



GUIDELINES ON THE MEASURES FOR THE PREVENTION OF MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM FOR AGENT IN LAND AND/OR BUILDING OR ESTATE AGENCY, LAND PROMOTER AND PROPERTY DEVELOPER (ABBREVIATED AS 'AL/AB/EA,LP & PD')

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ACRONYMS

AML/CFT	-ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM
CDD	-CLIENT DUE DILIGENCE (CDD)
AL/AB/EA	-AGENT IN LAND AND/OR BUILDING OR ESTATE AGENCY
LP	- LAND PROMOTER
PD	-PROPERTY DEVELOPER
DNFBPS	- DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS
ESAAMLG	-EASTERN AND SOUTHERN AFRICA ANTI-MONEY LAUNDERING GROUP
FATF	- FINANCIAL ACTION TASK FORCE
FIU	- FINANCIAL INTELLIGENCE UNIT
FIAMLA	- FINANCIAL INTELLIGENCE AND ANTI- MONEY LAUNDERING ACT 2002
ML	- MONEY LAUNDERING
PEP	-POLITICALLY EXPOSED PERSON
STR	- SUSPICIOUS TRANSACTION REPORT
TF	- TERRORISM FINANCING / FINANCING OF TERRORISM

1 INTRODUCTION

1.1 Purpose and Scope of the Guidelines

AL/AB/EA, LP & PD ¹ may become a preferred choice for criminals for hiding illicit gains. This arises because of a number of factors such as their relatively high monetary value, the appreciation of their value over time and the opportunity to conceal ownership. AL/AB/EA,LP & PD, in particular, are involved in the vast majority of AL/AB/EA,LP & PD transactions in Mauritius and, therefore, can play a key role in detecting money laundering and financing of terrorism schemes involving the AL/AB/EA,LP & PD industry. Given that they are in direct contact with clients (either buyer and/or sellers), they generally know their clients better than the other parties in the transactions. Therefore, they are well placed to detect any suspicious transaction/activity.

The document has been issued pursuant to section 10(2) (ba) of the Financial Intelligence and Anti Money Laundering Act (FIAMLA) 2002, as amended by the Economic and Financial Measures (Miscellaneous Provisions) Act 2013. They are intended to assist AL/AB/EA, LP & PD in complying with their obligations in relation to the prevention, detection and reporting of money laundering, financing of terrorism and proliferation. In the process, the accounting and auditing profession will not be misused by money launderers or those involved in dubious transactions.

1.2 Businesses and Individuals covered by the Guidelines

This guideline is addressed to the following:

1. Agents in Land/or Building or Estate Agency under the Local Government Act.
2. Land Promoters and Property Developers under the Local Government Act.

¹ For the purpose of this Guidelines, AL/AB/EA,LP & PD means Agents in Land/or Building or Estate Agency, Land Promoters and Property Developers under Local Government Act

1.3 Compliance with Guidelines and Enforcement

According to section 10(3) of the FIAMLA *any institution to which, or person to whom, guidelines are issued under subsection (2) (ba) or (c) shall comply with those guidelines.* Furthermore, section 10(4) of the FIAMLA stipulates that *Where an institution or a person fails to comply with guidelines issued under subsection (3), the institution or person shall be liable to pay a penalty not exceeding 50,000 rupees for each day on which such breach occurs as from the date on which the breach is notified or otherwise comes to the attention of the FIU and such penalty may be recovered by the Director as if it were a civil debt.*

2 MONEY LAUNDERING AND FINANCING OF TERRORISM

2.1 Money Laundering

Money laundering is the process intended to disguise the illegal origin of proceeds of crime in order to make them appear legitimate. If undertaken successfully, it allows criminals to maintain control over proceeds of criminal activities and, ultimately, provide a legitimate cover for these activities. The process is often carried out in three stages:

- o **Placement**

This initial stage involves the introduction of criminally tainted money into the financial system. The launderer seeks to introduce illegal proceeds into the financial system by, for example breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (e.g. cheques etc.) that are then collected and deposited into accounts at another location.

- o **Layering**

The layering stage is the dissociation of the dirty money from their source through a series of transactions to obscure the origins of the proceeds. These transactions may involve different entities such as companies and trusts as well as different financial assets such as shares, securities, properties or insurance products. It is the separation of benefits of drug trafficking or criminal conduct from their source by creating layers of financial transactions designed to disguise the audit trail. Illustratively, the launderer may engage in a series of conversions or movements of the funds to distance them from their source. (e.g. buying and selling of stocks, commodities or properties, buying precious metals or stones with cash, taking out and repaying a loan, use of gatekeepers and their services to buy and sell assets etc). The funds might even be channelled through the purchase and sale of investment instruments, or the launderer might simply wire the

funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not co-operate in anti-money laundering investigations. In some instances, the launderer might disguise the transfers as payments for goods or services or use gatekeepers to carry out such transactions, thus giving them a legitimate appearance.

- o **Integration**

The integration stage is the use of the funds in the legitimate economy through for instance, investment in real estate or luxury assets. Essentially, it is the provision of apparent legitimacy to benefits of drug trafficking or other illegal activities. If the layering process has been successful, the integration schemes thus place the laundered funds back into the economy so that they re-enter the financial system appearing as legitimate business funds. They can then be used for legitimate purchase of luxury goods, real estate and so on.

