

# GUIDANCE FOR SMALL LAW FIRMS ON MANAGING ML/TF RISKS AND IMPLEMENTING APPROPRIATE INTERNAL CONTROLS

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## ADDENDUM TO MAIN GUIDELINES ON THE MEASURES FOR THE PREVENTION OF MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM FOR LAW FIRMS/ FOREIGN LAW FIRMS/ JOINT LAW VENTURE/FOREIGN LAWYERS

### PART 1. INTRODUCTION

- 1 Pursuant to Section 17 of the Financial Intelligence and Anti Money Laundering Act 2002 (FIAMLA), Reporting Persons are required to:
  - “a) take appropriate steps to identify, assess and understand the money laundering and terrorism financing risks for customers, countries or geographic areas and products, services, transactions or delivery channels; and
  - b) consider all relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied.”
- 2 Under regulation 22 of the Financial Intelligence and Anti Money Laundering Regulations 2018 (FIAMLR), Law Firms<sup>1</sup> are required to implement programs/controls to protect themselves against money laundering and terrorism financing having regard to the money laundering and terrorism financing risks identified and the size of their business.
- 3 The same regulation require that these programs should include the **following internal policies, procedures and controls** –
  - (a) designation of a compliance officer at senior management level to be responsible for the implementation and ongoing compliance of the reporting person with internal programs, controls and procedures (Paragraph 4.1.1.1 of the Attorney General’s Office (AGO) Guidelines- Page 24);
  - (b) screening procedures to ensure high standards when hiring employees (Paragraph 4.1.3.1 of AGO Guidelines- Page 27);
  - (c) an ongoing training program for its directors, officers and employees to maintain awareness of the laws and regulations relating to money laundering and terrorism financing to (Paragraph 4.1.3.2 of AGO Guidelines- Page 27)–

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<sup>1</sup> Law Firms include Law Firms, Joint Law Ventures, Foreign Law Firms and Foreign Lawyers

- (i) assist them in recognizing and identifying suspicious transactions and red flags that may be linked to money laundering or terrorism financing and
    - (ii) instruct them in the procedures to be followed where any links have been identified under sub subparagraph (i);
  - (d) an independent audit function to review, assess and verify compliance with the relevant Act and Regulations.
4. All of the measures outlined at paragraphs 1, 2 and 3 comprise of the elements of AML/CFT Internal Control Program (Chapter 4 of AGO Guidelines - Page 23) for Law Firms. The measures outlined (and others to be discussed in this Addendum) serve to assist Small Law Firms<sup>2</sup> to manage and control the risks of the business being abused by money launderers and terrorism financiers. An appropriate AML/CFT Internal Control policy should address these requirements.
  5. This Guidance is an Addendum to the Guidelines for Law Firms, intended to assist Small Law Firms to comply with these requirements and to develop their Internal Control Policies. These measures are in addition to **and not in substitution** of the measures provided in the Main Guidelines for Law Firms, published in November 2020
  6. Small Law Firms face several challenges in setting up measures to protect themselves against Money Laundering (ML) and the Financing of Terrorism (TF). Small Law Firms may lack the financial resources to hire advisors or purchase specialised software or the capacity and knowledge to develop sophisticated risk assessment models and internal control measures. They may lack the required personnel in order to establish and monitor sophisticated compliance and reporting processes. This Addendum seeks to propose solutions in relation to these challenges.
  7. This Addendum outlines a template that Small Law Firms can consider and potentially utilise to assess the AML/CFT risks faced by their firms and document the internal control measures that the firm deem appropriate to protect them against these risks. **In implementing the requirements of the law, Law Firms are permitted to take measures in keeping with the nature and the size of their business** (The AML/CFT program should be proportionate to the size, risk and nature of the Law Firms- Page 23 of AGO Guidelines).
  8. It is important to note that:
    - (a) Owners and managers /directors of Small Law Firms should read the Guidelines for Law Firms issued by their AML/CFT Supervisor (Link to AGO's website: <http://attorneygeneral.govmu.org>) to understand the key elements of ML and TF and how these offences pose a serious threat to their business and to the security, stability and AML/CFT regime of Mauritius;

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<sup>2</sup> Small Law Firms mean small firms within the meaning of the Small and Medium Enterprises Act 2017, with annual turnover of more than Rs 2 million but not more than Rs 10 million pursuant to First Schedule of the abovementioned Act.

