

AML/CFT GUIDANCE FOR ACCOUNTANTS

PURPOSE AND CONTENTS

The Financial Intelligence Unit of Trinidad and Tobago (“the FIU”) provides the following overview of the obligations under the Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) regime of Trinidad and Tobago for Accountants irrespective of membership in a recognised professional body.

The purpose of this guidance is to provide industry specific guidance for the accounting sector on their legal obligations for measures to deter and detect money laundering and financing of terrorism activities. Because AML/CFT obligations are contained in several laws, amendments and regulations, it is easier for Accountants to access in one place the relevant provisions pertaining to their obligations. This guidance uses plain language to explain the most common situations under the specific laws and related regulations which impose AML/CFT requirements. It is provided as general information only. It is not legal advice, and is not intended to replace the AML/CFT Acts and Regulations.

The use of the word “must” indicates a legislative requirement, “should” indicates a best practice and the word “may” states an option for you to consider.

This guidance, which is divided into TEN (10) Parts, includes:

- (1) Clarification on the business activities which bring an Accountant within the AML/CFT regime.
- (2) An explanation of money laundering and financing of terrorism.
- (3) The main AML/CFT legal obligations and how these should be applied.
- (4) How to identify suspicious transactions and industry specific “red flags”.
- (5) Links to FIU Publications and Forms which provide additional detailed guidance:
 - Customer Due Diligence guide;
 - STR/SAR reporting Form and guidelines;
 - Terrorist Funds reporting Form and guidelines;
 - Guide to structuring an AML/CFT Compliance Programme;
 - Model compliance programme for Accountants; and
 - Offences and penalties.

PART 1

DO THESE OBLIGATIONS APPLY TO YOU?

These obligations apply to you if you are an individual or company, firm or partnership when you perform certain specified activities. If you are an employee of such individual, company, firm or partnership these obligations are the responsibility of your employer but you as an employee will have obligations to report suspicious transactions to the Compliance Officer of your organization in accordance with your employer's compliance programme.

If you are an Accountant or an accounting company, firm or partnership, you are subject to the obligations explained in this guideline only if you **engage in** any of the following specified activities on behalf of any individual or entity (other than your employer), or **give instructions** in respect of the following specified activities on behalf of any individual or entity (other than your employer):

- (1) buying and selling of real estate property;
- (2) managing of client's money, securities and other assets;
- (3) management of banking, savings or securities accounts;
- (4) organization of contributions for the creation, operation or management of companies, legal persons or arrangements;
- (5) creation, operation or management of companies, legal persons or arrangements; and buying or selling of business entities.

These specified activities include receiving or paying funds (e.g., you receive funds in trust to pay bills on behalf of your client); and transferring funds or securities by any means.

Accountants may provide certain trust and legal services to their clients. This guidance should also be followed by any Accountant or accounting company, firm or partnership which provides the following services:

- (1) acting as a formation agent of legal persons;
- (2) acting as a trustee for another person;

- (3) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons;
- (4) providing a registered office, business address or accommodation, correspondence or administrative address for a company a partnership or any other legal person or arrangement;
or
- (5) acting as (or arranging for another person to act as) a nominee shareholder for another person.

You are subject to the requirements when you engage in or give instructions in relation to those specified activities or services regardless of whether or not you receive any fees or have a formal letter of engagement to do so. So, even if you carry out these activities on a volunteer basis, you are subject to the AML/CFT requirements.

Specified Activity:

- a) Buying and Selling of Real Estate. The specified activity of buying and selling of real estate applies to both residential and commercial purchase and sale, lease and mortgage transactions and transactions which finance a purchase or sale of real estate. A “transaction” includes the receiving or making of a gift so no dollar limits or thresholds apply to this specified activity.
- b) Managing of client’s money, securities or other assets. Here, as well as under items c) and d) below, the Accountant would be handling the client’s funds. The particular focus of AML/CFT obligations lies in the potential risk in situations where the Accountant is actually handling client’s funds and this specified activity includes situations where you as an Accountant controls the use, application, or disposition of funds or has signatory authority over the client’s financial account.

Best practice: Any time you, as an Accountant, “touch the money” you should satisfy yourself as to the *bona fides* of the sources and ownership of the funds.

- c) Management of bank, savings or securities accounts. In addition to the risks identified in item b) above, an Accountant must be particularly cognizant of the funds that move through his/firm’s trust account or client’s account.

Best Practice: Accountants should exercise caution to avoid situations where they are essentially providing banking services for their clients as opposed to merely holding client's money for a legitimate transaction. For example, if you are being asked to make/receive payments to/from persons not party to the transaction but to uninterested persons whose identities are difficult to verify, you should exercise caution and/or treat this as a higher risk situation.