2.2 Financing of Terrorism

Financing of Terrorism is the process by which funds are provided to an individual or group to fund terrorist activities. Unlike money laundering, funds can come from both legitimate sources as well as from criminal activity for the financing of terrorism. Funds may also originate from personal donations, profits from businesses and charitable organizations but all the funds are actually used to finance terrorism. Funds may come, as well as from criminal sources, such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping and extortion.

Unlike money laundering, which precedes criminal activity, with financing of terrorism, it is possible to have fundraising or a criminal activity generating funds prior to the terrorist activity actually taking place. However, similar to money launderers, those financing terrorism also move funds to

conceal their source of those funds. The motive is to prevent leaving a trail of incriminating evidence.

3 AML/CFT LEGISLATIVE FRAMEWORK

The Financial Action Task Force (FATF) was established in 1989 by the G7 countries. It is an inter-governmental body whose purpose is to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, financing of terrorism and other related threats to the integrity of the international financial system. The FATF standards are reflected in its 40 Recommendations issued in February 2012. These are universally recognised as international standards for anti-money laundering and countering financing of terrorism (AML/CFT).

3.1 The Financial Action Task Force

The FATF issued a first report containing a set of *Forty Recommendations*, for the prevention of money laundering in April 1990. These 40 Recommendations were first revised in 1996. Subsequently, in October 2001 the FATF issued the *Eight Special Recommendations* to deal with the issue of financing of terrorism and added a ninth Recommendation in 2004. The continued evolution of money laundering techniques led the FATF to revise the FATF standards comprehensively in June 2003. The revision brought a number of changes and one of the changes related to the classification of AL/AB/EA, LP & PD as Designated Non-Financial Businesses and Professions' (DNFBPs) by the FATF. This change means that AL/AB/EA, LP & PD are now subject to the same Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) requirements as casinos, accountants, lawyers, dealers in jewellery. The most recent revision of the FATF recommendations was effected in 2012 and the 40+9 Recommendations were merged into 40 Recommendations².

²The new 40 Recommendations is available on the following website:

<http://www.fatfgafi>.

[org/topics/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthe](http://www.fatfgafi.org/topics/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthe)

Currently the membership of the FATF includes 36 members and 8 Associate Members, including the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).

3.2 ESAAMLG

ESAAMLG was founded in 1999 and its main objective is to ensure that its Members comply with the FATF standards. ESAAMLG was also admitted as an associate member of the FATF, in June 2010.

Assessment for compliance with the FATF Recommendations is done through the Mutual Evaluation Process following which a Mutual Evaluation Report (MER) is prepared and posted on the ESAAMLG's website.

Mauritius is a founding member of ESAAMLG and has undergone a mutual evaluation process by the ESAAMLG/IMF in 2003 and 2007 respectively. In the Mutual Evaluation Report 2008, some deficiencies in the AML/CFT framework were identified and recommendations were made to the Government to address them. Subsequently, Parliament made appropriate legislative changes to improve our AML/CFT framework.

3.3 AML/CFT Conventions ratified by Mauritius

Mauritius has also ratified a number of AML/CFT Conventions. In March 2001, Mauritius acceded to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, known as the Vienna Convention. On 18 April 2003, we have also ratified the United Nations Convention against Transnational Organised Crime known as the Palermo Convention. The UN Convention against Corruption was ratified on 14 December 2004. Mauritius has also

ratified International Convention for the Suppression of the Financing of Terrorism on 11 December 2004.

3.4 Mauritius AML/CFT Legislative Framework

Mauritius introduced its first AML-specific legislation in mid 2000, namely the Economic Crime and Anti-Money Laundering Act. This enactment was subsequently repealed in April 2002 under the Prevention of Corruption Act. A comprehensive AML legislation, namely The Financial Intelligence and Anti Money Laundering Act (FIAMLA) was enacted in June 2002. It imposes an obligation on AL/AB/EA, LP & PD to report suspicious transactions to the Financial Intelligence Unit.

In 2002, Parliament also enacted the Prevention of Terrorism Act and the Prevention of Corruption Act. In the following year, the Convention for the Suppression of the Financing of Terrorism Act came into force.

In 2003, Mauritius was assessed under the Financial Sector Assessment Program of the World Bank in relation to its AML/CFT framework. This assessment also served as a mutual evaluation report of the Mauritius AML/CFT framework for ESAAMLG and led to certain legislative amendments.

In July 2011, the Economic and Financial Measures (Miscellaneous Provisions) Act 2011 amended FIAMLA to empower the FIU to issue AML/CFT guidelines to members of the relevant profession or occupation which include AL/AB/EA, LP & PD.

In February 2012, the Assets Recovery Act was proclaimed. It provides inter alia, the setting up of an Enforcement Authority, which is an investigatory authority under the FIAMLA. In December 2012, further amendments were brought, namely the enactment of the Economic and Financial

Measures (Miscellaneous Provisions) Act 2012. One of the major amendments relate to the designation of different 'Regulatory Bodies' for the AML/CFT supervision of the DNFBP sector. The FIU were designated as 'Regulatory Body' for AL/AB/EA, LP & PD .Also, the FIAMLA was amended so that AL/AB/EA,LP & PD failing to comply with Guidelines issued by the FIU may be liable to a penalty not exceeding 50,000 rupees for each day such breach occurs.

