

**Anti Money Laundering and Counter  
Terror Financing- Guidance for  
Attorneys at Law**

## **INTRODUCTION.**

The Financial Intelligence Unit provides the following overview of the obligations under the Money Laundering and Proceeds Crime Act 2008 (As Amended), with its Regulations and Guidelines.

The purpose of this guidance is to provide industry specific guidance for Attorneys-at- Law on their legal obligations to deter and detect money laundering and financing of Terrorism activities. The guidance is merely a source of advice and information only, and does not serve as legal advice, and is not intended to replace the AML/CFT legal regime.

The Guidance will cover five main topics.

1. Specified business activities by Attorneys-at- Law.
2. The Role and Function of the FIU in the AML/CFT regime
3. Defining Money Laundering and Financing of Terrorism
4. How to identify suspicious transactions and red flags specific to Attorneys at Law.
5. Obligations of Attorneys at Law under the AML/CFT legal framework

## **1.DO OBLIGATIONS APPLY TO YOUR BUSINESS?**

The obligations under the MLPCA and its surrounding legal framework apply to you if you are an Attorney at Law, or are a sole practitioner, firm or partnership. In case of a sole practitioner or firm or partnership, you are subject to the obligations explained in this guideline only if you perform the following specified activities,

- Buying and selling of real estate property
- Managing of client's money, securities, and other assets
- Management of banking savings or securities accounts
- Organisation of contributions for the creation, operation, or management of companies, legal persons, or arrangements and,
- Creation, operation or management of companies, legal persons, or arrangements, and buying or selling of business entities.

You will be performing these specified activities when you participate in a transaction, when you assist in the planning or execution of the transaction or otherwise act for or on behalf of a client in the transaction.

- (a) Buying and Selling of Real Estate. The specified activity of buying and selling of real estate applies to both residential and commercial purchase and sale, lease and mortgage transactions and transactions which finance a purchase or sale of real estate.
- (b) Managing of Client Money, securities, or other assets. Here, as well as under items (c) and (d) below, the Attorney-at-Law would be handling the clients' funds. The particular focus of the AML/CFT obligations lies in the potential risk in situations where the Attorney-at-Law is handling clients' funds under this specified activity includes situations where you as an Attorney-at-Law controls the use, application or disposition of funds or has a signatory authority over the client's financial account.

The rule of thumb should be Any time you, as an Attorney-at-Law “touch the money” you should satisfy yourself as to the bona fides of the Sources and ownership of the funds.

- (c) Management of Bank, savings, or securities accounts. In addition to the risks identified in item (b) above, an Attorney-at-Law or law firm must be particularly cognizant of funds that move through the firm's trust account or client's account.

Attorneys at Law should exercise caution to avoid situations where they are essentially providing banking services for their clients as opposed to merely holding their client's money for a legitimate transaction. For Example, in real estate sale, if you are being asked to make/receive payments to/from persons not party to the transactions but to uninterested persons whose identities are difficult to verify, you should exercise caution and/or treat this as a higher risk situation.

- (d) Organisation of contributions for the creation, operation, or management of companies. The specified activity would include when an Attorney-at Law prepares for or carries out a transaction where investors contribute capital to a legal entity and would conceivably cover financing and refinancing transactions.

- (e) Creation, operation or management of legal persons or arrangements and business entities. This category of specified activities would include most of the routine work that is done by Attorneys-at-Law involved in corporate and commercial law.

Funds received or held for professional fees, disbursements, expenses, or bail are not included in the specified activities.

## **Accountable Institutions (AI's)**

Anti- Money Laundering and Counter- Financing of Terrorism is the responsibility of all Lesotho citizens. However, the Attorneys-At- Law are listed as Accountable Institutions under Schedule 1 of the Money Laundering and Proceeds of Crime Act (2008) as amended (MLPCA) and are subject to the provisions under the law together with its Regulations and Guidelines. Attorneys at law just as other AI's face greater risk of being utilised by criminals to launder money and finance and/or commit terror financing.

A business that carries out activities described above (schedule 1 AI's), is mandated to comply with legal obligations under the AML/CFT Legal framework.

