



Attorney-General's Office

Mauritius has been identified as a high-risk third country with strategic deficiencies in Anti-Money Laundering and Counter-Terrorist Financing (AML/CFT) by the FATF in February 2020.

Mauritius had undergone its Mutual Evaluation, from Eastern Southern African Anti-Money Laundering (ESAAMLG) and the Mutual Evaluation Report (MER) was published on 21 September 2018 and updated in September 2019. The report highlighted several deficiencies and, following the report, the FATF placed Mauritius on the grey list and specific action items were given to the country to be addressed in a specific time.

The Attorney General's Office (AGO) as a regulatory body is empowered to supervise, monitor and give guidance to a member falling under its purview¹. Besides the Guidelines which has been devised by the AGO to provide assistance to Law Firms, outreach is similarly a crucial component in increasing awareness and knowledge on compliance with AML/CFT legal obligations.

The AGO's progressive and pragmatic approach has been to conduct outreach sessions to enable the Law Firms to understand their AML/CFT obligations and the AGO has also started inspections (onsite /desk based) to ensure compliance to same. The initial outreach sessions were focused on enlightening the licensees on their legal obligations for AML/CFT. However, after few inspections, the inspection teams identified areas of weaknesses and thus the outreach sessions were enhanced on specific topics like Suspicious Transaction Reporting (STR) and Beneficial Ownership Information (BO). It has been observed by the inspection teams that licensees have shown their willingness to collaborate following

¹ S.19G(1)(a) of the Financial Intelligence and Anti-Money Laundering Act 2002

consistent communication with the AGO and also following the various outreach sessions. The AGO therefore, maintains its engagement towards its licensees in organizing outreach sessions on a regular basis.

The main objective of the AGO is to ensure that its licensees are compliant. Persistent non-compliance on behalf of the licensees will entail sanctions as provided by *Section 19H of Financial Intelligence and Anti Money Laundering Act (FIAMLA)*.

This paper has been devised to enable licensees to have a better understanding of the positive and negative findings observed following a number of inspections conducted during the first supervisory cycle of the AGO. The paper deals with the positive and negative findings observed during the inspection with the recommendations and the paper also gives an explanation on the Statistical Questionnaire (SQ).

The collaboration on the part of all Law Firms is essential to enable the AGO to effectively perform its duty and role as a supervisory/regulatory body.

The AGO also wishes to extend its deepest gratitude for the substantial collaboration and understanding of its licensees, without which, it would not have been possible to write this paper. We look forward to our continued cooperation.

Statistical Questionnaire

The SQ is a tool used mainly for an initial overview of the business and to enable the AGO to have a risk rating of the Law Firms. The SQ is sent to all Law Firms registered under the AGO on a yearly basis. This enables gathering of information with respect to the firm's activities.

Pursuant to *Section 19J of the FIAMLA*², the AGO being a regulatory body may require a Law Firm falling under its purview to furnish any information and produce any record or document within such time as it may determine. Failure to submit the SQ is considered as non-compliance and may entail sanctions. 1 Law Firm has already been sanctioned for persistent non-compliance.

It is of utmost importance for all Law Firms to fill in the SQ correctly with accurate and updated information. The data provided in the SQ gives the Supervisor an idea about the firm's structure and financial factors; clients; products, services and transactions; delivery channels and geographical risk. The information collected is then analysed by the team, enabling them to identify areas of potential ML/TF risk.

Part II of the SQ which relates to 'Engaging in Prescribed Activities' refers to the list of prescribed activities provided in *Part 2 of First Schedule of FIAMLA*. It is important that Law Firms fill in this particular section properly as this will help to determine if a Law Firm is engaged in prescribed activities or not.

Once the SQs are received at the level of the Supervisory Body, the Law Firm is given a risk score/rating and this determines the priority of the type of inspection.

A supervisory cycle has also been devised for the licensees carrying out the prescribed activities and this it is reviewed annually.