The latest amendments brought to the AML/CFT legislation were in December 2013, with the enactment of the Economic and Financial Measures (Miscellaneous Provisions) Act 2013. Regulatory bodies, which include the FIU, for the purpose of ensuring compliance with the guidelines, may require its AL/AB/EA, LP & PD to furnish such information to the FIU and produce such record or document that they may require. Another important amendment made in December 2013 requires AL/AB/EA,LP & PD to furnish such information or produce such record or document required under subsection 10(6) of the FIAMLA, to its regulatory body; namely the FIU. In case of non-compliance, AL/AB/EA,LP & PD shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

Copies of the above legislation are available on the FIU's website: www.fiumauritius.org.

The main pieces of legislation that relate to terrorism financing are the Convention for the Suppression of the Financing of Terrorism Act 2003 and the Prevention of Terrorism (Special Measures) Regulations 2003. The Prevention of Terrorism Act 2002 deals with the acts of terrorism under the purview of the Commissioner of Police. . These legislation are available on FIU's website: www.fiumauritius.org.It is also required (Section 14 of FIAMLA) that AL/AB/EA,LP & PD must report suspicious transactions, which include funds that may be linked to financing of terrorism to the FIU

4 THE FINANCIAL INTELLIGENCE UNIT (FIU)

The Mauritius FIU was set up in August 2002 under the provisions of section 9 of the FIAMLA. It is the central agency in Mauritius responsible for receiving, requesting, analyzing and disseminating to the investigatory and supervisory authorities³ disclosures of information regarding suspected proceeds of crime and alleged money laundering offences as well as the financing of any activities or transactions related to terrorism to relevant authorities

It was the first FIU to be set up in Africa and became member of the Egmont Group in July 2003. For general information on the FIU and the Egmont Group, please visit their websites:

www.fiumauritius.org and www.egmontgroup.org

³"Investigatory authorities" include the Commissioner of Police, the Director, The Mauritius Revenue Authority, the Enforcement Authority and the ICAC and "supervisory authorities" include the Bank of Mauritius, the Financial Services Commission and the GRA. As from 22 December, 2012, AML/CFT regulatory bodies have been clarified as in Part 11 of Schedule 1 of FIAMLA. They include the Mauritius Institute of professional Accountants, Financial Reporting Council, Attorney-General, Bar Council, Mauritius Law Society Council, Chamber of Notaries, Gambling Regulatory Authority and the FIU (for Agent in Land and/or Building or Estate Agency under the Local Government Act, Land Promoter and Property Developer under the Local Government Act, Dealer under the Jewellery Act)

5 THE PROCESS OF SUSPICIOUS TRANSACTION REPORTING

Section 14 of FIAMLA imposes an obligation on AL/AB/EA, LP & PD to make a report, **as soon as possible but not later than 15 working days** to the FIU of any transaction which they have reason to believe may be suspicious. The form, as approved by the FIU and in accordance with section 15 of the FIAMLA, to be used for reporting suspicious transaction is the Suspicious Transaction Report (STR) Form. A copy of the form is available on the website of the FIU on the link below:

http://www.fiumauritius.org/images/stories/STR_FORM_FINAL_VERSION.pdf

Information on the manner in which a STR shall be reported is contained in the FIU's **Guidance Note No. 3** which is available on the FIU's website.

5.1. Suspicious Transaction

'Suspicious transaction' is defined under FIAMLA as a transaction which (a) gives rise to a reasonable suspicion that it may involve (i) the laundering of money or the proceeds of any crime; or (ii) funds linked or related to, or to be used for, financing of terrorism or by proscribed organizations, whether or not the funds represent the proceeds of a crime; (b) is made in circumstances of unusual or unjustified complexity; (c) appears to have no economic justification or lawful objective; (d) is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; (e) gives rise to suspicion for any other reason.

For further details on how to identify and report a suspicious transaction, please refer to the FIU current Guidance Note No 3, mentioned above.

The offence for failing to report an STR is set out under section 19 of the FIAMLA. The penalty is a fine not exceeding one million rupees and imprisonment for a term not exceeding 5 years.

6 REQUEST FOR INFORMATION BY THE FIU

Under Section 13(2) and section 13(3) of FIAMLA, the Director of the FIU may, having regard to the complexity of a case, request additional information from AL/AB/EA,LP & PD who submitted the suspicious transaction report or from any other reporting entity which is, or appears to be, involved in the transaction. The additional information shall, as soon as practicable but not later than 15 days, be furnished to the FIU.

If AL/AB/EA, LP & PD fail to supply any information requested by the FIU under section 13(2) or 13(3) of FIAMLA, they commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years as per section 19 of the FIAMLA.