The obligations are stipulated under the below pieces of legislation and working forms read together:

1. Money Laundering (Financial Sanctions Relate Terrorist of Proliferation) Guidelines No.6 22
2. Money Laundering (Amendment) Regulations NO 38 of 2019
3. Money Laundering (Accountable Institutions Registration Form) Notice No 30. Of 2019
4. Money Laundering Proceeds of Crime (Amendment) Act No7 of 2016
5. Money Laundering (Politically Exposed Persons) Guidelines 152 of 2015
6. Money Laundering (Accountable Institutions) Guidelines 2013
7. Money Laundering and Proceeds of Crime Act 2008
8. Indicators of Suspicious Transactions
9. List of Accountable Institutions.

## **2. WHAT IS MONEY LAUNDERING?**

It is described as the process through which criminally derived proceeds are concealed to give them appearance of legitimacy, through a series of transactions in which funds are 'cleaned'. Criminals do this to enjoy and maintain control of the criminally derived proceeds and ultimately provide a legitimate cover for the source of their income.

For Money Laundering to take place, first there must have been the commission of a predicate offence which resulted in benefits/gains (illicit funds) to the perpetrator. The perpetrator will then attempt to conceal the fact that the funds were generated from criminal activity through various processes and transactions which may also involve other individuals, businesses, and companies. Methods of concealment may

vary from the purchase of a luxury item (e.g. a car) to passing money through legitimate business or in cases such as human trafficking or other serious crimes. The process usually takes a form of cash which and the intention is to enter the money to the into the financial system.

There are three main stages through which Money Laundering offence, namely, Placement, Layering and Integration.

### **Placement**

Criminally derived proceeds are brought into the financial system. Examples of the Placement are depositing cash into the Bank accounts or using cash to purchase assets. Techniques used include but are not limited to, **Structuring** (breaking up a large deposit transaction into smaller cash to purchase assets) and **Smurfing** (using different people, accounts to deposit cash).

### **Layering**

This takes place after the funds have entered the financial system and involves the movement of the funds. Funds may be shuttled through a complex web of multiple accounts, companies, and countries to deceive Law Enforcement Agencies and to make paper trail very difficult to follow.

### **Integration**

The money comes back to criminals “cleaned” as apparently legitimate funds. The laundered funds are used to fund further criminal activity or spent to enhance the criminal’s lifestyle. Criminals may use your services to assist in investment in legitimate businesses or other forms of investment, to buy property or settle litigation.

Successful money laundering allows criminals to use and enjoy the income from the criminal activity without suspicion.

### **What is the Terrorism Financing?**

Financing of Terrorism is the process by which funds are provided to an individual or group to fund terrorist activities. Unlike Money Laundering, funds can come from both legitimate sources as well as from criminal activity. Funds may involve low value transactions and give appearance of innocence and a variety of sources. Funds may come from personal donations, profits from businesses and charitable organisations, e.g. charitable organizations may organise fundraising activities where

the contributors to the fundraising activities believe that the funds will go to relief efforts abroad, but all the funds are transferred to a terrorist group. Funds may come, as well as from criminal sources, such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping, and extortion.

Unlike Money Laundering, which precedes criminal activity, with financing of terrorism you may have fundraising or a criminal activity generating funds prior to the terrorist activity taking place. However, like money launderers, terrorist financiers also move funds to disguise their source, destination, and purpose for which the funds are to be used. The reason is to prevent leaving a trail of incriminating evidence- to distance the funds from the crime or the source, and to obscure the intended destination and purpose.

### **Attorneys at Law as Accountable Institutions.**

The Financial Action Task Force (FATF), the body which sets standards internationally for money laundering and financing of terrorism, in evaluating risks and vulnerable activities has found that lawyers are susceptible to being used not only in the layering and integration stages, as has been the case historically, but also to disguise the origin of funds before placing them into the financial system. Lawyers are often the first professionals consulted for general business advice and on a wide range of regulatory and compliance issues.

The FATF characterises Attorneys-at-Law as Gatekeepers because they protect the gates to the financial system, through which potential users must pass to succeed. The term includes professional experts who provide financial expertise to launderers such as lawyers, accountants, tax advisers and trust and service company providers. The FATF has noted that gatekeepers are common element in complex money laundering schemes. Gatekeepers' skills are important in creating legal structures that could be used to launder money and for their ability to manage and perform transactions efficiently and to avoid detection.

