



DOCUMENTING A POLICY ON ANTI-MONEY LAUNDERING / COMBATTING THE FINANCING OF TERRORISM AND PROLIFERATION (AML/CFT&P)

AML/CFT/P Guidance Note 1 for Non-Bank Financial Institutions

October 1, 2023

Disclaimer

This Guidance Note is the 3rd edition authored by the NBFIRA in line with section 49(1)c of the Financial Intelligence Act and Regulations 2022 (“FI Legislation”) of the Republic of Botswana for comprehensive use by the NBFIs. The 2nd edition came out-of-date with the repeal of the Financial Intelligence Act 2019 and Regulations 2019. The note is indicative and while due care was exercised to ensure that its guidelines are accurate and consistent with the FI Legislation, the latter shall prevail in the unfortunate case of ambiguity and NBFIRA does not guarantee or take any liability whatsoever.

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GUIDANCE NOTE FOR DOCUMENTING A POLICY ON ANTI-MONEY LAUNDERING / COMBATting THE FINANCING OF TERRORISM AND PROLIFERATION (AML/CFT&P)

Definitions/Acronyms

- 1. AML/CFT&P** – [*Anti-Money Laundering and Countering the Financing of Terrorism and Proliferation*]. Detective and preventative controls against money laundering and the financing of terrorism and proliferation.
- 2. ML/TF/PF** – Money Laundering, Terrorist Financing and Proliferation Financing, all generally regarded as financial offence by the Financial Intelligence legislation.
- 3. AMLCO** – [*Anti-Money Laundering Compliance Officer*] an officer designated by an NBF (and approved by the NBFIRA) to ensure that preventative and detective controls against money laundering and the financing of terrorism and proliferations are implemented by entity.¹
- 4. CDD** – [*Customer Due Diligence*] The process of identifying, verifying and understanding particulars, behaviour patterns and financial profile of a customer, ultimate beneficial owner and related parties, before and during a business relationship².
SDD – [*Simplified Due Diligence*]³
EDD – [*Enhanced Due Diligence*]⁴
- 5. FIA** – [*Financial Intelligence Agency*] an Agency established by the Financial Intelligence Act with primary responsibility for receiving, analysing and disseminating financial intelligence information to investigatory and supervisory authorities, for supervision and coordination of Botswana's controls against money laundering, terrorism financing, and proliferation financing.

¹ FI Act s.14(1)(a)

² FI Act s.16 – 20, 23

³ FI Act s.28 Regulations r.13

⁴ FI Act s.21-24, FI Regulations r.11,12

- 6. High Risk Customer/Business/Jurisdiction** – See section 2 of Financial Intelligence Act.
- 7. Money Laundering⁵** - See section 47(1) Proceeds & Instruments of Crime Act, - a person who ; (a) engages in a transaction that involves property which is, or in part directly or indirectly represents the proceeds of any crime; or (b) receives, is in possession of, conceals, disguise, transfers, converts, disposes of, removes from or brings into Botswana any property which, in whole or in part directly or indirectly represents, the proceeds of any crime, where he or she knows, suspects or has reasonable grounds for knowing or suspecting that the property is derived or realised, in whole or in part, directly or indirectly from any confiscation offence or foregoing serious crime related activity, shall be guilty of the offence of money laundering.
- 8. NBFIRA** – *Non-Bank Financial Institutions Regulatory Authority* (designated as supervisory authority under the Financial Intelligence Act).
NBFi - *Non-Bank Financial Institution* (regulated entities, also referred as specified party under the Financial Intelligence Act)
- 9. Proliferation⁶** – the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of any arms of war or NBC weapons in contravention of the Arms and Ammunition Act, Nuclear Weapons (Prohibition) Act, Biological and Toxin Weapons (Prohibition) Act or Chemical Weapons (Prohibition) Act.
- 10. Risk Management Systems⁷** – internal policies, technologies, procedures and controls, informed by a risk assessment, that enable an NBFi to establish the risk indicators used to characterise customers, products and services to different categories of risk with the aim of applying proportionate mitigating measures in relation to the potential risk of financial offence in each category of risk established.

⁵ PICA s.47

⁶ FI Act s.2

⁷ FI Act s.2

11. Terrorism (Act of)⁸ – means any act or omission which is intended to advance a political, ideological or religious cause, or by its nature or context, may reasonably be regarded as being intended to intimidate or threaten the public or a section of the public, or compel a government or an international organisation to do or abstain from doing any act, or to adopt or abandon a particular position.

