

Appendix 6

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



The DFSA Rulebook

Anti-Money Laundering, Counter-Terrorist
Financing and Sanctions Module

(AML)

2 OVERVIEW AND PURPOSE OF THE MODULE

Guidance

1. In this module, for simplicity, a reference to “money laundering” also includes terrorist financing and the financing of ~~unlawful~~ illegal organisations (see Rule 3.1.1).

Overview of the DIFC’s AML regime

2. The DIFC is governed by two separate and complementary regimes in relation to AML regulation, both administered by the DFSA:
 - a. The Federal regime: Under Article 3 of Federal Law No. 8 of 2004, the provisions of Federal Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations ~~4 of 2002 on Combating Money Laundering and Terrorist Financing~~ and Federal Law No. 7 of 2014 on Combating Terrorism Offences and the implementing regulations under those laws apply in the DIFC. The DFSA, as the DIFC’s supervisory authority for Relevant Persons for the purposes of those laws, is obliged to supervise and monitor Relevant Persons for compliance with provisions of the Federal laws and regulations. ~~issue regulations and guidance in the DIFC relating to the regulation of anti money laundering and combating the financing of terrorism and unlawful organisations.~~ The DFSA may also impose administrative penalties for breaches of those laws and the implementing regulations. See Article ~~14~~ 14(2) of Federal Law No. ~~20 of 2018, 4 of 2002~~ and also Article ~~44~~ 47 of Cabinet Decision No. 10 of 2019, and Article 20 of Cabinet Decision No. ~~20 of 2019~~ Resolution No. 38 of 2014; and
 - b. The DIFC regime: Under Article 70(3) of the DIFC Regulatory Law 2004 (the “Regulatory Law”), the DFSA has jurisdiction for the regulation of anti-money laundering in the DIFC relating to Relevant Persons (see para 4 below) and their officers, employees and agents. The DIFC specific regime is contained in Chapter 2 of Part 4 of the Regulatory Law and any DFSA Rules made in connection with anti-money laundering measures, policies and procedures.
3. Note that under Article 71(1) of the Regulatory Law, the DIFC regime requires compliance with the Federal regime. It follows that a failure to comply with a provision of ~~Federal Law No. 4 of 2002 on Combating Money Laundering and Terrorist Financing~~ 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations or Federal Law No. 7 of 2014 on Combating Terrorism Offences or the implementing regulations under those laws may also provide evidence of failure to comply with Article 71(1), which may then be addressed under the disciplinary and remedial provisions of the Regulatory Law and DFSA Rules.

Purpose of the AML module

4. The AML module has been designed to provide a single reference point for all persons and entities (collectively called Relevant Persons) referred to in Rule 1.1.2 who are supervised by the DFSA for Anti-Money Laundering (AML), Counter-Terrorist Financing (CTF) and sanctions compliance ~~under the two regimes referred to above.~~ Accordingly it applies to Authorised Firms (other than Credit Rating Agencies), Authorised Market Institutions, Designated Non-Financial Businesses and Professions (DNFBPs), and Registered Auditors. The AML module takes into consideration the fact that Relevant Persons have differing AML risk profiles. A Relevant Person should familiarise itself with this module, and assess the extent to which the chapters and sections apply to it.
5. The AML module cannot be read in isolation from other relevant U.A.E. legislation or developments in international policy and best practice and, to the extent applicable, Relevant Persons need to be aware of, and take into account, how these aforementioned matters may impact on the Relevant Person’s day to day operations. This is particularly relevant when considering the list of persons and terrorist organisations issued under Cabinet Decision No. 20 of 2019 and the United Nations Security Council Resolutions (UNSCRs) which apply in the DIFC, and unilateral sanctions imposed by other jurisdictions which may apply to a Relevant

Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML)

Person depending on the Relevant Person's jurisdiction of origin, its business and/or customer base.

Structure of the AML module

.....

14. Chapter 13 contains the obligations applying to all Relevant Persons concerning Suspicious Activity Reports, which are required to be made under Federal Law No. 4 of 2002 ~~20 of 2018~~ on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations.