(b) This Guidance only relates to the obligations that Law Firms have as outlined at paragraph 2(a) to (d) above. There are still key mandatory measures in the law such as obligations to report suspicious transactions (Paragraph 5.6.1 of AGO Guidelines - Page 46) and to maintain proper records (Paragraph 5.2 of AGO Guidelines - Page 41) of customer details and transactions that are not included in this Guidance. Small Law Firms should consult the main Guidelines for Law Firms for more information on those obligations. The Guidelines are available On the AGO's website and may be consulted here:

<https://attorneygeneral.govmu.org/Documents/Law%20Firms/AMLCFTdocuments/LEGALPROFESSIONALSGUIDELINESNOV20.pdf>;

(c) The template at *Appendix 1* is provided to assist small firms in fulfilling their responsibilities to establish internal control, policies and procedures pursuant to Regulation 22<sup>3</sup> of FIAMLR. Nothing in this template creates new requirements for AML programs. Furthermore, simply following this template does not guarantee compliance with AML/CFT Program requirements nor provide a safe harbor from regulatory responsibility; and

(d) The risks identified in this Guidance and the related recommended measures are not intended to be all-encompassing. Other risks can arise from time to time or may be peculiar to a Law Firm. Law Firms should seek to identify other risks that may make the firm vulnerable to ML and TF risks and take appropriate measures to address these. For instance, Law Firms which service overseas clientele or PEPS (paragraph 5.5 of AGO Guidelines - Page 43) or who engage in the establishment of legal persons or arrangements could face greater threats from criminal elements including money launderers. These Law Firms should therefore take appropriate measures accordingly.

## **PART 2. GENERAL REQUIREMENTS FOR APPLYING APPROPRIATE INTERNAL CONTROLS**

9. There is no accepted “one size fits all” approach in assessing and managing ML and TF risks, although there are some mandatory measures set out in law (e.g. the appointment of a compliance officer and the implementation of staff screening and training programs). The guiding principle is that a Law Firm should consider the widest range of information available in considering what risks affect its operations and how significant and probable are those risks. Therefore, the intent is that Small Law Firms may tailor the nature and extent of their risk assessment and management activities according to the nature of the risk that is presented to their firm and the size of their operations. The reporting person is in best position to assess the risk of its clients, products and services and to allocate resources to counter the identified high-risk areas (Paragraph 4.1 of AGO Guidelines- Page 23)
10. Additionally, Law Firms may not be aware of every single ML and TF risk that the business faces, because they do not have complete information about the various elements that can

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<sup>3</sup> Small Law Firm mean small firm within the meaning of the Small and Medium Enterprise Act 2017, with the annual turnover of more than Rs 2 million but not more than Rs 10 million pursuant to First Schedule of the above-mentioned Act.

affect their business (e.g. they may not necessarily know which client may be under criminal investigation abroad or the legitimacy of the client's source of funds). This is the reason why Customer Due Diligence (CDD) and Know Your Client (KYC) obligations under both FIAMLA and the FIAML Regulations should be complied with.

11. Similarly, the internal controls that the Law Firms choose to implement to manage the risks of ML and TF cannot totally protect the business, because the exact nature of every risk is not known and there are constraints as to the nature and types of measures that can be implemented (which may vary with the financial and human resources available to the business). Hence, a Risk Based Approach (RBA) (which is discussed later) can help to mitigate the risk faced by the Law Firm by focusing efforts on the main risks that face the firm. (Further details on the RBA can be found at Paragraph 3.1 of AGO Guidelines - Page 13)
12. The management of AML/CFT risks in a Law Firm must be influenced by the use of a Risk Based Approach in the identification, management and mitigation of these risks. Law Firms should refer to chapter 3 of the Guidelines for Legal Professionals to for more details on this approach, but should bear in mind that a risk-based approach does not mean that Law Firms can choose not to comply with those mandatory requirements of the law that are also designed to protect Law Firms from ML and TF risks such as obligations for CDD, record-keeping and the obligation to make suspicious transaction reports, among others.
13. The importance is that the Law Firms can develop a reasoned and logical assessment of the risks facing the business based on the information it can reasonably access and that it takes steps to address these risks in keeping with what it has accessed and analysed and the availability of resources to address these risks.

It is equally important that the Law Firm keeps reviewing the information accessed and its assessment of this material and the related remedial measures taking into consideration that risks are dynamic and constantly evolving. Therefore, these measures need to be continuously monitored and the relevant risks should be kept under control.

### **THE RISK BASED APPROACH AS RECOMMENDED BY FATF (Chapter 3 of AGO Guidelines - Page 13)**

14. The Financial Action Task Force (FATF) specifies that both national authorities and the private sector, (which is a part of the national AML/CFT framework) should tailor their AML/CFT activities according to the risks presented. Where higher risks are identified, more stringent measures must be taken, whilst in cases where lower risks are identified, simplified measures may be taken provided these are warranted.

