



MOKAS

UNIT FOR COMBATING MONEY LAUNDERING

2014 Cyprus International Financial Crime Forum

9–10 July 2014

“Asset tracing, Freezing and Confiscation
of Illegal Proceeds in Cyprus”

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MONEY LAUNDERING

The process by which criminals conceal the true origin and ownership of the proceeds of their criminal activities

- ▶ “Dirty” funds come to appear “clean”
- ▶ Failure to prevent ML and confiscate criminal proceeds permits criminals to benefit and extend their activities
- ▶ A policy of each country should be to ensure that “crime does not pay”



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THE ANTI MONEY LAUNDERING SYSTEM OF EACH COUNTRY SHOULD HAVE THE FOLLOWING ELEMENTS:

- ▶ Criminalization of money laundering
- ▶ Law Enforcement Authorities and the Judiciary should have the power to trace, freeze and confiscate criminal proceeds
- ▶ Preventive measures to prevent money laundering activities through the financial system (applied by banks, lawyers, accountants, investment firms and others.)



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INTERNATIONAL MEASURES AGAINST MONEY LAUNDERING

- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) – 1988
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime – 1990
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism – 2005
- European Union Council 3 Directives of 1991, 2001, 2005 and Council Framework Decisions on Freezing and Confiscation
- Recommendations of the Financial Action Task Force on ML&FT (FATF)



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MONEY LAUNDERING SITUATION IN CYPRUS

- Money laundering at the “placement stage” is diminished by virtue of
 - the existence of the Law on the control of cash
 - the limited role of cash operations in the Cyprus economy
 - no bureaux de change
 - no casinos
- Money laundering can take place in the other stages therefore the attention of the authorities is focused mainly in the Banking and the International business sectors.



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THE CYPRUS LEGISLATION

- The Prevention and Suppression of Money Laundering Activities Law (No. 61(I)/96)
 - (Enacted in May 1996 and amended in 1997, 1998, 1999, 2000, 2003 and 2004)
- The Prevention and Suppression of Money Laundering Activities Law of 2007 (No.18(I)/2007) as amended in 2010 and 2013
- Legislation in line with:
 - The U.N. Convention
 - The Council of Europe Conventions
 - EU Directives, Council Framework Decisions
 - Recommendations of the FATF
- Includes both preventive and repressive provisions



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INSTITUTIONS AND PERSONS FALLING UNDER DOMESTIC AML MEASURES AND LEGISLATION

- Credit Institutions
- Financial Institutions
- Insurance Companies
- Investment Firms
- Money Transmitters
- Auditors, External Accountants and Tax Advisors
- Lawyers (when they participate in certain financial transactions)
- Real Estate agents
- Dealers in high value metals and stones



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SUPERVISORY AUTHORITIES

- Central Bank of Cyprus
- The Securities and Exchange Commission
- The Superintendent of Insurance
- The Superintendent of Co-operative Banks
- The Council of the Cyprus Bar Association
- The Council of the Institute of Certified Public Accountants
- The Unit for Combating Money Laundering (MOKAS) (for Estate agents and dealers in precious stones and metals)



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POWERS OF THE SUPERVISORY AUTHORITIES

- Directives which are binding and compulsory to supervised entities
- Supervise and assess the implementation of the Law and Directives by obliged entities
- Take measures in case of failure to comply:
 - To require measures to remedy the situation
 - To impose administrative fine up to €200.000
 - To amend or suspend or revoke the license
- Legal professionals and auditors are referred to the Competent Disciplinary Board



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PREVENTIVE MEASURES TO BE TAKEN BY FINANCIAL INSTITUTIONS AND PROFESSIONALS TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING

Principle: “know your customer”

- Customer due diligence
 - Customer identification
 - Identification of the beneficial owner
 - Obtaining information on the purpose and the nature of the business relationship
- Record Keeping
(For at least 5 years)
- Training
- Internal reporting
- Reporting of suspicious transactions



PROHIBITION

- Anonymous accounts
- Numbered accounts or in fictitious names
- Accounts with shell banks or banks which have relationships with shell banks



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CYPRUS ANTI-MONEY LAUNDERING LEGISLATION – REPRESSION

Laundering Offences:

Every person who

- a) knows, or
- b) ought to have known

that any kind of property constitutes illegal proceeds and in any way uses or possesses or transfers or conceals e.t.c. such property, commits an offence punishable with imprisonment of:



- 14 years in the case he knew – pec. penalty of up to €500,000
- 5 years in the case he ought to have known – pec. penalty of up to €50,000



PREDICATE OFFENCES

- » “All crimes approach”
- » All offences from which proceeds were derived and are punishable with imprisonment exceeding 1 year
- » Drug trafficking offences
- » Financing of terrorism offences



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FINANCIAL INTELLIGENCE UNIT (F.I.U.)