FATF Recommendation 22 acknowledges the role that such gatekeepers can play by recommending that such individuals have AML/CFT responsibilities when engaged in certain acts.

### **3.SUSPICIOUS TRANSACTIONS AND RED FLAGS SPECIFIC TO ATTORNEYS AT LAW.**

#### **Examples of Money Laundering with Attorneys at Law.**

##### **PURCHASING ESTATE/LAND THROUGH ATTORNEYS.**

Mr. A approached the *NO to Money Laundering Attorneys at Law* seeking services to assist in the purchase of property outside the country. Mr. A had in his possession cash to the value of M900 000. Mr. A requested the *NO to Money Laundering Attorneys at Law* to deposit the money into their trust account and facilitate the purchase process from their trust account.

When inquired about, Mr A claimed the money is from his business which is leasing out of residential properties. Mr. A is a well-known politician in the country.

Analysis from the FIU revealed that Mr. A was concealing funds from fraudulent activities he had participated in.

##### **EASY MONEY.**

A lawyer in Lesotho receives an email from Mr. Zulu from South Africa. Mr. Zulu requests the lawyer to act on his behalf to retrieve his R3 Million owed to him by a Contractor registered in Lesotho. Mr. Zulu alleged that He can only be contacted via email. The lawyer agrees and request all supporting documentation, including Mr. Zulu's identification documents. Mr Zulu obliged and submitted the requested documentation, including his South African Passport. The supporting documentation also included a decision of the court in South Africa which decided on his behalf against the Contractor. The documentation also includes an email from the Contractor promising to pay the money within 3- months.

The Lawyer became suspicious of the documentation of the decision of the court and investigated only to realise that the documents were all fake.

## **4. OBLIGATIONS UNDER THE AML/CFT/TF LEGAL FRAMEWORK.**

### **4.1 Know Your Client (KYC)**

The general obligation is that the Attorney at Law must establish satisfactorily that He is dealing with the person who their client purports to be.

The client must **IDENTIFY** who the prospective client and **VERIFY** the client's identity through an independent and reliable source.

Identification must include Identification documents, Source of Funds, and the Proof of Address of the Client. Know Your Client documentation must be submitted before establishment of business relationship.

Attorneys at Law must identify the customer, both Natural and Legal person, and verify that client's identity. The lawyer must verify that an individual purporting to act on behalf of the client is so authorized and identify and verify the identity of that client.

The Lawyer must identify and verify the beneficial owner.

Lawyers must understand and as appropriate obtain information on, the purpose and intended nature of the business relationship.

Lawyers must conduct **Ongoing Due Diligence** on the business relationship, including:

- (a) Scrutinizing transactions undertaken throughout the course of that relationship to ensure that the transactions being carried out are consistent with the lawyer's knowledge of the customer, their business and risk profile including where necessary the source of funds,
- (b) Ensuring that documents, data, or information collected under the CDD process is kept up to date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of clients.

Lawyers must apply **Enhanced Due Diligence (EDD)** to High-Risk Customers. EDD must include but is not limited to.

- Verification of identity using independent sources, e.g. Ministry of Home Affairs database to verify ID's
- Obtaining details of the source of the client's funds and the purpose of the transaction
- Obtaining approval from the senior officer to handle a client
- Applying supplementary measures to verify or certify or certify the documents supplied or requiring certification by financial institutions.



- Verifying the source of funds for the transaction, e.g if client states the money is from his Bank account, request proof thereof.
- Ongoing Monitoring (Monthly, Quarterly, Annually or on a transaction basis) of the client's account throughout the relationship.

***BEST PRACTICE: Large payments made in actual cash may also be a sign of Money Laundering. A policy of not accepting cash payments above a certain limit or all may reduce that risk. Since clients may attempt to circumvent such policy by depositing cash directly into your client's account at a bank, you should avoid disclosing client's account details as far as possible and make it clear.***

### **Ascertain whether a client is acting on behalf of a third party.**

Where a client is a Third Party; Reasonable measures must be taken to determine whether the client is acting on behalf of a third party especially where you must conduct Enhanced Due Diligence. Such cases will include where the client is an agent of the third party who is the beneficiary and who is providing the funds for the transaction. In cases where a third party is involved you must obtain information on the identity of the third party and the relationship with the client.