- d) Organization of contributions for the creation, operation, or management of companies. This specified activity would include when an Accountant prepares for or carries out a transaction where investors contribute capital to a legal entity and would conceivably cover financing and refinancing transactions.
- e) Creation, operation, or management of legal persons or arrangements, and buying and selling of business entities. This category of specified activities would include work routinely carried out by Accountants involved in commercial activities and includes mergers and acquisitions.

Funds received or held for professional fees, disbursements or expenses are not included in the specified activities.

You are **NOT** subject to the AML/CFT requirements if:

- i. you only carry out activities or transactions other than those listed above, e.g., financial audits.
- ii. you operate in an advisory only capacity. When you give instructions for any of the above-mentioned activities, it means that you actually direct the movement of funds. By contrast, when you provide advice to your clients, it means that you make recommendations or suggestions to them. **Providing advice is not considered to be giving instructions.**

Example: Giving instructions versus providing advice.

Example of giving instructions: "Based on my client's instructions, I request that you transfer \$15,000 from my client's account, account number XXX, to account number YYY at Bank X in Country Z."

Example of providing advice: “Based on the interpretation or application of (an element of tax law), we recommend that you invest in (a certain investment vehicle) to reduce your tax liability.”

PART 2

LISTED BUSINESS

Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) is everyone’s responsibility. It is important to note that all Accountants, in common with all citizens of Trinidad and Tobago, are subject to the Proceeds of Crime Act (“the POCA”) and the Anti-Terrorism Act (“the ATA”). However, further obligations are imposed on business sectors which face a greater risk of coming across crime proceeds and terrorist property than others. Business sectors which have been identified as more vulnerable include Accountants and Attorneys-at-Law when performing certain specific functions, Real Estate agents, Dealers in precious metals and precious stones dealers(s) and Trust and Company service providers, etc. These business sectors are identified as “Listed Businesses” under the First Schedule to the Proceeds of Crime Act Chap. 11:27.

If you carry on the business activities described in Part 1 you are a Listed Business; you have to comply with legal obligations under the AML/CFT laws of Trinidad and Tobago and the FIU as your Supervisory Authority monitors your compliance.

The AML/CFT laws of Trinidad and Tobago, in which you will find your obligations, are:

- (1) Proceeds of Crime Act, Chap: 11:27;
- (2) Anti-Terrorism Act, Chap: 12:07;
- (3) Financial Intelligence Unit of Trinidad and Tobago Act, 2009, Act No.11 of 2009;
- (4) Financial Obligations Regulations, 2010;
- (5) Financial Intelligence Unit of Trinidad and Tobago Regulations, 2011; and
- (6) Financial Obligations (Financing of Terrorism) Regulations, 2011.

PART 3

ABOUT THE FIU

The FIU is Trinidad and Tobago's Financial Intelligence Unit. The FIU was established under the FIU Act pursuant to Recommendation 26 of the 40+9 Recommendations of the Financial Action Task Force (the FATF). Recommendation 26 (now Recommendation 29 of the FATF's 40 Recommendations) mandates every country in the world to have a FIU to serve as the information related arm in efforts to combat money laundering, terrorism and related crimes. The FIU was created as an administrative type FIU, in that it does not have law enforcement or prosecutorial powers. Rather, it is a specialised intelligence agency which is legally responsible for producing financial intelligence for Law Enforcement Authorities (LEAs).

The FIU became operational in 2010 when it was established by virtue of the proclamation of the FIU Act. It is an autonomous department within the Ministry of Finance and the Economy.

The FIU works in very close partnership with individuals and entities that have obligations under the AML/CFT laws. These individuals and entities have specific obligations to report certain information to the FIU. Accountants have such obligations and are therefore, also reporting entities.

PART 4

WHAT THE FIU DOES

(1) Analyses and Produces Intelligence Reports

Essentially, the FIU is responsible for producing financial intelligence that is then disclosed to LEAs for investigation. To do this, the FIU receives and requests financial information from various reporting entities such as banks, credit unions and other financial institutions, accountants, attorneys-at-law, money services businesses, art dealers, motor vehicle sales, real estate, private members' clubs - a total of seventeen (17) different reporting sectors that must provide financial information to the FIU.

On receipt of the information, the FIU analyses it and looks for links between the financial information received, other relevant information from different sources, intelligence provided by LEAs, as well as other international partners. Once the analysis leads to the belief that the transaction is related to suspicions of money laundering or terrorist financing, the FIU sends an intelligence report to LEAs who will investigate the matter. The LEAs who investigate intelligence reports from the FIU are the Commissioner of Police, Comptroller of Customs and Excise, Chief Immigration Officer and Chairman of the Board of Inland Revenue.