Under the FATF standards, entities including legal professional engaged in certain types of financial activities are required to understand their ML/TF risks relating to clients, products, services, transactions and delivery channels (These are level of risks under paragraph 3.1.1.1 of AGO Guidelines - Page 16). Importantly, for the purposes of this Addendum, Law Firms are required to have policies controls and procedures that allow them to manage, mitigate and monitor the risks that have been identified (Under section 17A of FIAMLA and under paragraph 3.1.2 [Risk Mitigation] of AGO Guidelines - Page 21).

15. A risk-based approach is preferable to a more prescriptive one in the area of AML/CFT because it is more:
- a. **flexible** as money laundering and terrorist financing risks vary across jurisdictions, customers, products and delivery channels and over time;
  - b. **effective** as Law Firms are better equipped than legislators to effectively assess and mitigate the particular money laundering and terrorist financing risks that they may face; and
  - c. **proportionate** because a risk-based approach promotes a common sense and intelligent approach to combatting money laundering and terrorist financing as opposed to a check-the-box approach. It also allows Law Firms to minimize the adverse impact of anti-money laundering procedures on their low-risk customers.

16. The process to measure risks and develop the appropriate internal controls is as follows:
- a. Identify the Risk or Threat to the firm (Guidance may be sought by using the Risk Assessment Tool (Paragraph 3.1.1.2 of AGO Guidelines - Page 21);
  - b. Decide whether it is a major risk that needs to be addressed. This is done by considering the probability that the business will be impacted as well as how significant the impact will be, if the risk materializes; and
  - c. If it is likely that the business will be impacted, and the impact is significant, then the Law Firm should take specific action to address it.

It should also be recognised that certain situations may not arise everyday (i.e. a lower probability of occurring), but if they occur, they may still have a significant or even devastating impact on the business. For such cases, it is still advisable that Small Law Firms have measures in place that deal with these risks.

17. To identify ML and TF risks that a Law Firm faces, it is critical to understand the key features of the environment and factors affecting the firm's operations. The key question to ask is: **what are the biggest factors that the business faces that make it vulnerable to be used for ML or TF?**
18. To answer that question, different aspects of the environment and business operations should be considered to ascertain what these major risks are.

These include:

- (a) **What are the overall ML and TF risks facing the country?** What does the Government say about the legal profession and ML and TF? Is the trade considered to be high risk or low risk? Based on the National Risk Assessment<sup>4</sup>, what do the authorities say are the main risks facing the industry? Have the supervisory authorities provided any advice on this to the industry?

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<sup>4</sup><https://attorneygeneral.govmu.org/Documents/LatestNews/NATIONAL%20RISK%20ASSESSMENT%20REPORT%202019.PDF>

**Matters to consider:** The National Risk Assessment (NRA) provides that the legal profession represents a Medium High money laundering risk to Mauritius, with ML Vulnerabilities rated Medium-High and ML threat rated as Medium. Some of the threats attached to the profession identified were the risk of customers with criminal backgrounds that may require legal services. Vulnerabilities include the use of cash in legal transactions, and other categories of high-risk customers and specific services such as setting up complex legal structures and providing nominee and directorship services. The NRA also indicated that these risks were somewhat mitigated by the fact that a large proportion of Law Firms activities related to litigation and advisory services, outside of the financial activities that require AML/CFT obligations.

**Internal Control Measures to mitigate these risks could include:**

- (i) Customer Due Diligence (CDD) measures to ensure that the firm knows its customers, their backgrounds and the nature of their business; Record Keeping to properly document the details of customers and their transactions;
- (ii) Enhanced Due Diligence (EDD) measures in cases where the customer is identified as belonging to a high-risk category;
- (iii) Ongoing monitoring of transactions to ensure that transactions accord with the lawyer's understanding of the intent and purpose; and
- (iv) Checking client's names against UN sanctions lists issued by the National Sanctions Secretariat and disseminated by the Financial Intelligence Unit.

In relation to measure (iv), it is compulsory for Law Firms to comply with the obligations under the United Nations (Financial Prohibition, Arms Embargo and Travel Ban) Sanctions Act 2019 (UN Sanctions Act).

Under Section 23(1) of the UN Sanctions Act, no person shall deal with the funds or other assets of a listed party, including:

- a) All funds and other assets that are owned or controlled by the listed party,
- b) Those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by the listed party;
- c) Funds or other assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by the listed party; and
- d) Funds or other assets of a party acting on behalf of, or at the direction of, the listed party. listed party;

Under Section 24 of the UN Sanctions Act, no person shall make any funds or other assets or financial or other related services available, directly or indirectly, or wholly or jointly, to or for the benefit of:

- a) A listed party;
- b) A party acting on behalf, or at the direction, of a listed party; or

c) An entity owned or controlled, directly or indirectly, by a listed party.

