



***GUIDANCE NOTE ON  
SUSPICIOUS TRANSACTION  
AND  
SUSPICIOUS ACTIVITY  
REPORTS***

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## INTRODUCTION

1. The Financial Investigation Agency (“FIA”) is the reporting authority of the Virgin Islands and acts through the guidance and direction of the Steering Committee in matters relating to suspicious activity reports concerning money laundering and terrorist financing.<sup>1</sup> It is established under and governed by the Financial Investigation Agency Act, 2003 from which it derives its powers, in addition to those prescribed in the Drug Trafficking Offences Act, 1992, as amended, and Proceeds of Criminal Conduct Act, 1997, as amended. The Agency is instrumental in the reporting mechanism with respect to suspicious activities and transactions relating to money laundering and terrorist financing.<sup>2</sup>
2. The purpose of this Guidance Note is to render assistance and practical guidance to persons, financial institutions, non-financial businesses and organisations, such as the Non-Profit Organisations (“NPOs”) and the Designated Non-Financial Businesses and Professions (“DNFBPs”), and all other businesses and establishments in fulfilling their obligations to file a Suspicious Transaction or Suspicious Activity Report (“STR/SAR”) to the FIA in accordance with the Proceeds of Criminal Conduct Act, 1997, as amended and Sections 17 & 18 of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (“AML Code”).
3. The FIA has the responsibility for the supervision and monitoring of the NPOs and DNFBPs<sup>3</sup> and part of that mandate is to ensure that compliance procedures and obligations with respect to money laundering and terrorist financing are understood and complied with by the NPOs and DNFBPs.
4. The Proceeds of Criminal Conduct Act, 1997, as amended, and the AML Code make it imperative for persons to make a report of any information that comes to his or her knowledge in the course of any suspicious business activity or transaction in his or her employment.
5. Having regard to this particular obligation on the employees of such financial institutions, non-financial businesses, entities and organisations, the FIA deemed it necessary to formulate this Guidance Note as a means of ensuring

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<sup>1</sup> Section 6 of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008

<sup>2</sup> Explanatory Notes, Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (p. 17)

<sup>3</sup> Section 18 of the NPO Act; Section 8(2) of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008

that reporting businesses and organisations within the Territory of the Virgin Islands file STRs/SARs of the best and highest quality.

6. This Guidance Note is to be used as a reference and read in conjunction with the Proceeds of Criminal Conduct Act, 1997, as amended, the Anti-Money Laundering Code of Practice, 2008 and the Anti-Money Laundering Regulations, 2008.

## LEGISLATION

7. The legislation that governs for these purposes are as follows:

- Drug Trafficking Offences Act, 1992, as amended
- Proceeds of Criminal Conduct Act, 1997, as amended
- The Terrorism (United Nations Measures) (Overseas Territories) Order, 2001
- The Anti-Terrorism (Financial and Other Measures) Overseas Territories Order, 2002
- The Anti-Money Laundering and Terrorist Financing Code of Practice, 2008, as amended
- The Anti-Money Regulations, 2008, as amended

## WHO IS UNDER AN OBLIGATION TO FILE A SUSPICIOUS ACTIVITY/SUSPICIOUS TRANSACTION REPORT (“SAR/STR”)?

8. Based on Section 27(2) of the Proceeds of Criminal Conduct Act, 1997, as amended, the following persons are required to file SARs and STRs:
  - a. Entities regulated by the Financial Services Commission (“FSC”),
  - b. Non-financial businesses and professions (whether public or private) designated by FSC as vulnerable to ML/TF activities when engaged in transactions involving the acceptance of a cash payment of ten thousand dollars (US\$10,000) or more or the equivalent in any other currency.<sup>4</sup> The

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<sup>4</sup> The Non-Financial Business (Designation) Notice, 2008, expressly provides that the threshold to apply AML/CFT standards is for sales and purchases of US\$15,000 or more. However, the AML Code of Practice and Regulations provide a threshold of US\$10,000. Consequently, for the purposes of this guidance note, the FIA has taken the position that AML/CFT obligations will apply to the lower threshold of US\$10,000 or more with respect to DNFBP sales and purchases.

