



## Enforceable Guideline 9

Financial Transactions Reporting Act

This Guideline is an enforceable instrument issued pursuant to the powers of the Financial Intelligence Unit under the Financial Transactions Reporting Act No.22 of 2004 [Section 25.1.j FTR Act & Regulation 35 and 37 FTR Regulations].

### Obligations of Legal Practitioners under the Financial Transactions Reporting Act and Regulations

#### 1 INTRODUCTION

- 1.1 Legal practitioners<sup>1</sup> must comply with the Financial Transactions Reporting (FTR) Act and Regulations<sup>2</sup> when providing services to clients<sup>3</sup> in relation to:
  - (i) buying or selling real estate<sup>4</sup>;
  - (ii) managing client money, securities or other assets;
  - (iii) managing bank, saving or securities accounts;
  - (iv) organizing contributions for the creation, operation or management of companies; or
  - (v) creating, operating or managing legal persons or legal arrangements (including trusts, partnerships and unincorporated associations) and buying and selling business entities.<sup>5</sup>
- 1.2 Legal practitioners must also comply with the FTR Act when providing trust or company related services to clients such as:
  - (i) forming legal persons or legal arrangements including trusts, partnerships, and unincorporated associations;
  - (ii) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons or legal arrangements;
  - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or legal arrangement;
  - (iv) acting as, or arranging for another person to act as, a trustee of an express trust; or

<sup>1</sup> Legal practitioners are a category of Designated Non-Financial Businesses and Professions (DNFBPs) and are included in the definition of “financial institution” that are covered by the FTR Act.

<sup>2</sup> Schedule of the FTR Act.

<sup>3</sup> The terms “client” and “customer” maybe used interchangeably.

<sup>4</sup> Relating to conveyancing services.

<sup>5</sup> Section (p) of the Schedule of the FTR Act.

- (v) acting as, or arranging for another person to act as, a nominee shareholder for another person.<sup>6</sup>
- 1.3 The objective of this Guideline is to provide guidance to legal practitioners on their obligations under the FTR Act and Regulations.
- 1.4 This Guideline may also be used by legal practitioners as a basis for developing their internal procedures, policies, systems and controls on anti-money laundering (AML) and combating the financing of terrorism (CFT).

## **2 OBLIGATIONS UNDER THE FTR ACT AND REGULATIONS**

- 2.1 Legal practitioners are obligated under the FTR Act and Regulations to:
  - i. identify and verify its clients;
  - ii. monitor clients' transactions;
  - iii. report suspicious transactions to the Financial Intelligence Unit (FIU);
  - iv. report cash transactions of \$10,000 and above in Fiji dollars or its equivalent in foreign currency to the FIU;
  - v. maintain proper client records;
  - vi. provide staff with training and awareness on AML/CFT policies and procedures and related matters;
  - vii. put in place internal systems, policies and procedures to enable it to comply with the FTR Act and Regulations; and
  - viii. put in place other control measures such as appointing an AML Compliance Officer, etc.

## **3 DEVELOPING AN INTERNAL SYSTEM, POLICY AND PROCEDURES ON OBLIGATIONS UNDER THE FTR ACT**

- 3.1 Legal practitioners should establish and maintain clear and documented internal systems, procedures, policies which incorporate the requirements of the FTR Act, FTR Regulations and any FIU issued policies and guidelines.
- 3.2 The internal procedures should clearly outline the steps or processes that staff must take or follow in order to comply with the specific requirements of the FTR Act.
- 3.3 Individual legal practitioners who do not employ or act in association with any other person during the course of the practice are exempt from maintaining written internal systems, procedures and policies.

## **4 CLIENT IDENTIFICATION AND VERIFICATION/ CLIENT DUE DILIGENCE**

- 4.1 Legal practitioners must identify its clients and verify its clients' identities using reliable and independent source documents data or information or other evidence which the legal practitioner considers as reasonably capable of verifying their clients' identity. A legal practitioner must know its clients.