In deciding who the beneficial owner is in relation to a client who is not a private individual, bracket [a company or a trust] you should look behind the corporate entity to identify those who has ultimate control over the business and to the company's assets, with particular attention paid to any shareholders or others who inject a significant proportion of capital or financial support.

Care should be taken to verify the legal existence and trading of economic purpose of corporates and to ensure that any person purporting to act on behalf of the company is fully authorized to do so.

### **4.2 Develop Effective Compliance Program.**

Lawyers must develop a written compliance program. If you are an organization the compliance program also must be approved by senior management. A compliance program is a written document explaining your system of internal procedures, systems, and controls which intendance to make your business less vulnerable to being used by money launderers and terrorism financiers. Your compliance program will contain majors that ensure that you comply with your

reporting, record keeping, client identification, employee training and other AML / CFT obligations. These policies, procedures and controls must be communicated to employees and fully implemented will help reduce the risk of your business being used for money laundering or to finance terrorism. The compliance program must be reviewed continuously.

The following five elements must be included in your compliance regime.

- ✚ the appointment of a staff member as compliance officer.
- ✚ Internal compliance policies as procedures such as reporting suspicious transactions to the compliance officer application of CDD, EDD and record keeping.
- ✚ Your assessment of your risks to money laundering and terrorism financing and measures to mitigate high risks,
- ✚ ongoing compliance training for all staff at the level appropriate for the job duties
- ✚ periodic documented review of the effectiveness of implementation of your policies and procedures, training, and risk assessment.

#### **(4.3) Keep Record.**

Players are required to keep a record of each transaction for a specified. Specified. Record keeping is important for use of any investigation into, analysis of possible money laundering and terrorist financing. Records must be kept in a manner which allows for swift reconstruction of individual transactions and provide evidence for prosecution of money laundering and other criminal activities. You must keep the following records in electronic or written form for a period of five years after the end of the business relationship or the completion of the once off transaction.

Attorneys at Law are to keep records of the following.

- a. All documents and international transaction records,
- b. Source of funds declarations
- c. Client's identification records
- d. Client's information records
- e. Copies of official corporate records
- f. Copies of Suspicious Transactions Reports submitted by the office.
- g. A register of all enquiries (date, nature of enquiry, name of officer, agency and powers being exercised) made by a Law Enforcement Agency or any other Competent Authority.

- h. The names, addresses, position titles and other official information pertaining to your staff,
- i. All wire transfer records (originator and recipient's identification data)
- j. All other information the firm may deem relevant.

#### **(4.4) SUBMITTING REPORTS TO THE FIU.**

Attorneys at Law are required to submit two types of reports, namely.

- ❖ Threshold Transaction Reports
- ❖ Suspicious Transaction Reports.

The relationship between the Accountable Institutions and the Financial Intelligence Unit is a crucial one as the FIU can only perform its core function which is to receive, analyse and disseminate financial intelligence reports, when the AI submits quality reports. Failing to report to the FIU knowledge or suspicion of crime proceeds or terrorist property is a criminal offence.

#### Reporting Suspicious Transactions/Activities

Attorneys at Law must submit a Suspicious Transaction Report to the FIU where they are aware or have reasonable grounds to suspect,

That funds being used for the purpose of a transaction are proceeds of a crime

That transaction or an attempted transaction is related to the commission or attempted commission of a money laundering offence.

That funds are linked or related to or to be used for terrorism, terrorist acts or by terrorist organisation or those who finance terrorism.

In terms of Regulation 19 of the Money Laundering and Proceeds of Crime Regulations, 2019, (as amended), suspicious transaction reports are to be reported immediately upon forming the suspicion.

However, where a suspicious transaction is submitted regarding a designated entities or individuals, the Attorney must not enter into a business agreement with the designated entity/individual.