7 PROTECTION OF INFORMATION

Confidentiality is a key success factor for the operations of an FIU. Under section 30(1) of the FIAMLA, the Director, every officer of the FIU, the Chairperson and members of the Board shall take an oath of confidentiality before they begin to perform their duties. They should maintain during and after their relationship with the FIU, the confidentiality of any matter relating to the relevant enactments. Section 30(2) of the FAIMLA further provides that no information from which an individual or body can be identified and which is acquired by the FIU in the course of carrying out its functions shall be disclosed except where disclosure appears to the FIU to be necessary to enable it to carry out its functions, or in the interests of the prevention or detection of crime, or in connection with the discharge of any international obligation to which Mauritius is subject. Any breach of this section shall be punishable by a fine not exceeding Rs1 million and to imprisonment for a term not exceeding 3 years.

The FIU takes all the necessary precautions to protect the identity of the person reporting the suspicious transaction when disclosing the information to law enforcement or other competent authorities. As regards physical security, the FIU Mauritius has a well-defined architecture covering access control. Confidentiality of IT-information and databases is well-preserved by IT Security Policies and Procedures.

8 TIPPING OFF

After making a suspicious transaction report to the FIU, Section 16 (1) of FIAMLA prevents AL/AB/EA,LP & PD from informing anyone, including the customer, about the contents of a suspicious transaction report or even discloses to him that he/she has made such a report or information has been supplied to the FIU pursuant to the request made under section 13(2) or 13(3) of FIAMLA. It shall amount to an offence under the Act punishable by a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years

9 MITIGATING THE RISK OF MONEY LAUNDERING AND FINANCING OF TERRORISM BY AL/AB/EA, LP & PD

Recommendation 1 of the FATF focuses on assessing risks and applying a risk based approach. In particular, countries have a duty to require DNFBPs to identify, assess, and take effective action to mitigate their money laundering and terrorist financing risks.

Provisions already exist in FIAMLA for assessment and mitigation of risks for reporting entities. Under section 3(2) of FIAMLA, any AL/AB/EA, LP & PD is required to take such measures that are necessary to ensure that its services are not being misused to commit a money laundering or the financing of terrorism offence. The penalty for such an offence is a fine not exceeding 2 million rupees and penal servitude for a term not exceeding 10 years.

The other measures mitigating the risks of money laundering and financing of terrorism are set out under section 17 and 10(2) (ba) of the FIAMLA. These measures include:

- (a) verification of the true identity of all customers and other persons with whom they conduct transactions;
- (b) keeping such records, registers and documents
- (c) upon a Court order, make available such records, registers and documents as may be required by the order
- (d) put in place appropriate screening procedures to ensure high standards when recruiting employees.

No AL/AB/EA, LP & PD can reasonably be expected to detect all wrongdoing by clients, including money laundering. However, if any AL/AB/EA, LP & PD develops systems and procedures to

detect, monitor and report the riskier clients and transactions, he will reduce its chances of being misused by criminals.

A risk-based approach also requires AL/AB/EA, LP & PD to have systems and controls that are commensurate with the specific risks of money laundering and financing of terrorism facing them. Assessing this risk is, therefore, one of the most important steps in creating a good anti-money laundering compliance program. As money laundering risks increase, stronger controls are necessary. However, all categories of risk — whether low, medium or high — must be identified and mitigated by the application of controls, such as verification of customer identity, CDD policies, suspicious activity monitoring and checking list of people on whom sanctions have been applied or being applied. A risk based approach should be flexible, effective and proportionate.

9.1 Risk-Based Approach

In the context of AL/AB/EA, LP & PD, the risk of money laundering or financing of terrorism is defined as the risk of the professional services being used directly or indirectly by criminals to channel illicit money. In accordance with AML/CFT laws and revised FATF Recommendations of 2012, AL/AB/EA, LP & PD should be responsible for assessing their exposure to the risk of money laundering and financing of terrorism. The purpose of establishing a risk-based approach is to make sure that anti money laundering and financing of terrorism measures applied by AL/AB/EA, LP & PD are proportionate to the identified risk. The categories, criteria and elements of risks defined below identify potential risks of money laundering and financing of terrorism. The risk categories may be broken down into different levels of risks and they also help to determine the rigidity of your policies and procedures.

9.1.1 Factors to determine Risk

The risks the sector faces depend on variety of factors, namely:

- The client base
- The services provided
- Geographic location

9.1.1.1 Risk of Client base

The levels of risks associated with the client base could include for example, (i) **prohibited** clients (i.e., clients that are prime candidates for prohibited transactions, a list of designated persons/entities on the UNSCR 1267 (Al Qaeda Sanction List) or 1373, persons whose assets may have been frozen under section 45 of the Dangerous Drugs Act, (ii) clients considered as **high risk** (for example, Politically Exposed Persons), (iii) **medium risk** client, (iv) **low /standard** risk client.