12. UNSC – The United Nations Security Council

13. UNSC Sanctions List – a list of individuals and institutions subject to sanctions measures (i.e., asset freeze, trade embargo, travel restrictions and arrest) imposed by the United Nations Security Council and to be enforced by members of the United Nations.

⁸ Counter-Terrorism Act s.2

Authority, Purpose & Scope

Authority

1. This *Guidance Note* is issued by the Non-Bank Financial Institutions Regulatory Authority (“NBFIRA”), pursuant to its authority provided for in Section 49 (1) (c) of the Financial Intelligence Act, 2022 (“FI Act”), which empowers the Authority to issue instructions or guidelines to help Non-Bank Financial Institutions (“NBFIs”) comply with the FI Act. They are also issued pursuant to its authority as provided for in Section 4 of the Non-Bank Financial Institutions Regulatory Authority Act (“NBFIRA Act”).

Purpose

2. The purpose of this *Guidance Note* is to provide guidance on developing a comprehensive Anti-Money Laundering/Combating the Financing of Terrorism and Proliferation AML/CFT&P policy in line with the requirements of Section 14 of the FI Act. The section requires NBFIs to implement programmes i.e. policies to combat commission of financial offense.

Scope

3. This *Guidance Note* applies to institutions licensed, exempted and supervised by the NBFIRA through various primary and secondary legislation. These include but are not limited to the NBFIRA Act, Insurance Industry Act, Retirement Funds Act, Botswana Stock Exchange Act, Collective Investment Undertakings, the Securities Act, Virtual Assets Service Providers Act.

Accountability & Responsibility

4. Boards of directors [or most senior management in the absence of the former] of NBFIs are accountable and responsible for their entity’s compliance with provisions of the Financial Intelligence legislations including those on documenting the institutional AML/CFT&P policy. The responsibility may be delegated to executive management to ensure compliance during day-to-day business activities as conducted by a NBFi.

Introduction

NBFIRA hereby issues an updated “*Guidance Note 1*” to assist the NBFIs (referred to as specified parties under the FI Act) to document their institutional policy on Anti-Money Laundering/Combating the Financing of Terrorism and Proliferation (AML/CFT&P) in order to satisfy in part section 14(1)(e) of the FI Act. The Guidance Note is not limiting in scope and shall only serve as a non-obligatory guide in the implementation of the relevant FI Act obligation. Thus, regulated entities may go extra mile or follow other/similar principles/formats in satisfying this obligation.

An AML/CFT&P Policy

Background

1. AML/CFT&P policy is by and large the apex of an institutional AML/CFT&P *risk management system*⁹ and indeed high-level statement of commitment by a regulated entity’s leadership to set the tone on its risk appetite and provide guidance to its division-specific **Internal Procedures, Guidelines & Controls**. The control measures contained in the policy must be informed by a regular **Money Laundering, Terrorism Financing and Proliferation Financing (“ML/TF/PF”) Risk Assessment** which should have considered relevant risk assessment reports by the NBFIRA and relevant authorities (including that of National Risk Assessment), business nature/size/complexity, geographic location/origin of business and customers, products/services and their distribution channels, and customer types to give a comprehensive understanding of regulated entity’s risk profile. *Customer acceptance policy, internal rules, programmes, procedures & controls*¹⁰ should then provide details on how the entity (including its members of staff and related parties) should achieve compliance with the FI Act, FI Regulations

⁹ FI Act s.13

¹⁰ FI Act s.14(1)(e)

[including other relevant legislation]¹¹ and prevent its systems and products from being used for ML/TF/PF purposes.

2. AML/CFT&P risk management system includes regulated entity's understanding of its ML/TF/PF risks and legal obligations, installation of control technologies, documentation and effective implementation of policies, procedures, controls and continuous training for and by all divisions in the business.

AML/CFT&P Policy Structure¹²

3. From the outset the policy should;
 - a. Clearly relate and refer to the entity's business line, risk profile (assessment results), the FI Act, and Regulations [including relevant legislation].
 - b. Recognise and reference the AML/CFT&P compliance structure/function, designated AMLCOs, internal audit function, relevant role players, their responsibilities and reporting lines.
 - c. Be reviewed whenever there are reasonable changes in relevant legislation and business but at least once a year; and be approved by an entity's Board of Directors/Senior Management.
 - d. Be availed and communicated at all times to all members of staff and/or related parties (i.e. business partners, suppliers) through regular training and translation into documented division-specific AML/CFT&P Internal Procedures, Rules & Controls.
4. The Policy should include the following elements;
 - a. **Definitions** – key business line and AML/CFT terminologies with reference to the obligations under the FI Act, FI Regulations [including other relevant legislation].