.....

The U.A.E. criminal law

17. The U.A.E. criminal law applies in the DIFC and, therefore, persons in the DIFC must be aware of their obligations in respect of the criminal law as well as these Rules. Relevant U.A.E. criminal laws include Federal Law No. 4 of 2002 ~~on Combating Money Laundering and Terrorist Financing~~ 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations, Federal Law No. 7 of 2014 on Combating Terrorism Offences and the Penal Code of the U.A.E.

18. Under Federal AML legislation a Person may be criminally liable for certain conduct, such as:

- a. money laundering;
- b. financing terrorism;
- c. financing illegal organisations;
- d. 'tipping off';
- e. violation of sanctions;
- f. failure to declare currency or precious metals brought into or taken out of the U.A.E.

~~Under Federal AML legislation, a Person may be criminally liable for the offence of money laundering if it intentionally commits specified acts in relation to funds which it knows are the proceeds of crime. The DFSA notes that:~~

- a. ~~the failure to report suspicions of money laundering;~~
- b. ~~"tipping off"; and~~
- c. ~~assisting in the commission of money laundering.~~

~~may each constitute a criminal offence that is punishable under the laws of the State.~~

19. The U.A.E. Central Bank has the power under Federal AML legislation to freeze funds or other assets suspected of relating to money laundering, terrorist financing or the financing of ~~unlawful~~ illegal organisations. Other Federal authorities also have powers to apply for the freezing or confiscation of funds or other assets that have been used for such purposes.

20. In a number of places in this module, Guidance cross-refers to specific requirements in Federal AML legislation. ~~As interpretation of Federal AML legislation is a matter for the relevant Federal authorities rather than the DFSA, any question about those requirements should be directed to the relevant Federal authorities. Rules or Guidance in this module should not be relied upon to interpret or determine the application of the Federal AML legislation~~ the laws of the State. Relevant Persons should refer to the guidelines issued under the Federal AML legislation to understand their obligations under that legislation.

.....

3 INTERPRETATION AND TERMINOLOGY

3.1 Interpretation

3.1.1 A reference in this module to “money laundering” in lower case includes a reference to terrorist financing and the financing of ~~unlawful~~ illegal organisations, unless the context provides or implies otherwise.

.....

3.2 Glossary for AML

.....

3.2.1 In this module, the terms and abbreviations listed in the table below have the following meanings:

.....
<u>Cabinet Decision No. 10 of 2019 Resolution No. 38 of 2014</u>	Means Federal Cabinet <u>Decision No. 10 of 2019 Resolution No. 38 of 2014</u> on the Implementing Regulations of Federal Law No. <u>20 of 2018</u> of 2002.
<u>Cabinet Decision No. 20 of 2019</u>	<u>Means Federal Cabinet Decision No. 20 of 2019 regarding Terrorism Lists Regulation and Implementation of UN Security Council Resolutions on the Suppression and Combating of Terrorism, Terrorist Financing and Proliferation of Weapons of Mass Destruction, and Related Resolutions.</u>
.....
Federal AML legislation	Means all U.A.E Federal Laws and their implementing regulations relating to money laundering, terrorist financing and the financing of unlawful <u>illegal</u> organisations, as well as sanctions compliance, including Federal Law No. <u>20 of 2018</u> 4 of 2002, Federal Law No. 7 of 2014, and Cabinet <u>Decision No. 10 of 2019 Resolution No. 38 of 2014</u> and <u>Cabinet Decision No. 20 of 2019.</u>
Federal Law No. <u>20 of 2018</u> 4 of 2002	Means U.A.E Federal Law No. <u>4 of 2002 on Combating Money Laundering and Terrorist Financing</u> <u>20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations.</u>
.....
<u>FIUD</u>	The Financial Intelligence <u>Unit</u> Department of the U.A.E Central Bank.
.....

Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML)

<u>Illegal Organisation</u>	<u>An organisation the establishment or activities of which have been declared to be criminal under Federal AML legislation.</u>
.....
Suspicious Activity Report (SAR)	Means a report in the prescribed format regarding suspicious activity (including a suspicious transaction) made to the FIUD under <u>Rule 13.3.1(e) Federal Law No. 20 of 2018 and Cabinet Decision No. 10 of 2019.</u>
.....
unlawful organisation	Means an organisation the establishment or activities of which have been declared to be criminal under Federal AML legislation.

.....

5 BUSINESS RISK ASSESSMENT

5.1 Assessing business AML risks

.....

New products, business practices and technologies

- 5.1.3** (1) This Rule applies in relation to:
- (a) the development of new products and new business practices, including new delivery mechanisms, channels and partners; and
 - (b) the use of new or developing technologies for both new and existing products.
- (2) Without limiting Rules 5.1.1 and 5.1.2, a Relevant Person must take reasonable steps to ensure that it has:
- (a) assessed and identified the money laundering risks relating to the product, business practice or technology; and
 - (b) taken appropriate steps to manage and mitigate the risks identified under (a),
- before it launches or uses the new product, practice or technology.

Guidance

1. Unless a Relevant Person understands the money laundering risks to which it is exposed, it cannot take appropriate steps to prevent its business being used for the purposes of money laundering. Money laundering risks vary from business to business depending on the nature of the business, the type of customers a business has, and the nature of the products and services sold.
2. Using the RBA, a Relevant Person should assess its own vulnerabilities to money laundering and take all reasonable steps to eliminate or manage such risks. The results of this assessment will also feed into the Relevant Person's risk assessment of its customers under chapter 6.
3. Under Article 4 of Cabinet Decision No.10 of 2019, in assessing its money laundering risks and taking steps to mitigate those risks, a Relevant Person is required to take into consideration the results of the National Risk Assessment prepared by the National Anti-Money Laundering and Combating Financing of Terrorism Committee (NAMLCFTC).

.....

6 CUSTOMER RISK ASSESSMENT

.....

Guidance on fictitious and anonymous accounts

9. A Relevant Person should note that, in addition to the prohibition in Rule 6.1.6 against establishing anonymous or fictitious accounts or accounts for unknown persons, the Federal AML legislation also prohibits the creation or keeping of records of bank accounts using pseudonyms, fictitious names or numbered accounts, without the account holder's name, opening of accounts held under borrowed, mock or fake names or with numbers without the names of account holders.

7 CUSTOMER DUE DILIGENCE

.....

7.3 Customer due diligence requirements

.....

Guidance on identification and verification of Beneficial Owners

.....

8. Under Federal AML legislation, if the customer is a legal person, the Relevant Person must identify any person who, alone or jointly with other persons, has a controlling ownership interest of 25% or more ~~obtain information identifying the names and addresses of partners and shareholders who each hold more than 5% of the capital of in~~ the legal person i.e. it applies a specified threshold. This does not affect the approach that should be taken under Rule 7.3.1(1)(b) and Rule 7.3.3 for verifying the identity of Beneficial Owners, where no threshold is specified (see Guidance items 4 to 7 above). As a result, under the Federal AML legislation a Relevant Person will need to obtain information identifying partners and shareholders who hold natural persons who have a controlling interest of more than 25% of the capital of the legal person. Then, in accordance with the risk-based approach in Guidance items 4 to 7, the Relevant Person should determine whether it is necessary also to identify other persons who may be Beneficial Owners, and verify their identity.

.....

7.7 Failure to conduct or complete customer due diligence

- 7.7.1 (1) Where, in relation to any customer, a Relevant Person is unable to conduct or complete the requisite Customer Due Diligence in accordance with Rule 7.1.1 it must, to the extent relevant:

.....

- (2) A Relevant Person is not obliged to comply with (1) (a) to (e) if:
 - (a) to do so would amount to “tipping off” the customer, in breach of Federal AML legislation; or
 - (b) the FIU~~D~~ directs the Relevant Person to act otherwise.

.....

10 SANCTIONS AND OTHER INTERNATIONAL OBLIGATIONS

.....

10.2 Relevant United Nations resolutions and sanctions

.....