The type of your client may also pose ML/FT risks, e.g., individuals, listed companies, private companies, joint ventures, partnerships, etc. The following is a list of type of clients and the level of risks associated with them. Note that this is not a prescriptive list nor does it imply that the risk is the same across the DNFBP sector, i.e., it may be low risk for one DNFBP and considered as high risk for another. Identification of high risk clients may be based on the following:

- Unusual involvements of third parties...
- Titling a residential property in the name of third party; for example, a friend, relative, business associate, or lawyer.
- Use of legal entities (corporations, LLCs or partnerships) that obscure the identity of the person who owns or controls them without a legitimate business explanation.
- Non face to face client
- Politically exposed persons (PEPs)

- Persons whose assets have been frozen under section 45 of the Dangerous Drugs Act
- Clients with an affiliation to countries with high levels of corruption or from which terrorist organizations

9.1.1.2 Risk of Products/ Services

An essential element of risk assessment is to review new and existing services that the AL/AB/EA, LP & PD offer to determine how they may be used to launder money or finance terrorism. For instance, some services can be used to conceal the ownership or the source of property, such as:

- Services in relation to complex transactions/ enabling significant volumes of transactions to occur rapidly
- Services allowing customer to engage in transactions with minimal oversight by the institution
- Services allowing levels of anonymity to the users

Given the nature of services offered by AL/AB/EA, LP & PD, they may be exposed to transactions risks such as:

- Under or over-valued properties. (E.g., is the property owner selling the property for significantly less than the purchase price)
- Disinterest in obtaining a better price
- Use of large amounts of cash.
- Buyer brings actual cash to the closing.
- The purchase of a property without a mortgage, where it does not match the characteristics of the buyer.
- Property purchases inconsistent with the individual's occupation or income.
- Immediate resale of the property.

- Purchases being made without viewing the property, no interest in the characteristics of the property.

9.1.1.3 Geographical locations of the business/clients/products being used

Geographic location is generally accepted as a contributing factor to the level of risk. However, there is definite, independent system for assessing the money laundering risks of various territories. While some firms may design their own methods of assessing the jurisdictional risk, other may take certain elements into consideration namely (i) lists published by authorities in different jurisdictions e.g., U.S Office of Foreign Assets Control, the U.S. Financial Crimes Enforcement Network, the European Union, the World Bank and the United Nations Security Council Committee, (ii) whether the country is a member of the FATF or of a FATF-style regional body and has AML requirements equivalent to international best practices, (iii) overall reputation of the country (iv) Political Stability Regime (v) High levels of internal drug production or to be in drug transit regions. Besides, reference can be made to annual International Narcotics Control Strategy Report and yearly “Corruption Perception Index”, among others.

AL/AB/EA, LP & PD should therefore implement a risk-based approach to allow effort to be concentrated on higher risk areas when establishing an appropriate AML/CFT Program.

10 AML/CFT PROGRAM

An AML/CFT program is required to identify, mitigate and manage the risk of the products or services being offered by the AL/AB/EA, LP & PD that could facilitate money laundering or terrorism financing.

AML/CFT programs should be risk based. This means that AL/AB/EA, LP & PD s can develop their own program, tailored to their situation to mitigate money laundering and terrorism financing risks. This approach recognizes that not all aspects of an institution' business present the same level of risks. The reporting entity is in the best position to assess the risk of their clients, products and services and to allocate resources to counter the identified high risk areas.

The basics of an AML/CFT program consist of the basic element:

- Internal policies, procedures and controls
- Suspicious Transaction Reporting & Monitoring
- On-going Employment Screening and training program
- Record-Keeping
- Independent audit function to test the AML/CFT program

10.1 Internal policies, procedures and controls

AL/AB/EA, LP & PD should to have in place adequate policies, procedures and internal controls that promote high ethical and professional standards and prevent their profession from being misused by criminals. These policies, procedures and internal controls should be efficiently introduced and maintained and each Agent in Land/or Building or Estate Agency, Land Promoter and Property Developer should be aware of his responsibilities, thus ensuring compliance with FIAMLA 2002 and the Guidelines.

10.1.1 Identification and Verification Procedures

It is important that the AL/AB/EA,LP & PD know with whom they are dealing with (“know your customer” principle) when they carry out either face to face or non-face to face transactions. They need to **identify**⁴ and **verify**⁵ the true identity of their respective clients or if the client is being represented, the authorised person(s) acting on behalf of the client. In case of corporate bodies, they need to ascertain the company’s ultimate beneficial owner, by obtaining information on their identity on the basis of documents, data or information obtained from a reliable and independent source and verifying the accuracy of the information obtained.

Identification and verification measures need to be carried out:

- when entering into a transaction,
- when dealing with a one-off client,
- where there is a suspicion of *money laundering* or *financing of terrorism*; and
- where there are doubts concerning the veracity of previous identification information.

(i) Individuals (Face to Face transactions)

An individual’s identity consists of a totality of his name, current address, previous addresses, date of birth, place of birth, physical appearance, employment history, financial history and family circumstances.

(a) Residents of Mauritius

The name of individuals residing in Mauritius should be verified from an original official valid document such as National identity cards, current valid passports, and current valid driving licenses.

Besides, it is essential that the current permanent address of the client be verified as an integral part of identity. Satisfactory evidence of address can be obtained by a recent utility bill or a recent

⁴ Identify means to ascertain who a person claims to be.

⁵ Verify means to obtain evidence that tends to show that the person is who he says he is.

bank or credit card statement or a recent bank reference or a any other document or documents which either singly or cumulatively establishes, beyond reasonable doubt, the address of the applicant for client.