The FIU receives many reports of suspicious transactions from reporting entities, but within those reports are legitimate transactions. The FIU's analysis is therefore, to ensure that only those transactions on which there are reasonable grounds to suspect are related to money laundering or terrorist financing, are disclosed to LEAs. Only transactional information and information relating to the suspicion of money laundering and terrorist financing are contained in the Intelligence report. For example, the name and other information on the person who actually submitted the report would not be provided to LEAs.

(2) Supervises for AML/CFT Compliance

Another important function of the FIU is the responsibility of ensuring compliance with obligations under the Proceeds of Crime (Money Laundering) Act, Anti-Terrorism Act and the Regulations made under those Acts. The FIU is the Supervisor for listed businesses and non-regulated financial institutions which have obligations under those Acts and Regulations and is responsible for making sure that they are meeting those obligations. Accountants are a listed business which is supervised by the FIU.

Activities related to our compliance mandate would be educating and providing guidelines (such as this), enhancing public awareness of money laundering and terrorist financing to allow entities who have AML/CFT obligations to be aware and know exactly what they need to do in terms of meeting their obligations. The FIU also approves compliance programmes, conducts on-site inspections and takes action to ensure that the law is being respected by the entities it supervises.

PART 5

WHAT IS MONEY LAUNDERING?

Money laundering is the process by which illegally obtained funds are given the appearance of having been legitimately obtained. For money laundering to take place, first, there must have been the commission of a serious crime which resulted in benefits/gains (illegal funds) to the perpetrator. The perpetrator will then try to disguise the fact that the funds were generated from criminal activity through various processes and transactions which may also involve other individuals, businesses and companies. There is no one single method of laundering money. Methods can range from the purchase and resale of a luxury item (e.g., cars or jewellery) to passing money through legitimate businesses and “shell” companies or as in the case of drug trafficking or other serious crimes. The proceeds usually take the form of cash which needs to enter the financial system by some means.

There are three (3) acknowledged methods in the money laundering process. However, the broader definition of money laundering offences in POCA includes even passive possession of criminal property as money laundering.

(1) **Placement**

Criminally derived funds are brought into the financial system. Examples of Placement are depositing cash into bank accounts or using cash to purchase assets. Techniques used include Structuring - breaking up a large deposit transaction into smaller cash deposits and Smurfing – using other persons to deposit cash.

(2) **Layering**

This takes place after the funds have entered into the financial system. It involves the movement of the money. Funds may be shuttled through a web of multiple accounts, companies and countries in order to disguise their origins. The intention is to conceal, and obscure the money trail in order to deceive the LEA and to make the paper trail very difficult to follow.

(3) Integration

The money comes back to criminals as apparently legitimate funds. The laundered funds are used for activities such as investment into real estate, luxury assets, and business ventures, to fund further criminal activity or spent to enhance the criminal's lifestyle. At this stage, the illegal money has achieved the appearance of legitimacy.

Successful money laundering allows criminals to use and enjoy the income from the criminal activity without suspicion.

PART 6

WHAT IS 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 involve low dollar value transactions and give the appearance of innocence and a variety of sources. Funds may come from personal donations, profits from businesses and charitable organizations e.g., a charitable organization may organise fundraising activities where the contributors to the fundraising activities believe that the funds will go to relief efforts abroad, but, all the funds are actually transferred to a terrorist group. 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 terrorist financing you may have fundraising or a criminal activity generating funds prior to the terrorist activity actually taking place. However, like money launderers, terrorist financiers also move funds to disguise their source, destination and purpose for which the funds are to be used. The reason is to prevent leaving a trail of incriminating evidence - to distance the funds from the crime or the source, and to obscure the intended destination and purpose.

PART 7

WHY ARE ACCOUNTANTS A LISTED BUSINESS?

The FATF, the body which sets standards internationally for money laundering and terrorist financing, has evaluated money laundering and financing of terrorism risks and vulnerable activities. It was found that money laundering and financing of terrorism activities were involved in the accounting sector. In many countries, Accountants are the first professionals consulted by small businesses and individuals when seeking general business advice and on a wide range of regulatory and compliance issues.

The FATF characterises Accountants as **“Gatekeepers”** because they “protect the gates to the financial system,” through which potential users must pass in order to succeed. The term includes professional experts who provide financial expertise to launderers, such as lawyers, accountants, tax advisers, and trust and service company providers. The FATF has noted that gatekeepers are a common element in complex money laundering schemes. Gatekeepers’ skills are important in creating legal structures that could be used to launder money and for their ability to manage and perform transactions efficiently and to avoid detection. FATF’s Recommendation 22 acknowledges the role that such gatekeepers can play by recommending that such individuals have AML/CFT responsibilities when engaged in certain activities.

