THE MONEY LAUNDERING AND TERRORISM FINANCING RISK ASSESSMENT OBLIGATION OF ACCOUNTABLE PERSONS

Pursuant to Section 6A of the Anti Money Laundering Act (AMLA), 2013 (as mended) every reporting entity/accountable person shall take actions to identify, assess, understand and monitor its risks of Money Laundering (ML) and Terrorism Financing (TF) activities and take appropriate measures to mitigate the risks identified.
In accordance with Regulation 8 of the Anti Money Laundering (AML) Regulations, 2015 the outcome of the risk assessment is required to be documented and made available to the Financial Intelligence Authority (FIA) and other competent authorities upon request.

When conducting its risk assessment, a reporting entity/accountable person should do so in line with Section 6A of the AMLA and should consider amongst other things the following factors;

(a) The profile of its customers;
(b) The geographic area in which it conducts business;
(c) The means by which such products or services are delivered to its customers/clients;
(d) The transactions that it conducts;
(e) Customer due diligence carried out by third parties; and
(f) The technological developments in identifying such risks.

In addition, a reporting entity/accountable person must take into consideration information obtained from relevant sources such as:

i. The outcome of any risk assessment carried out at national level (the National Risk Assessment (NRA) or sectoral level (Sector Risk Assessments);
ii. Guidance documents issued by the FIA; and
iii. Trends and typology reports issued by the FIA, ESAAMLG or FATF.

THE RISK ASSESSMENT PROCESS

As part of the risk assessment process, an accountable person must consider all relevant inherent ML/TF risks factors that may increase their business' vulnerability to

being abused by money launderers and for terrorist financing activities.
A simple risk assessment process to assess the business' ML/TF risk exposure and vulnerability consist of:

(a) Identifying the ML/TF risks (inherent risk);
(b) Assessing the ML/TF risks;
(c) Implementation and Evaluation of the AML/CFT internal controls;
(d) Documentation of the Risk Assessment results; and
(e) Reviewing and updating the Risk Assessment on an on-going basis

1. IDENTIFYING THE ML/TF RISKS

The first step that reporting entities should undertake in conducting its risk assessment is to assess the ML/TF risks to which the business is or may be exposed to during the conduct of its business, before the application or implementation of any internal control measures. This is known as the business' inherent risk.

It is important to note that as all businesses are different in nature, size and complexity, the inherent risk will vary.
Generally, the size and complexity of the reporting entity's/accountable person's nature of business plays a role in how vulnerable it is to ML/TF risk. For example, a business with a large customer base is less likely to know its customers personally and may offer a greater degree of anonymity than a business with a small customer base.

In conducting its risk assessment to identify those areas of its business that may be susceptible to ML/TF risk, the reporting entity/accountable person should consider the following risk factors:

(a) Customer Risks – the type of customers they conduct business with;
(b) Product/Service Risks – the type of products and/or services provided to its customers;
(c) Geographic Risks – the geographical location of its customers;
(d) Transaction and Delivery Channels Risks – the manner in which products and/or services are delivered to and transactions conducted with its customers;
(e) Other Factors – any other risk factors as identified by the reporting entity/accountable person

The factors described are not exhaustive and reporting entities/accountable person may consider other pertinent risk factors applicable to the nature, size and complexity of its business. It is to be noted that not all risk factors outlined will be relevant or applicable to the business.

CUSTOMER RISKS

The reporting entity/accountable person should understand the nature and the level of risks that their customers may bring into their business, as certain category of customers may pose a higher ML/TF risk than others. In establishing the customer risks, the following criteria but not limited to, may be considered:

(a) The customer type e.g., whether customers are individuals, legal persons or arrangements, high-net worth individuals, PEPs or NPOs;
(b) The Ownership Structure of Non-Individual Customers e.g., whether the business/ company has a complex ownership structure which may obscure the identity of the beneficial owner(s); and
(c) Nature of their business activity – whether the customer's business is by nature a high-risk business (e.g. cash-intensive businesses)

PRODUCT/SERVICE RISKS

Reporting entities/accountable person should assess the potential risks arising from the products and services that they offer to their customers. Certain products and services, by their nature, may present high vulnerability to ML/TF and thus may be exploited for ML/TF purposes.