² s.19J. Request for information: (1)A regulatory body may, in the discharge of its functions under this Act, require a member falling under its purview to furnish it with any information and produce any record or document within such time and at such place as it may determine

The section below is an extract of the Guidelines which can be found on the AGO's website and highlights the instances where a Law Firm is deemed to be engaging in prescribed activities.

'This guideline is addressed to the following:

■ *Law Firms/Foreign Law Firms/Joint Law Venture/Foreign lawyers and*

■ *Individual law practitioners namely barristers/attorneys and notaries who are involved in the following activities, listed in Part 2 of the First Schedule of FIAMLA (as listed below):*

A barrister, an attorney, a notary, a Law Firm, a foreign Law Firm, a joint law venture, a foreign lawyer under the Law Practitioners Act, [...], who prepares for³ or carries out, transactions for his client concerning the following activities –

(i) Buying and selling of real estate;

(ii) Managing of client money, securities or other assets;

(iii) Management of bank, savings or securities accounts;

(iv) Organisation of contributions for the creation, operation or management of legal persons such as a company, a foundation, a limited liability partnership or such other entity as may be prescribed;

(v) Creating, operating or management of legal persons such as a company, a foundation, an association, a limited liability partnership or such other entity as may be prescribed, or legal arrangements, and buying and selling of business entities; or

(vi) any activity specified in item (f);

³ Preparing or carrying out transactions for clients can include the drafting of legal documentation in the context of the creation of a corporation for example. It can also include but is not limited to the preparation of an act of sale of a company or real estate, making arrangements for a financial transaction to be conducted on behalf of a client, and preparing incorporation documentation.

f) A company service provider who prepares, or carries out, transactions for a client concerning the following activities –

(i) acting as a formation legal professional of a legal person with a view to assisting another person to incorporate, register or set up, as the case may be, a company, a foundation, a limited liability partnership or such other entity as may be prescribed;

(ii) acting, or causing another person to act, as a director, as a secretary, as a partner or in any other similar position, as the case may be, of a legal person such as a company, foundation, a limited liability partnership or such other entity as may be prescribed;

(iii) providing a registered office, a business address or an accommodation, a correspondence or an administrative address for a legal person such as a company, a foundation, a limited liability DRAFT partnership or such other entity as may be prescribed; or

(iv) acting, or causing another person to act, as a nominee shareholder for another person.

There will be circumstances where you give advice in relation to a listed activity (without necessarily then carrying out the activity). Generally, advice alone, in the absence of any actual listed activity, will not be captured. It is highlighted that the preparation of services/transactions would also result in the legal professional being captured.

It may be that in practice you expect to provide a mixture of advice and listed activities for a customer over a period of time. In those circumstances, you would need to conduct CDD to the required level prior to establishing a business relationship with the customer (and prior to providing any advice)

Legal professionals are not subject to AML/CFT obligations when ascertaining the legal position of their client, or in performing their task of defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings. In principle, activities which are prescribed activities under Part 2 of First Schedule of FIAMLA which are related to the preparation or carrying out of financial transactions and the creation, operation and management of legal persons and arrangements are not subject to legal professional privilege.

The guidance would like to emphasize that if you are unsure about your obligations when it comes to your duty of confidentiality and claiming legal professional privilege over communications in a given situation, you should consider seeking independent legal advice and/or contact your relevant professional bodies’.

Risk-Based Approach (RBA)

A risk-based approach must be adopted by Law Firms/Foreign Law Firms/Joint Law Venture/Foreign Lawyers and Individual Law Practitioners (barristers/attorneys and notaries) who perform any of the activities listed in *Part 2 of the First Schedule of FIAMLA*. The following are the three steps to establish a risk-based approach; (1) risk assessment, (2) risk mitigation and (3) risk monitoring.

For the purpose of assessing money laundering and terrorism financing risks, risk is defined as a function of threat⁴, vulnerability⁵ and consequence⁶.