Examples of ML cases involving Accountants

Case 1 - Accountant and lawyers assist in a money laundering scheme

Suspicious flows of more than USD 2 million were identified being sent in small amounts by different individuals who ordered wire transfers and bank drafts on behalf of a drug trafficking syndicate who was importing of 24 kg of heroin concealed in cargo into Country Z. Bank drafts purchased from different financial institutions in Country Y (the drug source country) were then used to purchase real estate in Country Z. An Accountant was used by the syndicate to open bank accounts and register companies. The Accountant also offered investment advice to the principals.

A firm of solicitors was also used by the syndicate to purchase the property using the bank drafts that had been purchased overseas after they had first been processed through the solicitor's trust account. Family trusts and companies were also set up by the solicitor.

Case 2 - An Accountant provides specialist financial advice to organised crime

A law enforcement operation identified an Accountant, Mr. J, who was believed to be part of the criminal organisation involved in money laundering and re-investment of illicit proceeds derived from drug trafficking led by Mr. X.

Mr. J's role was mainly that of a "legal and financial consultant". His task was to analyse the technical and legal aspects of the investments planned by the organisation and identify the most appropriate financial techniques to make these investments appear licit from a fiscal stance. He was also to try to make these investments profitable. Mr. J was an expert in banking procedures and most sophisticated international financial instruments. He was the actual financial "mind" of the network involved in the re-investment of proceeds available to Mr. X.

Mr. J operated by sub-dividing the financial transactions among different geographical areas through triangle transactions among companies and foreign credit institutions, by electronic transfers and stand-by credit letters as a warrant for commercial contracts which were later invested in other commercial activities.

Source: FATF Report on money laundering typologies 2003-2004

PART 8

YOUR OBLIGATIONS

Your main obligations under the AML/CFT laws are summarized below:

- (1) Register with the FIU;
- (2) Submit Reports to the FIU;
- (3) No "Tipping-off";
- (4) Keep Records;

- (5) Ascertain client identity;*
- (6) Appoint a Compliance Officer;*
- (7) Develop an effective Compliance Programme and submit to the FIU; and*
- (8) Implement your Compliance Programme and conduct periodic reviews.*

(1) REGISTRATION WITH THE FIU

You must register with the FIU for the purpose of identifying yourself as an entity which is supervised by the FIU if you perform any of the specified activities. You must also notify the FIU of a change of address of your registered office or principal place of business within six (6) months of such change.

Businesses in existence on or before February 10, 2011 were required to register within three (3) months from the coming into effect of the FIU Regulations, i.e. by May 9, 2011.

If you commence business after May 9, 2011 you must register as soon as you begin operations or as soon as you register under the Registration of Business Names Act or incorporate or register under the Companies Act, whichever is the earlier date.

a) How to Register

The registration process is very simple and free of charge. On-line registration is available through the FIU's website or you may download the form and complete it manually. You may register on the **FIU Registration Form** which you may access by [clicking here](#).

b) Offences

Failure to register within the time stipulated is an offence and you are liable on summary conviction to a fine of \$50, 000 and to a further fine of \$5,000 for each day the offence continues.

Failure to notify the FIU of a change of address of your registered office or principal place of business is an offence and you are liable on summary conviction to a fine of \$20, 000.

(2) SUBMITTING REPORTS TO THE FIU

You are required to send to the FIU two (2) types of reports:

- a) reports of Suspicious Transactions or Activities; and**
- b) reports of Terrorist Funds in your possession.**

The relationship between reporting entities and the FIU is a key one, because the FIU can only perform its analytical function to produce financial intelligence if the various reporting entities report the critical information they have to report.

Failing to report to the FIU knowledge or suspicion of crime proceeds or terrorist property is a criminal offence. If you continue to deal with such transaction or funds knowing or having reasonable grounds to suspect that the funds are crime proceeds or terrorists' funds and you do not report it to the FIU, then you may have committed the offence of money laundering or financing of terrorism.

a) Reporting Suspicious Transactions/Activities

- i. You must submit a Suspicious Transaction or Suspicious Activity Report (STR/SAR) to the FIU where you know or have reasonable grounds to suspect:**
 - ❖ that funds being used for the purpose of a transaction are the proceeds of a crime; or
 - ❖ a transaction or an attempted transaction is related to the commission or attempted commission of a money laundering offence; or
 - ❖ that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

The STR/SAR must be submitted within fourteen (14) days of the date the transaction was deemed to be suspicious.