In assessing the risks of the products/services provided, it is recommended that the following is considered: -

(a) Whether the product/service allows for anonymity;
(b) Whether the product/service allows the identity of the beneficial owner to be obscured;
(c) Whether the product/service disguises or conceals the source of wealth or source of funds of the customer;
(d) Whether the product/service commonly involve;
    (i) The receipt or payment in cash;
    (ii) Whether the product/service has a high transaction or investment value; and
    (iii) Whether the product/service has been identified in the National Risk Assessment (NRA), Financial Intelligence Authority (FIA) Guidance documents or Trends & Typology Reports as presenting a higher ML/TF risk.

GEOGRAPHIC RISKS

Geographical risk may arise in respect to the location or nationality of a customer or the origin and the destination of transactions conducted by the customer.

This is in view of the fact that different geographic locations pose different levels of AM/TF risks, based on the prevailing factors in that particular jurisdiction. While there is no general rule to determine whether a particular country or geographical area can be classified as being more vulnerable to ML/TF risk, reporting entities/accountable person may consider whether the country or jurisdiction:

a) Has been identified as being subjected to economic sanctions or embargoes;
b) Are known to be providing funding for or otherwise supporting terrorist activities;
c) Lacks appropriate and effective systems to combat ML/TF; or
d) Has a high level of corruption or other criminal and illicit financial activities.

To identify such jurisdictions, country reports issued by international organizations may be considered, including but not limited to:

a) The Financial Action Task Force (FATF) list of high-risk jurisdictions;
b) FATF mutual evaluation reports;
c) Transparency International Corruption Perception Index;
d) Organization for Economic Cooperation and Development's ("OECD") country risk classification;

e) U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctions list including the Specially Designated Nationals and Blocked Persons List (SDN); and / or

f) Basel AML Index

TRANSACTION AND DELIVERY CHANNEL RISKS.

The manner in which customers are on-boarded and services/products are provided to customers (delivery channels) and the manner in which transactions are conducted affects the business' vulnerability to ML/TF. For example, customers on-boarded non-face-to-face or through intermediaries presents a higher vulnerability to ML/TF by nature due to the challenges that may occur in the verification of the customer's identity. In assessing the risks of the products/services provided, it is recommended that the following is considered:

a) Are services/products provided to customers face-to-face? i.e., customers are physically met or known personally to the business.

b) Are services/products provided to customers on a non-face-to-face basis? i.e., customers are not personally met but have direct contact with the business through telephone, email or other forms of communication.

c) Are intermediaries used for providing of services/ product? i.e. there is no direct relationship with the end-client and all transactions and communication is done through an intermediary.

Furthermore, reporting entities/accountable person should be aware of the risks associated with the manner in which transactions with the customers are conducted. Payments conducted in cash poses a higher ML/TF risks than transactions conducted through the financial system e.g bank transfers, cheques or VISA cards.

ANY OTHER FACTORS

Reporting entities/accountable person may also assess other factors, which may apply to the nature of their business, which does not fall in the categories outlined above. It is important to note that there may be a particular feature about a business that can make it more attractive to individuals who want to carry out ML/TF activities.

2. ASSESSING THE MONEY LAUNDERING RISKS

Regulation 8(4) of the AML regulations, 2015 (as amended) requires accountable persons to develop and implement mechanisms and systems that enable them to identify and assess the ML/TF risks consistent with their nature and size.

Once the different risks have been identified, the reporting entity should determine the level of those risks within its business. The methodology of the risk assessment provided herein is one of a lower complexity, and is limited to only considering the likelihood of the ML/TF event occurring. This may be based on the business experience, historical/ present data and publicly available information.

Reporting entities wishing to undertake a more in-depth risk assessment, may also assess the impact (consequences) that the ML/TF event may have on its business.

The ML/TF risk assessment should consider each risk factor (event) that has been identified and consideration of the likelihood that the event may occur based on the business' experience based on historical/present data and publicly available information such as NRA, Sectoral Risk Assessments and Trends and Typology reports issued by the FIA, the Eastern and Southern Africa Anti money laundering Group (ESAAMLG), FATF or any other authority on AML/CFT matters.