



Amendments to AML/CFT Code of Practice

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Why The Amendments

- Address gaps in compliance with FATF 40 Recommendations
- Address gaps identified by other international standard setting bodies: OECD and GIFCS
- Transition fully to a risk-based approach
- Provide guidance
- Improve compliance levels by licensees
- Improve compliance and supervision tools of the FSC/FIA



Ownership and Control

- Definition of Beneficial Owner changed to address FATF identified deficiencies
- AML Regulations also amended
- **Beneficial owner** means the natural person who ultimately owns or controls an applicant for business or a customer or on whose behalf a transaction or activity is being conducted
- **Control**, for the purposes of the definition of Beneficial Owner, means having an influence over the activities of an applicant for business or customer without any ownership interest, and includes:
 - (a) having an influence through close family relationships, or historical or contractual associations; or
 - (b) using, enjoying or benefitting from the assets owned by the applicant for business or customer



Proliferation Financing

- Amendments were made to make it explicitly clear that proliferation financing should be treated equally as ML/TF
- Licensees should therefore consider the PF Risk Assessment and take its findings on board when undertaking risk assessments of applicants for business and customers



Internal Controls

- Section 11 amended to create a requirement under (v) and (w) for sanctions compliance
 - (v) establishing policies and procedures to ensure compliance with sanctions obligations;
 - (w) implementing systems and procedures for sanctions screening, monitoring and reporting;
- Breaches could therefore lead to enforcement actions such as administrative penalties and fines
- Amendments makes it clear that controls must be monitored, tested and record of findings maintained

Institutional Risk Assessments

- Section 12 makes it absolutely clear that all licensees are required to carry an institutional risk assessment
- Section 12 (2) provides that for such an assessment the licensee must
 - (a) document and maintain records of the risk assessments conducted;
 - (b) consider all relevant risk factors before making a determination of the level of customer risk or institutional risk;
 - (c) apply the appropriate risk mitigation measures and controls based on the level of risk identified in risk assessments;
 - (d) regularly review and update risk assessments on an ongoing basis;
 - (e) update risk assessments where there are any changes in relevant risk factors; and
 - (f) have appropriate mechanisms in place to provide risk assessment information to the Commission or the Agency, on request.
- Introduces a requirement to risk assess any new products/services
- Extensive Explanatory Notes provide what criteria to consider when undertaking these assessments



CDD Measures

- Section 19(4)
 - Adds VASPs (Provision in force 1 December 2022)
 - Adds Gaming/Betting
- AML Regulations also amended
- Section 19 (4A) clarifies when CDD must be done on beneficiaries of trust and life insurance policies
 - as soon as the beneficiary is identified or designated—
 - (a) for a beneficiary that is identified as a specifically named natural person, legal person or legal arrangement, taking the name of the person, legal person or legal arrangement; and
 - (b) for a beneficiary that is designated by characteristics or by class, obtaining sufficient information concerning the beneficiary to satisfy the entity or professional that it or he or she will be able to establish the identity of the beneficiary at the time of the payout.



CDD Measures

- Section 19(7) provides clarity on when simplified CDD can be done
 - “Where pursuant to subsection (6) an entity or a professional makes a determination that a customer poses low risk, having regard to the **money laundering, terrorist financing and proliferation financing risks identified by a Virgin Islands’ national risk assessment, or a risk assessment conducted by a competent authority, law enforcement agency or any other authority with responsibility relating to money laundering, terrorist financing and proliferation financing in the Virgin Islands**, the entity or professional may simplify the customer due diligence measures as required under subsections (2), (3) and (4) (b)”
- AML Regulations also amended
- Extensive explanatory notes to provide guidance on how CDD may be undertaken on a risk sensitive basis



CDD Measures: ECDD

- Section 20 provides clarity on when enhanced CDD must be undertaken
- Aligns definition of PEPs with FATF standards
 - Foreign PEP
 - Domestic PEP
 - International Organisation PEP
- Extensive explanatory notes to provide guidance on how ECDD may be undertaken



CDD Measures: Ongoing CDD

- Section 21 requires an entity or professional to:
 - (a) scrutinise the transactions undertaken by each customer throughout the course of that relationship, for purpose of making an assessment of consistency between the transactions undertaken by the customer and the entity's or professional's knowledge of the customer, the customer's business and risk profile, including source of funds where necessary;
 - (b) screen all its or his or her customers to identify the customers that may present a higher risk, including customers that
 - (i) have become PEPs;
 - (ii) are subject to applicable sanctions; and
 - (iii) are associated with criminal activities; and
 - (c) review and update customer due diligence information, including information on beneficial ownership
 - (i) on a risk sensitive basis, prioritising the review and update of customers that present a higher risk; and
 - (ii) upon certain trigger events as determined by senior management of the entity or professional.

