



**KEY ELEMENTS TO BUILD AN
AML/CFT COMPLIANCE MANUAL
FOR FINANCIAL INSTITUTIONS, DESIGNATED NON-
FINANCIAL BUSINESSES & PROFESSIONS AND
NON-PROFIT ORGANISATION**

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A. PURPOSE

The purpose of this guide is to assist Financial Institutions (FIs), Designated Non-Financial Businesses and Professions (“DNFBPs”) and Non-Profit Organisations (“NPOs”) collectively called “relevant businesses” in the development of a written Anti-Money Laundering/Counter Terrorist Financing (“AML/CFT”) Compliance Manual. The Compliance Manual for FIs must be submitted to the Financial Services Commission (the “FSC”) in accordance with Regulation 3(3)(a) of the AML Regulations, 2008, as amended (“AMLR”). Similarly, the Compliance Manual for DNFBPs and NPOs must be submitted to the Financial Investigation Agency (the “Agency”) in accordance with Regulation 3(3)(b) of the AMLR.

This guide aims to explain the basics of the written AML/CFT Compliance Manual, which the FIA will consider when determining its approval for DNFBPs and NPOs. The guide does not necessarily represent all the requirements necessary by Law or the obligations imposed by the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (the “AML Code”). FIs should therefore consult with the FSC for further guidance.

B. INTRODUCTION

A relevant business must develop an AML/CFT Compliance Manual designed and tailored for its individual business. In developing the Compliance Manual, relevant businesses should weigh factors including but not limited to:

- i. its size;
- ii. location;
- iii. customers;
- iv. complexity of business activities;
- v. the types of business relationships it maintains; and
- vi. the types of transaction in which its customers engage.

It should incorporate a risk-based assessment of business relationships and cover all business lines, products and services. The policies should reflect what the risk-based assessment identifies as the higher areas of risk.

The written AML/CFT Compliance Manual must bear the signature/stamp/seal of approval of the senior management officials (directors/partners/owner of the business) and the date of approval.

An annual review is required to:

- i. incorporate any changes to the legislation which may affect how you operate,
- ii. consider benchmarks and best practice reviews in your approach to AML/CFT; and
- iii. reflect the outcome of your annual risk assessment.

C. THE WRITTEN COMPLIANCE MANUAL

The written AML/CFT Compliance Manual should be comprised of the six (6) key components as outlined in Regulation 3(1) of the AMLR and Section 4 and Part II – VII of the AML Code. These are:

- i. identification procedures for:
 - a. new and continuing business relationships;
 - b. verification procedures; and
 - c. third party reliance.
- ii. record keeping procedures to establish and maintain:
 - a. the verification of the customer's identity;
 - b. records of transactions and reports;
 - c. the timeframe to keep records; and
 - d. the format of storage and how documents will be retrieved.
- iii. internal reporting procedures in relation to suspicious transactions;
- iv. internal controls and communication procedures appropriate for the prevention of money laundering and terrorist financing;
- v. employee training to include frequency and the focus area for training; and
- vi. independent assessment of compliance to test the system.

It should have a good structure so that the policies will be easy to apply in practice. As such, a well-structured AML/CFT Compliance Manual includes:

1. TABLE OF CONTENTS

2. INTRODUCTION

This should include:

- i. a brief history of the relevant business – when it was formed, the type of business (sole trader, partnership, company, corporation);
- ii. the nature of business and summary of activities and services provided;
- iii. an organisational chart which shows responsibilities for various tasks and the compliance reporting structure.

3. A POLICY STATEMENT

This should include:

- i. the purpose of the AML/CFT Compliance Manual.

- ii. the relevant business' commitment to the Government of the Virgin Islands' initiatives in combating Money Laundering and Terrorist Financing.
- iii. An explanation that its purpose is to:
 - a. help its employees detect and prevent money laundering and terrorist financing; and
 - b. ensure that suspicious activities and transactions can be identified and reported thereby protecting the business from being used for illegal purposes.
- iv. The regulatory requirements the policies and procedures developed are designed to meet e.g. the FSC, the Agency.
- v. The obligation that all employees are required to abide by the policies and procedures set out. This **must** be made explicit.

4. OVERVIEW OF MONEY LAUNDERING AND TERRORIST FINANCING CRIMES

A. Explain the crimes of Money Laundering and the Terrorist Financing

- i. Criminal proceeds are where criminals generate a profit by illicit acts such as illegal arms sales, smuggling, activities of organised crime, including for example drug trafficking and prostitution rings, embezzlement, insider trading, bribery and computer fraud schemes. **Money laundering** is the processing of criminal proceeds to "legitimise" the ill-gotten gains through disguising their illegal origin, changing the form, or moving the funds to a place where they are less likely to attract attention¹. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising their source. An explanation of the three (3) stages of money laundering should also be included. These are:
 - a. Placement or moving the funds from direct association with the crime;
 - b. Layering or disguising the trail to stop detection; and
 - c. Integration or making the money available to the criminal, once again, with its occupational and geographic origins hidden from view.²
- ii. **Terrorist Financing** is the provision of funds for terrorist activity, which may be raised from legal sources such as personal donations and profits from businesses and charitable organisations as well as from criminal sources³ identified in 3(i) above.