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<sup>6</sup> Section (o) of the Schedule under the FTR Act.

- 4.2 Legal practitioners must also ensure that client engagement files are opened and maintained in the true name of clients.
- 4.3 Legal practitioners must first identify the following categories of clients:
  - i. Natural person (domestic or foreign);
  - ii. Legal person or entity (i.e. company);
  - iii. Trust (other similar legal arrangements);
  - iv. Beneficial owners of companies and trusts; and
  - v. Politically Exposed Persons (PEPs).
- 4.4 The following details should be obtained by collecting and verifying to reliable and independent source documents (for natural person):
  - i. Name of the client;
  - ii. Date of birth;
  - iii. Permanent residential address in Fiji. This should be a physical address and not a postal address;
  - iv. Occupation including name of the employer or if the client is self-employed, the nature of self-employment or business;
  - v. Source of funds of the client;
  - vi. Citizenship; and
  - vii. Specimen signature.
- 4.5 For detailed information on the client identification and verification requirements for a natural person, refer to Part 2 of FIU Enforceable Guideline 4.
- 4.6 For detailed information on the client identification and verification requirements for a legal person or entity, refer to Part 3 of FIU Enforceable Guideline 4.
- 4.7 For detailed information on the client identification and verification requirements for a trust (other similar legal arrangements), refer to Part 4 of FIU Enforceable Guideline 4.
- 4.8 For detailed information on dealing with clients that are PEPs refer to FIU Enforceable Guideline 7.
- 4.9 *Source of funds* refers to the origin of funds or the activity that will generate funds to be used in a business relationship or occasional transaction. The origin or activity maybe a client's occupation or business activity. For detailed information on establishing *source of funds*, refer to FIU Policy Advisory 1/2019.
- 4.10 Legal practitioners must undertake these client identification and verification processes and procedures in the following circumstances:
  - i. For all new clients, before or during the course of establishing a continuing business relationship with the client; or
  - ii. For any existing clients, when a legal practitioner has doubts about the adequacy of identification information previously obtained or when it

suspects that the client is engaging in money laundering or terrorist financing activities.

- 4.11 Once a legal practitioner has established a continuing business relationship with a client, it does not have to repeatedly identify and verify its client's identity each time that client conducts further transactions or requires further services.

## 5 RISK BASED APPROACH

- 5.1 Client identification or client due diligence (CDD) measures must be applied on a risk based approach by first assessing the level of money laundering or terrorist financing (ML/TF) risks of their clients upon first engagement.
- 5.2 If the risk assessment determines that the client or business engagement presents a high risk for ML/TF, the legal practitioner must perform enhanced CDD.
- 5.3 Examples of clients who are at high risk for money laundering and therefore must be subjected to complete and enhanced identification measures include:
- i. non-resident client or clients who reside permanently outside of Fiji;
  - ii. non-face-to-face clients (e.g. person wishing to establish a business relationship with a legal practitioner via the internet or other similar technology); or
  - iii. persons previously reported in FIU Alert Notices.<sup>7</sup>
- 5.4 If the risk assessment determines that the client or business engagement presents a low risk for ML/TF, the legal practitioner can perform simplified CDD.
- 5.5 A legal practitioner may reduce or simplify its client identification requirements, processes and procedures in the following circumstances:
- i. where a client is assessed as having a low risk for engaging in money laundering or terrorist financing activities. For example clients who are children or minors; certain sole trader businesses (such as rural micro-finance sole trader businesses; neighborhood shop or canteen businesses); students; rural farmers; rural dwellers; casual employees.
  - ii. where information on the identity of the client is publicly available.
  - iii. where adequate checks and controls on the client exist in Fiji. For example persons who work in a regulated profession such as a medical practitioner; accountant; dentist; teacher; police officer; etc.
- 5.6 For low risk clients, the following minimum details should be obtained by collecting and verifying to reliable and independent source documents (for natural person):
- i. Client's name;
  - ii. Client's permanent residential address in Fiji; and
  - iii. Client's occupation.