Guidance

1. In Rule 10.2.1(1), taking reasonable measures to comply with a United Nations Security Council resolution or sanction may include, for example, a Relevant Person not undertaking a transaction for or on behalf of a person or undertaking further due diligence in respect of a person.
2. Relevant United Nations Security Council resolutions or sanctions mentioned in Rule 10.2.1 may, among other things, relate to money laundering, terrorist financing or the financing of weapons of mass destruction or otherwise be relevant to the activities carried on by the Relevant Person. For example:
 - a. a Relevant Person should exercise due care to ensure that it does not provide services to, or otherwise conduct business with, a person engaged in money laundering, terrorist financing or the financing of weapons of mass destruction; and
 - b. an Authorised Market Institution should exercise due care to ensure that it does not facilitate fund raising activities or listings by persons engaged in money laundering or terrorist financing or financing of weapons of mass destruction.
3. A Relevant Person should be proactive in checking for, and taking measures to comply with, relevant resolutions or sanctions issued by the United Nations Security Council. The DFSA expects Relevant Persons to perform checks on an ongoing basis against their customer databases and records for any names appearing in resolutions or sanctions issued by the United Nations Security Council as well as to monitor transactions accordingly.
4. A Relevant Person may use a database maintained elsewhere for an up-to-date list of resolutions and sanctions, or to perform checks of customers or transactions against that list. For example, it may wish to use a database maintained by its head office or a Group member. However, the Relevant Person retains responsibility for ensuring that its systems and controls are effective to ensure compliance with this module.
5. Relevant Persons should also be aware of their obligations under Cabinet Decision No. 20 of 2019, which include the obligation to check on a daily basis the sanctions lists issued by the United Nations Security Council.

10.3 Government, regulatory and international findings

- 10.3.1** (1) A Relevant Person must establish and maintain systems and controls to ensure that on an ongoing basis it is properly informed as to, and takes reasonable measures to comply with, any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions (each of which is referred to in this Rule as a “finding”) 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 FIUD;
 - (c) FATF;

- (d) U.A.E. enforcement agencies; and
 - (e) the DFSA,
- concerning the matters in (2).

.....

Guidance

.....

4. The Relevant Person's MLRO is not obliged to report all transactions from these countries or jurisdictions to the FIU if they do not qualify as suspicious under the Federal AML legislation. See chapter 13 on Suspicious Activity Reports.

.....

12 AML TRAINING AND AWARENESS

12.1 Training and awareness

.....

Guidance

1. The DFSA considers it appropriate that all new relevant Employees of a Relevant Person be given appropriate AML training as soon as reasonably practicable after commencing employment with the Relevant Person.
2. Relevant Persons should take a risk-based approach to AML training. The DFSA considers that AML training should be provided by a Relevant Person to each of its relevant Employees at intervals appropriate to the role and responsibilities of the Employee. In the case of an Authorised Firm the DFSA expects that training should be provided to each relevant Employee at least annually.
3. The manner in which AML training is provided by a Relevant Person need not be in a formal classroom setting, rather it may be via an online course or any other similarly appropriate manner.
4. A relevant Employee would include a member of the senior management or operational staff, any Employee with customer contact or which handles or may handle customer monies or assets, and any other Employee who might otherwise encounter money laundering in the business.
5. ~~Relevant Persons should be aware of their duty under Cabinet Resolution No. 38 of 2014 to establish and provide AML training programmes in co-ordination with the FID.~~

13 SUSPICIOUS ACTIVITY REPORTS

.....

13.3 Suspicious activity report

- 13.3.1** A Relevant Person must ensure that where the Relevant Person's MLRO receives a notification under Rule 13.2.2, the MLRO, without delay:

Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML)

- (a) inquires into and documents the circumstances in relation to which the notification made under Rule 13.2.2 was made;
- (b) determines whether in accordance with Federal AML legislation a Suspicious Activity Report must be made to the FIU~~D~~ and documents such determination;
- (c) if required, makes a Suspicious Activity Report to the FIU~~D~~ as soon as practicable; and
- (d) notifies the DFSA of the making of such Suspicious Activity Report immediately following its submission to the FIU~~D~~.

