

Appendix 2

In this appendix underlining indicates new text and striking through indicates deleted text.



The DFSA Rulebook

Anti Money Laundering Module

(AML)

3 ANTI MONEY LAUNDERING COMPLIANCE REQUIREMENTS

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3.3 Appointment, responsibilities and duties of the MLRO

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Responsibilities

- 3.3.3** (1) An Authorised Firm must ensure that its MLRO is responsible for all of its anti money laundering activities carried on in or from the DIFC.
- (2) An Authorised Firm must ensure that its MLRO carries out and is responsible for the following:
- (a) establishing and maintaining the Authorised Firm's anti money laundering policies, procedures, systems and controls and compliance with anti money laundering legislation applicable in the DIFC;
 - (b) the day-to-day operations for compliance with the Authorised Firm's anti money laundering policies, procedures, systems and controls;
 - (c) acting as the point of contact to receive internal Suspicious Transaction Reports from the Authorised Firm's Employees pursuant to Rule 3.5.1;
 - (d) taking appropriate action pursuant to Rule 3.5.2 following the receipt of an internal Suspicious Transaction Report from the Authorised Firm's staff;
 - (e) making, in accordance with U.A.E. Law No. 4, external Suspicious Transaction Reports to the Anti Money Laundering Suspicious Cases Unit (AMLSCU) of the U.A.E. and sending corresponding copies to the DFSA under Rule 3.5.2;
 - (f) acting as the point of contact within the Authorised Firm for competent U.A.E. authorities and the DFSA regarding money laundering issues;
 - (g) responding promptly to any request for information made by competent U.A.E. authorities or the DFSA;

- (h) receiving and acting upon any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in under Rules 3.6.1 and 3.6.2 section 3.6 and GEN Rule 5.3.30; and
- (i) establishing and maintaining an appropriate anti money laundering training programme and adequate awareness arrangements pursuant to Rules under section 3.9.

Guidance

In accordance with GEN Rule 5.3.21 where an Authorised Firm outsources specific anti money laundering tasks of its MLRO to another suitable individual of a third party provider, including within a corporate Group, the MLRO of the Authorised Firm remains responsible for ensuring compliance with the duties imposed on the MLRO.

Reporting

3.3.4 The MLRO must report at least annually to the Governing Body or senior management of the Authorised Firm on the following matters:

- (a) the results of the review under Rule 3.1.1(3);
- (b) the Authorised Firm's compliance with applicable anti money laundering laws including Rules;
- (c) the quality of the Authorised Firm's anti money laundering policies, procedures, systems and controls;
- (d) any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in under Rules 3.6.1 and 3.6.2 section 3.6 and GEN Rule 5.3.30 and how the Authorised Firm has taken them into account;
- (e) any internal Suspicious Transaction Reports made by the Authorised Firm's staff pursuant to Rule 3.5.1 and action taken in respect of those reports, including the grounds for all decisions;
- (f) any external Suspicious Transaction Reports made by the Authorised Firm pursuant to Rule 3.5.2 and action taken in respect of those reports including the grounds for all decisions; and
- (g) any other relevant matters related to money laundering as it concerns the Authorised Firm's business.

- 3.3.5** An Authorised Firm must ensure that its Governing Body or senior management promptly:
- (a) assess the report provided under Rule 3.3.4;
 - (b) take action, as required subsequent to the findings of the report, in order to resolve ~~in~~ any identified deficiencies; and
 - (c) make a record of their assessment in (a) and the action taken in (b).
- 3.3.6** (1) The report provided under Rule 3.3.5 and the records of the assessment and actions pursuant to Rule 3.3.5(c) must be documented in writing.
- (2) A complete copy of each must be provided to the DFSA promptly.

3.4 Customer identification requirements

Duties and responsibilities

- 3.4.1** (1) Subject to the exception under Rule 3.4.5, an Authorised Firm must establish and verify the identity of any customer with or for whom the Authorised Firm acts or proposes to act.
- (2) In establishing and verifying a customer's true identity, an Authorised Firm must obtain sufficient and satisfactory evidence having considered:
- (a) its risk assessment under Rule 3.7.1 in respect of the customer; and
 - (b) the relevant provisions of App1 and App2.
- (3) An Authorised Firm must update as appropriate any customer identification policies, procedures, systems and controls.