businesses that apply are those that engage in the business of the buying and selling of:

- i. boats;
  - ii. vehicles;
  - iii. jewellery; and
  - iv. other High Valued Goods
- c. Professionals such as Real Estate Agents that engage in the business of buying and selling of real estate.
- d. Professionals such as an Accountant, an Attorney-at-Law or other Independent legal professional when performing the following functions on behalf of a client:
  - i. buying and selling of real estate;
  - ii. managing client monies, securities, or other assets;
  - iii. management of bank, savings or securities accounts;
  - iv. the organisation of contributions for the creation, operation or management of companies;
  - v. the creation, operation or management of legal persons or arrangements;
  - vi. the buying and selling of business entities; and
  - vii. any other activity relating or incidental to any of the matters outlined in sub-paragraphs (i) to (vi).
- e. Charities or other non-profit making institutions, associations or organisations.<sup>5</sup>
- f. Additionally, based on the Proceeds of Criminal Conduct Act, 1997, an individual or entity, besides those listed above, are also under an obligation to file SARs/STRs where the individual or entity knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering<sup>6</sup> or terrorist financing<sup>7</sup> based on information received in their course of trade, profession, business or employment.

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<sup>5</sup> Section 4(1) of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008

<sup>6</sup> Section 30A(1) of the Proceeds of Criminal Conduct Act, 1997, as amended

<sup>7</sup> Section 10 of the Anti-terrorism (Financial and Other Measures) Overseas Territories Order, 2002

## WHAT IS SUSPICION?

9. Legislation does not state what constitutes a “suspicion”. However, by its ordinary meaning, it is the act or an instance of suspecting or believing that something is wrong without adequate proof or evidence, or the notion of a feeling that something is possible or probable.

## WHAT IS A SUSPICIOUS TRANSACTION?

10. Suspicious transactions are financial transactions in which there are reasonable grounds to suspect that, the funds involved are related to the proceeds of criminal conduct. Reasonable grounds should be construed to mean any transaction that a reasonable man would consider suspicious within the circumstances. The reasonableness would depend on the specific nature of each business, entity and organisation.
11. An example of a financial transaction that could be deemed suspicious with respect to real estate (DNFBP) is where a client negotiates a purchase for the market value or above the asking price but requests that a lower value be recorded on documents, paying the difference “under the table”.

## WHAT IS A SUSPICIOUS ACTIVITY?

12. Suspicious activities differ to suspicious transactions in that the activities are not transactions per se but acts that may develop into financial transactions. For instance, the reluctance on the part of a potential client to provide documentations required to conduct Customer Due Diligence or to open a bank account are activities that can be deemed suspicious.
13. Suspicious activities indicate the potential abuse of the financial services regime by criminals, money launderers and financiers of terrorism. Consequently, the reporting of suspicious activities is a proactive way to assist in the prevention, detection and combating of money laundering and terrorist financing activities.
14. The key to recognition of knowledge, suspicion or where there are reasonable grounds for knowledge or suspicion, is for businesses, entities and organisations to know and understand their clients. This is necessary to determine what the normal activity is for each customer and how the

particular transaction or activity differs from the usual or expected course of business.

## HOW TO IDENTIFY A SUSPICIOUS TRANSACTION OR SUSPICIOUS ACTIVITY

15. The below factors and indicators (“red flags”) may assist in identifying a suspicious transaction or suspicious activity. Such “red flags” may warrant additional scrutiny. Closer scrutiny to the ‘red flags’ should assist in determining whether the transaction or activity is suspicious or one for which there does not appear to be a reasonable business or legal purpose.
16. In considering the formulation of a suspicious transaction/activity report, the reporting business, profession, entity or organisation should consider all the circumstances of the transaction/activity such as the source of funds, the destination of said funds, the jurisdiction as well as the beneficial owner (where applicable).