AL/AB/EA, LP & PD may also request for additional verification of identity by:

- checking a local telephone directory
- checking a current register of electors
- visiting the applicant for business at his permanent residential address.

(b) Non Resident of Mauritius

Regarding clients who are not resident in Mauritius but who make face-to-face contact with any AL/AB/EA,LP & PD , they should be required to provide the following information such as true name, current permanent address, mailing address, telephone and fax number, date and place of birth, nationality, occupation and name of employer (if self-employed, the nature of the self employment), signature/signatures, authority to obtain and data provided. Documents required are namely: the National Identity Card, current valid passports, and current valid driving licences, armed forces identity card

(ii) Individuals –(Non Face to Face transactions)

It is most vital that the procedures adopted to verify identity of clients for non-face- to-face transaction is at least as robust as those for face-to-face verification. Accordingly, in accepting transactions from non-face-to-face clients, AL/AB/EA,LP & PD should apply uniformly effective customer identification procedures as for those mentioned above (for both residents and non-residents of Mauritius) and other specific and appropriate measures to mitigate the higher risk posed by non-face-to-face verification of clients.

In addition, for non-resident requiring services from abroad, details such as true name, current permanent address, mailing address, telephone and fax number, date and place of birth, nationality, occupation and name of employer (if self-employed, the nature of the self-employment), signature/signatures, authority to obtain any data provided. Documents required are namely: the National Identity Card, current valid passports, and current valid driving licences, armed forces identity card should be provided.

Duly certified as a true copy by a lawyer, accountant or other professional persons who clearly adds to the copy (by means of a stamp or otherwise) his name, address and profession to aid tracing of the certifier if necessary and which the financial institution believes in good faith to be acceptable to it for the purposes of certifying.

(iii) Corporate

(a) Locally Incorporated Companies

With regard to locally incorporated companies, AL/AB/EA,LP & PD should verify(i) the identity of those who ultimately own or have control over the company's business and assets, more particularly (ii) their directors (iii) their significant shareholders and their authorised signatories (iv) the legal existence of the company.

Documents should be acquired and retained in the case of locally incorporated companies:

- (i) their directors and significant shareholders (the same documents as are required for the identification of a personal customer);
- (ii) Official documents which collectively establish the legal existence of that entity, e.g. the original or certified copy of the certificate of

incorporation of the company, details of its registered office and place of business etc.

Further enquiries may be made for verification such as verifying with the Registrar of companies, that the company continues to exist and has not been, or is not in the process of being, dissolved, struck off, wound up or terminated, by conducting in cases of doubt a visit to the place of business of the company, to verify that the company exists for a legitimate trading or economic purpose.

(b) Trusts

In the case of trusts, certified extracts of the original trust deed or probate copy of a will creating the trust, documentary evidence pertaining to the appointment of the current trustees and the nature and purpose of the trust, as well as documentary evidence as are required for personal clients on the identity of the current trustees, the settler and/or beneficial owner of the funds and of any controller or similar person having power to appoint or remove the trustees should be requested and retained. AL/AB/EA,LP & PD may also obtain written confirmation from the trustees that they are themselves aware of the true identity of the underlying principals i.e. the settlors/named beneficiaries, and that there are no anonymous principals.

(c) Sociétés

Procedures set out for verification of individual clients may be applied to verify the identity of those in control of the société Besides for sociétés, the original or certified copy of the Acte de Société may be requested and retained and for Mauritian sociétés, the AL/AB/EA,LP & PD should ensure, by verifying with the Registrar of Companies, that the société continues to exist.

(d) Entities that are subject to AML/CFT by other supervisory/regulatory bodies

The same verifications for locally incorporated companies may be applied.

Besides, in case of entities that are subject to AML/CFT and CDD measures by licensee of other sector supervisors/regulatory bodies, the AL/AB/EA, LP & PD may rely on the CDD carried out by the corresponding licensee of that sector supervisor on its licensee, e.g., the AL/AB/EA, LP & PD may rely on the CDD carried out by management companies on the directors, shareholders and ultimate beneficial owners of the GBCs which are client of the AL/AB/EA, LP & PD. However, simplified CDD measures shall not be acceptable whenever the AL/AB/EA, LP & PD has suspicion of money laundering or financing of terrorism activities being carried out by their clients. The AL/AB/EA, LP & PD must ensure that the information on the client, director, shareholders and ultimate beneficial owners of entities are readily available to them, in case of a request made by any authority.

(e) Foreign Companies

For foreign companies, the same documents as for locally incorporated companies should be requested and retained. In addition, the veracity of information should be checked.

Where AL/AB/EA, LP & PD cannot obtain all the information required to establish the identity of the client to its full satisfaction, he shall not commence the business relation or perform the transaction and consider making a suspicious transaction report to the FIU. Moreover, if during the course of its business activities, the AL/AB/EA, LP & PD have doubts about the veracity or adequacy of previously obtained client identification data, he should terminate the business relationship and consider making a suspicious transaction report to the FIU.

10.1.2 Verification of the Source of Wealth

Source of wealth describes the activities which have generated the total net worth of a person both within and outside a business relationship, that is, those activities which have generated a client's net assets and property.