Guidance

An Authorised Firm should adopt a risk-based approach for the customer identification and verification process. Depending on the outcome of the Authorised Firm's money laundering risk assessment of its customer, it should decide to what level of detail the customer identification and verification process will need to be performed.

- 3.4.2** (1) Subject to the exception under Rule 3.4.6, whenever an Authorised Firm comes into contact with a customer with or for whom it acts or proposes to act, it must establish whether the customer is acting on his own behalf or on the behalf of another Person.

- (2) An Authorised Firm must establish and verify the identity of both the customer and any other Person on whose behalf the customer is acting, including that of the Beneficial Owner of the relevant funds, which may be the subject of a Transaction to be considered, and must obtain sufficient and satisfactory evidence of their identities.

Guidance

1. An Authorised Firm should obtain a statement from a prospective customer to the effect that he is, or is not, acting on his own behalf. In cases where the customer is acting on behalf of third parties, it is recommended that the Authorised Firm obtain a written statement, confirming the statement made by the customer, from the parties including that of the Beneficial Owner.
2. Further Guidance is set out in App1 on how to identify any other Persons on whose behalf the customer is acting, including the Beneficial Owner.

- 3.4.3** (1) The obligations under Rules 3.4.1 and 3.4.2 must, subject to (3), be fulfilled before the Authorised Firm effects any Transaction on behalf of the customer.

- (2) It is an Authorised Firm's responsibility when it next has contact with a customer who was an existing customer, prior to the Authorised Firm's authorisation by the DFSA, to assess whether it has performed the identification of that customer which would have been required had these Rules been applicable when the customer became a customer, and to obtain without delay any missing information or evidence about the true identity of all relevant parties.

- ~~(3) With regard to Insurance Business carried on in or from the DIFC, if it is necessary for sound business reasons to enter into an insurance contract before the identification requirements under Rules 3.4.1 and 3.4.2 can be completed:~~

- ~~(a) an Authorised Firm must have controls which ensure that any money received is not passed on to any Person until the customer identification requirements have been fulfilled; or~~
- ~~(b) a member of the senior management of an Authorised Firm may authorise in writing the payment of the money.~~

- (3) An Authorised Firm does not have to fulfil the obligations under Rules 3.4.1 and 3.4.2 before effecting a Transaction for a customer where it has, on reasonable grounds, established that:

- (a) following a preliminary risk assessment, the proposed Transaction presents a low risk in relation to money laundering and terrorist financing;

- (b) it would be prejudicial to the customer to interrupt or delay the normal course of business in respect of effecting the Transaction; and
 - (c) the Transaction is in respect of Investment Business or Insurance Business.
- (4) Where the Authorised Firm is unable to establish and verify the identity of the customer referred to in (3), including where applicable, any beneficiaries, beneficial owners or trustees, within the 30 days following receipt of customer's instruction, it must:
 - (a) consider the circumstances and determine whether to make an internal Suspicious Transaction Report to the MLRO;
 - (b) where it has determined that it is unnecessary to make such a report, return to the customer any monies associated with the Transaction excluding any reasonable costs incurred by the Authorised Firm;
 - (c) where the Authorised Firm has determined to make such a report, not return any monies or provide any Investments to the customer, unless instructed to do so by the MLRO and otherwise act in accordance with instructions issued by the MLRO; and
 - (d) not establish any further business relationship with that customer until the verification process has been completed for that customer in accordance with the AML Rules.

Guidance

In relation to the matters referred in Rule 3.4.3, the situations that the firm may take into account, include for example, accepting subscription monies during a short offer period or executing a time critical Transaction, which if not executed immediately, would or may cause a customer to incur a financial loss due to price movement or loss of opportunity.