CDD Measures: Ongoing CDD Cont.

- Extensive explanatory notes to provide guidance on how Ongoing CDD may be undertaken
- Licensees must implement and be able to demonstrate an ability to adequately monitor relationship and transaction
- Licensees must be able to identify an unusual transaction and where relevant have processes and procedures in place for senior management to approve such transactions
- monitoring should be in real time, post-event or both. Licensee should have a clear policy/procedure on such monitoring
- Explanatory Notes also provides specific guidance to TCSPs



CDD Measures: PEPs

- Section 22
- **foreign politically exposed person** means an individual who is or has been entrusted with prominent public functions in a jurisdiction outside the Virgin Islands, and includes the family members and close associates of that individual
- **domestic politically exposed person** means an individual who is or has been entrusted with prominent public functions in the Virgin Islands, and includes the family members and close associates of that individual
- **international organisation politically exposed person** means an individual that is a member of senior management of an international organisation, and includes the family members and close associates of that individual
- Removes the 2 year provision of when a person ceases to be a PEP
 - An entity or a professional shall have risk-based policies, processes and procedures in place to determine when a customer, or the beneficial owner of a customer, who ceases to qualify as a politically exposed person by virtue of no longer holding the post or relationship that qualified him or her as a politically exposed person shall, cease to be treated as a politically exposed person



CDD Measures: Verification

- Overall makes it clear that BO needs to be subject to verification process including in relation to legal persons, legal arrangements and trusts etc.
- Section 24 now makes it clear the circumstances in which a director must be verified (also each BO)
- Section 25 makes it clear verification measures must be undertaken on shareholders and directors
- Explanatory Notes provide guidance on how to undertake verification measures in relation to a segregated portfolio company
- Section 28 makes it clear verification measures required for trusts
- Explanatory Notes provide guidance on criteria and characteristics of a beneficiary or classes of beneficiaries

Wire Transfers

- Amendments required for significant technical compliance issues
- Ensures full originator and full beneficiary information is available



Virtual Assets Transfers

- AML Regulations also amended
- Provision in force 1 December 2022
- Implements FATF “travel rule”
- Brings equivalent wire transfer rules to the virtual asset sector
- Ability to fully identify and verify payee and payer must be demonstrated
- All BO information must be available



Record Keeping

- Section 42 makes it clear that records must be kept of attempts to establish a business relationship or to do a transaction
- Section 49 expands the requirement to notify the FSC of relevant issues with employees
- FSC/FIA given power to create a system to monitor persons reported by licensees



Repeal of Section 54 and Schedule 2

- In favor of a risk-based approach which allows the licensee to risk assess the jurisdiction and determine, based on criteria, whether a higher risk scenario is present
- List became difficult and almost impossible to maintain as justifying inclusion of some jurisdictions was difficult and removing provided additional hurdles



Application of counter-measures

- Allows FSC/FIA to require entities to take specific measures in relation to customers emanating from a particular jurisdiction
- Counter measures include
 - (a) applying stringent requirements for the identification and verification of applicants for business or customers in the jurisdiction, including requirements for the establishment of beneficial owners of legal persons and legal arrangements before any business relationship is established;
 - (b) enhancing reporting mechanisms or systematic reporting of financial transactions on the basis that such transactions with the jurisdiction are more likely to be suspicious;
 - (c) limiting business relationships or financial transactions with the jurisdiction or persons within that jurisdiction; and
 - (d) discontinuing from engaging in any kind of business relationship emanating from or relating to such jurisdiction.



Enhanced Penalties

- Penalties have been increased to ensure they are effective and dissuasive
- \$60,000 – \$100,000 for a corporate entity
- \$60,000 – \$80,000 for individual
- Penalties are per individual breach
- Licensees should be mindful of FSC’s commitment to ensuring compliance and to taking action for noncompliance as evidenced in the publication of its “Enforcement Philosophy”





Questions

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