

**Key Results of the
Sectoral Risk Assessment on
Legal Entities,
Legal Arrangements and
Voluntary Organisations**

National Coordinating Committee on Combating
Money Laundering and Funding of Terrorism

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Acronyms used in this assessment

AML	Anti-Money Laundering
AMLU	Anti-Money Laundering Unit of the Malta Police Force
BO	Beneficial Owner
CFT	Combating the Financing of Terrorism
CFP	Combating the Financing of Proliferation
DD	Due Diligence
DNFB	Designated Non-Financial Businesses and Professions
EU	European Union
FATF	Financial Action Task Force
FI	Financial Institution
FIAU	Financial Intelligence Analysis Unit
FIU	Financial Intelligence Unit
FT	Financing Terrorism
IIP	Malta Individual Investor Programme
MBR	Malta Business Registry
MFSA	Malta Financial Services Authority
MIIPA	Malta Individual Investor Programme Agency
ML	Money Laundering
MSB	Money Service Business
MLA	Mutual Legal Assistance
NCC	National Coordinating Committee on Combating Money Laundering and Terrorism Financing
NRA	National Risk Assessment
NPO	Non-Profit Organisations
OECD	Organisation for Economic Co-operation and Development
OCVO	Office of the Commissioner of Voluntary Organisations
PEP	Politically Exposed Person
PF	Proliferation Financing
ROLP	Registrar of Legal Persons
STR	Suspicious Transaction Report
TCSP	Trust and Company Service Provider
TFS	Targeted Financial Sanctions
VFA	Virtual Financial Asset
VO	Voluntary Organisation

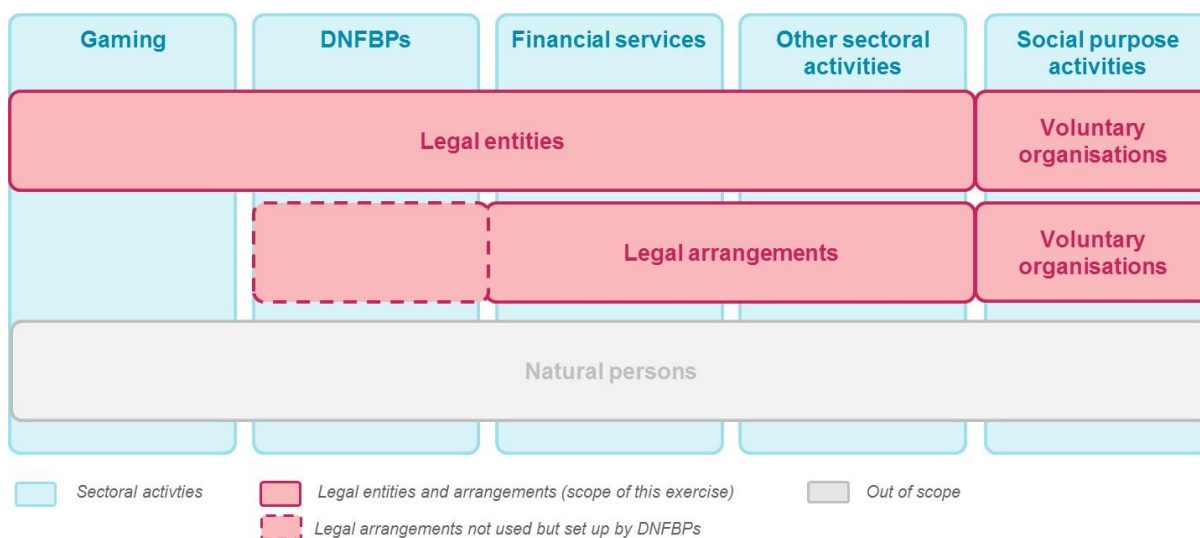
1. Introduction

A sectoral risk assessment in the area of legal entities, legal arrangements and VOs is necessary, and this is especially so in view of the fact that these sectors do not represent a specific ‘sector’ of the economy, but rather they constitute the structures through which a nation’s economic activity is delivered. This is especially so when one takes into consideration the definitions as provided by Financial Action Task Force (FATF)¹:

- **Legal entities**: any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, other corporate bodies, foundations, partnerships, or associations and other similar entities. This group excludes legal entities established for non-profit or social purposes (including purpose foundations and purpose associations) which are considered in voluntary organisations;
- **Legal arrangements**: refers to express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT purposes) include *fiducie*, *Treuhand* and *fideicomiso*;
- **Voluntary organisations**: A legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of ‘good works’ (e.g. charities).

The interaction between legal entities and legal arrangements and the various sectors of the economy is presented in Figure 1 below.

Figure 1. Interaction of legal entities and legal arrangements with economic sectors



¹ The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering and counter-terrorist financing standard.