Risk-based approach also requires legal professionals to have stronger systems and controls that are adequate with the specific risks of money laundering and financing of terrorism facing them. Assessing this risk is, therefore, one of the most fundamental phases in creating a vigorous anti-money laundering compliance program.

However, all categories of risk, whether low, medium or high must be identified and mitigated by the application of controls, such as verification of customer identity, Customer Due Diligence (CDD)/Enhanced Due Diligence (EDD) policies, suspicious activity monitoring and checking list of people on whom sanctions have been applied or is being applied. A risk-based approach should be flexible, effective and proportionate. It is important to note that *Section 3(2) of FIAMLA* provides that ‘*a reporting person who fails to take such measures as are reasonably necessary to ensure that neither he, nor any*

⁴ A threat is a person or group of people, object or activity with the potential to cause harm to, for example, the state, society, the economy, etc. In the ML/TF context this includes criminals, terrorist groups and their facilitators, their funds, as well as past, present and future ML or TF activities. (FATF Guidance National Money Laundering and Terrorist Financing Risk Assessment-February 2013, page 7- https://www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf)

⁵ Vulnerabilities comprise those things that can be exploited by the threat or that may support or facilitate its activities. In the ML/TF risk assessment context, looking at vulnerabilities means focusing on, for example, the factors that represent weaknesses in AML/CFT systems or controls or certain features of a country. They may also include the features of a particular sector, a financial product or type of service that make them attractive for ML or TF purposes. (FATF Guidance National Money Laundering and Terrorist Financing Risk Assessment-February 2013, page 7- https://www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf)

⁶ Consequence refers to the impact or harm that ML or TF may cause and includes the effect of the underlying criminal and terrorist activity on financial systems and institutions, as well as the economy and society more generally. (FATF Guidance National Money Laundering and Terrorist Financing Risk Assessment-February 2013, page 7- https://www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf)

*service offered by him, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence or the financing of terrorism shall commit an offence.’ Under **Section 8 of FIAMLA**, the penalty for such an offence is a fine not exceeding 10 million rupees and penal servitude for a term not exceeding 20 years.*

Findings of the Onsite Inspections

This part will discuss the several findings of the AGO, both positive and negative, in light of the recent inspections that have been conducted. Furthermore, it will explore the various and common oversights when applying AML/CFT procedures and controls to the management of a Law Firm while also giving recommendations to address those issues.

Our aim is to broaden our licensees' understanding and approach of AML/CFT procedures and controls through examples of commendable practices and also, examples of common omissions, when implementing AML/CFT frameworks.

FINDINGS FOR ONSITE INSPECTION

The findings that the inspection teams have gathered during inspections conducted over the first supervisory cycle.

1. Compliance Officer and Money Laundering Reporting Officer

(Regulations 22(1)(a) and 26 of Financial Intelligence and Anti – Money Laundering Regulations 2018 (FIAMLR))

Findings:

It is an obligation under FIAMLR for Law Firms to have a Compliance Officer (CO) and a Money Laundering Reporting Officer (MLRO)

The inspection teams have observed that all Law Firms have appointed a CO and MLRO who are all persons holding a post at Senior Management level. In some Law Firms, the CO and the MLRO are the same person, due to the size of the business. It was also observed that Law Firms have a proper compliance team where there is a structure and a reporting line. The reporting lines are the Director/Managing Partners.

Recommendation:

All Law Firms should have a proper reporting line and the procedures should be well documented in the Internal Policy and Procedure Manual.