- ii. You must submit a STR/SAR to the FIU immediately if a designated entity* attempts to enter into a transaction or continue a business relationship. You must not enter into or continue a business transaction or business relationship with a designated entity.**

*A designated entity means any individual or entity and their associates designated as terrorist entities by the Security Council of the United Nations. **You may access the Security Council of the United Nations List (“the UN list”) by [clicking here](#).**

iii. **Defining Knowledge and Suspicion**

The first criterion provides that, before you become obliged to report, you must know or have reasonable grounds for suspecting, that some other person is engaged in money laundering or financing of terrorism.

If you actually ‘know’ that your client is engaged in money laundering, then your situation is quite straightforward – the first criterion is met. However, knowledge can be inferred from the surrounding circumstances, so, e.g. failure to ask obvious questions may be relied upon by a jury to imply knowledge.

You are also required to report if you have ‘reasonable grounds’ to suspect that the client or some other related person is engaged in money laundering or financing of terrorism. By virtue of this second, ‘objective’ test, the requirement to report will apply to you if based on the facts of the particular case, a person of your qualifications and experience would be expected to draw the conclusion that those facts should have led to a suspicion of money laundering. The main purpose of the objective test is to ensure that Accountants (and other regulated persons) are not able to argue that they failed to report because they had no conscious awareness of the money laundering activity, e.g., by having turned a blind eye to incriminating information which was available to them, or by claiming that they simply did not realise that the activity concerned amounted to money laundering.

iv. **Attempted Transactions**

You also have to pay attention to **suspicious attempted transactions**. If a client attempts to conduct a transaction, but for whatever reason that transaction is not completed, and you think that that attempted transaction is suspicious, you must report it to the FIU.

Example of suspicious attempted transaction: a client wants you to form a company for him. He is vague on what are the proposed company's business activities and he presents you with \$ 10,000 in cash to cover your fees and incorporation fees. You ask him, for identification and he delays in providing it but keeps pressing you to form the company; subsequently he terminates the transaction. If you think that this transaction is related to some crime you have to report that attempted transaction to the FIU. On the other hand, a client simply seeking your advice on how to form a company and how long it takes would not be sufficient for being an attempted transaction.

Therefore, an attempt is only when concrete action has been taken to proceed with the transaction.

NOTE: It is only when you know or reasonably believe that the funds are criminal proceeds or related to money laundering or financing of terrorism that you have to report: you do not have to know what the underlying criminal activity is or whether illegal activities occurred.

You must report suspicious transactions/activities and terrorist funds **on the STR/SAR Form which you may access by [clicking here](#).**

[Click here](#) for Guidance Note on Suspicious Transaction/Activity Reporting Standards to guide you in completing the STR/SAR form.

v. *How to Identify a Suspicious Transaction/Activity*

Accountants are encouraged to adopt a healthy level of professional scepticism and to make reasonable enquiries if they come across information which could form the beginning of a suspicion.

You are the one to determine whether a transaction or activity is suspicious based on your knowledge of the client and of the industry. You are better positioned to have a sense of particular transactions which appear to lack justification or cannot be rationalized as falling within the usual parameters of legitimate business. You will need

to consider factors such as; is the transaction normal for that particular client or is it a transaction which is atypical i.e. unusual; as well as the payment methods.

In making your assessment, consider some of the functions performed by Accountants that are the most useful to the potential launderer such as:

- ❖ Financial and tax advice – Criminals with large sums of money to invest may pose as individuals hoping to minimise their tax liabilities or desiring to place assets out of reach in order to secure future liabilities;
- ❖ Creation of corporate vehicles or other complex legal arrangements (e.g. trusts) – such structures may serve to confuse or disguise the links between the proceeds of a crime and the criminal;
- ❖ Buying or selling of property – Property transfers serve as either the cover for transfers of illegal funds (layering stage) or else they represent the final investment of these proceeds after their having passed through the laundering process (integration stage);
- ❖ Performing financial transactions – Accountants may carry out various financial operations on behalf of the client (e.g., cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers, etc.); and
- ❖ Gaining introductions to financial institutions.

While general indicators may point to a suspicious transaction, industry-specific indicators would also help you and your employees to better identify suspicious transactions whether completed or attempted.

Consider the following red flags when you act on behalf of a client:

- ❖ Client appears to be living beyond his or her means.
- ❖ Client has cheques inconsistent with sales (i.e., unusual payments from unlikely sources).
- ❖ Client has a history of changing book-keepers or Accountants yearly.
- ❖ Client is uncertain about location of company's records.