Section 25(1) and 25(2) of the UN Sanctions Act, provide that a reporting person has the obligation to notify to the National Sanctions Secretariat (NSS) and their relevant regulatory authority (in our context the AGO) when there is a match with a listed party or designated party, in situation where funds or other assets are available or even if there are no funds or other asset available.

In addition, one of the directives of the AGO is that when a Law Firm is performing screening (when onboarding a client, whenever there are changes in the lists and whenever there is a change in Beneficial Ownership information or Ultimate Beneficial Ownership information) it has to inform the AGO, within 24 hrs, that screening has been performed. If there is no match, a "NIL return" has to be sent to the AGO only.

In case there are no updates on the UNS lists and there has been no change in BO/UBO information, still a monthly report has to be submitted to the AGO.

In cases of positive matches, both the NSS and AGO have to be notified

**What is the risk posed by the services that you provide?** For Law Firms, some services carry a lower level of risk than others. For example, general litigation services carry a much lower risk of money laundering than carrying out real estate or financial transactions. Also establishing corporate group structures, complex structures or legal arrangements such as trusts can expose the Law Firm to money laundering and/or the financing of terrorism. Services which relate to cross border transactions may also carry a higher degree of ML/TF risks depending on the circumstances.

**Matters to consider:** Law Firms should carefully consider the types of services they provide and consider the best means of managing these risks by incorporating the appropriate internal controls into their everyday activities from the onboarding of a client, through the management of the engagement to the termination of the relationship. Commercial legal services and services involving financial transactions, corporate structures and real estate will generally carry a higher level of risk than other areas of practice (e.g. family law or tort litigation). In particular, schemes that seek to minimize tax liability and to distance clients from assets (asset protection) are also vulnerable to money laundering risks. Services involving large amounts of cash are inherently risky, given the anonymous nature of this medium of exchange. Law Firms should therefore establish from the outset with the client those procedures considered necessary by the Law Firms to mitigate these risks. Law Firms may also want to consider limiting the amounts of cash they are willing to accept in the course of the business relationship and insisting on the use of methods that involving financial institutions such as bank transfers and the use of cheques to carry out transactions.

Additionally, Law Firms should always consider and leverage the national and international AML/CFT framework. This includes, for example, ensuring that transactions involve financial institutions and other professionals that are subject to AML/CFT requirements. International businesses require stringent scrutiny and monitoring including actively making enquiries as to a potential client's prior relationships with bankers and

other professionals subject to AML/CFT obligations, obtaining references, seeking verifications with professional associations or regulatory bodies.

Finally, Law Firms should ensure that they monitor any changes in circumstances that may affect the initial assessment of the level of risk associated with the activity and take appropriate action to address any additional risks that may arise.

**Potential Internal Control measures to mitigate the risks could include:**

- a. Limiting the use of cash for large transactions (Pursuant to section 5 of FIAMLA, legal professionals shall not make or accept any payment in cash in excess of 500,000 rupees or an equivalent amount in foreign currency- Paragraph 5.7 of AGO Guidelines - Page 49);
- b. Ensuring all aspects of the transaction including details of the property are properly recorded. Lands purchased by foreigners (non-citizens, include a foreign entity) is subject to Non-Citizens (Property Restriction) Act and usually any such transaction would first be subject of advice by the AGO as far as the law is concerned although the screening is done by the Economic Development Board;
- c. Requiring that payments made in the course of a transaction by clients or counterparties are made through financial institutions that are subject to AML/CFT obligations;
- d. In carrying out financial transactions or the setting up of structures involving legal person and/or legal arrangements, Law Firms should fully understand and document the nature and purpose of the transaction, the identities of all parties involved (including beneficial owners) and the source of funds that will be used for the transaction (Paragraph 5.1.2 of AGO Guidelines - Page 33);
- e. In carrying out real estate transactions involving overseas clients, Law Firms should be familiar with the Economic Development Board and their vetting procedures. Firms should be able to contact the Board to assist with verifying the identity of purchasers and their beneficial owners; and
- f. Ensuring that financial institutions and Designated Non-Financial Business and Professions (DNFBPs) are involved in the transaction and that their details are properly recorded.

**What is the nature of the clients and do they pose risks?** Are they persons known to the Law Firm, overseas clients, or bodies corporate or persons acting through agents; are they exhibiting characteristics that suggest that they are high risk? What kind of ML and TF risks do they pose to the business?

**Matters to consider:** There are indicators that may suggest that a customer presents a high risk of money laundering or terrorism financing. These are set out in the main Guidance but some key ones include: **(Guidance may be sought using the ML/TF Indicators for Legal Professionals - Chapter 7 of AGO Guidelines- Page 72).**

- (i) Persons from a high-risk jurisdiction;
- (ii) Persons conducting business on a non-face to face basis;
- (iii) Persons who are conducting business via legal vehicles or legal arrangements;



- (iv) Persons who are clearly buying on behalf of another undisclosed person; and
- (v) Persons who are politically exposed persons.