2. Compliance, Policy and Procedures Manual

(Section 17A of FIAMLA & Regulation 22(1) of FIAMLR)

Findings:

Law Firms, in general, have a Compliance and Policy Manual. However, the Law Firms have to ensure that in their Manual, the following provided/included (the list below is not exhaustive):

- Client identification including risk assessment
- Customer Due Diligence, Enhanced Due Diligence
- Ongoing Monitoring, Record Keeping,
- Suspicious Transaction Reporting,
- Internal Audit
- Training.
- Targeted Financial Sanction (TFS)

Deficiency:

Some Law Firms did not have a complete Policy Manual, in as much as, the list mentioned above was not included in the Manual.

For the TFS, procedures and action/s taken when coming across a positive match were not documented. There was also no mention of processes in place for filing of Nil Reports or Positive match to the National Sanction Secretariat (NSS) and the Supervisory Body. (Please refer to the NSS Guidelines for more details)

Some firms had not provided a detailed policy on training, such as induction course for new staff, periodic/refresher and course subjects. Additionally, a training plan for the coming months was not provided.

Recommendation:

The Compliance and Policy Manual or the Policy and Procedure Manual of the Law Firms have to contain details about all the procedures in place, the reporting line and all CDD and EDD measures that are observed in the Law Firm. TFS, BO register and Politically Exposed Person (PEP) register must form part of that document.

3. Internal Risk assessment of the Law Firm

(Section 17 of FIAMLA)

According to *Section 17 of FIAMLA*, every reporting person has to document their risk assessment in writing.

Findings:

The Law Firms had not documented their internal risk assessment. These were not flagged as a deficiency in the compliance letters as the AGO understands that this is a new process. However, this issue is presently being taken up during follow up inspections.

Recommendation:

The Law Firms have to document an internal risk assessment.

The risk assessment has to take the following into consideration:

- Higher risk clients
- Product
- Geographic risk
- Delivery channel
- Suggested control measures

A risk rating must be provided of the above (High risk/Moderate risk/Low risk).

Suggested Control measures must be provided.

The risk assessment must be approved and signed by higher level Management.

Law Firms are requested to consult the Guidelines issued by the AGO for the documentation of the internal risk assessment⁷.

4. Client Risk assessment

(Section 17 of FIAMLA)

Findings:

The Law Firms have in place a risk assessment procedure, which is conducted for all potential clients prior to onboarding. The procedure normally includes preliminary checks, risk assessment questionnaire or a set of questions (Know Your Customer (KYC)) that determines whether a client is rated as high, medium or low risk.

Recommendation:

Some KYC forms had no records of the method used and the date the TFS screening was made.

The method used for TFS screening as well as the date of screening must be clearly indicated in the KYC forms.

5. CDD/EDD

(Section 17C of FIAMLA and Regulations 3 and 12 of FIAMLR)

Findings:

The Law Firms have performed CDD and EDD on existing and new clients.

In respect of CDD, the Law Firms have provided the inspection team with the following:

- Group structure / share registers for the identification of Ultimate Beneficial Owners (UBO);

⁷ Please refer to the [AML/CFT Guidelines for Legal Professionals](#) on the website of the AGO, Annex I, page 78-84

- Copy ID/ Proof of address of UBO;
- Certificate of Incorporation; and
- Address of Legal Persons.

Regarding EDD, the Law Firms have provided the following:

- Search reports (Google, world check); and
- Senior Management approvals.

Recommendation:

For monitoring purposes, the Law Firms are required to keep a database of clients mentioning details of clients name, date of onboarding, transaction value involved, jurisdiction, the legal service provided to clients as well as the type of clients (PEPs/High Net Worth/clients with criminal records). These should be provided to the Inspection team upon request.

6. Trainings

(Regulation 22(1)(c) of FIAMLR)

Findings:

Most of the Law Firms have provided trainings to their staff (New hires and existing).

Course materials and attendance records were provided, except for those which were conducted online.

Evidence for courses for new hires was provided.

Deficiency:

In some cases, not all legal professionals employed in a Law Firm have received trainings.

Training log books have not been kept by Law Firms.

Recommendation:

Trainings should be provided to all legal professionals employed in a Law Firm.