- Definition

A central, national agency responsible for receiving (and as permitted requesting) analyzing and disseminating to the competent authorities, disclosures of financial information:

- (i) concerning suspected proceeds of crime, or
- (ii) required by national legislation or regulation,

in order to counter money laundering



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THE CYPRUS LEGISLATION (CONTINUED)

- Composition of Cypriot F.I.U. (MOKAS).
Representatives of:
 - » The Attorney General
 - » The Chief of the Police
 - » The Director of Customs Department
 - » Accountants / Financial Analysts
- It is headed by a representative of the Attorney General.
- The Unit was established in 1996 and became operational in January 1997



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FUNCTIONS OF MOKAS

- MOKAS is the F.I.U. of Cyprus with investigative powers
- All members of MOKAS are deemed to be investigators by virtue of section 5 of the Criminal Procedure Law
- Gathering, classification, evaluation and analysis of information relevant to laundering offences
- Conducting investigations
- Co-operation and exchange of information with other F.I.U.s (with all type of FIUs) as well as with AROs
- Issuing directives for the better exercise of its functions, to Financial Institutions, Police, professional and others.



- Disclosure Court Orders
- Freezing or restraint Court Orders
- Administrative Orders for the postponement or non execution of financial transactions
- Registration and enforcement of foreign court orders (restraint and confiscation)
- Training of Police, Financial Institutions, Professionals (e.g lawyers and Accountants)



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ASSET TRACING

An effective AML System should include measures to trace and confiscate criminal proceeds.

- **Disclosure Court Orders**
(Sections 45–46 of AML/CFT Laws)
 - Conditions:
 - Reasonable ground for suspecting that a person has committed or benefited from an offence (predicate or laundering)
 - The requested information is believed that it is useful for the analysis/investigation
 - It can be used for foreign cases as well (Based on Requests from foreign authorities)
 - **Section 68B of AML/CFT Laws**

Enquiries of the FIU to persons engaged in financial business activities as to whether they have business relationship with a specific person.

- **Criminal Procedure Law**



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FREEZING

- Restraint and charging orders issued by the Court
- Following an ex parte application of the Attorney General (through lawyers of the FIU)
- At the preliminary stages of the investigation
 - Court order for the freezing of property of a suspect who is outside the jurisdiction of Cyprus or has died
 - Following an ex parte application of the Attorney General (through lawyers of the FIU)
- Duration of freezing orders: Valid until the final determination of the case in question



CONFISCATION

- Following conviction for a predicate or laundering offence and before sentencing
- Value confiscation
- Reversal of the burden of proof
The accused has to demonstrate the legitimate source of the proceeds
- The Court can assume that the proceeds are illegal unless the contrary is proved on a balance of probabilities
- Extended confiscation:
Any property acquired by the defendant during the period of 6 years before the commencement of the criminal proceeding can be considered as proceeds
- Confiscation without a conviction in certain cases. Against a person who is outside the jurisdiction of Cyprus or has died