- ❖ Company carries non-existent or satisfied debt that is continually shown as current on financial statements.
- ❖ Company has no employees, which is unusual for the type of business. Company is paying unusual consultant fees to offshore companies.
- ❖ Company's records consistently reflect sales at less than cost, thus putting the company into a loss position, but the company continues without reasonable explanation of the continued loss.
- ❖ Company shareholder loans are not consistent with business activity.
- ❖ Examination of source documents shows misstatements of business activity that cannot be readily traced through the company's books.
- ❖ Company makes large payments to subsidiaries or similarly controlled companies that are not within the normal course of business.
- ❖ Company acquires large personal and consumer assets (i.e., boats, luxury automobiles, personal residences and cottages) when this type of transaction is inconsistent with the ordinary business practice of the client or the practice of that particular industry.
- ❖ Company is invoiced by organizations located in a country that does not have adequate money laundering laws and is known as a highly secretive banking and corporate tax haven.
- ❖ Client has business activity inconsistent with industry averages or financial ratios.
- ❖ Examination of source documents shows misstatements of business activity that cannot be readily traced through the company books.

*Source: <http://www.fintrac-canafe.gc.ca/publications/guide/guide-eng.asp>

It is important to note that it is not only cash transactions which may be suspicious. Money Laundering includes the layering and integrating stages where there is no more cash, but only funds that are moved around while trying to confuse the money trail. It can also be of any amount. If you think a \$ 1,000.00 transaction is suspicious, you must report it to the FIU.

b) Reporting Terrorist Funds

- i. You **must report immediately** to the FIU the existence of funds within your business where you know or have reasonable grounds to suspect that the funds belong to an individual or legal entity who:
 - ❖ commits terrorist acts or participates in or facilitates the commission of terrorist acts or the financing of terrorism; or

❖ is a designated entity.

- ii. You **must report immediately** to the FIU where you know or have reasonable grounds to believe that a person or entity named on the UN list or the list circulated by the FIU, has funds in Trinidad and Tobago.

Report the existence of suspicion of terrorist funds on the **Terrorist Funds Report - FIU TFR Form** which you may access by [clicking here](#).

You may access the **Security Council of the United Nations List (“the UN list”)** by [clicking here](#).

[Click here](#) for **Guidance Note on Procedures for Reporting Terrorist Funds** to assist you in completing the TFR form.

(3) NO TIPPING-OFF

When you have made a suspicious transaction report to the FIU, you or any member of your staff must not disclose the content of such report to any person including the client or that you have made such a report. It is an offence to deliberately tell any person, including the client, that you have or your business has filed a suspicious transaction report about the client’s activities/transactions. You must also not disclose to anyone any matter which may prejudice money laundering or financing of terrorism investigation or proposed investigation.

The prohibition applies to any person acting, or purporting to act, on behalf of an Accountant or accounting firm, including any agent, employee, partner, director or other officer, or any person engaged under a contract for services.

(4) RECORD KEEPING

You are required to keep a record of each and every transaction for a specified period. Record keeping is important to anti-money laundering investigation which allows for swift reconstruction of individual transactions and provides evidence for prosecution of money laundering and other criminal activities.

You must keep the following records in electronic or written form for a period of six (6) years or such longer period as the FIU directs. The records must be kept for six (6) years after the end of the business relationship or completion of a one-off transaction.

- a) All domestic and international transaction records;
- b) Source of funds declarations;
- c) Client's identification records;
- d) Client's information records;
- e) Copies of official corporate records;
- f) Copies of suspicious transaction reports submitted by your staff to your Compliance Officer (STRs/SARs);
- g) A register of copies of suspicious transaction reports submitted to the FIU (STRs/SARs);
- h) A register of all enquiries made by LEAs (date, nature of enquiry, name of officer, agency and powers being exercised) made by any Law Enforcement Authority or other competent authority;
- i) The names, addresses, position titles and other official information pertaining to your staff;
- j) All wire transfers records; (originator and recipient identification data): and
- k) Other relevant records.

(5) ASCERTAIN CLIENT IDENTITY – KNOW YOUR CUSTOMER

If you cannot satisfactorily apply your due diligence measures in relation to a client, e.g., you are unable to identify and verify a client's identity or obtain sufficient information about the nature and purpose of a transaction, you must **NOT** carry out a transaction for that client or enter into a business relationship with the client and you must terminate any business relationship already established. You should also consider submitting a STR/SAR to the FIU.

a) All Customers

The general principle is that an Accountant should establish satisfactorily that he is dealing with a real person or organization (not fictitious) and obtain identification evidence sufficient to establish that the client is that person or organization. In the case of an organization, you must ascertain that the client is duly authorized to act for the organization.