To this end, the National Coordinating Committee on Combating Money Laundering and Funding of Terrorism (NCC) was established within the Ministry for Finance and Financial Services through Subsidiary Legislation S.L. 373.02, enacted on the 13th April 2018. The NCC is the governing body responsible for the general oversight of Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) policy. The NCC in 2018 led the exercise for the completion of thematic risk assessments, including for legal entities and arrangements. This sectoral risk assessment was a national effort and incorporated data and expertise from relevant authorities and the private sector.

The sectoral risk assessment on legal entities, legal arrangements and VOs has been finalised and endorsed by the NCC board members in July 2019. The purpose of this risk assessment was to evaluate Malta's ML/FT risk exposure through the lens of legal entities and arrangements, to improve the understanding of the nature of these risks (e.g. typologies and patterns), and to identify measures that would strengthen the AML/CFT regime to mitigate such risks. In order to provide outreach to the private sector and enhance awareness of the risks identified in this risk assessment, the NCC is presenting this key results document. For competent authorities, this document will help prioritise efforts and resources using a risk-based approach, while for the private sector, it will help them in promoting an understanding of the threats and vulnerabilities and will allow for the development of proportionate and effective controls.

The key results document presents a summarised view of the methodology and key findings of the risk assessment. How this risk assessment was conducted is briefly presented in the third section. Subsequently, the key findings of this risk assessment follow, while the final section will present the action plans aimed at mitigating such risks.

1. Overview of the Risk Assessment

In this risk assessment, the FATF guidance definitions were used, whereby, legal arrangements refer to express trusts or other similar legal arrangements. In addition, legal persons refer to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, partnerships, or associations and other relevantly similar entities.

This risk assessment was a national effort which incorporates data and expertise from all relevant competent authorities. The NCC led this exercise, developing the methodology, gathering and analysing data from various sources and drafting the report itself. The Malta Financial Services Authority (MFSA), Financial Intelligence and Analysis Unit (FIAU), Malta Business Registry (MBR), Registrar of Legal Persons (RLP), Office for the Commissioner for Voluntary Organisations (OCVO) and Commissioner for Revenues (CfR) also contributed to the assessment by providing data and expertise on the sectors they oversee. The NCC reviewed and approved the risk assessment and strategy.

The first step was to assess the 'threats' that are most likely to exploit legal entities and arrangements, as well as their inherent vulnerabilities. It leveraged a combination of qualitative insights and quantitative data gathered by the competent authorities. On completion of the threat assessment, inherent vulnerabilities and control effectiveness were reviewed for each class of legal entity and arrangement. This led to an articulation of the overall residual risk for each class which, in line with global perspectives, found that a number of classes of legal

entities and arrangements (in particular private companies, trusts, foundations and associations) are more vulnerable to abuse and misuse for money laundering purposes. This is primarily driven by the opportunities presented by these structures to conceal beneficial ownership and is compounded by varied coverage/ effectiveness of ongoing monitoring. Other entity types, such as partnerships and branches of foreign entities, are marginally less vulnerable due to more transparent beneficial ownership (i.e. for partnerships) and due to the added involvement of peer EU regulators in monitoring (i.e. foreign branches). VOs, meanwhile, are vulnerable to exploitation for terrorist financing owing to their international presence and the expectation that a number will operate in high-risk locations (e.g. conflict zones).

Therefore, this risk assessment had as an objective that of assessing the nature of ML/FT risk posed to the different types of legal entities and arrangements present in Malta, to help inform both the public and private sector of these risks and the measures they can take to mitigate them. As already mentioned, there were three fundamental elements to this consideration:

- Threats: the types of predicate offences which could give rise to instances of money laundering or terrorist financing through a legal entity or arrangement;
- Vulnerabilities: the characteristics of a particular class of legal entity or arrangement which may make it attractive for money laundering or terrorist financing purposes; and
- Controls: the measures in place to mitigate any risk of exposure to money laundering or terrorist financing.

Using these three elements, assessments of the risks posed by each class of legal entity and arrangement can be formed. The two key measures of risk considered by this risk assessment were:

- Inherent risk: the risk of ML/FT occurring through a particular class of legal entity and legal arrangement, taking into account the threats posed to the legal entities and arrangements and vulnerabilities associated with their specific characteristics, before accounting for controls and mitigating actions;
- Residual risk: the risk of ML/FT occurring through a particular class of legal entity and arrangement, taking into account the controls and mitigating factors which aim to reduce the inherent risk. The FATF guidelines indicate that countries, competent authorities and DNFBPs, which include TCSPs, should identify, assess and understand the ML/FT risks to which they are exposed and take the required AML/CFT measures to effectively and efficiently mitigate and manage the risks. For TCSPs, identifying and maintaining an understanding of the ML/FT risk faced by the sector as well as specific to their services, client base, jurisdictions in which they operate and the effectiveness of actual and potential risk controls that are or can be put in place, will require the investment of resources and training. For supervisors, this will also require maintaining an understanding of the ML/FT risks specific to their area of supervision, and the degree to which AML/CFT measures can reasonably be expected to mitigate such risks.