### Factors

17. The following are some relevant factors (*not exhaustive*) that one should be mindful of when seeking to identify a suspicious transaction/suspicious activity:
  - a. Is the customer known personally?
  - b. What are the customer’s economic/financial status, employment history, behavior and general background?
  - c. Does the transaction or activity make sense for that particular customer?
  - d. Is the transaction in keeping with the normal practice in the market to which it relates i.e. with reference to the market, size and frequency?
  - e. Is the transaction to be settled in the normal manner?
  - f. Is the role of any agent involved in the arrangement unusual?

- g. Are the reasons for the transaction or activity transparent and understandable, i.e. is there a cheaper, easier or more convenient method available?
  - h. Are the client's instructions structured in such a way that the economic or lawful purpose of the instruction is not apparent or is absent entirely?
  - i. When asked to explain the circumstances or the transaction is the client or customer evasive or give explanations which do not stand up to reasonable scrutiny?
18. Generally, as a rule of thumb, any transaction/activity that creates some feeling of uneasiness or wariness should be monitored closely and the reporting business, profession, entity or organisation should determine whether in the circumstances the filing of a STR/SAR would be necessary.

### Indicators

19. Section 56 of the AML Code, refers to Schedule 3 of the said Code which provides guidance to enable an entity, business, or professional to establish the types of activities or transactions that may give rise to suspicion of money laundering or terrorist financing. Naturally, only the indicators that apply to the specific circumstances of the business, entity or professional ought to be applied and considered.
20. The following indicators ("red flags") highlighted below are general types of suspicious transactions and activities:

### 'Red flags' related to customer profile/Behavioural indicators

- a. Inadequate information in the documents required to be presented or submitted by the customer or inconsistent information or reluctance to give information.
- b. An unreasonable proportion between job/profession, financial profile and transactions of the customers.
- c. Demonstrating different customer attitude other than general customer attitude models. For instance, behaving overly friendly or exhibiting threatening attitude in order to prevent suspicious transaction or activity reporting on them.



- d. Use of false identification.
- e. The parties to the transaction (owner, beneficiary, etc) are from countries known to support terrorist activities and organisations.
- f. Reports from the media stating that the customer is linked to known terrorist organisations or engaged in terrorist activities.
- g. Very difficult to verify customer information and source of funds.
- h. Client's documents such as identification, statement of income or employment details are provided by an intermediary who has no apparent reason to be involved (*the intermediary may be the actual client*).

#### 'Red flags' related to financial transactions

- a. No usual and reasonable legal or economic ground or reason in conducted or requested transactions.
- b. Client using means of payment unusually such as by making too many cash payments with small denominations or making payments in a foreign exchange used infrequently.
- c. Client deposits a large and unusual amount of cash with you to make payments which are outside of the client's profile.
- d. Frequent change of ownership of same asset in unusually short time periods with no apparent business, economic or other legitimate reason.
- e. Divergence from the type, volume or frequency of transactions expected in the course of the business relationship.
- f. Deposits were structured below the reporting requirements to avoid detection.
- g. Client requests the firm to act as his agent in obtaining high sum bankers' drafts, cashiers' cheques, other cash equivalent or near cash monetary instruments or in making wire transfers to and from other banks or financial institutions.

### 'Red' flags' related to Real Estate sector

- a. Client does not want to put his/her name on any document that would connect him/her with the property or uses different names on Offers to Purchase, closing documents and deposit receipts.
- b. Client purchases property in someone else's name such as an associate or a relative (other than a spouse).
- c. Client buys real estate for third parties without any reasonable ground such as business or family relation.
- d. Client wants to re-sell property shortly after purchase at a significantly different purchase price, without corresponding changes in market values in the same area.
- e. Client leases real estate by using large amounts of cash
- f. Client negotiates a purchase but wants to record a lower value on documents, paying the difference "under the table".