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<sup>7</sup> This will be issued from time to time by the FIU to the Anti-Money Laundering Compliance Officer.

- 5.7 For detailed requirements on how to assess ML/TF risks, refer to FIU Policy Advisory 5/2007.

## **6 MONITOR CLIENT'S ENGAGEMENTS AND TRANSACTIONS**

- 6.1 Legal practitioners must gather and maintain client information on an on-going basis.
- 6.2 Legal practitioners must also monitor client engagements or transactions on an on-going basis.
- 6.3 On-going monitoring of a client engagement means:
  - i. monitoring transactions throughout the course of the client engagement to ensure that the transactions are consistent with the legal practitioner's knowledge of the client and the client's business and risk profile;
  - ii. monitoring to identify complex or unusually large transactions, and unusual patterns of transactions which can be reported as suspicious; and
  - iii. reviewing existing documents and information to ensure that they are relevant, sufficient, and up-to-date for the purpose of applying CDD measures.
- 6.4 Legal practitioners must develop and implement procedures and processes for conducting on-going monitoring of its clients' engagements. Such procedures and processes should clearly identify the staff that will be responsible for the monitoring controls and the timing and frequency of these monitoring controls.
- 6.5 The extent of monitoring will depend on the nature and size of the legal practitioner. Monitoring can be achieved through either manual or automated processes or a combination of both. Ongoing training and awareness by staff also contributes to effective monitoring.
- 6.6 Monitoring of clients' transactions may lead to the identification of suspicious transactions, activities or clients.
- 6.7 For the list of considered suspicious indicators or transactions, refer to the Appendices in FIU Enforceable Guideline 1.

## **7 REPORT SUSPICIOUS TRANSACTIONS AND CLIENTS**

- 7.1 Legal practitioners must report to the FIU any *suspicious transaction* including any attempted suspicious transaction.
- 7.2 A *suspicious transaction* is any transaction (including attempted transaction) or information which a legal practitioner suspects or has reasonable grounds to suspect maybe related to the commission of a money laundering, terrorist financing or any other serious offence or criminal activities.
- 7.3 The suspicious transaction must be reported to the FIU, within 2 working days of forming a suspicion.

- 7.4 If a legal practitioner identifies a suspicious transaction, activity or client, it should:
- i. report its suspicion immediately to its designated Anti-Money Laundering Compliance Officer (AMLCO);
  - ii. not “tip-off” the client, and
  - iii. not discuss with any other staff or legal practitioner that it has reported a suspicious transaction report (STR).
- 7.5 A legal practitioner including its employees are protected from any civil, criminal or disciplinary action taken against it for reporting a suspicious transaction in good faith.
- 7.6 Furthermore, the FTR Act prohibits the disclosure of information that will identify or will likely identify any person who has handled a transaction for which a STR has been raised or any person who has prepared or raised a STR.
- 7.7 A legal practitioner is required to comply with the STR and other obligations under the FTR Act notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.
- 7.8 STRs can be reported to the FIU manually via a STR form or electronically via the FIU’s online reporting system, ODDS.
- 7.9 For detailed information on the suspicious transaction reporting requirements, refer to FIU Enforceable Guidelines 1 and 2.

## **8 REPORT CASH TRANSACTIONS**

- 8.1 Legal practitioners must report to the FIU any transaction involving *cash* of \$10,000 and above in Fiji dollars or its equivalent in foreign currency related to any of the services listed in 1.1 and 1.2 above.
- 8.2 *Cash* is defined in the FTR Act under Part 1(2) as including:
- i. notes and coins;
  - ii. bank draft;
  - iii. bank cheque;
  - iv. bearer bonds;
  - v. travelers’ cheque;
  - vi. postal note and
  - vii. money orders.
- 8.3 Cash transactions related to other services that a legal practitioner may provide which are not covered under the FTR Act and are not included in 1.1 and 1.2 above, are not required to be reported to the FIU.
- 8.4 The following examples indicate when a cash transaction reporting obligation may arise (for XYZ Legal practitioner):
- (i) XYZ Legal practitioner receives a bank cheque of \$350,000 from a clerk for G.Singh Legal practitioner as full settlement on behalf of

their client, Bruce Garrison, for the purchase of property from John Smith, a client of XYZ Legal practitioner.