2. Assessment of ML/FT threats

First of all, it is important to highlight that this section does not consider the controls in place or their effectiveness. This section presents the ML/FT threats in light of the legal entities and legal arrangements and VOs.

Tax evasion is the predicate offence that poses the highest threat of money laundering. This threat is particularly relevant in the context of legal entities and arrangements as these legal structures, often complex, have globally been exposed to proceeds of tax evasion. Sole traders and companies operate across cash-intensive sectors of the economy, and it is suspected that in some cases much of this income is left undeclared to avoid tax payments. In the case of private limited companies, illicit proceeds can be layered using shell corporations, often across jurisdictions, to create a complex ownership structure. Networks of interconnected companies hold shares in each other, and thus receive payments and dividends from each other, obscuring ultimate beneficial ownership behind an intricate web of entities. The use of nominee shareholders and other such instruments can further conceal ultimate beneficial ownership. As a result, any profits earned by these companies might remain under the control of the ultimate beneficial owner but might not be declared to authorities and subsequently taxed.

Trusts and foundations can also be used to evade tax by shielding assets from competent authorities. In such cases, assets are typically placed into trusts or foundations, whereby the settlor relinquishes control. They are then managed by the trustees and administrators in the interests of the beneficiary or the declared purpose. However, in practice, the settlor can retain considerable control over the assets through instruments such as letters of wishes to the controllers, or by appointing trustees or administrators with whom they have a relationship. Thus, the ultimate owner can benefit from the assets without officially owning them, and therefore avoiding paying the associated tax. Finally, in the case of foundations and VOs, funds can be paid directly into organisations under the guise of donations, with the beneficial owner retaining some degree of control via the same mechanisms outlined above.

The threat from **local criminal groups** is considered high, where such a ranking does not take into account the controls for different entities and arrangements. Recent evidence suggests that local criminal groups have grown in size and become more organized. From the perspective of legal entities, criminal groups continue to be a significant threat, because the proceeds of crime generated often need to be integrated into the mainstream financial system to enable movement and storage.

Drug trafficking has been assessed as medium-high risk. Malta has a high rate of drug-use as evident from studies carried out by the European Monitoring Centre on Drugs and Drug Abuse (EMCDDA). The proceeds from this predicate offence have traditionally been cash-based which, combined with the high number of cash transactions in Malta, compound the threat from drug trafficking. Furthermore, the increased proliferation of dark-net marketplaces has broadened access to a greater number of potential users, while the proceeds from such marketplaces are almost always generated in cryptocurrency.

Fraud and misappropriation are economic crimes which are also strongly linked globally to legal entities and arrangements. Proceeds from fraudulent activities may flow through the financial system via use of legal structures. For example, private companies, trusts and foundations have been established by suspicious individuals looking to exploit positions of power or control within various organisations for the purpose of self-dealing and embezzlement. Often the perpetrator awards high-value, inflated-profit contracts to organisations owned or controlled by themselves or close associates; insider trading is also a risk, where firms linked to the perpetrator trade using material non-public information obtained through their position.

More specifically, although multiple methods exist, one particular typology has been commonly identified for placement of **funds**. Typically, the individual concerned forms a

company which purports to carry out certain activities, which in turn enable the crime. For instance, in the case of self-dealing, this would be the allocation of contracts for self-benefit, and in the case of insider trading this would entail the abuse of investment services. The perpetrator then proceeds to move the illicit proceeds to an entity or arrangement by creating complex ownership structures to conceal beneficial ownership of the entity or arrangement.

Corruption and bribery are relevant threats to legal entities and arrangements in Malta. Private companies, trusts and foundations are typically linked to this predicate offence. In cases where bribes are made these are typically paid to individuals in a position of influence in return for favourable treatment. They can be provided either in monetary form or in kind, for example through the provision of services to the individual. Two main typologies exist depending on the form of the bribe. For payments of cash or a direct transfer of assets, these are frequently executed through legal entities and arrangements beneficially owned by the recipient. The method varies depending on the type of entity or arrangement owned by the beneficiary. For private companies, for example, bribes may be disguised as payments for fake goods or services delivered by the company. These transactions will often be supported by false documentation and invoicing. Sometimes, to add an extra layer of apparent authenticity, the company will actually provide the good or service, but does so at a vastly inflated price. For trusts, assets are often placed directly into the trust by the payer; for foundations and non-profit organisations, payments are often disguised as donations to the organisation.