### 'Red flags' related to Dealers in precious metals and stones

- a. A client paying for high-priced jewellery or precious metal with cash only.
- b. Purchase appears to be beyond the means of the client based on his stated or known occupation or income.
- c. Transaction lacks business sense.
- d. Client indiscriminately purchases merchandise without regard for value, size or colour.
- e. Client orders item, pays for them in cash, cancels the order and then receives a large refund.
- f. Transactions that appear to be structured to avoid reporting requirements.

- g. Client is reluctant to provide adequate identification information when making a purchase.

#### 'Red flags' related to NPOs

- a. Sudden increase is detected in the frequency and amounts of financial transactions on the account of an NPO from a particular donor.
  - b. The donation does not match the donor's known source of funds and wealth.
  - c. The donation of funds or other properties derives from donors residing in high risk countries.
21. It is important to note that 'red flags' are not intended to cover every possible situation and should not be viewed in isolation. *Additionally, the mere presence of a 'red flag' does not necessarily indicate reasonable grounds to suspect money laundering or terrorist financing activity.* On the contrary, if a number of 'red flags' are present during a transaction or a series of transactions, then a business, entity or organisation ought to apply closer scrutiny. Applying together, the presence of one or more 'red flags' with the knowledge of the client's business or financial affairs may assist in identifying suspicious transactions or activities.
22. Additionally, 'red flags' which point to a transaction being related to terrorist financing are in ways similar to those relating to money laundering. It is quite possible that a transaction could relate to both offences. For instance, funds to be utilised for terrorist activity could be the proceeds of criminal activity as well as from sources that are legitimate.
23. The context in which the transaction or activity occurs or is attempted is an integral factor in assessing suspicion. This will vary from business to business, and from one client or customer to another. It is therefore advisable that an entity, business or organisation should evaluate transactions or activities in terms of what seems appropriate and within normal practices in each respective line of business and based on the knowledge of its clientele. The fact that transactions or activities do not appear to be consistent with normal industry practices may be a relevant factor for determining whether there are reasonable grounds to suspect that the transactions or activities are related to money laundering or terrorist financing activity.

24. Further, it is also important to keep in mind that the ***behaviour*** is suspicious, not the individual.

### HOW TO MAKE A SUSPICIOUS TRANSACTION OR SUSPICIOUS ACTIVITY REPORT TO THE FIA?

25. When there has been a detection that amounts to reasonable grounds to suspect that a transaction or activity is related to the attempted commission or commission of a money laundering or terrorist financing offence, a suspicious activity report or suspicious transaction report ought to be filed with the FIA as soon as the suspicious activity has been detected.<sup>8</sup>
26. A suspicious transaction or activity report should also be filed with the FIA where the MLRO is uncertain as to whether the details of the report received by him substantiate the suspicion.<sup>9</sup>
27. Where a suspicious transaction or activity report is required to be made or submitted by the MLRO to the FIA, the report should be made or submitted in writing in a legible and sufficiently detailed form, with sufficient information and clarity and in full compliance with the requirements of the AML legislative regime.<sup>10</sup>
28. Additionally, a reporting entity can utilise the Agency's updated SAR/STR form that is annexed to the FIA's website, [www.fiabvi.vg](http://www.fiabvi.vg).

### Types of Disclosure

29. Generally, on a SAR/STR form the types of disclosure to choose from are Initial Report, Supplemental Report and Correction Report. The types of disclosure should be selected as follows:
- a. Initial Report - This option should be selected if a report is being filed on the person of interest for the first time.

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<sup>8</sup> Section 18(2) of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008

<sup>9</sup> Section 18(6) of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008

<sup>10</sup> Section 55(1) of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008

- b. Supplemental Report - This option should be selected if a report was previously filed and another suspicious transaction or activity occurs with respect to the same person of interest that requires the filing of a subsequent report.
- c. Correction Report - This option should be selected if a previously filed report is being corrected or altered. The corrected information should be included in the new report and it should indicate the changes that are being made under the detailed section of the relevant form.