**Other matters to consider:** The risks attached to clients are probably the most serious risks faced by Law Firm<sup>5</sup>. If a client is a criminal and/or is trying to fulfil some criminal purpose, it is likely that the services that that client is seeking from the firm is related to that criminal activity or involves using the proceeds of that criminal activity. As such the assessment of risks attaching to clients is of fundamental importance to the firm's risk management and internal controls. Small Law Firms should consult the Guidance issued by the Attorney General's Office on the due diligence measures necessary to properly identify and verify the identity of prospective clients (including their beneficial owners). Key measures that should be employed where a firm identifies a client (either at the beginning of a relationship or during the course of the relationship) are also contained in that guidance. In cases, involving non-face to face business (Paragraph 5.1.1 (b) of AGO Guidelines - Page 32), legal vehicles and arrangements (Paragraph 5.1.2 of AGO Guidelines - Page 33) and undisclosed principals, Law Firms should follow the customer due diligence measures (Paragraph 5.1 of AGO Guidelines - Page 30) outlined in the law and in the Guidelines from the AGO. The measures outlined in this Addendum are additional to and not a substitution for those measures provided in the Guidelines.

**Measures to mitigate risks would include:**

- a. Conducting internet searches on potential clients and/or utilising commercial due diligence databases;
- b. Checking with regulatory agencies, industry associations or other affiliations to verify a client's identity and good standing;
- c. Ensuring that the firm's onboarding documentation is robust and comprehensive and provides that the firm may terminate the relationship if false information is provided;
- d. Ensuring that the firm's onboarding documentations requires clients to provide beneficial ownership information (where applicable) and information on their bankers and legal representatives or other references, together with the client's consent for the release of identification information to the firm for verification procedures;
- e. Checking the names of the prospective clients against the list of high-risk entities and individuals issued by the FIU and under UNSCR 1267 and 1373;
- g. Checking the beneficial ownership of legal vehicles through the Companies registry (when established) or the notary involved in the transaction; and
- f. Consider contacting the FIU and request advice on how to proceed.

- (b) **Who are the other parties to legal transactions other than clients? Do they pose risks?** (Chapter 7 of AGO Guidelines under sub-heading 'The parties'- Page 73) Are they

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<sup>5</sup> This however does not derogate from an accused's right to representation and from counsel's duties in this regard.

licensed or regulated in any way? What is the nature of their businesses? How do they source their products? Are they linked to other high-risk businesses or to known criminal enterprises? Are they operating from overseas jurisdictions that are vulnerable to money laundering or the financing of terrorism?

Points to consider: This issue does not arise with respect to parties who are in litigation with a firm's clients and the precautions that should be taken are not as stringent as those that would apply to a firm's own clients as certainly a firm should not correspond with another party, save through his or her lawyers. However, firms should be aware of potential risks if a party with whom their client is transacting turns out to be a money launderer or terrorism financier.

**Measures to mitigate these risks could include:**

- a. Only carrying out business with reputable, well established businesses;
- b. Where counterparties require registration or licensing, obtaining information that such licenses are issued and up to date;
- c. Only accepting financial channels that involve a financial institution, such as; electronic transfers or managers cheques;
- d. Conducting due diligence on counterparties, including checking trade journals, chambers of commerce websites, regulatory bodies and industry associations and requesting developers' information about their own operations and sources; and
- e. Checking the name of counterparties against any listing of high-risk entities and individuals disseminated by the FIU.

- (c) **What are the ways that the firm transacts business and what ML and TF risks do these methods pose? This falls under the category of business practices/delivery channels under paragraph 3.1.1.1 (d) of AGO Guidelines- Page 20)** Are the transactions mainly cash transactions? Cross border transactions? Other means? Through a licensed financial institution (such as by electronic transfer)?

**Points to consider:** From an AML/CFT perspective, doing transactions by way of cash is riskier especially if the proposed cash to be used is in large amounts. Cash is anonymous and the origins of the cash usually cannot be traced. Also, many illicit activities such as drug trafficking often generates large quantities of cash, and therefore cash is a favored means of transacting by these criminals.

On the other hand, transactions carried out through financial institutions are less vulnerable to ML and TF risks. This is because of the systems that banks and other financial institutions have to screen their customers.

Cross border transactions, especially those involving high risk jurisdictions or involving legal person and arrangements (where the beneficial ownership or corporate structures information is not available) also carry high levels of risks.