- 3.4.4** (1) An Authorised Firm must:
- (a) ensure that the information and documentation concerning a customer's identity remains accurate and up-to-date; and
 - (b) conduct ongoing due diligence on its business relationship with, and ongoing scrutiny of, Transactions undertaken by, a customer throughout the course of the relationship.

- (2) If at any time an Authorised Firm becomes aware that it lacks sufficient information or documentation concerning a customer's identification, or develops a concern about the accuracy of its current information or documentation, it must promptly obtain appropriate material to verify the customer's identity.

Guidance

1. An Authorised Firm should undertake a periodic review to ensure that customer identity documentation is accurate and up-to-date.
2. An Authorised Firm should undertake a review particularly when:
 - a. the Authorised Firm changes its 'Know Your Customer' documentation requirements;
 - b. a significant Transaction with the customer is expected to take place;
 - c. there is a material change in the business relationship with the customer; or
 - d. there is a material change in the nature or ownership of the customer.
3. Additional elements concerning the customer identification ongoing due diligence of the business relationship with the customer and scrutiny of Transactions which an Authorised Firm should take into account are set out as further Guidance in App1.
4. The degree of the ongoing due diligence to be undertaken will depend on the risk assessment carried out pursuant to section 3.7.

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Documentation and records

- 3.4.8** (1) All relevant information, correspondence and documentation used by an Authorised Firm;
- (a) to verify a customer's identity pursuant to Rules 3.4.1 and 3.4.2 ~~must be kept for at least six years from the date on which the business relationship with a customer has ended.~~ and
 - (b) in respect of the ongoing due diligence and scrutiny required under Rules 3.4.4 and 3.4.13(1)(b),
must be kept for at least six years from the date on which the business relationship with a customer has ended.

- (2) If the date on which the business relationship with a customer has ended remains unclear, it may be taken to have ended on the date of the completion of the last Transaction.

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Business partner identification

- 3.4.13** (1) (a) Prior to establishing the business relationship an Authorised Firm must establish and verify its business partners' identities in accordance with Rules 3.4.1 and 3.4.2 by obtaining sufficient and satisfactory evidence of the identity of any business partner it relies upon in carrying on its Financial Services.
- (b) An Authorised Firm must maintain accurate and up-to-date information and conduct ongoing due diligence on its business partners, throughout the course of the business relationship.
- (c) If at any time an Authorised Firm becomes aware that it lacks sufficient information or documentation concerning a business partner's identification, or develops a concern about the accuracy of its current information or documentation, it must promptly obtain appropriate material to verify such business partner's identity.
- (2) In the context of this Rule, a 'business partner' includes:
- (a) a qualified professional as specified in Rule 3.4.10;
 - (b) a member of the Authorised Firm's Group;
 - (c) a Correspondent Bank; or
 - (d) any other service provider.

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3.6 Government, regulatory and international findings

- 3.6.1** An Authorised Firm must ~~have arrangements to ensure that it~~ establish and maintain systems and controls to obtain and makes appropriate use of any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) the Financial Action Task Force (FATF); and
- (d) the DFSA;

~~which contain: concerning arrangements for preventing money laundering or terrorist financing in a particular country or jurisdiction, including any assessment of material deficiency against relevant countries in adopting international standards.~~

- ~~(e) a finding or other conclusion concerning arrangements for restraining money laundering in a particular country or jurisdiction; and~~
- ~~(f) an assessment that those arrangements assessed to be materially deficient in comparison with one or more of the relevant, internationally accepted standards, including any recommendations published by the FATF, required of or recommended to countries and jurisdictions.~~

