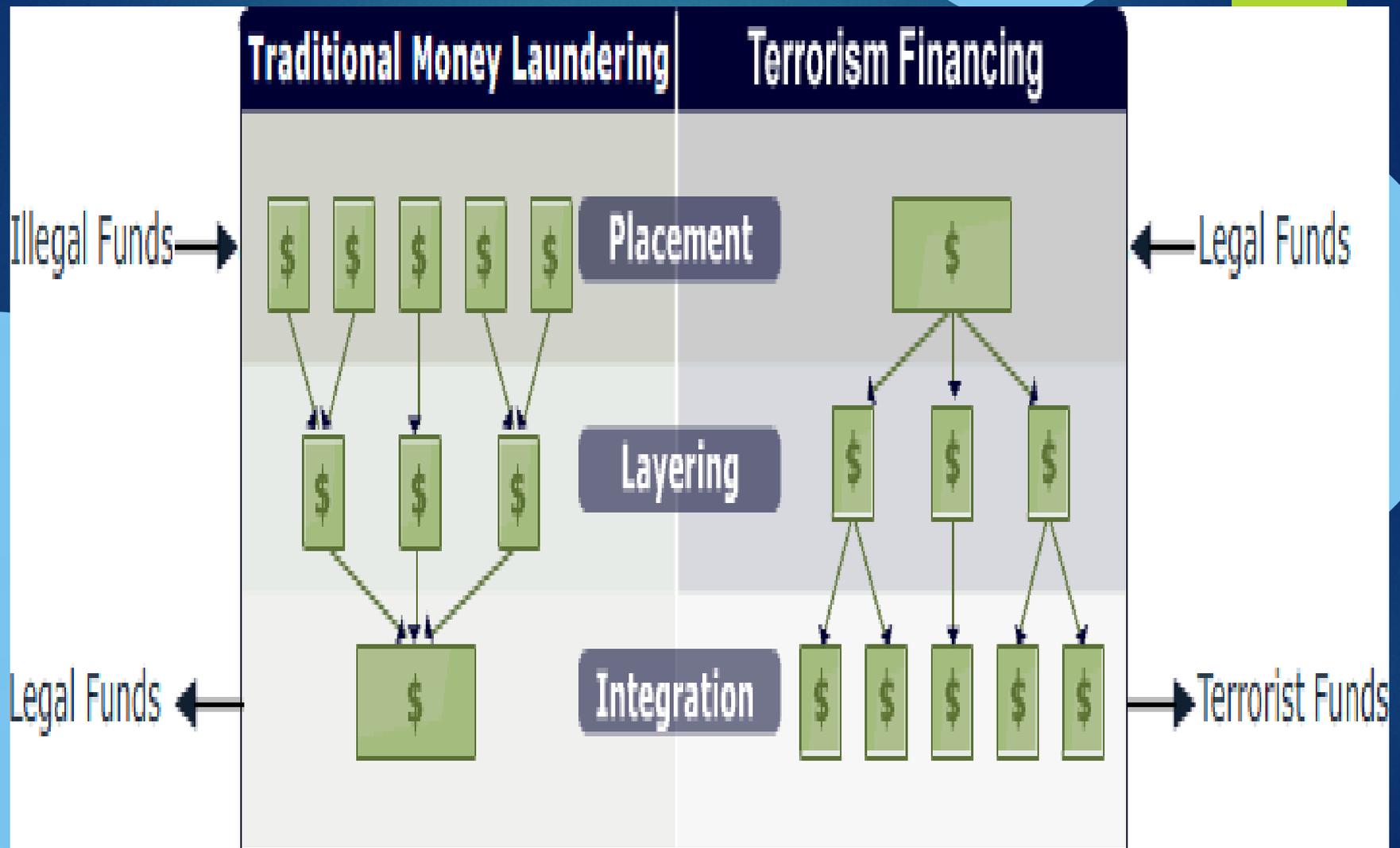
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Differences:

- ▶ Money Laundering involves the proceeds of illegal activity while terrorists can raise funds through legitimate sources as well as criminal activity.
- ▶ Money Laundering hides the source while Terrorist Financing hides the purpose.