**Measures to mitigate these risks could include:**

- (a) Restricting the use of cash in significant legal transactions;

- (b) Ensuring transactions are carried out using a financial institution;
- (c) Not accepting cash on account of fees from clients (especially, where such funds are suspected to be proceeds of crime);
- (d) Checking the countries of originators against FATF's listing of high-risk countries; and
- (e) Checking counter-parties against terrorism financing and proliferation financing listings issued by the Government

It bears repeating that the measures outlined for internal controls are in addition to those that mandatory measures that are required by the law such as customer due diligence (including the use of enhanced customer due diligence measures in high risk situations) record-keeping and others.

### **PART 3. APPOINTING A COMPLIANCE OFFICER**

19. Pursuant to Regulation 22(1) (a) of FIAMLR, having a compliance officer is a mandatory measure for managing ML and TF risks as that officer is responsible for making sure that the obligations that the business are subject to are met and that the policies that the business has developed to ensure compliance with the law are implemented. Please note that as per the AGO's Guideline on 'The measures for the prevention of ML and CFT for Law Firms' (at **page 25**) **"The same individual can be appointed to the positions of MLRO and CO provided the legal professional considers this appropriate with the respective demands of the two roles and whether the individual has sufficient time and resources to fulfil both roles effectively"**

Compliance officers should be advised as to what their duties are and who they should report to. The main duties and responsibilities of compliance officers are set out at page 25 of the Main Guidelines.

The main issue for 'Small Law Firm', (including those having only one law practitioner) is the appointment of an officer to carry out these duties, given limited human resources availability. It is in the best practice that the compliance officer should not be the direct manager or owner of the business, because the separation of duties ensures that the compliance officer can act independently without undue influence the management. For example, a Compliance officer may identify a suspicious transaction that should be avoided or reported, but which an owner/manager may wish to execute because of the income it would generate.

The compliance officer may in certain circumstances have to be the sole director of the Law Firm and as such will have to carry out the obligations as set out in the law. The appropriate arrangement depends on the human resources available to the business. Smaller businesses may not have persons other than the owner/manager with the educational or other capacity to carry out these compliance functions. In such cases, the owner/manager may assume the functions of the compliance officer<sup>6</sup> and should in all cases notify the Attorney General of the appointment of the officer who is so appointed.

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<sup>6</sup> The Attorney General's Office shall deem the duties of the compliance officer to be independent from the owner through verifications during Onsite Inspections.

A compliance officer should produce an annual plan of the AML/CFT activities that the firm is expected to undergo during the year. This can include schedules of meetings with supervisors, trainings for employees, compliance audits and supervisory inspections. At the end of the year, the compliance officer should report to the owner/manager on these activities and what were the result of same. Even if the owner/director and the compliance officer are the same person, this report should be documented for the purpose of the AML/CFT Supervisor verifying that the legal obligations are being met.

#### **PART 4. EMPLOYEE SCREENING (Paragraph 4.1.3.1 of AGO Guidelines- Page 27)**

20. A Law Firm can be vulnerable to money laundering or the financing of terrorism through its employees that is an insider. Employees may, through negligence or dishonesty, expose the Law Firm to money laundering or the financing of terrorism. Employees can also expose the business as a result of pressure, extortion or being criminally inclined. There is a need to have proper screening mechanisms in place for the purpose of managing these risks.

Whilst some of these situations cannot be totally avoided, Law Firms should seek to mitigate these risks by taking particular care in their hiring of staff.

Background screening can be an effective risk-management tool, providing management with some assurance that the information provided by the applicant is true and that the potential employee has no criminal record in Mauritius or abroad. Additional measures include verifying that the potential employee has the requisite skills, certification, license or degree for the position; deter theft and embezzlement; and prevent litigation over hiring practices. An institution should also verify that contractors are subject to screening procedures measures that should be adopted include, obtaining the certificate of character; multiple employer references; and (where considered necessary) police clearance reports. Where the employee is another lawyer, checking whether he or she is in good standing with professional and regulatory organisations is advisable.

Law Firms should have structured interviews that ensure that potential vulnerabilities are explored with the potential employees. Additionally, references that are provided should also be contacted.

Law Firms should take the time to document these measures, to ensure consistency of application during the recruitment process.

#### **PART 5. TRAINING FOR DIRECTORS AND EMPLOYEES (Paragraph 4.1.3.2 of AGO Guidelines- Page 27)**

21. Training is one of the most important means to stress on the importance of AML/CFT efforts, as well as, educating employees about what to do if they encounter potential money laundering and the necessity to act in a professional manner. Training also acts as an important control in the mitigation of money laundering risks to which the institution may be exposed.

The business, through the compliance officer, should make necessary arrangements for the training of management and staff in anti-money laundering measures and on emerging trends in the area. The compliance officer can communicate with the AGO, FIU or other authorities

involved in the fight against ML and TF, such as, the police, prosecutors, tax authorities or anti-corruption agencies to ascertain whether these entities are available to provide training.