Guidance

1. The purpose of this Rule is to ensure that when an Authorised Firm makes a decision about its anti money laundering policies, procedures, systems and controls, it should takes into account any findings of inadequacy, for example any notice or guidance issued by from the FATF list of Non-Cooperative Countries and Territories, concerning the approach to money laundering of individual countries or jurisdictions. In addition, the systems and controls mentioned in Rule 3.6.1 should be established and maintained by an Authorised Firm taking into account its risk assessment pursuant to section 3.7. In relation to the term “make appropriate use” in Rule 3.6.1 this may mean that an Authorised Firm cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of that Person.
 2. Authorised Firms should examine and pay special attention to any Transactions or business relations with Persons located in such countries or jurisdictions.
 3. Authorised Firms considering Transactions or business relationships with Persons located in countries or jurisdictions that have been identified as deficient, or against which the U.A.E. or the DFSA have outstanding advisories, should be aware of the background against which the assessments, or the specific recommendations have been made. These circumstances should be taken into account in respect of introduced business from such jurisdictions, and when receiving inward payments for existing customers or in respect of inter-bank Transactions from Correspondent Banking Clients.
 4. The Authorised Firm’s MLRO is not obliged to report all Transactions from these countries or jurisdictions to the AMLSCU and the DFSA if they do not qualify as suspicious pursuant to U.A.E Law No. 4. See section 3.5 on internal and external reporting requirements.
 5. Transactions with counterparties located in countries or jurisdictions which have been relieved from special scrutiny, for example taken off ~~the FATF list of NCCTs~~, sources mentioned in this Guidance may nevertheless require attention which is higher than normal.
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6. In order to assist Authorised Firms, the DFSA will, from time to time, publish U.A.E. national, FATF or other findings, guidance, directives or sanctions. However, the DFSA expects that an Authorised Firm takes its own steps in acquiring relevant information from various available sources. For example, an Authorised Firm may obtain relevant information from the consolidated list of financial sanctions in the European Union Office, HM Treasury (United Kingdom) lists, and Foreign Assets Control (OFAC) of the United States Department of Treasury.
7. Authorised Firms should take note of GEN Rule 5.3.30 which requires such firms to obtain and make appropriate use of the United Nations Security Council's relevant resolutions and sanctions. Such resolutions and sanctions may, for example, relate to money laundering and terrorist financing and proliferation of weapons of mass destruction.

3.6.2 An Authorised Firm must ~~have arrangements to ensure that it~~ establish and maintain systems and controls to obtain and makes appropriate use of any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) U.A.E. enforcement agencies; and
- (d) the DFSA;

~~which contain a finding or other conclusion~~ concerning names of Persons, groups, organisations or entities or any other body where suspicion of ~~Money Laundering~~ money laundering or terrorist financing exists.

Guidance

1. The systems and controls mentioned in Rule 3.6.2 should be established and maintained by an Authorised Firm taking into account its risk assessment pursuant to section 3.7. In addition, the systems and controls mentioned in Rule 3.6.1 should be established and maintained by an Authorised Firm taking into account its risk assessment pursuant to section 3.7. In relation to the term "make appropriate use" in Rule 3.6.2 this may mean that an Authorised Firm cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of that Person.
- ~~±~~ 2. An Authorised Firm should be proactive in obtaining and appropriately using available national and international information, for example suspect lists or databases from credible public or private sources with regard to ~~Money Laundering~~ money laundering and or terrorist financing including obtaining relevant information from sources mentioned in Guidance 6 under Rule 3.6.1. The DFSA encourages Authorised Firms to perform checks against their customer databases and records for any names appearing on such lists and databases as well as to monitor Transactions accordingly.

- ~~2.~~ 3. The risk of terrorists entering the financial system can be reduced if Authorised Firms apply effective anti money laundering strategies, particularly in respect of 'Know Your Customer' procedures, see Rules under sections 3.4 and 3.7 in conjunction with App1 and App2. Authorised Firms should assess which countries carry the highest risks and should conduct an analysis of Transactions from countries or jurisdictions known to be a source of terrorist financing.
- ~~3.~~ 4. The DFSA may require Authorised Firms to take any special measures it may prescribe with respect to certain types of Transactions or accounts where the DFSA reasonably believes that any of the above may pose a money laundering risk to the DIFC.
- 5. Authorised Firms should take note of GEN Rule 5.3.30 which requires such firms to obtain and make appropriate use of the United Nations Security Council's relevant resolutions and sanctions. Such resolutions and sanctions may, for example, relate to money laundering or terrorist financing and proliferation of weapons of mass destruction.