For bribes paid in-kind, these may be delivered in the form of real estate development or similar services. They are often facilitated using a construction company, where the contractor is engaged across multiple legitimate projects, and in addition, is requested to construct or renovate real estate of the corrupt individual. To disguise this, the contractor will bill the recipient at substantially below the market rate and will make up the difference by inflating costs for other legitimate projects underway.

The threat of funds from the provision of **unlicensed financial services** products being placed through legal entities and arrangements, albeit low, should also be considered. It should be recognised that financial services products are typically provided through some form of corporate structure. As such, any revenues earned from this predicate offence would generally enter the system through a legal entity.

Finally, **internationally terrorist financing** is a threat with strong links globally to legal entities and arrangements, particularly VOs. VOs worldwide carry out legitimate charitable work in high-risk jurisdictions and conflict zones. As a result, activities conducted by VOs in these areas, including the movement of funds, are typically viewed with less suspicion than if executed through other structures. This leaves VOs globally vulnerable to exploitation.

3. Assessment of inherent ML/FT risk

This section provides an assessment of the inherent risk of each class of legal entity and arrangement to misuse for ML/FT purposes. The statistical data gathered to inform this assessment was combined with qualitative insights provided by the competent authorities to produce the risk outcomes.

Legal Entities

Private Limited Companies: In Malta, private limited companies were assessed as having a high inherent risk prior to considering the controls in place. This is mainly attributable to the large number of entities of this type, their complex beneficial ownership structures, the proliferation of private limited companies in higher-risk sectors, and the concentration of ownership by high-risk foreign individuals. The large number of private limited companies in Malta results in high volumes of activity and a disparate client base. Both of these factors increase the inherent risk (i.e. pre-controls) of ML/FT misuse and abuse, either by controllers of this entity type or by end clients. There are inherent characteristics of private limited companies that, while in most cases serve a legitimate business purpose can also be used to disguise ownership. For example, these companies often have shareholders who are legal persons (as opposed to natural persons) and layers of shell corporations may be formed, often spread across multiple jurisdictions, with ownership of each layer vested in numerous parent shell companies. Additional characteristics (such as the use of nominee shareholders) may also be misused to disguise ultimate ownership further. The operation of private limited companies across a wide range of sectors is also a significant driver of inherent vulnerability. These sectors include those that were identified in the NRA as having a material inherent risk of abuse for ML/FT, (e.g. financial institutions, DNFBPs and the gaming sector). Their proliferation in cash-intensive sectors such as hospitality, manual services and retail also contributes to the overall level of vulnerability, while the prevalence of cross-border activity and foreign ownership poses challenges for ongoing monitoring.

Public Limited Companies: In Malta, the ML/FT vulnerability of public limited companies (as a corporate structure) is particularly low due to the relative scarcity of companies of this type registered in Malta. Furthermore, several Maltese public limited companies are listed, thereby increasing transparency further and reducing their attractiveness to those looking to commit ML/FT offences. Since public limited companies tend to have fragmented shareholdings, the risk of them being controlled by a high-risk foreign national or other high-risk individual is not considered to be significant.

Partnerships: in Malta the sectors in which partnerships operate are a key area of vulnerability. Partnerships are a popular form for many firms acting as gatekeepers, company service providers or advisers, such as advocates, accountants and TCSPs. These sectors fall under the broader class of DNFBPs. The vulnerability of partnerships is therefore driven in part by their underlying exposure to high risk sectors. In addition to sectoral exposure, such services are often provided to or on behalf of foreign individuals (potentially limiting transparency), in many cases non-EU citizens, who are looking for assistance with their activities in Malta.

Foundations: In Malta, foundations (excluding those purpose foundations which are categorised as voluntary organisations) are vulnerable to misuse for ML/FT purposes for a number of reasons. There is the possibility that such foundations (i.e. non-VO foundations) are owned by high-risk individuals, secondly, they may be used as investment vehicles and asset holding structures and finally, they have strong privacy features. Foreign organisations are also permitted to operate in Malta, and while still limited, this adds to an already fragmented landscape. Finally, both the ability to form separated cells to partition assets and the option to use foundations as a holding structure for other companies further increases the vulnerability of this entity type.

Branches of foreign entities: In Malta, branches of foreign entities are vulnerable to ML/FT transactions as a result of their activities in higher risk sectors, their international operations, and foreign beneficial ownership. Local branches are estimated to operate primarily in the

financial services sector, which pose a particularly high risk. While the majority of branches operating in Malta are of EU-registered entities, the entities themselves may also operate outside of the EU in high-risk jurisdictions and may pass this risk on to local branches.