Given that the law expressly states that training must be ongoing and include instruction on reporting suspicious transactions and procedures to be followed where any links have been identified under subparagraph (i) of Paragraph 4.1.3.2 of AGO Guidelines at Page 27 and page 765 of Government Notice 108 of 2018, special attention must be placed on these areas, compliance officers should maintain close contact with the FIU to ascertain the availability of training of this nature.

Other forms of training may be available from outside sources, including other regulators and co-ordinate with their efforts together to solicit such training opportunities so that it can be delivered to the widest range and number of industry participants.

It would be advisable for Small Law Firms to keep a proper training log which records all the ongoing training programs during the year.

## **PART 6. INTERNAL AUDIT (Paragraph 4.1.4 of AGO Guidelines- Page 28)**

22. Internal audit generally refers to the testing of systems and processes that is done by a party internal to the business. However, in the context of Small Law Firms, this could conceivably be done by way of outsourcing, whereby a Law Firm could hire the services of an independent external accounting or audit professional to carry out an audit of the firms AML/CFT functions to ascertain if they are functioning properly. Whether the internal audit function is carried out by an internal auditor or by way of outsourcing, the internal audit function should be clearly prescribed and demonstrate its independence as well as integrity of its procedures and the system in place. In this regard, the internal auditor (including outsourced auditors) should have unfettered access to all information relating to the AML/CFT program of the firm and should have direct reporting access to owners and most senior managers.

The internal audit should take place on a yearly basis or as specified by the regulatory body and cover at a minimum:

- a. Assessing whether the AML/CFT Programs for the year has been developed;
- b. Assessing whether the AML/CFT Programs has been carried out for the previous period;
- c. Assessing whether the business is properly carrying out customer due diligence procedures in accordance with the requirements of the FIAMLR;
- d. Assessing whether the business is properly carrying out record-keeping procedures in accordance with the requirements of the FIAMLR;
- e. Assessing whether the business is properly carrying out suspicious transaction reporting procedures in accordance with the requirements of the FIAMLR; and
- f. Assessing whether the business is meeting its obligations under the UN Sanctions Act.

After the audit exercise is completed, a report should be produced that should be provided to the owner/manager and also be made available to the supervisory authorities upon their request. The report should also recommend what measures should be taken to improve compliance. It is to be noted that the recommended changes should be implemented no later than a month following the completion of the audit (Page 29 of AGO Guidelines).

Again, the use of an outsourced auditor will depend on the financial resources available to the business. If this is not feasible, the owner/manager may appoint a staff member to be responsible for this area. **However, the officer in charge of internal audit responsibility cannot be the same as the compliance officer since the internal audit involves a review of the work done by the compliance officer. (Page 29 of AGO Guidelines)**

## **PART 7. CONCLUSION**

Irrespective of their size, Law Firms remain susceptible to money laundering and financing of terrorism risks if they do not exercise vigilance and proactively and continuously assess the risks affecting the services provided. This is in addition to the implementation of the measures

Law Firms should also maintain regular contact with their AML/CFT supervisor to remain abreast of new trends and emerging risks and to constantly develop means of further protecting their institutions against ML and TF threats.

**APPENDIX 1**

**DRAFT SIMPLIFIED INTERNAL CONTROL POLICY TEMPLATE**

NAME OF BUSINESS:

ADDRESS:

PHONE NUMBER:

OWNERS:

MANAGERS:

**INTRODUCTION**

It is the policy of the business to prohibit and actively prevent money laundering and any activity that facilitates money laundering or the funding of terrorist or criminal activities by complying with all applicable requirements under the Financial Intelligence Anti-Money Laundering Act 2002 and its implementing regulations.

The business, its owners and managers acknowledge that this using this template does not guarantee compliance with AML Program requirements nor provide a safe harbor from the business' responsibility under the applicable laws, regulations and guidelines.

**PART 1          COMPLIANCE OFFICER**

NAME:

DATE APPOINTED:

CONTACT INFORMATION:

LISTING OF DUTIES:

- Preparation of annual compliance plan for management approval
- Monitoring execution of annual compliance plan
- Arranging training for staff
- Ensuring Employee Screening procedures are followed,
- Preparing for Supervisory inspections
- [include additional duties]

## **PART 2           EMPLOYEE TRAINING**

The compliance officer and the owner/manager shall make appropriate arrangements to have the management and staff of the business receive training in anti-money laundering and/or the combating of terrorism financing at least once annually.

Listing of Trainings planned/carried out for the year

[include listing of courses, dates of delivery and party delivering the course]

## **PART 3           EMPLOYEE SCREENING**

The owner/manager shall ensure that employees are properly screened prior to being employed. Applicants should produce a minimum of 2 professional references and a Certificate of Character before being hired.