Verification can be performed by checking the (i) Details of the client's occupation, or (ii) details of any businesses currently owned and the client's role within such businesses, or (iii) details of any businesses sold by the client (iv) details of any wealth (including businesses) inherited from other family members among others.

The information gathered under 10.1.1 above should assist the AL/AB/EA, LP & PD to develop a sound CDD program. Also it will enable the AL/AB/EA, LP & PD to develop transaction and activity profile of the client, assess and grade the money laundering and financing of terrorism risks that the client may pose.

10.2 Suspicious Transaction Reporting & Monitoring

Proper due diligence may require management to gather further information regarding a client or his transaction before deeming it suspicious and deciding to report to the FIU as part of a AML/CFT program. Systems for monitoring and reporting suspicious activity should be risk-based, and should be determined by factors such as the firm's size, the nature of its business, its location, frequency and size of transactions and the types and geographical location of its clients, among others. In such context internal reports may be created. Some of the reports may include:

- The procedures to identify potential suspicious transactions or activity.
- A formal evaluation of each instance, and continuation, of unusual transactions or activity.
- A documentation of the suspicious transaction reporting decision, whether or not filed with the authorities.

Besides, internal reporting lines and procedures may be determined for reporting suspicious transactions to the FIU, taking into consideration speed and confidentiality principles.

10.3 Employment Screening and Training

10.3.1 Employment Screening

Screening procedures before employing the personnel should put in place screening procedures to ensure high standards when hiring employees. In this context, significance may be given to:

- Obtaining and confirming proper references at the time of recruitment;
- Requesting information from the member of staff with regard to any regulatory action taken against him or action taken by a professional body
- Requesting information from the member of staff pertaining to any criminal convictions and the provision of a check of his criminal record (for instance, requiring a Certificate of Character).

10.3.2 Employee Training

A training program should be designed to train the appropriate personnel on a regular basis. A successful training program not only should meet the standards set out in laws (i.e. FIAMLA Act 2002) but should also satisfy internal policies and procedures in place. For the purpose of this “Guidelines”, training includes not only formal training courses, but also communications that serves to educate and inform employees such as e-mails, newsletters, periodic team meetings and anything else that facilitates sharing of information.

Topics to be taught in the training program vary according to target audience and services being offered but several basic matters should be factored into the program:

- Policies and Procedures in place to prevent money laundering and financing of terrorism for instance identification, record-keeping, the recognition and reporting of suspicious transactions
- Legal Requirements under relevant AML/CFT legislations⁶ and the statutory obligations under these laws
- Penalties for anti-money laundering violations
- How to react when facing a suspicious client or transaction
- Duties and accountabilities of employees
- New developments together with information on current money laundering and financing of terrorism techniques, methods and trends.

Lastly, it would be advisable for firms to keep a record of all anti-money laundering and combating the financing of terrorism training delivered to their employees.

10.4 Record Keeping

All AL/AB/EA,LP & PD should to keep records of all the transactions in which they are involved in and the identification data of clients (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents) and business correspondence for at least five years after the business relationship has ended. This will enable competent authorities to investigate and prosecute money laundering offences or other related offences. Furthermore, they should keep records on all internal reports of suspicious transactions that have been raised by their employees to the responsible officer, the reasons/documentations for not filing any such

⁶ Financial Intelligence and Anti-Money Laundering Act 2002, the Prevention of Corruption Act 2002 in so far as it is applicable to money laundering, the Prevention of Terrorism Act 2002 with regard to the financing of terrorism and the Convention for the Suppression of the Financing of Terrorism Act 2003 and Regulations applicable to them.

reports to the FIU, reports of suspicious transactions flagged to the FIU, training provided to their employees, if applicable, or training that the AL/AB/EA, LP & PD have undergone.

10.5 Auditing AML/CFT program

Putting in place an AML/CFT Program is not sufficient; the program must be monitored and evaluated. AL/AB/EA, LP & PD should assess their anti-money laundering programs regularly to ensure their effectiveness and to look for new risk factors. The audit program should address issues such as (i) the adequacy of AML risk assessment (ii) the adequacy of CDD policies, procedures and processes, and whether they comply with internal requirements. (iii) the adequacy of the risk based approach in relation to the services offered clients and geographic locations (iv) training adequacy, including its comprehensiveness, accuracy of materials, training schedule (v) compliance with applicable laws.(vi) the system's ability to identify unusual activity (vii) the adequacy of recordkeeping (viii) Review Suspicious Transaction Reporting (STR) systems, which should include an evaluation of the research and referral of unusual transaction among others. After the completion of the audit, the recommended changes should be implemented.

11 OTHER MEASURES

Moreover, AL/AB/EA,LP & PD shall not make or accept any payment in cash in excess of 500,000 rupees or an equivalent amount in foreign currency pursuant to section 5 of FIAMLA. Under FIAMLA, "cash" means money in notes or coins of Mauritius or in any other currency; and it includes any cheque which is neither crossed nor made payable to order whether in Mauritian currency or in any other currency. As far as transaction is concerned, it includes opening an account, issuing a passbook, renting a safe deposit box, entering into a fiduciary relationship or establishing any other business relationship, whether electronically or otherwise; and it includes also a proposed transaction.