You must **identify** who the prospective client is and **verify** the person's identity by reference to independent and reliable source material. Such material should include documentary identification issued by the Government departments or agencies. You must also ask the source of funds for the transaction. Client's identification, also called Customer Due Diligence (CDD) or Know Your Client-(KYC), must be obtained for customers who are individuals as well as companies. You must obtain satisfactory evidence of the client's identity before establishing a business relationship or completing a transaction for occasional customers.

[Click here](#) for **Customer Due Diligence Guide No. 1 of 2011** for more information.

b) High Risk Customers/Transactions

There are customers and types of transactions and products which may pose higher risk to your business and you are required to take additional measures in those cases. The AML/CFT laws have identified certain high risks customers and require you to perform Enhanced Due Diligence ("EDD"). You may also determine that certain customers, transactions and products pose a higher risk to your business and apply EDD.

You must take specific measures to identify and verify the identity of the following individuals or entities:

- i. Any individual or entity who conducts a large cash transaction i.e. TT \$90,000 and over;
- ii. Any individual or entity who conducts business transactions with persons and financial institutions in or from other countries which do not or insufficiently comply with the recommendations of the Financial Action Task Force (the "FATF"). [Click here](#) for **FATF High Risk and Non-Cooperative Jurisdictions**;
- iii. Any individual or entity who conducts a complex or unusual transaction (whether completed or not), unusual patterns of transactions and insignificant but periodic transactions which have no apparent economic or visible lawful purpose.
- iv. Domestic and Foreign Politically Exposed Persons (PEPs). [Click here](#) for **Customer Due Diligence Guide No. 1 of 2011** for the categories of persons who are PEPs;

- v. Any individual or entity for whom you have to send a suspicious transaction report to the FIU (reasonable measures and exceptions apply e.g., to avoid tipping-off);
and
- vi. Any client or transaction, product type that you have identified as posing a higher risk to your business.

You must apply EDD measures to high risk clients, which include, but are not limited to:

- ❖ Verification of identity using independent sources e.g. additional form of Government issued identification ;
- ❖ obtaining details of the source of the customer's funds and the purpose of the transaction;
- ❖ Obtain approval from the senior officer to conduct the transaction;
- ❖ applying supplementary measures to verify or certify the documents supplied or requiring certification by a financial institution;
- ❖ Impose a cash threshold limit for transactions after which a senior officer's approval is needed to conduct the transaction;
- ❖ Verify the source of funds for the transaction e.g. if client states the money is from his bank account, ask for proof; or
- ❖ Ongoing monitoring (e.g. weekly, monthly, quarterly or on a transaction basis) of the client's account through the relationship.

c) Is the Client acting for a Third Party?

You must take reasonable measures to determine whether the client is acting on behalf of a third party especially where you have to conduct EDD.

Such cases will include where the client is an agent of the third party who is the beneficiary and providing the funds for the transaction. In cases where a third party is involved, you must obtain information on the identity of the third party and their relationship with the client.

In deciding who the beneficial owner is in relation to a client who is not a private individual, (e.g., a company or trust) you should look behind the corporate entity to identify those who

have ultimate control over the business and the company's assets, with particular attention paid to any shareholders or others who inject a significant proportion of the capital or financial support.

Particular care should be taken to verify the legal existence and trading or economic purpose of corporates and to ensure that any person purporting to act on behalf of the company is fully authorized to do so.

[Click here](#) for **Customer Due Diligence Guide No. 1 of 2011** for more information.

(6) APPOINT A COMPLIANCE OFFICER

You must appoint a senior employee at managerial level as Compliance Officer (CO). The individual you appoint will be responsible for the implementation of your compliance regime.

You must obtain the approval of the FIU for the person you have chosen as your CO. If you change your CO you must inform the FIU immediately and get the FIU's approval for the new CO.

If you are a small business, employing five (5) persons or less, the CO must be the person in the most senior position.

If you are the owner or operator of the business and do not employ anyone, you can appoint yourself as CO to implement a compliance regime.

In the case of a large business (employing over five [5] persons), the CO should be from senior management and have direct access to senior management and the board of directors. Further, as a good governance practice, the appointed CO in a large business should not be directly involved in the receipt, transfer or payment of funds.

Your CO should have the authority and the resources necessary to discharge his or her responsibilities effectively including access to all relevant areas of the reporting entity's operations, all relevant staff members (at any level) and the power to effect corrective action if applicable. The CO must:

- a) have full responsibility for overseeing, developing, updating and enforcing the AML/CFT Programme;
- b) have sufficient authority to oversee, develop, update and enforce AML/CFT policies and procedures throughout the company;
- c) be competent and knowledgeable regarding money laundering issues and risks and the anti-money laundering legal framework.