The Business reserves the right to request further information from applicants and their references prior to employment.

[Listing of employees employed for the year and measures taken to screen them].

## **PART 4           INTERNAL AUDIT**

- NAME OF PERSON APPOINTED TO CARRY OUT INTERNAL AUDIT FUNCTIONS:
- DATE APPOINTED:
- CONTACT INFORMATION:
- LISTING OF DUTIES (at a minimum):
  - a. Review of client files to determine whether customer due diligence (including enhanced due diligence) and verification requirements are being met;
  - b. Review of client and firm files to determine whether customer identification and verification information as well as transaction recording information is also being appropriately recorded;
  - c. Review of training files to determine whether the firm has provided adequate training programs being offered to staff and that the staff are participating appropriately in such trainings;
  - d. Review of recruitment files to ascertain whether the appropriate employee screening requirements are being met;
  - e. Review of internal reporting procedures to determine whether staff are appropriately reporting transactions that may be suspicious to the appropriate member of the management team and that reports are duly considered before reports are made to the FIU;



- f. Review of files and reports relating to suspicious transactions to ensure that reports are being made to the FIU after consideration by the Compliance/Reporting Officer;
  - g. Review of files to ensure client names are being checked against terrorist listing and proliferation listings issued by the Government when appropriate;
  - h. Review of past supervisory inspection reports or correspondence from AML/CFT supervisors to ensure that concerns have been or are being actively addressed; and
  - i. Other duties and responsibilities.
- FREQUENCY OF COMPLIANCE AUDIT: [on a yearly basis]
  - IMPORTANT POINTS TO NOTE [at a minimum]
    - a. The person carrying out internal audit functions should put his/her findings in writing, including his/her findings on the firm's level of compliance with the firm's obligations referred to at a to h above.
    - b. The internal audit report should contain recommendations to rectify the deficiencies.
    - c. The management should commit in writing to rectify the deficiencies identified within a specified time frame.

**PART 5 RISK ANALYSIS AND RELATED INTERNAL CONTROLS**

The following table is intended to assist businesses in considering and documenting the different types of AML/CFT risks faced by the business. It is not exhaustive but intended to assist Small Law Firms in considering the types of risks facing their business and potential methods for quantifying and addressing those risks.

<b>TYPE OF RISK</b>	<b>LIKELIHOOD OF OCCURRENCE</b>	<b>IMPACT ON THE BUSINESS</b>	<b>ASSESSMENT Likelihood/Impact</b>	<b>MEASURES TO ADDRESS</b>
Risk to the Country [Elaborate on the precise risk]	Choose one A) Strong B) Moderate C) Low	Choose one A) Serious B) Moderate C) Low		
Risk posed by purchasers [Elaborate on the precise risk]	Choose one A) Strong B) Moderate	Choose one A) Serious B) Moderate		

risk]	C) Low	C) Low		
Risk posed by vendors [Elaborate on the precise risks]	Choose one A) Strong B) Moderate C) Low	Choose one A) Serious B) Moderate C) Low		
Risk posed by method of doing business [Elaborate on the precise risks]	Choose one A) Strong B) Moderate C) Low	Choose one A) Strong B) Moderate C) Low		
Geographical Risk	Choose one A) Strong B) Moderate C) Low	Choose one A) Strong B) Moderate C) Low		
Risks from Products or services offered List the types of products	Choose one A) Strong B) Moderate C) Low	Choose one A) Strong B) Moderate C) Low		

**KEY:**

- a. In all cases where the Assessment points to a **Serious Impact** on the business, it is advisable that measures to address these risks be put in place.
- b. More stringent measures should be put in place where there is a **Strong Likelihood** of occurrence together with a **Serious Impact**.
- c. Less stringent measures can be put in place if there is a **Moderate Likelihood** and a **Serious Impact**.
- d. Even less stringent measures can be put in place if there is a **Low Likelihood** and a **Serious Impact**.

- e. Cases involving **Moderate Impact** and **Strong Likelihood of Occurrence** should also have reasonably stringent measures, with cases of **Moderate Impact** and **Moderate Likelihood** requiring less stringent measures.

**PART 6            REVIEW OF THIS POLICY**

The Owners/managers together with the Compliance Officer shall review this Policy at least once a year. The Owner/Manager and Compliance Officer may consult with the FIU in the process of carrying out this review and may take into account any recommendations that arise in the course of any supervisory review of this Policy or of the AML/CFT activities of the business generally.

**This Policy on the AML/CFT Internal Policies of the [Name of Business] were approved by [name of owner/manager] on the      day of      2021/2022.**

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SIGNATURE

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DATE