- (ii) XYZ Legal practitioner issued a bank cheque for settlement on the purchase of a land on behalf of client, John Smith. The land is being purchased from Ajay Singh. The bank cheque is made payable to Fiji National Bank.
  - (iii) XYZ Legal practitioner made a bank cheque payment of \$15,000 payable to University of Suva for tuition fees on behalf of trust client, Jasper Nair.
- 8.5 A legal practitioner is not required to report the following transactions as a cash transaction:
- (i) A payment made or received of \$10,000 or above, involving either a personal cheque, company cheque or electronic fund transfer mode;
  - (ii) A bank cheque of \$10,000 or above received which is not payable to the legal practitioner's bank account (but rather is payable to its client).
- 8.6 If there are multiple cash transactions for a single engagement, the legal practitioner is required to report each cash transaction of \$10,000 or above separately. For example, for a property sale engagement, if the deposit and the final settlement payment are both \$10,000 or above, there will be a CTR reported for the deposit transaction and another CTR reported for the settlement transaction.
- 8.7 A cash transaction must be reported to the FIU within 5 working days from the date of the transaction.
- 8.8 CTRs can be reported to the FIU manually via a CTR form or electronically via the FIU's online reporting system, ODDS.
- 8.9 For detailed information on how to complete a CTR form refer to FIU Enforceable Guideline 3.

## **9 MAINTAIN PROPER CLIENT RECORDS**

- 9.1 Legal practitioners must establish and maintain records of:
- i. a client's identity and any transactions conducted or services provided;
  - ii. all reports made to the FIU; and
  - iii. any enquiries made to your business by the FIU or a law enforcement agency.
- 9.2 A legal practitioner can keep records in a machine-readable form (electronic) or any other prescribed form from which a paper copy (hard copy) can be readily produced. The form and manner decided to use to maintain these records must enable it to comply as soon as practical with requests for information from the FIU or a law enforcement agency.
- 9.3 All records must be kept for a minimum period of 7 years from the date:
- i. the evidence of a client's identity was obtained;
  - ii. of any transaction or correspondence;

- iii. the engagement relationship ceases.
- 9.4 For detailed information on the record keeping requirements, refer to the FIU Policy Advisory 7/2007.

## **10 STAFF TRAINING AND AWARENESS**

- 10.1 Legal practitioners must ensure that staff are made aware of its obligations under the FTR Act. Staff must also be made aware of the internal procedures and policies in place to enable the business to comply with the FTR Act and Regulations.
- 10.2 Legal practitioners must establish and maintain procedures and systems for creating staff awareness of new AML/CFT developments, including information on current money laundering and financing of terrorism techniques, methods and trends.
- 10.3 This may include having induction training for new staff, regular in-house training and issuing brochures or handouts on the entity's obligations under the FTR Act to all staff.
- 10.4 Legal practitioners can utilize forums organized by the FIU, FIU issued Policy Advisories, Enforceable Guidelines and the FIU website ([www.fijifiu.gov.fj](http://www.fijifiu.gov.fj)) in their awareness programs.