Terrorist Financing vs Money Laundering

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Similarities & differences between TF & ML

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In TF, the focus is on the destination or use of funds, which may have been derived from legitimate sources. Terrorists hide the purpose.

In ML, the focus is on the handling of criminal proceeds, i.e. the source of funds is matters. (The launderer hides the source).

AML/CFT Legislation

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Money laundering is criminalized under Section 47 of the **Proceeds and Instruments of Crime Act, 2014** (commenced in January 2015)

AML/CFT Legislation

The Financial Intelligence Act , 2009 and Regulations 2013

- Proceeds And Instruments Of Crime Act,2014
- Penal Code & Counter Terrorism Act
- Corruption And Economic Crime Act
- Non Bank Financial Institutions Regulatory Authority Act
- Anti Human Trafficking Act
- Counter Terrorism Act
- Chemical Weapons (Prohibition) Act
- Customs & Exercise Duty Act
- Trust Propert Control Act

**KEEP
CALM
AND
ASK
QUESTIONS**

Obligations of Specified Parties as per the FI Act, 2019 (Section 11 – 28)(33-34)

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The specified parties are required to;

1. Conduct risk assessments and take appropriate measures to manage and mitigate the identified risks(Section 11)
2. Implement & maintain programmes to combat ML/TF (section 12)
 - Designate Compliance officer at managerial level
 - Maintain ongoing employee training programme
 - Develop and implement independent audit function to examine and evaluate policies
 - Implement and maintain a customer acceptance policy.
3. Conduct customer due diligence and ongoing customer diligence(Section 14 -15), Customer identification (Section 16)
4. Enhanced due diligence measures, e.g in relation to PIPs(sections 18-20)

Obligations of Specified Parties as per the FI Act, 2019 (Section 11 – 28) Continued....

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- ▶ Keeping of records obtained through customer due diligence measures and period of keeping records (Sections 27-28)

1. Reporting Obligation (Section 34 & 35 FI Act)

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There are three reports which specified parties are obliged to submit to the Financial Intelligence Agency.

Reporting Obligations (Cont.)

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- i. Suspicious Transactions Reports (STRs),
- ii. Cash Transactions Reports (CTRs), and
- iii. Electronic Funds Transfers (EFTs)

Reports received by the FIA are analyzed for activities and patterns that may indicate criminal offences.

STR & Large Cash Reporting

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- ▶ A specified party or accountable institution shall, within such period as may be prescribed (Regulation 21), report a suspicious transaction to the Agency. (section 33)
- ▶ Report within period prescribed report particulars of a transaction where an amount of P10 000 or above is paid to the customer, or received from the customer. (section 34)

Manner of reporting (Regulation 20)

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STR and Cash Transactions reports shall be sent to the Agency electronically by means of internet based portal (goAML) provided for by the Agency. Reporting entities must transmit reports utilizing this platform.

Where a person does not have the technical capacity, the reports shall be set out in Form B and sent to Agency.

Offences relating to Reporting (Section 41)

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Failure to submit a report by a specified party to the Agency would attract ;

- ✓ a fine not exceeding P5 000 000;
- ✓ a suspension or revocation of license/registration as the case may be; or
- ✓ both penalties above, as may be imposed by the supervisory authority

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It is an offence to disclose to the person involved in the transaction or to an unauthorized third party that the transaction has been reported to the Agency or that the Agency has requested further information on the reported transaction.

- ❖ **Penalty** – a fine not exceeding P50 000/imprisonment not more than 3 years or to both.

Indemnity of person making report (Section 42)

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No civil or criminal proceedings shall lie against any person for having reported in good faith suspicious transaction or supplies any information in connection with a suspicious transaction, their identity shall also not be admissible before court.

6. Record Keeping (Sections 11-15)

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Where the reporting entity establishes business relationship or concludes a transaction with a customer, it shall maintain record.

According to section 12(1) of the FI Act, a specified party shall keep records for **at least 5 years**.

Cost of ML and TF

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- Increased Crime and Corruption:
- Undermines the Legitimate Private Sector:
- Weakens Financial Institutions:
 - Loss of control of, or mistakes in, decisions regarding economic policy:
 - Economic Distortion and Instability
 - Loss of Tax Revenue
 - Risks to Privatization Efforts
 - Reputation Risk for the Country
 - Social Costs