¹¹Other relevant legislations refer to financial and AML/CFT&P related laws such as Proceeds & Instruments of Crime Act (PICA), Counter-Terrorism Act (CTA), Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, Anti-Human Trafficking Act, Trust Property (Control) Act, Arms and Ammunition Act, Chemical Weapons (Prohibition) Act, Cybercrime & Computer Related Crimes Act, Nuclear Weapons (Prohibition) Act, Penal Code Act.

¹² This section is partly guided by the Generally Accepted Compliance Practice Framework Handbook (GACP) of the Compliance Institute of Southern Africa (2019).

- b. **Compliance Policy Statement** – description of organisational commitment, ethical, legal and business reasons against ML/TF/PF i.e., reference to the FI Act, Regulations [including other relevant legislation] and organisational strategy.
- c. **Framework** – link between entity’s ML/TF/PF risk profile, AML/CFT&P risk management system and organisational risk management framework and the methodology to be used.
- d. **AML/CFT Compliance Principles** – key principles to be taken into account and adhered to by all staff with reference to the FI Act, FI Regulations [including other relevant legislation].
- e. **AML/CFT Compliance Standards & Guidelines** – consists of legal obligations, standards and guidelines for implementation process of but not limited to the following;
 - i. **AML/CFT Function**¹³ – establishment of a compliance function and designation of AML Compliance Officer(s) (AMLCO). The function’s role, powers and independence at board, management and operational levels. The function’s adequacy and effectiveness should be independently reviewed by internal audit function once a year, and external audit once every three years.¹⁴
 - ii. **AML/CFT Risk Management System & Controls**¹⁵ – risk assessment, policies, systems, internal procedures & rules, and their implementation.
 - iii. **Training**¹⁶ – for compliance function and all staff whenever there is a change in ML/TF/PF risk factors, relevant legislation, policy and controls, but at least annually (refresher training).
 - iv. **Due Diligence**¹⁷ – identification & verification, customer/beneficiary/employee Due Diligence [SDD, EDD], Prominent & Influential Persons (PIPs), High Risk Persons, Business & Jurisdictions (CDD information to be kept up-to-date and relevant)

¹³ FI Act s.14 and AML/CFT&P 1st Directive

¹⁴ See AML/CFT&P 1st Directive

¹⁵ FI Act s.14

¹⁶ FI Act s.14(c)

¹⁷ FI Act s.16-24

- v. **Monitoring Transactions**¹⁸ – ongoing due diligence, screening of suspicious (uncharacteristic, unusual, complex) transactions, high risk jurisdiction and persons, and UNSC sanctioned persons/jurisdictions.
 - vi. **Reporting**¹⁹ – suspicious activity reporting, cash transaction threshold reporting (>P9,999), reporting sanctioned persons/jurisdictions, reporting suspicious (uncharacteristic, unusual, complex) transactions.
 - vii. **Record Keeping**²⁰ – strong and accessible record keeping systems, to retain records for at least 20 years after a once-off transaction, or 20 years after end of business relationship.
- f. **Scope & Applicability** – state the scope, applicability, regulatory and legal consequences and internal disciplinary measures for non-compliance to the FI Act, FI Regulations [including other relevant legislation], AML/CFT&P Policy, Internal Procedures, and Guidelines & Controls on the regulated entity and individual member of staff.

Conclusion

The NBFIRA anticipates better understanding on formulation of adequate AML/CFT&P policies. Regulated entities are advised to familiarise themselves with the FI Act, its Regulations, and other relevant laws in order to understand their legal obligations and ensure adequate compliance programmes in line with Botswana legislation to combat money laundering, and the financing of terrorism and proliferation. The regulated entities are further advised to enquire with the NBFIRA and visit the [website](#) for regular updates.

Authorisation

This Guidance Note was approved on October 1, 2023 and applies immediately.

¹⁸ FI Act s.29-30

¹⁹ FI Act s.29, 38, 39, 40, 42, 45

²⁰ FI Act, s.31, 32