Depending on your type of business, your CO should report, on a regular basis, to the board of directors or senior management, or to the owner or chief operator of the business. The identity of the CO must be treated with the strictest confidence by you and your staff.

The CO's responsibilities include:

- i. Submitting STRs/SARs and TFRs to the FIU and keeping relevant records;
- ii. Acting as Liaison officer between your business and the FIU;
- iii. Implementing your Compliance Programme;
- iv. Directing and enforcing your Compliance Programme;
- v. Ensuring the training of employees on the AML/CFT;
- vi. Ensuring independent audits of your Compliance Programme.

For consistency and on-going attention to the compliance regime, your appointed CO may choose to delegate certain duties to other employees. For example, the officer may delegate an individual in a local office or branch to ensure that compliance procedures are properly implemented at that location. However, where such a delegation is made, the CO retains full responsibility for the implementation of the compliance regime.

Best practice: You should appoint an alternate CO to perform the CO's functions in the event the CO is absent for any reason. You will need to obtain the FIU's approval for the person to act as alternate CO.

(7) DEVELOP AND SUBMIT TO THE FIU A WRITTEN COMPLIANCE PROGRAMME

After you have registered with the FIU as a reporting entity, you must develop a written Compliance Programme (“CP”) which you must submit to the FIU for approval. If you are an organization, the CP also has to be approved by senior management.

The CP is a written document explaining your system of internal procedures, systems and controls which are intended to make your business less vulnerable to being used by money launders and terrorism financiers. Your CP will contain measures that ensure that you comply with your reporting, record keeping, client identification, employee training, and other AML/CFT obligations. These policies, procedures and controls, must be communicated to employees, and when fully implemented, will help reduce the risk of your business being used for money laundering or to finance terrorism. The CP shall be reviewed annually by the listed business and must be resubmitted to the FIU every two (2) years from the date the FIU gives written approval of the CP to the listed business.

[Click here](#) for the model CP for Accountants and [click here](#) for the CP Check list.

The FIU will examine your CP and approve or recommend amendments if deficiencies are identified.

A well-designed, applied and monitored regime will provide a solid foundation for compliance with the AML/CFT laws. As not all individuals and entities operate under the same circumstances, your compliance procedures will have to be tailored to fit your individual needs. It should reflect the nature, size and complexity of your operations as well as the vulnerability of your business to money laundering and terrorism financing activities.

The following five (5) main elements must be included in your compliance programme:

- a) The appointment of a senior staff member as CO;
- b) Internal compliance policies and procedures;
- c) Your assessment of your risks to money laundering and terrorism financing, and measures to mitigate high risks;
- d) Ongoing compliance training for staff;

- e) Periodic documented review of the effectiveness of implementation of your policies and procedures, training and risk assessment.

[Click here](#) to access the **Guide to Structuring an AML/CFT Compliance Programme**.

(8) IMPLEMENT AND TEST YOUR COMPLIANCE PROGRAMME

Your obligations include implementing your written CP. The FIU may conduct an onsite examination to determine whether the measures outlined in your CP are effectively implemented.

In addition, you must conduct internal testing to evaluate compliance by your staff with your CP in particular, CDD, record keeping and suspicious transactions reporting.

Best practice: Internal testing should be carried by someone other than the CO to avoid potential conflict since the CO is responsible for implementation of the CP which contains your AML/CFT measures.

External testing must also be carried out to test the effectiveness of your systems, controls and implementation of same by someone not employed in your business.

Such reviews (both internal and external) must be documented and made available to the FIU.

PART 9

OFFENCES & PENALTIES FOR NON-COMPLIANCE

Non-compliance with your obligations under the AML/CFT laws and regulations may result in criminal and or administrative sanctions.

Penalties include fines and terms of imprisonment, and sanctions include possible revocation of licenses, issuance of directives and court orders.

Click here to access a summary of the Offences and Penalties under AML/CFT laws and Regulations of Trinidad and Tobago.

PART 10

ADDITIONAL RESOURCES

This summary is intended to guide you in fulfilling your legal obligations under the AML/CFT Laws.

Additional reference materials include:

- The AML/CFT laws available on the FIU's website, www.fiu.gov.tt under "Legal Framework".
- FATF Guidance on the Risk-Based Approach for Accountants - updated February 1, 2012 at <http://www.fatf-gafi.org/documents/riskbasedapproach/fatfguidanceontherisk-basedapproachforaccountants.html>
- The FATF recommendations at www.fatf-gafi.org/recommendations

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