### Contents of Report

- 30. The Reporting entity, business or organisation (“reporting entity”) is required to fill in all the relevant fields in the form with accurate and detailed information. If a field is inapplicable on the relevant form, then the letters “N/A” should be inserted in that particular field.
- 31. The report should provide details of the information giving rise to any knowledge or reasonable grounds for the suspicion held, including the full details of the customers, the transaction or activity.<sup>11</sup> The reporting entity should provide as many details as possible including the reasons that made it suspect that the transaction or activity may be related to money laundering, terrorist financing or both, and why the filing of the SAR/STR is necessary.
- 32. The information in the STR/SAR should set out clearly and concisely the basis for knowledge of money laundering or terrorist financing activity.
- 33. In cases where the Reporting entity is uncertain that the details of the internal report substantiates the suspicion, this information should also be provided in the report to the FIA.
- 34. Additionally, if there is supporting documentation that the reporting entity deems necessary to attach to the report, the reporting entity should describe such documentation and retain copies. Any information or documentation that the reporting entity considers may be beneficial to demonstrate the reason for filing a STR/SAR should be submitted to the FIA.

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<sup>11</sup> Section 18(1)(b) of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008

## Tips:

35. The full legal names of the main subject(s), whether individuals or entities, should always be used in filling out the relevant form.
36. Dates should be entered using the format “dd/mm/yy”. The number zero ‘0’ should precede any single digit number. Also, if a day or month is unknown or is unavailable, enter zeros in the fields for day and month.
37. The information inserted into the form should be done in a manner that fully and specifically identifies the main subject(s). For example, in filling out the person’s occupation, profession or business, it should be clearly specified, such as *doctor, nurse, dentist, lawyer, secretary, barbershop owner, architect*, etc. Non-specific terms such as *self-employed, businessman*, etc, should never be used.
38. When entering telephone numbers, the area code with respect to the individual or entity should always be inserted.
39. In the FIA’s STR/SAR form there is a section for “Additional Notes”. Therefore, if any additional information has been established that could be useful, this information can be included in the “Additional Notes” section. If another form for external reporting is used, it is advisable that the form makes provision for additional notes.

## PROHIBITION OF “TIPPING OFF”

40. *It is imperative that a business, entity or organisation understands that it is not allowed to inform anyone, including the client, about the contents of a suspicious transaction or activity report or even that such a report has been made.<sup>12</sup> The suspicious transaction or activity report should therefore not be made in the presence of the customer or client.*
41. *As it relates to a suspicious transaction, considering it is important that a reporting entity does not “tip off” its client or customer that such a report is being made, it is important that the reporting entity does not request information from the individual conducting or attempting the transaction that would not normally be requested during a transaction.*

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<sup>12</sup> Section 31 of the Proceeds of Criminal Conduct Act, 1997, as amended

## WHAT IS/ARE THE METHOD(S) TO FILING A STR/SAR WITH THE FIA?

42. A STR/SAR should be reported to the FIA by the following methods:

- a. By hand delivery in a ***sealed*** envelope and stamped "***confidential***". The envelope should be addressed to:

Steering Committee  
c/o The Director  
Financial Investigation Agency  
2<sup>nd</sup> Floor, Ritter House Bldg  
Road Town, Tortola  
British Virgin Islands, VG1110

- b. Electronically, by secure reporting system to be advised by the FIA; or

- c. By facsimile to number (284) 494 1435.

43. The latter two methods can be utilised in cases where the Reporting entity considers the urgent need to make the report.<sup>13</sup>

## WHAT HAPPENS AFTER THE STR/SAR IS FILED WITH THE FIA?

44. Once the STR/SAR is filed with the FIA, the FIA will forward a written acknowledgment letter to the Money Laundering Reporting Officer within a reasonable time from the date of receipt.

45. The FIA receives and analyses STRs/SARs and uses them to identify the proceeds of crime. It seeks to counter money laundering and terrorism by passing on important information to law enforcement agencies so that they can take action.

