

Money Laundering

The Financial investigation agency :- What to expect.

What is money laundering?

Money laundering is exchanging criminally obtained money or other assets for "clean" money or other assets with no obvious link to their criminal origins. It also covers money, however come by, which is used to fund terrorism.

Where does the term money laundering come from ?

The term "money laundering" is said to originate from Mafia ownership of Laundromats in the United States. Gangsters there were earning huge sums in cash from extortion, prostitution, gambling and bootleg liquor. They needed to show a legitimate source for these monies.

One of the ways in which they were able to do this was by purchasing outwardly legitimate businesses and to mix their illicit earnings with the legitimate earnings they received from these businesses. Laundromats were chosen by these gangsters because they were cash businesses and this was an undoubted advantage to people like Al Capone who purchased them.

The FIA

The Financial Investigation Agency is the FIU or Financial Intelligence Unit for the British Virgin Islands. Worldwide there are 109 FIU's who are members of Egmont Recommendation 26 of the FATF says that every country should have an Egmont style Financial Intelligence Unit.

An Egmont style Financial Intelligence Unit is a single, national agency responsible for receiving, (and as permitted, requesting), analysing and disseminating to competent authorities, disclosures of financial information:

- 1. concerning suspected proceeds of crime and potential financing of terrorism, or**
- 2 required by national legislation or regulation in order to combat money laundering and the financing of terrorism.**

The role of the Financial Investigation Agency however goes further than being the Financial Intelligence Unit for the British Virgin Islands. In addition the above role the FIA deals with mutual legal assistance treaty requests and requests for legal assistance, made under the Criminal Justice (International Co-operation) act. These are requests for evidence, or exhibits required by the requesting authority, in a form that is admissible in a court of law.

Enquiries made by other Egmont Group Financial Intelligences Units, world wide are received and investigated by the FIA. Other enquiries by non Egmont FIU's and other authorities competent to make requests for information are dealt with by the FIA. It should be noted that these enquiries differ from the requests for legal assistance as they are relate to intelligence or information and not requests for evidence. The exchange of information through the Egmont group and the passing on of information to other competent authorities is a vital part in the fight against money laundering and combating the financing of terrorism.

In order to fulfill the obligations required by the world to play their part in the fight against money laundering, the British Virgin Islands took the approach of removing the FIU from the Police and creating a separate body, the Financial investigation Agency. This agency is staffed with a healthy mix of Police and Customs, each of whom brought their own skills and experience to the Agency. Starting from this base the agency continued to trained it staff, to a high level. Each member of staff will be able to take back skills to their organization, which will be of benefit to the Police and Customs respectively. The separation of the FIA from the Police and the setting up as an independent statutory body has brought that level of transparence that has boosted confidence in the entire system and can only be of benefit to the British Virgin Islands.

CHRONOLOGY OF EVENTS

Leading to the creation of the Financial Investigation Agency

BRITISH VIRGIN ISLANDS

1493 Columbus discovers the Virgin Islands on his second voyage

1992 Appointment of a Drugs and Fraud Profit Confiscation Officer.

1993 Financial Investigation Unit is Formed, as part of the, Royal Virgin Islands Police

1993 Criminal Justice (International Co-operation) Act passed.

1994 Drugs Trafficking Act passed.

1997 Proceeds of Criminal Conduct Act passed.
Criminal Code Passed.

1997 First Due Diligence and Compliance Conference, BVI.

1998 Anti money Laundering Code of Practice Introduced.

INTERNATIONAL

1988 *United Nations Vienna Convention, on Narcotic Drugs and Psychotropic Substances,*

1989 *FATF recognized the need for Financial Intelligence Units*

1995 *Formation of the Egmont . Group Brussels.*

1996 *FATF/CFATF referred to FIU's as a Central Authority in the context of STR's*

2000 *United Nations Convention on Transnational Organized . Crime.*

2001 *Special recommendations in relation to the financing of terrorism.*

FATF/CFATF

2003 *FATF/CFATF recommendation .
26 requires each country
to have an Egmont style FIU*

