



THE BASEL AML INDEX

A number of obligations under the Maltese Prevention of Money Laundering and Funding of Terrorism Regulations require subject persons to assess whether the jurisdictions they are dealing with are non-reputable jurisdictions. A non-reputable jurisdiction is one that has deficiencies in its national anti-money laundering and terrorist financing regime or has inappropriate and ineffective measures for the prevention of money laundering and terrorist financing. In assessing these elements, subject persons are to take into account any accreditation, declaration, public statement or report issued by an international organisation as well as whether the jurisdiction has been included by the European Commission in the list that it may publish in terms of Article 9 of the 4th AML Directive.

The Basel AML Index

The focus of today's newsletter is the Basel AML Index, which is an independent, research-based index issued by a not-for-profit organisation with the main goal of ranking countries according to their risk of money laundering and terrorist financing (ML/TF). It is, therefore, worth highlighting that this Index does not measure the actual amount of money laundering or terrorist financing activity, but rather the risk which is inherent to a country's vulnerability to ML/TF and its capacities to counter it.

The latest AML Index 2019 has assessed 125 countries with sufficient data to classify them depending on their national anti-money laundering and countering the financing of terrorism framework and related factors such as perceived levels of corruption, financial sector standards and public transparency. By combining data sources including the Financial Action Task Force (FATF), Transparency International, the World Bank and the World Economic Forum, the overall risk score represents a holistic assessment addressing structural as well as functional elements of the country's resilience against ML/TF.

Remarks: Simplifying a complicated matter

As some rankings might seem surprising, it may be appropriate to spend a few words on the methodology used by the Basel Institute. Five domains, each of them bearing a different weight on the overall scale, were taken into consideration:

- i. Quality of AML/CFT Framework
- ii. Bribery and Corruption
- iii. Financial Transparency and Standards
- iv. Public Transparency and Accountability
- v. Legal and Political Risks.

The scores were then aggregated as a composite index using a qualitative and expert-based assessment in order to form the final country ranking. This implies that, on the one hand, the Index provides a simplified comparison of countries' risks of ML/TF; and that, on the other hand, the scores summarise a complex and



multidimensional issue and should therefore not be viewed as a factual or quantitative measurement of ML/TF activity or as a specific policy recommendation for countries or institutions.

Also, the Index does not disaggregate data on ML- and TF-related risks due to a lack of separate and regularly updated data related to TF risks.

A more detailed description of the methodology and of the indicators may be read in the Basel AML Index report ¹. Without this background in mind, the below results may easily be misunderstood or misrepresented.

The outcome

Countries are ranked from highest to lowest level of risk as in 2019. The worst 20 performing countries are Mozambique (1st with a score of 8.22), Laos, Myanmar, Afghanistan, Liberia, Haiti, Kenya, Vietnam, Benin, Sierra Leone, Cape Verde, Nigeria, Zimbabwe, Paraguay, Yemen, Cambodia, Cote D'Ivoire, China (19th), Mongolia and Nicaragua.

Big players assessed by the Basel AML Index are India (51st), Hong Kong (69th), United States (72nd), Japan (73rd), Italy (75th), Brazil (76th), Switzerland (78th), Canada (79th), Netherlands (82nd), Singapore (95th), Ireland (97th), Germany (99th), Spain (100th), United Kingdom (106th) and France (108th).

The best 20 performers are Estonia (125th, with a 2.68 score), Finland, New Zealand, Macedonia, Sweden, Bulgaria, Lithuania, Uruguay, Slovenia, Israel, Croatia, Norway, Malta (113th), Montenegro, Denmark, Australia, Slovakia, France, Portugal and United Kingdom.

General trends

The below key findings on general trends have been highlighted by the Basel Institute on Governance:

- Some progress from 2018, but very slow: More countries showed slight improvements in their risk scores, including Switzerland (+0.37%) and Malta (+0.02%). However, there have been no substantial changes and this confirms that most countries are slow to improve their resilience against ML/TF risks. Only one country (Tajikistan) managed to improve its score by more than 1 point.
- Some countries are still going backwards: The risk scores of 13% of countries deteriorated by more than 0.1 point. Colombia, Latvia, Finland and China were the players with the highest deterioration in risk scores.
- Most countries are at significant risk: 60% of countries have a risk score of at least 5.0 and can be loosely classified as having a significant risk of ML/TF.

Analysis of FATF Data

By analysing the FATF data, it appears that, despite countries' performance in technical compliance has drastically improved, the AML/CFT systems remain largely ineffective. Moreover, countries are making progress in international cooperation

¹ <https://www.baselgovernance.org/sites/default/files/2019-08/Basel%20AML%20Index%202019.pdf>



and use of financial intelligence and in the overall understanding of the risks of money laundering and terrorist financing.

They fare similarly well when it comes to the domestic coordination of efforts to combat ML/TF and to the use of financial intelligence and in relation to the investigation of terrorist finance offences.

Nevertheless, it is highlighted that countries need to get better at supervising regulatory authorities and implementing preventive measures. In addition to it, transparency of beneficial ownership remains a sticking point. Information on ownership structures is largely unavailable to competent authorities.

Lastly, reporting of suspicious transactions is quite effective but not followed by conviction.

Conclusions reached by the Basel AML Index 2019

During development of this Index, it became clear to the Basel Institute on Governance that the quality of data concerning financial crimes is still a critical issue to be addressed. The FATF has taken positive steps by increasing the frequency of FATF updates and harmonising the methodology between different regional bodies. It is hoped that full coverage can be soon achieved so as to have updated reports at all times. It must also be noted that even low-risk countries are not entirely immune to ML/TF and that they need to stay on the radar for analysis for ML/TF risks. In this respect, opacity of beneficial ownership remains a key issue across all countries and requires a coordinated response at the international level.