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<sup>13</sup> Section 17(1)(b) of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008

46. In order to properly analyse the STR/SAR, the FIA may require additional information from the reporting entity. It is expected that the reporting entity cooperates with the FIA insofar as this is concerned.
47. The FIA, after analysing the STR/SAR, would provide generally two types of written feedback to the reporting entity indicating the following:
- a. an intelligence report has been sent to a local or foreign law enforcement agency or a foreign financial intelligence unit for investigation and will advise whether more information would be required; or
  - b. the STR/SAR has been filed for intelligence purposes. The FIA would indicate that at the material time no further action is required. The FIA would also express gratitude for filing the report and would advise that the reporting entity monitors the transaction or activity of the client or customer.
48. *Please note that the FIA, having regard to the matter at hand, may make a request for further or additional information from the reporting entity or from any other entity, business or organisation, in order to facilitate its functions and powers under the relevant legislation.*

#### ADDITIONAL INFORMATION WITH RESPECT TO REPORTING TO FIA

49. A reporting entity will not be held liable for disclosing to the Steering Committee of the FIA his suspicion or belief that an individual is engaged in money laundering or discloses any information or other matter on which that suspicion or belief is based. The disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.<sup>14</sup> Additionally, this protection extends to information provided voluntarily to FIA due to suspicions of money laundering or terrorist financing activity.
50. A person commits an offence if:
- a. he knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering;

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<sup>14</sup> Section 30A(4) of the Proceeds of Criminal Conduct Act, 1997, as amended



- b. the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to his attention in the course of his trade, profession, business or employment; and
  - c. he does not disclose the information or other matter to the Steering Committee as soon as is reasonably practicable after it comes to his attention.<sup>15</sup>
51. Specific penalties apply for failure to comply with the suspicious transaction/activity reporting obligations. Failure to report a suspicious transaction or suspicious activity in circumstances where it is suspected that another person is engaged in money laundering attracts the following:
- a. on summary conviction, to a fine not exceeding one hundred and fifty thousand dollars (US\$150,000) or imprisonment for a term not exceeding three years, or both; or
  - b. on conviction on indictment, to a fine not exceeding five hundred thousand dollars (US\$500,000) or imprisonment for a term not exceeding five years, or both.<sup>16</sup>
52. Additionally, under the AML Code, Section 17(2) and 17(7)(b) provides that a Reporting entity that fails to comply with the suspicious transaction/activity reporting obligations, commits an offence and is liable to be proceeded against under the general proviso Section 27(4) of the Proceeds of Criminal Conduct Act, 1997, as amended. Section 27(4) provides:
- Where a person fails to comply with or contravenes a provision of a Code of Practice, he commits an offence and is liable on summary conviction to a fine not exceeding one hundred and fifty thousand dollars or to a term of imprisonment not exceeding two years or both.*
53. Furthermore, notwithstanding the criminal penalties mentioned at paragraphs 50 and 51, the Financial Services Commission and the Financial Investigation Agency<sup>17</sup> can enforce what is termed “administrative penalties” against their regulated sectors for failure to comply with statutory obligations.

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<sup>15</sup> Section 30A(1) of the Proceeds of Criminal Conduct Act, 1997, as amended

<sup>16</sup> Section 30A(10) of the Proceeds of Criminal Conduct Act, 1997, as amended

<sup>17</sup> Section 3 of the Proceeds of Criminal Conduct (Amendment) Act, 2017

Failure by an employee to report a suspicious activity or transaction carries an administrative penalty of seventy thousand dollars (\$70,000).<sup>18</sup>

54. For any clarification on this Guidance note, please contact the following:

Financial Investigation Agency  
2nd Floor, Ritter House,  
Wickham's Cay II, Road Town,  
Tortola, British Virgin Islands, VG1110  
Telephone: 284-494-1335  
Fax: 284 -494-1435  
Email: [info@fiabvi.vg](mailto:info@fiabvi.vg)  
Website: [www.fiabvi.vg](http://www.fiabvi.vg)

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<sup>18</sup> Schedule 4 of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008