Other legal entities: In Malta, other legal entities, which comprise registered associations, were assessed to have a relatively low vulnerability due to their limited number. This, among other things, makes beneficial ownership easier to track. They also typically carry out relatively low-risk activities (many are social purpose associations or associations such as professional bodies), and in Malta the majority have comparatively transparent management structures. The majority of registered associations in Malta are also thought to operate exclusively domestically. In terms of beneficial ownership and management, registered associations are run for the benefit of their members where a significant number of these members are thought to be residents, with any foreign beneficial ownership being a minority share. Finally, the management of these entities is conducted by administrators, the majority of whom are domestic operators.

Legal Arrangements

Trusts: In Malta, trusts are particularly exposed to being misused for ML/FT purposes. There are several reasons for this. Firstly, trusts experience an element of privacy and confidentiality. Secondly, trusts are prevalent in Malta. Trusts are estimated to hold a very large volume of assets. A common challenge of this sector is that the size and fragmentation naturally lead to a large number of trustees and settlors, with the sheer number of parties involved limiting transparency and visibility regarding ultimate beneficial ownership. The beneficial ownership of trusts is often held by foreign residents, many of whom are based outside the EU. A number of trusts are also thought to be exposed to PEPs, further driving the vulnerability of this arrangement. The recognition of foreign trusts under domestic law (trusts registered overseas and governed by foreign laws) drives more vulnerability by further exposing the country to foreign beneficial owners. Note that where such trusts are administered by Maltese trustees, said trustee must comply with obligations under PMLFT. Finally, there is considerable precedent; trusts have been known to be misused both in Malta and abroad for a variety of money laundering offences, including tax evasion.

Other legal arrangements: In Malta, other legal arrangements mainly comprise of sole traders and unregistered associations (excluding charitable associations registered as VOs). Sole traders drive the vulnerability of this sector, and this stems from their activities in higher-risk areas of the economy and their strong links with the predicate offence of tax evasion. In addition, vulnerability is driven by the large proportion of sole traders who operate in cash-intensive areas of the economy. Given their unregistered status it is challenging to create a comprehensive view of unregistered associations. However, information is often available to authorities from other sources (e.g. Inland Revenue, chambers and professional bodies, etc.) and through different legislative frameworks. A number of unregistered associations are civil partnerships of professionals, and the individuals (e.g. lawyers, accountants, architects etc.) must hold warrants issued by the authorities.

Voluntary organisations

In Malta, VOs are those trusts, foundations, associations and temporary organisations which are established for a lawful, non-profit making social purpose, and which are voluntary in nature. In Malta, their inherent vulnerability (prior the assessment of controls that are in place) stems from their large number, and the high-risk destination of some of these funds. The activities and geographies in which VOs operate are a key vulnerability factor.

4. Controls and residual risk assessment

Findings of the assessment indicate that certain classes of legal entities and arrangements are highly exposed to illicit proceeds of crime from tax evasion, activities of local criminal groups and drug trafficking. However, it is to be noted that such findings do not take into account the controls in place or their effectiveness. This section presents the findings of the controls and the residual risk assessment.

Legal entities

With regards to an assessment of the controls, this risk assessment found that controls in Malta relating to:

- **Private limited companies** were assessed to have a ‘moderate’ level of effectiveness, with some mitigating impact on the inherent risk. However, despite these current controls the residual risk remains ‘high’. The awareness of AML/CFT obligations and understanding of ML/FT risks among private limited companies was found to be low, reducing the effectiveness of controls. In particular, awareness of risks is lowest among companies operating outside supervised sectors.
- **Public limited companies** (i.e. capital companies) were also found to be operating with a ‘moderate’ effectiveness resulting in a ‘medium-low’ residual risk; though still comparatively higher control effectiveness compared to private limited companies and higher than partnerships.
- **Partnerships** were found to operate with ‘low’ control effectiveness resulting in a residual risk of ‘medium-high’. This stems from a combination of limited market entry controls, limited transparency over beneficial ownership, a low level of ongoing monitoring and limited enforcement activities. Ongoing monitoring is not considered to significantly mitigate the ML/FT risks for partnerships. Many partnerships are not supervised, as they are not automatically AML/CFT subject persons: supervision is limited to those entities operating in relevant sectors such as TCSPs. Partnerships are required to submit audited accounts as part of their annual returns process. Auditors are classified as DNFBPs, and are licensed and overseen by the MFSA, meaning some ongoing monitoring is in place for partnerships; however, this is not directly an AML/CFT obligation. Finally, a low level of detection (i.e. STRs and intelligence reports) across this class of entities further contributes to the low level of effectiveness of controls.
- **Foundations** were found to operate with a ‘low’ effectiveness of controls with a ‘high’ residual risk. Although there are market entry controls and some ongoing monitoring, effectiveness across the regime is limited due to lack of verification of beneficial ownership and limited detection, investigation and prosecution.
- The controls in place to mitigate the risks posed by **branches of foreign entities** are varied due to the coverage and oversight of different supervisory bodies, as well as by the sectors in which they operate.
- **Other legal entities**, which includes registered associations, have varied controls applied to them, with appropriate market entry controls but limited ongoing monitoring. Furthermore, the understanding of AML/CFT risks is limited, especially as they are not subject persons. Ongoing monitoring is limited, and the overall detection and enforcement environment is also limited, with lack of statistical evidence. Thus, the effectiveness of the controls in place was assessed as ‘low’, with a resulting residual risk of ‘medium-low’.