¹ <http://www.fatf-gafi.org/faq/moneylaundering/>

² <https://www.unodc.org/unodc/en/money-laundering/laundrycycle.html>

³ <http://www.fintrac-canafe.gc.ca/fintrac-canafe/definitions/terrorist-terroriste-eng.asp>

B. AML/CFT Laws

- i. **Explain the laws, namely the:**
 - a. Proceeds of Criminal Conduct Act, 1997, as amended (“POCCA”);
 - b. Anti-Money Laundering Regulations, 2008, as amended (“AMLR”);
 - c. Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (“AML Code”);
 - d. Financial Investigation Agency Act, 2003, as amended (“FIAA”);
 - e. Non-Profit Organisation Act, 2012 (“NPOA”);
 - f. Proliferation Financing (Prohibition) Act, 2009 (“PFPA”); and
 - g. Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002 (“ATFOMOTO”);
 - h. The Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 (“TUNMOTO”); and
 - i. Drug Trafficking Offences Act, 1992, as amended (“DTOA”)
- ii. **State legal requirements:** that the laws require certain businesses to file specific reports, maintain records on certain transactions to help prevent money laundering and terrorist financing and to obtain documentation that may be used to prosecute money launderers and those who commit terrorist acts or facilitate the commission of terrorist acts.
- iii. **State clearly the obligations of the relevant business:**
 - a. must register/obtain a license with the FSC (where the business is an FI) the NPO Registration Board (where the business is an NPO) and the Department of Trade and Consumer Affairs (where the business is considered a DNFBP), to operate in the Territory;
 - b. is required to fully comply with the Code which provides the minimum requirements in relation to the compliance obligations relating to money laundering and terrorist financing;
 - c. is required to reasonably design a Compliance Manual which contains measures to show that a risk-based approach is adopted for Customer Due Diligence (CDD), record keeping and reporting requirements, staff training to detect and report certain transactions, and internal controls and systems are adequate to prevent abuse by money launderers and terrorist financiers;
 - d. is to submit its Compliance Manual, to the FSC (if the business is a FI) or the Agency (if the business is a DNFBP or NPO), for approval.

Where a manual is approved by the Agency, it will bear its seal.

5. INTERNAL POLICIES, PROCEDURES AND CONTROLS

This section explains the Who, What, When, Where, Why and How of the Compliance Manual and communicates the policies, procedures and controls that employees are expected to follow to ensure that the relevant business complies with its AML/CFT obligations under the law.

The Internal Policies should have:

i. **Application of the policy:**

Indicate in a clear statement the persons to whom the Compliance Manual applies- i.e. all staff, all directors. It should also include provision for persons to sign a form acknowledging that they have received a copy of the Compliance Manual and that they understand their obligations and duties as contained therein. A sample form should be attached as an Appendix.

ii. **Legal Regime Requirements:**

Identify the relevant business' responsibilities under the relevant Laws including the POCCA, the AMLR, AML Code, FIAA, ATFOMOTO, DTOA and the PFPA. The offences and penalties should be summarised in an Appendix.

iii. **Risk Assessment:**

Identify the types of risk where the high-risk activities lie in the business/entity.

iv. **Due Diligence Measures:**

- a. Identify the CDD measures.
- b. Include customer identification documentation required, and how verification of customer information is to be carried out. For example, government issued picture identification, utility bill receipts, voters' register (where accessible), credit reference agencies, third party verification, etc.
- c. Identify due diligence measures for individuals, companies, legal persons, non-face-to-face business relationships, third party relationships, introducers both domestically and internationally, cross border transactions;
- d. Identify due diligence measures for Enhanced Due Diligence ("EDD"):
 - Politically Exposed Persons ("PEPs");
 - Complex ownership structures; and
 - Persons who are located in countries considered or identified as a high-risk country or that has international sanctions, embargos or other restrictions imposed on it.
- e. Include CDD details in accordance with Sections 19-31 of the AML Code and Regulations 4-7 of the AMLR. Sample Identification forms listing the identification data to be collected could be attached as an Appendix.

v. **Acceptance of Original/Copies of Documents**

Indicate whether copies of documentation are acceptable and whether they need to be certified/notarized and by whom.

vi. **Account/Transaction Monitoring**

Include the monitoring of the business relationship measures, which will identify unusual business transactions of the client.

vii. **Methods of Payment/Source of Funds Declaration**

Include procedures to govern cash transactions. Is there a threshold? Include the compulsory requirements of due diligence for one-off transactions linked or unlinked of \$10,000.00 and over. Is there a threshold for wire transfers? Is there a threshold for a type of payment method? State when a customer would be required to complete a Source of Funds Declaration ("SOFD"). The SOFD form could be attached as an Appendix.

viii. **Reporting Procedures**

Clearly state the internal reporting procedures. The law requires the filing of a suspicious transaction/activity report ("STR/SAR") with the Agency for any transaction or pattern of transactions that is attempted or conducted for ANY amount that you know or suspect or have reason to suspect the following:

- a. Involves funds derived from a specified offence or is intended to hide funds derived from a specified offence;
- b. Is structured to avoid recordkeeping or reporting requirements;
- c. Has no business or apparent lawful purpose; or
- d. Facilitates criminal activity.