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INTERNATIONAL COOPERATION

Mutual Assistance in the area of freezing/confiscation

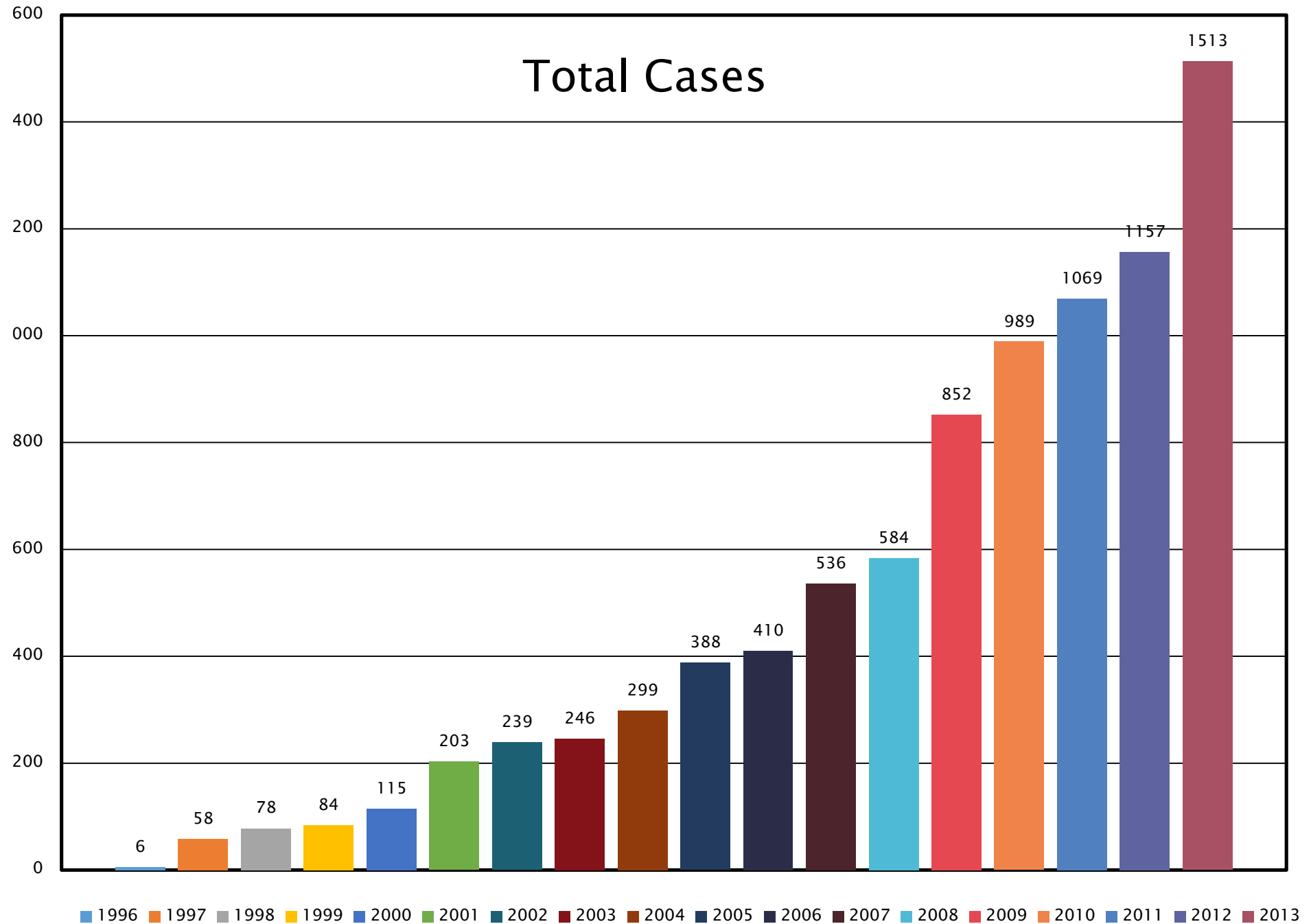
Cooperation with EU Member States:

- Cyprus has fully implemented the Framework Decisions 2003/577/JHA and 2006/783/JHA (Part IV A of the AML/CFT Laws)

Cooperation with third countries:

- Registration and enforcement of foreign court orders based on International Conventions (Part IV of the AML/CFT Laws)
- Conditions/Procedure:
 - Application to the Court by the lawyers of the FIU
 - The foreign Court order is in force and enforceable
 - The affected person was given the opportunity to present his case in the foreign court
- Consequences: As if it were an order issued by the Cyprus Courts

Total Cases





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Court Orders

Freezing Court Orders: 206

Instructions for non execution of transactions: 145

Confiscation Court Orders: 28

Registration and Enforcement of foreign court orders: 33



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THANK YOU !!!!

www.law.gov.cy/mokas