12 ML/TF INDICATORS FOR AL/AB/EA, LP & PD

There are a number of situations which may give rise to a suspicion that a transaction may involve money laundering. The list of situations given below is meant to assist AL/AB/EA, LP & PD to detect/identify “transactions” in the conduct of their operations and business activities. It is not a prescriptive list of all possible transactions linked to money laundering or terrorism financing. Nor does it imply that the transactions listed below are necessarily linked to such activities. The role of AL/AB/EA, LP & PD agents is to be familiar with these indicators, and exercise sound judgment based on their knowledge of the AL/AB/EA,LP & PD industry, and when there they identify any “suspicious transactions”, know the proper action to take.

- Client brings a significant amount of cash to the AL/AB/EA,LP & PD agent for transactions.
- Client purchases property in the name of a nominee such as an associate or a relative (other than a spouse), or on behalf of minors or incapacitated persons or other persons who lack the economic capacity to carry out such purchases.
- Client does not want to put his or her name on any document that would connect him or her with the property or uses different names on relevant documents.
- Client attempts to hide the identity of the true customer or requests that the transaction be structured to hide the identity of the true customer.
- Buyer is an agent or owner of a shell company who refuses to disclose the identity of the company.
- Address given by client is unknown or is believed to be false.
- Client inadequately explains the last minute substitution of the purchasing party's name.
- Client pays substantial down payment in cash and balance is financed by an unusual source or ‘offshore’ bank.
- Client purchases property without inspecting it.

- Client purchases multiple properties in a short period of time, and seems to have few concerns about the location, condition and anticipated repair costs, etc., of each property.
- Client pays rent or the amount of a lease in advance using a large amount of cash.
- Client is a recently created legal entity and the amount of the transaction is large compared to their assets.
- Transaction does not match the business activity known to be carried out by the client company.
- Transaction is made in circumstances of unusual or unjustified complexity and without any economic justification or lawful objective
- Transaction is entered into at a value significantly different (much higher or much lower) from the real or market value of the property.
- Property is sold in a series of successive transactions each time at a higher price between the same parties.
- Buyer takes on a debt significantly higher than the value of the property.

GENERAL GLOSSARY

- “Criminal activity” refers to: (a) all criminal acts that would constitute a predicate offence for money laundering in Mauritius or (b) at a minimum to those offences that would constitute a predicate offence as required by Recommendation 3 of the FATF.
- “criminal” means a person committing or intending to commit a criminal activity
- DNFBP” means a business or profession, who is carrying on the below business or profession
 - real estate developers or agents which carry out transactions with a customer involving the buying or selling of real property;
 - dealers in precious metals or precious stones;
 - law firms, notary firms, or other independent legal businesses;
 - accounting, audit firms;
- “Egmont Group of FIUs”: Recognizing the importance of international cooperation in the fight against money laundering and financing of terrorism, a group of Financial Intelligence Units (FIUs) met at the Egmont Arenberg Palace in Brussels, Belgium, and decided to establish an informal network of FIUs for the stimulation of international co-operation. Now known as the Egmont Group of Financial Intelligence Units, Egmont Group FIUs meet regularly to find ways to promote the development of FIUs and to cooperate, especially in the areas of information exchange, training and the sharing of expertise. For more information, please visit the website: **www.egmontgroup.org**
- “guidelines” means the guidelines issued by the FIU under section 10(2)(ba) to members of relevant profession or occupation;
- “member of relevant profession or occupation” , as per First Schedule Part I of the FIAMLA, consists of the following:
 - (a) Agent in Land and/or Building or Estate Agency under the Local Government Act
 - (b) Attorney

- (c) Barrister
 - (d) Dealer under the Jewellery Act
 - (e) Land Promoter and Property Developer under the Local Government Act
 - (f) Law firm, foreign law firm, joint law venture, foreign lawyer,
 - (g) Licensed auditor under the Financial Reporting Act
 - (h) Notary
 - (i) Person licensed to operate a casino, gaming house, gaming machine, totalisator, bookmaker and interactive gambling under the Gambling Regulatory Authority Act
 - (j) Professional accountant, public accountant and member firm under the Financial Reporting Act
- "One-off client" means any client carrying out transaction other than in the course of a business relationship.
 - "Politically Exposed Persons" has the same meaning as per the Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism for Financial Institutions issued by the Bank of Mauritius issued in June 2005 (updated as at July 2014)
 - "suspicious transaction" means a transaction which –
 - (a) gives rise to a reasonable suspicion that it may involve -
 - (i) the laundering of money or the proceeds of any crime; or
 - (ii) funds linked or related to, or to be used for, terrorist financing or by proscribed organisations, whether or not the funds represent the proceeds of a crime;
 - (b) is made in circumstances of unusual or unjustified complexity;
 - (c) appears to have no economic justification or lawful objective;
 - (d) is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; or
 - (e) gives rise to suspicion for any other reason.

USEFUL WEBSITES

FIU www.fiumauritius.org

FATF www.fatf-gafi.org

ESAAMLG www.esaamlg.org

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