Indicate when and how a suspicious transaction or activity will be reported to the Compliance Officer/Money Laundering Reporting Officer (the "CO/MLRO"). A sample form for employees to make the suspicious report to the CO/MLRO should be attached as an Appendix.

ix. **Offence of Tipping Off**

Include a notification to all employees that it is illegal to tell a customer that they are filing a STR/SAR. 'Tipping-Off' should be clearly explained and the type of behaviour that would constitute Tipping -Off should be illustrated. The penalties such an offence attracts should also be highlighted.

x. **Red Flags**

An Appendix illustrating examples of suspicious activities or transactions that are industry specific may also be included.

6. APPOINTMENT OF A COMPLIANCE OFFICER / MONEY LAUNDERING REPORTING OFFICER (“CO/MLRO”)

i. **Duty to Appoint**

a. For entities supervised by the FSC, state that you are required to appoint a Compliance Officer (“CO”) and obtain approval of the FSC for that appointed person. The FSC allows COs to function as MLROs, also with approval.

Provision must also be made for an alternate CO/MLRO to carry out the duties in the absence of the CO/MLRO.

b. For entities supervised by the Agency, state that you are required to appoint a MLRO and notify the Agency of such appointment and any subsequent changes.

ii. **Seniority of Reporting Officer**

Identify the level at which the designated CO/MLRO (and if necessary the substitute CO/MLRO) is in the relevant business. The CO/MLRO should be at a senior level. *Please refer to regulation 13(1) of the AMLR for MLRO and section 43(2)(b) of the Regulatory Code, 2009 for CO.*

iii. It is not necessary to state CO's/MLRO's name in the written AML/CFT Compliance Manual. However, the MLRO and the substitute MLRO identities and contact details **must** be provided to the FIA separately.

COs should follow the approval process outlined by the FSC.

iv. **Reporting Officer's Responsibilities**

State the responsibilities of the CO/MLRO. Refer to sections 16-18 of the AML Code.

Include the CO's/MLRO's reporting obligations and specifically the following:

- a. that the STR/SAR should be in the form as described in section 55 of the AML Code. You may include a copy of the form as an Appendix. A STR/SAR form can also be found on the Agency's website;
- b. the timeliness of submission to the Agency;
- c. the reporting provisions of the ATFOMOTO;
- d. the duty to report BOTH complete and any attempted transactions or activity that the entity or professional has turned away;
- e. the submission of a SAR if there is reasonable belief that that property is being used for terrorist activities.

Include other CO's/MLRO's duties as required by Law. For example, to keep a register of all inquiries relating to money laundering made of it by the Agency, to train staff/members, etc.

7. RECORD KEEPING REQUIREMENTS

Records of transactions and identification data must be kept for a minimum of five (5) years. You must also include the types of records which must be kept as it relates to your business (for example, identification, transaction records and reports) and state how they will be kept, i.e. electronic or written form. The format must allow easy retrievability of records when requested by the Agency.

8. ONGOING EMPLOYEE TRAINING

Include measures to ensure all employees are made aware of the relevant laws governing AML/CFT. Include training provisions for new staff and additional/refresher training for existing staff. One good training tool will be the AML/CFT Compliance Manual. The CO/MLRO and alternates will need more in-depth and ongoing training.

9. REVIEW OF PROGRAM

The relevant business must periodically assess the risk of criminal conduct and take appropriate steps to design, implement, or modify its Compliance Manual to reduce the risk of criminal conduct identified through this process.

- i. **Review by CO/MLRO-** State how often the Compliance Manual must be reviewed to ensure its adequacy.
- ii. **Independent Internal Audit** (*by someone, competent within your business other than the CO/MLRO*)- Indicate how often it will be conducted and whether a written report will be prepared and to whom it will be sent. Independent Audit means a review, (by persons who are not part of the AML/CFT compliance team of the FI's/DNFBP's/NPO's) of AML/CFT policies and procedures, for their appropriateness, compliance and effectiveness.
- iii. **External Audit** (*a competent person or company independent of your organization*) - Indicate how often and how it will be done, whether a written report will be prepared and to whom it will be sent.

Please be advised that all relevant businesses are required to follow all the requirements of AML/CFT laws and regulations. This guide may NOT contain all those requirements and does not create a safe harbour from regulatory responsibility. The obligation to develop an AML/CFT Compliance Manual is not a “one-size-fits-all” requirement, and you must tailor your program to fit your particular business' legal obligations.

Dated this 24^h day of August 2018.

Signed:

Alcedo Fahie

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Financial Investigation Agency