13.3.2 Where, following a notification to the MLRO under 13.2.2, no Suspicious Activity Report is made, a Relevant Person must record the reasons for not making a Suspicious Activity Report.

13.3.3 A Relevant Person must ensure that if the MLRO decides to make a Suspicious Activity Report, his decision is made independently and is not subject to the consent or approval of any other person.

Guidance

1. Relevant Persons are reminded that the failure to report suspicions of money laundering or terrorist financing may constitute a criminal offence that is punishable under the laws of the State.
2. SARs under Federal AML legislation should be ~~emailed or faxed~~ sent to the FIU~~D~~ via the FIU's electronic system or by other means approved by the FIU. ~~The dedicated email address and fax numbers, and the template for making a SAR are available on the DFSA website.~~
3. In the preparation of a SAR if a Relevant Person knows or assumes that the funds which form the subject of the report do not belong to a customer but to a third party, this fact and the details of the Relevant Person's proposed course of further action in relation to the case should be included in the report.
4. If a Relevant Person has reported a suspicion to the FIU~~D~~, ~~it must in accordance with the Federal AML legislation~~ the provide any additional information requested by the FIU. The FIU~~D~~ may instruct the Relevant Person on how to continue its business relationship, including effecting any transaction with a person. If the customer in question expresses his wish to move the funds before the Relevant Person receives instruction from the FIU~~D~~ on how to proceed, the Relevant Person should immediately contact the FIU~~D~~ for further instructions.

13.4 Tipping-off

Guidance

1. Relevant Persons are reminded that in accordance with Federal AML legislation, Relevant Persons or any of their Employees must not disclose, directly or indirectly, to the Customer or to any other person that they have reported, or are intending to report, a suspicious transaction. They also must not disclose information contained in an SAR or the fact that a suspicious transaction is being investigated ~~tip-off any person, that is, inform any person that he is being scrutinised for possible involvement in suspicious activity related to money laundering, or that any other competent authority is investigating his possible involvement in suspicious activity relating to money laundering.~~
2. If a Relevant Person reasonably believes that performing CDD measures will tip-off a customer or potential customer, it may choose not to pursue that process and should file a SAR. Relevant Persons should ensure that their Employees are aware of and sensitive to these issues when considering the CDD measures.

13.5 Freezing assets

Guidance

The DFSA has power under the Regulatory Law to restrict an Authorised Person from disposing of or transferring property including, for example, assets or other funds suspected of relating to money laundering. It may also apply to the Court for an order restraining a person from transferring or disposing of any assets suspected of relating to money laundering. In cases involving suspected money laundering, the DFSA will usually take such action in co-ordination with the FIU~~D~~.

14 GENERAL OBLIGATIONS

.....

14.4 Record keeping

14.4.1 A Relevant Person must maintain the following records:

.....

(e) any relevant communications with the FIU~~D~~;

.....

for at least six years from the date on which the notification or report was made, the business relationship ends or the transaction is completed, whichever occurs last.

.....

14.5 Annual AML return

14.5.1 A Relevant Person must complete the AML Return form in AFN and submit it to the DFSA by the end of September each year. The annual AML Return must cover the period from 1 August of the previous year to 31 July of the reporting year.

Guidance

Relevant Persons should be aware of their obligation under Cabinet Decision No. 10 of 2019 ~~Resolution No. 38 of 2014~~ to prepare and submit semi-annual reports to their senior management, and to send a copy of those reports, with senior management remarks and decisions, to the relevant Supervisory Authority ~~AML reports and copy them to the FID.~~

.....

14.7 Employee disclosures

14.7.1 A Relevant Person must ensure that it does not prejudice an Employee who discloses any information regarding money laundering to the DFSA or to any other relevant body involved in the prevention of money laundering.

Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML)

Guidance

The DFSA considers that “relevant body” in Rule 14.7.1 would include the FIU~~D~~ or another financial intelligence unit, the police, or a Dubai or Federal ministry.