3.7 Money laundering risks

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Suspicious transactions and transaction monitoring

- 3.7.3** An Authorised Firm must establish and maintain policies, procedures, systems and controls in order to monitor for and detect suspicious Transactions.

Guidance

1. An Authorised Firm should apply an intensified and ongoing monitoring programme over higher risk transactions and accounts.
2. Various risk aspects about Transaction monitoring and about the detection of suspicious Transactions, which the Authorised Firm should take into account, are set out as further Guidance in App2 section A2.3.

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3.9 Awareness and training

- 3.9.1** An Authorised Firm must have arrangements to provide periodic information and training to all Employees to ensure that they are aware of:

- (a) the identity and responsibilities of the Authorised Firm's MLRO and his deputy;

- (b) applicable legislation relating to anti money laundering;
- (c) the potential effect on the Authorised Firm, its Employees and its customers of breaches of applicable legislation relating to money laundering;
- (d) the Authorised Firm's anti money laundering policies, procedures, systems and controls and any changes to these;
- (e) money laundering risks, trends and techniques;
- (f) the types of activity that may constitute suspicious activity in the context of the business in which an Employee is engaged that may warrant an internal Suspicious Transaction Report pursuant to Rule 3.5.1;
- (g) the Authorised Firm's arrangements regarding the making of an internal Suspicious Transaction Report pursuant to Rule 3.5.1;
- (h) the use of relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in pursuant to Rules 3.6.1 and 3.6.2 section 3.6 and GEN Rule 5.3.30; and
- (i) requirements relating to customer identification and ongoing due diligence and scrutiny of Transactions requirements pursuant to the Rules in section 3.4.

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App1 CUSTOMER IDENTIFICATION REQUIREMENTS

A1.1 Duties and responsibilities

Guidance

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Guidance relating to Rule 3.4.4

8. Pursuant to Rule 3.4.4, an Authorised Firm must ensure that the information and evidence concerning a customer's identity is accurate and up-to-date.
 - a. An Authorised Firm is expected to ensure that the information and the evidence obtained from a customer is valid and has not expired, for example, when obtaining copies of identification documentation such as a passport or identification card.
 - b. The customer identification process does not end at the point of application. Following the start of the customer relationship, an Authorised Firm should ensure that all relevant evidence and information is kept up-to-date including, for example, the list of authorised signatories who can act on behalf of a corporate client.
 - c. When conducting ongoing due diligence on the business relationship with, and scrutiny of Transactions undertaken by, a customer, an Authorised Firm should:
 - i. ensure consistency of such Transactions with the firm's knowledge of the customer and the customer's purpose and risk profile; and
 - ii. verify, where necessary, the source of money
 - e. d. If a customer account is dormant or an Authorised Firm has had no contact with the customer within the previous twelve months, an Authorised Firm should take reasonable steps to verify whether available information, documentation and evidence concerning the customer is still valid and up-to-date.

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App2 MONEY LAUNDERING RISKS

A2.1 Risk assessment

Guidance relating to Rule 3.7.1

1. Generally, an Authorised Firm is expected to take a risk-based approach when assessing any business relationship or Transaction with respect to its specific money laundering risk and the information and evidence that might be required or validated for this purpose. ‘Know Your Customer’ procedures need to be established and managed according to the perceived money laundering risk.
 2. a. The Authorised Firm should take specific and adequate measures necessary to compensate for the higher risk of money laundering which might arise, for example from the following products, services or customers:
 - i. non face-to-face business relationships or Transactions, such as via mail, telephone or the Internet;
 - ii. Internet based products;
 - iii. correspondent banking relationships, see also Rule 3.4.13;
 - iv. customers from FATF ‘Non Cooperative Countries and Territories’ and higher-risk countries, see also as may be found in sources mentioned in Guidance under Rule 3.6.1; and
 - v. Politically Exposed Persons, see also Rule 3.7.2.
 - b. Pursuant to Rule 3.7.3, an Authorised Firm should apply an intensified monitoring of Transactions and accounts in relation to these products, services and customers.
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