Legal arrangements

With regards to an assessment of the controls, this risk assessment found that controls in Malta relating to:

- **Trusts:** The AML/CFT measures relating to trusts are limited in scope and effectiveness. This is largely caused by the absence of market entry controls covering this arrangement, limited ongoing monitoring and limited collection and verification of beneficial ownership data. However, Malta is a signatory to The Hague Convention, which enables a global alignment of several requirements on trusts and their controllers. The effectiveness of the controls in place was assessed as ‘low’, with a resulting residual risk of ‘high’.
- **Other legal arrangements:** have limited market entry controls, limited understanding of AML/CFT risks faced by their businesses, and low levels of detection and enforcement activity. Furthermore, unregistered associations in this class (which are not voluntary organisations) are not AML/CFT subject persons. The effectiveness of the controls in place was assessed as ‘low’, with a resulting residual risk of ‘high’.

Voluntary organisations

- Until 2018, **voluntary organisations** in Malta have had limited market entry requirements and a relatively low level of understanding of AML/CFT obligations. It is important to note that over the course of 2018, substantial progress has been made by the CVO with regards to ongoing monitoring and supervision, with domestic and international authorities leveraged where relevant. The effectiveness of the controls in place was assessed as ‘moderate’, with a resulting residual risk of ‘high’.

5. Recommendations

The evolving links between ML/FT and legal entities and legal arrangements are receiving greater attention from both the public and private sectors. There is an overall drive towards increasing the transparency of legal entities and arrangements, which has manifested itself in the issuance of regulation and guidance in recent years. There is a global trend towards increased regulation of instruments and vehicles which have historically been associated with ML/FT offences. This ranges from banning instruments such as bearer shares, which help conceal the beneficial ownership of corporate vehicles, to reviewing the feasibility of entire classes of legal entities and arrangements when these have been known to be highly exposed to ML/FT offences. In addition, there is an increasing need for public-private engagement. A good understanding of the threats and vulnerabilities faced by the private sector is relatively low across many countries. Making more information available to the private sector is a priority area for the authorities in Malta. Therefore, this section highlights specific recommendations that emerge from this risk assessment for the competent authorities and for the private sector as well.

Recommendations for competent authorities

This section outlines a number of areas for future enhancement and investment that need to be adopted by the competent authorities.

1. **Finalise set-up of beneficial ownership databases:** It is critical to store beneficial ownership data electronically and in an easily accessible format as this underpins monitoring and investigative activities, while complying with the Fourth EU Anti-Money Laundering Directive. Specific measures that should be taken include:

- Malta Business Registry: make the existing beneficial ownership accessible as appropriate to relevant authorities; review and upgrade database architecture if required to ensure that analytics can be deployed;
- Registrar for Legal Persons: establish an online database to store public information on legal persons to facilitate transparency; implement an electronic beneficial ownership database that is accessible to other relevant authorities such as the FIAU, and which is capable of supporting advanced analytics systems;
- Office of the Commissioner for Voluntary Organisations: continue to develop the online, publicly searchable database of VOs and a second, non-public database containing information such as the risk-rating of VOs and information from annual returns which is accessible to the relevant competent authorities.

A coordinated effort across authorities is also required to ensure that relevant data held by each authority is made available to the others as required. Electronic access to information should be granted as required: for example, the FIAU should have direct access to timely and accurate beneficial ownership data for intelligence purposes, whereas this information should be digitally available to the police upon request. In the longer term, integration of systems should be pursued, for example the collation of beneficial ownership information into a single centralised database.