Training log books must be kept by all Law Firms specifying all trainings obtained by the CO/MLRO and other staff with regards to AML and CFT.

7. Record Keeping

(Section 17F of FIAMLA)

Findings:

The Law Firms have not kept records for the relevant period as per *section 17F of FIAMLA*.

However, explanations received from the Law Firms were that, they have recently been operational. Henceforth, records will be kept for a period of seven years. Furthermore, their Compliance Manual provides for records to be kept since the start of their operation and for a period of 7 years.

8. Independent audit

(Regulation 22(1) (d) of FIAMLR)

Findings:

It was observed that not all Law Firms have carried out an independent internal audit. The Law Firms that did not have an independent internal audit had provided explanation that they have recently implemented the AML/CFT Policies and Procedures. Timelines were agreed upon by the Law Firms and the supervisory/regulatory body, through remedial plans.

Recommendation:

An independent internal audit should be carried out on a yearly basis as per the Guidelines issued by the AGO.

In documenting the audit, the Law Firm should take the following into consideration:

- Objective
- Scope of the Audit
- Period for carrying out check
- Methodology used;
- Weaknesses and recommendations on the AML/CFT program (Risk Based Approach (RBA); CDD/EDD, PEP, Training/staff screening/Appointment of MLRO & CO / Assessment of knowledge of staff on FIAMLA & FIAMLR, Record Keeping, STR, Sanctions); and
- Review and actions taken by Management to address the weaknesses.

9. Reliance on third parties:

(Section 17D of FIAMLA & Regulation 21 of FIAMLR)

Findings:

Few Law Firms have made reliance on third parties for CDD purposes.

The Law Firms that relied on third parties had provided the following:

- Evidence of request for information.
- Evidence that the third party is a reliable party (Regulated body).
- Third Party Reliance Letter which provides information that the third party has completed all CDD measures.

10. STR

(Section 14 of FIAMLA)

Findings:

The Law Firms have procedures and policies for reporting an STR. This is documented in the Compliance Manual of all Law Firms.

Law Firms keep Internal and External reporting registers. The inspection team asks for Internal/External suspicious activity register to ensure whether they keep record for any suspicious activity, hence identification of red flags.

It was observed that these Law Firms were registered on the GoAML Platform.

11. TFS

(Sections 23 & 24 of the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019)

Findings:

The policy on TFS is mentioned in the Compliance Manual of all Law Firms.

Law Firms have adopted the below mentioned ways for cross verification:

- List provided by the Financial Intelligence Unit (FIU);
- Google search;
- World check; and
- Others: Risk screen/name scan.

The Law Firms had no clients falling under the UN Sanctions list.

Deficiency:

The Law Firms have filed Nil Reports to the NSS, but they have not provided any evidence.

Recommendation:

All clients of the Law Firms must be screened against the UN Sanctions list.

The Law Firms have to introduce a record indicating the dates on which verifications were made whenever there is an update in the UN Sanctions list (Screen log).

The Law Firms must keep a list of clients and the dates on which they were screened.

Where verification is performed manually, the Law Firms have to specify the UN Sanctions list used and the date on which screening was done.

Screening must be done upon onboarding of a client, whenever there is a change in the UN Sanctions list and also whenever there is a change in BO /UBO information of the client.

12. Measure of Best Practices

For better monitoring, Law Firms are advised to introduce the following:

- PEP register (Despite, the fact that the Law Firm may not be having any PEP as client for the time being);
- UBO register; and
- Risk register.

The Risk register should include name of clients, the risk ratings and also, justification for the rating attributed to the client (e.g. factors that would trigger the rating).

Conclusion

Law Firms should take into consideration all the deficiencies noted and work towards strengthening their AML/CFT procedures and controls.

The AGO appreciates the collaboration and support of the Law Firms. Moreover, the AGO looks forward to working with the Law Firms and to continue providing its guidance as a supervisory body.