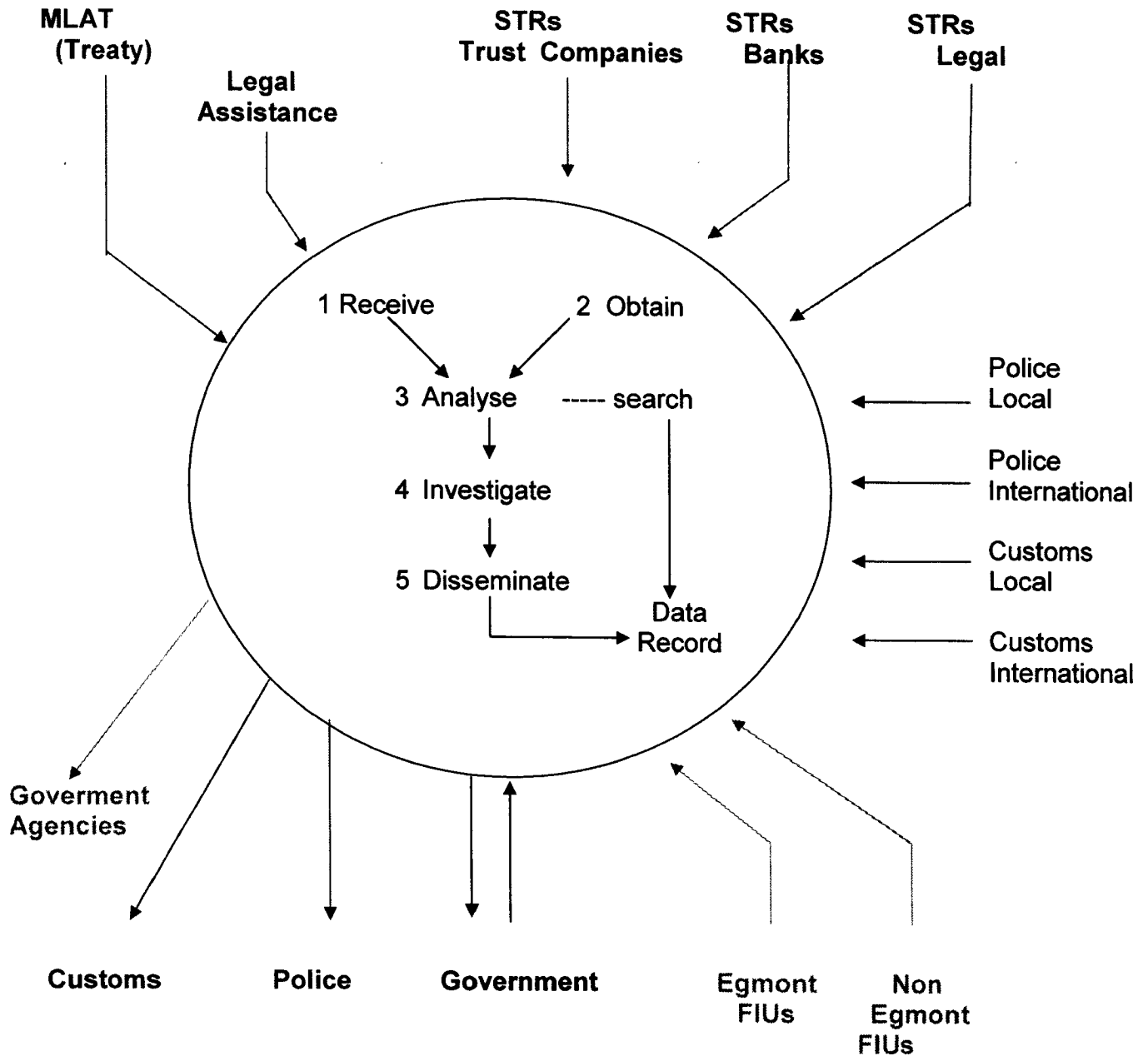
2003 Director Designate Appointed to the
Financial Investigation Agency (October)

2003 Financial Investigation Agency
Act passed. (December)

2004 Inaugural meeting of the **Board** of
the **Financial Investigation Agency.**
Director appointed (May)

2004 Police Officers seconded (June)
Chief Operating Offices Appointed
(July)

2007 First Amendment to the FIA Act



Core Functions of a Financial Intelligence Unit (FIU)

The International Monetary Fund recognizes that there are three core functions in the operation of an FIU. These functions are common to all types of FIU i.e.

- a. Administrative (FIU)
- b. Law Enforcement. (FIU)
- c. Judicial (FIU)
- d. Prosecutorial (FIU)
- e. Hybrid. (FIU)

The **Financial Investigation Agency Act 2003** , has made a number of important changes in the law.

Section 4(2) (b) - (c) - (d)

- (b) The Agency may on receipt of disclosures referred to in paragraph (a) *financial offence or the proceeds of a financial offence*, order in writing any person to refrain from completing any transfer for a period not exceeding seventy two hours.

- (a) May on receipt of a request (whether through the Governor, Attorney General, Commissioner or otherwise) from a foreign financial investigation agency or law enforcement authority, including the Commissioner of Police, order any person to freeze a persons bank account for a period not exceeding five days if satisfied that the request relates to the proceedings of a financial offence

- (b) May require the production of such information, excluding information subject to legal privilege, that the Agency considers relevant to the performance of its functions.

Section4 (4)

Any person failing or refusing to provide the information required under subsection (2)(d) *above* - commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or both.

Section 8(1) – (2)

- (1) No proceedings for breach of banking or professional confidentiality may be instituted against any person or against any director or employee of a financial or business entity who in good faith transmits information or submits reports in accordance with any financial services legislation, or Criminal Justice(International Co-operation) Act, 1993 or the Drug Trafficking Offences Act, 1992 or any other enactment relating to the provision of mutual legal; assistance.

- (2) No civil or criminal action may be brought nor any professional sanctions taken against any person who, or against any director or employee of a financial or business entity that, in good faith transmits information or submits reports to the Agency.