***A designated entity means any individual or entity and their associates designated as terrorist entities by the Security Council of the United Nations. To access the Security Council of the United Nations List (the UN list)***

*follow:*

*[https://main.un.org/securitycouncil/en/sanctions/1267/aq\\_sanctions\\_list](https://main.un.org/securitycouncil/en/sanctions/1267/aq_sanctions_list)*

Attorneys at law must report suspicious transactions and terrorist funds using a designated Suspicious Transaction Reporting Form.

*To access the **indicators of suspicious transactions** visit: <https://fju.org.ls/resources/>*

Additional Industry specific indicators to Attorneys may consider are in developing suspicion are.

- ❖ Activities with no apparent purpose, or which make no obvious economic sense, or involve apparently unnecessary complexities
- ❖ The use of Non-resident accounts, companies or structures in circumstances where the clients need do not appear to support such economic requirements
- ❖ Where the activities being undertaken by the client or the size or pattern of transactions without reasonable explanation out of the ordinary range of services normally requested or are inconsistent with your experience in relation to the client
- ❖ Excessively obstructive or secretive client
- ❖ Client is reluctant to provide identification documents
- ❖ Purpose of instructions, legal services and transactions in unclear
- ❖ Transactions involve unusual levels of funds or cash
- ❖ Property transactions which are atypical
- ❖ Transactions involve international countries
- ❖ Unusual instructions
- ❖ Changing instructions
- ❖ Unusual retainers
- ❖ Unexpected deposits into clients' accounts.

**Examples of Functions of Attorneys that may attract money launders:**

- ❖ Financial and tax advice- Criminals with large sums of money to invest may pose as individuals hoping to minimise their tax liabilities or desiring to place assets out of reach to secure future liabilities.
- ❖ Creation of corporate vehicles or other complex legal arrangements (e.g trusts)- such may serve to confuse or disguise the links between the proceeds of a criminal and the criminal.

- ❖ Buying and selling of property- Property transfers serve as either the cover for transfers of illegal funds (layering stage) or else they represent the final investment of these proceeds after the proceeds have passed through the laundering process (integration stage)
- ❖ Performing financial transactions- Attorneys at law may carry out various financial operations on behalf of the client, (e.g cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchasing and sale of stock, sending and receiving international funds transactions
- ❖ Gaining introductions to financial institutions.

The set of circumstances giving rise to unusual transaction or arrangement, and which may provide reasonable grounds for concluding that is suspicious, will depend on the client and the transaction or service in question. Industry specific indicators would also help you and your employees to better identify suspicious transactions whether completed or attempted.

#### **(4.4) AVOID TIPPING OFF.**

Where a suspicious transaction has been reported to the FIU, the attorney at law or their member of staff must not disclose that you have such a report or the content of such report to any person including the client. It is an offence to deliberately disclose to anyone other than the FIU that an STR has been submitted. This is because disclosure may prejudice money laundering or financing of terrorism investigation or proposed investigation.

#### **(4.5) REGISTER WITH THE FINANCIAL INTELLIGENCE UNIT.**

Registration with the Financial Intelligence Unit (FIU) Lesotho is a mandatory requirement applicable to all Accountable Institutions – listed in Schedule 1 of the Money Laundering and Proceeds of Crime Act, respectively. Registration with the FIU is a legal obligation in terms of Regulation 21 of the Money Laundering and Proceeds of Crime Regulations 2019, as amended.

Registration with the FIU enables accountable institutions to fulfil other MLPCA compliance obligations.

Where there are changes to the registration details as provided upon initial registration, an accountable institution is mandated to update registration details with the Unit within 60 days of such changes.

The failure to register with the FIU or the failure to update registration information are offences and may result in a fine not exceeding **M50 000**. Persons who commence new businesses which are regarded as accountable institutions are required to register with the unit within 30 days from the date the business commenced.

All registrations must be completed and submitted to the FIU electronically within the prescribed period by clicking on this link.

In exceptional circumstances an accountable institution may make use of a manual paper-based mechanism to register.

There is **no cost** to register the business.

If you have any queries regarding registering your business, call the FIU on 22312529 to submit your query, alternatively send your query to [inquiries@fiu.org.ls](mailto:inquiries@fiu.org.ls)