Focus on Switzerland

Switzerland has been one of the main protagonists of this Report, especially with respect to the Bribery and Corruption (that has a 10% impact on the overall Basel AML Index score), Public Transparency and Accountability (5%) and Legal and Political Risks (5%) domains.

Corruption and bribery are very common predicate offences to money laundering. Countries with high exposure or vulnerability to corruption are at a higher risk of money laundering as proceeds of corruption need to be laundered. In this respect, Switzerland has been ranked one of the best countries in the world (7th position).

Public Transparency and Accountability relates to the transparency of public disclosures, the openness of budgets and public accountability. An example of money laundering in this context relates to bribery and contributions to election campaigns and political parties in return for advantages. Low performance in this domain (as is the case of Switzerland) is mainly associated with poor transparency levels of political finances, mainly related to inadequate campaign spending reporting by parties and candidates.

Legal and Political Risks domain covers political and legal risks associated with media freedom and strength of the rule of law in the country. The data are taken from Freedom House, the WEF and the World Justice Project (WJP). Freedom of expression in the press is seen as an important tool to expose money laundering. Additionally, a functioning and independent judicial system is a critical measure to deter crime, including financial crimes and money laundering, through the threat of punishment. Switzerland has been the third best player in 2019.



Focus on Malta

Malta has ranked 113th in the Basel AML Index 2019.

Current legal framework

The Maltese legal framework has been recently amended and mainly consists of the Prevention of Money Laundering Act (“Act”), Prevention of Money Laundering and Funding of Terrorism Regulations, and the Implementing Procedures issued by the FIAU.

Money laundering is defined as participation in a “criminal activity”, such as conversion, acquisition, possession or use of proceeds from such criminal activity. Attempting or acting as an accomplice to any criminal activity would also therefore fall within the money laundering definition.

But what is a criminal activity according to the Maltese legislative framework?

As per article 2 of the Act, criminal activity means any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to either a crime specified in the 19.12.1988 UN Convention (illicit substance and drug trafficking) or to any criminal offence. The reference to “any other law” entails a responsibility not only for clients but also for subject persons to ensure that its customers’ activities are legal in any jurisdiction wherein they operate.

The MONEYVAL Report

Opposite findings from those reached by the Basel Institute for Governance may be found in the Mutual Evaluation Report ² on Malta published by MONEYVAL ³ in September 2019. The evaluation was conducted by an assessment team consisting of legal, financial and law enforcement experts and was mainly based on information provided by the country via the 2018 National Risk Assessment (NRA).

Amongst all findings, MONEYVAL noted that money laundering investigations and procedures do not seem to be in line with the country’s risk profile and the growing size and complexity of its financial sector, also due to limited resources in the police force, in the Registry of Companies and in the Maltese authorities. It was further added that Malta’s supervisory authorities lack the adequate resources to conduct risk-based supervision for the private sector and that the country is lacking an in-depth analysis of how all types of legal persons and legal arrangements can be misused for money laundering and financing of terrorism purposes.

As a result, MONEYVAL has urged Malta to “step up its efforts to investigate and prosecute money laundering as well as to strengthen its supervisory system”, placing Malta under “enhanced follow-up procedures”. Both the Maltese government and the FIAU promptly reacted by welcoming the outcomes of the MONEYVAL report and

² <https://rm.coe.int/moneyval-2019-5-5th-round-mer-malta2/168097396c>

³ MONEYVAL is the official name of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. It is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.



declaring themselves committed to timely implementing the recommendations identified therein.

Low risk as per the Basel Index vs High risk as per MONEYVAL: Where does the truth lie?

It is at least curious to note that whilst the NRA, drawn up by the Maltese government, classifies Malta as a *high-risk* jurisdiction for ML/TF, the same government made express reference to the Basel Index which deems Malta to be a *low-risk* jurisdiction for ML/TF. The different methodology adopted together with possible political influences lie behind the final score. Nevertheless, all of us have surely asked the same question: is Malta a low-risk (Basel Index) or a high-risk (NRA) jurisdiction for ML/TF? Does the truth perhaps lie somewhere in the middle?

In view of all these international implications, the whole Mandaris group is committed to being abreast of all regulatory developments involving ML/TF matters at all times. In the event that entrepreneurs and operators intend to carry out their activities overseas, it may be recommended to seek legal advice on the legality of the planned activities so as to mitigate any risk and any consequent impact and damage.

Please do not hesitate to contact the author if you have any questions or queries.

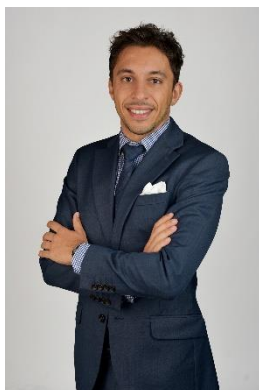
Our office locations

Mandaris Ltd.
St. Alban-Anlage 46
CH-4052 Basel
Tel. +41 61 285 17 17
Fax +41 61 285 17 77

Mandaris Ltd.
Beethovenstrasse 49
CH-8002 Zurich
Tel. +41 43 344 33 55
Fax +41 43 344 33 66

Mandaris Ltd.
Bahnhofstrasse 23
CH-6300 Zug
Tel. +41 41 500 01 15
Fax +41 41 500 01 16

Mandaris Group (Malta)
Ltd.
Forni Complex 1E, Level 2,
Pinto Wharf,
Valletta Waterfront
Floriana, FRN 1913
Malta
Tel. +356 2779 1900
Fax +356 2713 2410



The author:

Alessandro Chiarenza
MLaw
Legal and Compliance Manager (Malta)
alessandro.chiarenza@mandaris.com
Phone: +356 2779 1900