2. *Collect and aggregate relevant statistical data:* the authorities should ensure that accurate statistical data is both maintained and easily accessible to the relevant authorities to help inform ongoing future risk assessments. Examples of relevant data range from the number of entities operating in the country and the number of STRs filed / investigations by each legal entity and arrangement type, to a view of the geographic distribution and other risk factors associated with beneficial owners of these entities and arrangements. As a first step, data should be gathered to populate the placeholders present throughout this document. Additional activities include:

- Malta Business Registry: collect and maintain detailed statistics relating to the different corporate entity types, including information such as sectors of activity, the use of companies, and the nature of directors and beneficial owners;
- Registrar for Legal Persons: collect statistics on the number of non-corporate entities and arrangements in Malta, such as associations, foundations and foreign organisations, as well as data on the operations, sectors, usage, controllers and beneficial owners;
- Commissioner for Voluntary Organisations: gather data on the areas of operation of VOs, the submission of annual returns, and any other relevant information for the purposes of assessing risk;
- Other detection, investigation and prosecution authorities: the FIAU should keep statistics on the number of STRs submitted/investigations conducted relating to different types of legal entities and arrangements, complemented by data from the courts over prosecutions and convictions for ML/FT.

3. *Acquire and embed advanced analytical capabilities:* Advanced analytical tools, such as network analysis tools and documentation validation tools, are required to support the activities of competent authorities across the AML/CFT regime. Network analysis capabilities should be a key focus, which would allow relevant data from multiple sources (including beneficial ownership databases, adverse media reports and financial accounts) to be considered dataset rather than individually. These systems would help link the beneficial owners, legal entities and arrangements, voluntary organisations and persons of

interest, flagging any inconsistencies in information provided or suspicious links. This would allow authorities to detect more ML/FT typologies without the need to expend significant manpower. Document verification systems could also be introduced, which cross-reference formal documents against official sources to ensure validity. Finally, third party information providers such as credit reference agencies and name screening platforms could be integrated with databases to verify and risk-assess ownership.

- 4. Enhance monitoring activities:** Although some diligence and monitoring activities are currently carried out by the competent authorities, additional capabilities and activities should be introduced to further strengthen the impact of these institutions:
- Malta Business Registry and Registrar for Legal Persons: enhance the checks conducted to verify the accuracy of beneficial ownership information provided and authenticity of supporting evidence, (e.g. by checking identity documents against government databases); introduce procedures to cross-check beneficial ownership information against information submitted for linked entities and arrangements, such as those that form part of the same ownership structure;
 - Office of the Commissioner for Voluntary Organisations: continue capacity building in order to further ongoing monitoring activities, similar to the on- and offsite inspections carried out by the MFSA; embed and make use of the further legal capabilities granted under new legislation to address issues such as non-submission of annual returns, and disenroll non-compliant organisations;
 - MFSA: use ML/FT risk assessments to more clearly differentiate the level of supervision of entities and arrangements;
 - Other detection, investigation and prosecution authorities: increase international cooperation between the FIAU and foreign FIUs for the purposes of strategic analysis and investigations; enhance the capabilities of investigation and prosecution using expert investigators and specialist financial crime magistrates; enhance the supervisory activities of other units such as the MGA.

Efforts should also be made to link the work of all relevant authorities across the supervisory lifecycle. For example, market entry checks such as registration diligence and beneficial ownership should be more formally linked to ongoing monitoring and supervision, so that information gathered during market entry checks flows through to inform the level of supervision on the entity or arrangement. Strategic analysis of typologies, threats and vulnerabilities should also be conducted across legal entities and arrangements on an ongoing basis.

- 5. Increase the breadth and depth of private sector education:** Additional outreach should be conducted to provide guidance to the private sector on their AML/CFT obligations, and to raise awareness of risks and vulnerabilities. These should take the form of guidance documents, seminars, workshops and circulars. Specific activities should include:
- Office of the Commissioner for Voluntary Organisations: continue to implement its outreach plan within its remit on AML/CFT issues, ensuring that as many VOs as possible attend these events and prioritising attendance of the organisations classified as high-risk under the CVO's internal risk-rating procedures; consider introducing mandatory AML/CFT training programmes for those involved in establishing or controlling VOs;
 - Malta Financial Services Authority: look to run further workshops with entities and arrangements under its supervision to raise awareness of the ML/FT risks typically experienced by legal entities and arrangements, and issue guidance on controlling these

risks; run sessions with TCSPs, who often act as gatekeepers to other at-risk entities and organisations;

- Other detection, investigation and prosecution authorities: the FIAU should conduct further outreach sessions with subject persons on the role of STRs to ensure they recognise that these stem from a legal responsibility to report suspicious activity to the FIAU; the FIAU should also run further workshops with DNFBPs to promote an awareness of specific ML/FT risks which are more likely to be experienced in their areas of operation.