## **11 ANTI-MONEY LAUNDERING COMPLIANCE OFFICER**

- 11.1 Legal practitioners must appoint an Anti-Money Laundering Compliance Officer (AMLCO) who will be responsible for the firm's compliance with the requirements of the FTR Act and Regulations, FIU Directives and issued Policy Advisories or Enforceable Guidelines. The AMLCO role maybe assigned to an existing staff/role within the firm.
- 11.2 Legal practitioners must inform the FIU of its nomination by providing to the FIU a completed AMLCO Nomination Form (Form 5).
- 11.3 The AMLCO is responsible for ensuring compliance and implementing the requirements of the FTR Act and Regulations, FIU Directives and issued Policy Advisories or Enforceable Guidelines.
- 11.4 The AMLCO must have sufficient authority to:
  - i. access all necessary records in a timely manner; and
  - ii. act independently and report to senior management.
- 11.5 A legal practitioner must ensure that there is continuity in the reporting process in the absence of the AMLCO. This could be addressed by appointing another staff to assist the AMLCO.
- 11.6 The FIU must be informed if the AMLCO changes.
- 11.7 The obligation to appoint an AMLCO does not apply to an individual legal practitioner who, in the course of carrying on his or her business, does not employ or act in association with any other person. The sole legal practitioner assumes the role of the AMLCO.

## **12 OTHER REQUIREMENTS**

- 12.1 Staff Recruitment - Legal practitioners must put in place screening procedures to ensure high standards when hiring staff or legal practitioners and to prevent the employment of persons convicted of offences involving fraud and dishonesty.
- 12.2 FIU Requests - Legal practitioners must promptly and accurately respond to any request for information from the FIU.
- 12.3 Review of the internal procedures, policies, systems and controls - Legal practitioners must periodically review its internal procedures, policies, systems and controls.

## **13 OVERSIGHT AND IMPLEMENTATION**

- 13.1 The FIU and/or the relevant supervisory authority, in the course of its supervision, may assess the compliance of legal practitioners with the requirements of this Guideline.
- 13.2 Non-compliance may result in sanctions as specified in section 43(2) of the FTR Act and regulation 42(2) and 42(3) of the FTR Regulations.
- 13.3 This Guideline is effective from 17 January 2022.

**Financial Intelligence Unit**

17 December 2021

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**Notice to Legal Practitioners:**  
**FIU Issues Guideline for Legal Practitioners**

17 December 2021

**New Guideline for Legal Practitioners**

The FIU has issued Enforceable Guideline 9 on obligations of legal practitioners under the Financial Transactions Reporting (FTR) Act and Regulations. The Guideline provides guidance to legal practitioners on anti-money laundering (AML) and combating the financing of terrorism (CFT) requirements, such as, know your client, establish source of funds, and reporting suspicious transactions and clients to the FIU.

The Guideline will also assist legal practitioners to develop their internal procedures, policies, systems and controls on AML and CFT. An effective AML/CFT system will also prevent their businesses from being used by clients for illicit activities.

The Guideline is an enforceable instrument that is issued pursuant to the powers of the FIU under section 25.1(j) of the FTR Act and regulation 35 and 37 of the FTR Regulations. All covered legal practitioners must comply with the requirements of Guideline 9. The Guideline is effective from 17 January 2022.

**Role of Legal Practitioners in Fiji's Efforts to Combat ML and TF**

Fighting money laundering (ML) and terrorism financing (TF) in Fiji requires a concerted effort. Traditional financial institutions such as commercial banks, together with certain designated non-financial businesses and professions such as legal practitioners play a crucial role under Fiji's AML/CFT regime.

Legal practitioners are seen as the gatekeepers of the "financial system". Criminals seek the services of "gatekeepers", such as legal practitioners, to conceal their identity and illicit funds, to create that anonymity needed to be able to launder proceeds of illegal activities or engage in other criminal activities. Sophisticated criminals seek the services of legal practitioners to mask the ownership and source of tainted assets through the use of shell/front companies or nominee accounts with unknown beneficial owners. This may result in the abuse of a lawyer's trust accounts to launder illicit funds.

Therefore, legal practitioners are vulnerable to ML/TF risks. Legal practitioners play a critical role in ensuring their compliance with FTR Act requirements to mitigate their exposure of ML/TF risks.

Fiji is a member of the Asia/Pacific Group on Money Laundering (APG) and is required to implement FATF's international AML/CFT best practices.

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