6. Increase number and specialisation of human resources: A number of authorities may need to hire additional resources to enhance the frequency and effectiveness of their activities. These include:

- a. Malta Business Registry, and Malta Registrar for Legal Persons: consider hiring specialist resources to facilitate verification of beneficial ownership information provided for entities and arrangements, and administrative staff to ensure the timely update of databases;
- b. Office of the Commissioner for Voluntary Organisations: continue hiring additional resources, including specialists such as language experts, to facilitate monitoring and investigations into organisations, and legal experts, to advise on sanctioning VOs who do not adhere to disclosure and submission requirements;
- c. Malta Financial Services Authority: consider hiring additional resources to conduct additional on- and offsite inspections, and to enhance the depth of ongoing monitoring activities;
- d. Other detection, investigation and prosecution authorities: consider hiring additional FIAU resources to investigate the increasing number of STRs; hire specialists to investigate and prosecute ML/FT crimes involving legal entities and arrangements; train specialist financial crime magistrates to expedite prosecution.

7. Enact legislative changes as required: Competent authorities should seek legal opinions on whether legislative changes are necessary to reduce the risk of certain features of legal entities and arrangements. Registration of some arrangements is currently not compulsory, meaning it is difficult for the authorities to gain a complete view of the status quo. Strong privacy and confidentiality features are also in place for private foundations and express trusts, which may increase the appeal of these entities and arrangements to the perpetrators of ML/FT. The authorities should review the relative merits of increasing regulation in these areas. In addition, the authorities should consider strengthening the sanctions which can be imposed for non-compliance with transparency requirements, in order to make the potential penalties more dissuasive. Specific activities include:

- Malta Business Registry: seek legal opinions on whether legislative changes are needed to reduce the risk of the legal features of companies being abused to conceal beneficial ownerships (e.g. appointment of nominee shareholders); introduce requirements for diligence on companies' beneficial ownership to be carried out before submission of details to the Registrar, (e.g. through requiring the use of CSPs); strengthen legal powers to take action against companies who do not comply with reporting requirements;
- Registrar for Legal Persons: seek legal opinions on whether legislative changes are needed and adequate to enhance the authorities' visibility over trusts and associations as appropriate; seek legal opinions regarding whether the privacy and confidentiality features of each of entities and arrangements individually should be altered to reduce their risk of being misused or abused for ML/FT purposes (note that the expectation

would be that the extent to which these are reduced would vary between different arrangements/ entities), and whether this would be desirable given other concerns (e.g. ensuring freedom of association, considering potential negative consequences for organisations);

- Office of the Commissioner for Voluntary Organisations: continue to push through Parliament legislation requiring the enrolment of all VOs and granting additional sanctioning powers.

Recommendations for the private sector

This risk assessment emphasizes the need for competent authorities to engage the private sector and help them understand the AML/CFT risks associated with specific legal entities and legal arrangements. In addition to the guidance provided by competent authorities however, the private sector should also take on a pro-active approach. Private sector organisations should use this risk assessment to increase their understanding of the threats and vulnerabilities posed by each vehicle type and based on that develop proportionate and effective controls for the risks they face.

To provide further guidance on the implications of this risk assessment for the private sector, some actions are articulated for VOs and DNFBPs specifically, namely:

- Develop and maintain an up-to-date internal risk assessment, and use this to ensure that operations are in line with risk appetite (Relevant organisation: VOs)
- Develop a risk assessment methodology to ensure (potential) clients and their activities can be appropriately risk profiled. Use the outputs to inform your gatekeeping role (Relevant organisation: DNFBPs)
- Maintain an up-to-date BO database, and invest in technologies that ensure accurate collection of this information (Relevant organisation: DNFBPs)
- Collaborate with competent authorities to ensure practices are updated with supervisory expectations on AML/CFT, including attending outreach workshops as relevant (Relevant organisation: VOs and DNFBPs)

The collaboration of VOs and DNFBPs with competent authorities should however go beyond raising awareness of the ML/FT risks facing legal entities and legal arrangements and the establishment of the required controls. In addition, they should work closely together with authorities to share first-hand insights and good practices, file timely STRs in case of a subject person, etc.

6. Concluding remarks

The purpose of this sectoral risk assessment was to evaluate Malta's risk exposure through the lens of legal entities and legal arrangements and VOs, to improve the understanding of the nature of these risks (e.g. typologies and patterns), and to identify measures that would strengthen the AML/CFT regime. This sectoral risk assessment involved a four-step process including an assessment of the threats, vulnerabilities, controls, and finally the residual risk calculation. The purpose of this document on the other hand was to raise awareness of the key results and to highlight the recommendations that need to be addressed by the competent authorities and the private sector. The NCC will continue in its role of a coordinating body and

to provide a comprehensive, coordinated and communicated strategy for managing the risks identified. Furthermore, the NCC will continue to assess whether there was an effective execution of the action plan in order to address the highlighted risks. Finally, the NCC will continue to work hard to have an effective ongoing cooperation and intelligence sharing among stakeholders, especially in light of the fact that risks are not static but are continuously changing.