

TIP OF THE MONTH

AML-CFT Policies, Controls and Procedures

Reporting Persons have the legal obligation under the Section 17A. of the Financial Intelligence Anti Money Laundering Act (FIAMLA) to establish Policies, Controls and Procedures to mitigate and manage effectively the risks of money laundering and terrorism financing.

WHAT IS IT ABOUT?

- Policies are usually a set of guidelines for a business to follow in order to **achieve specific goals**. Policies, Controls and Procedures are formulated to direct and exert influence on decisions to be made within the organization and to **keep all activities within a set of established boundaries**.
- They provide principles that **guide actions, set roles and responsibilities** and **reflect values and beliefs** (what is to be done, who is to do it, how it is to be done when is to be done and for whom it is to be done, etc.)
- **AML-CFT Policies, Controls and Procedures ('PCPs')** are crucial to the good business practice of any reporting person and is a **key tool in the fight against Money Laundering (ML) and Terrorism Financing (TF)**.

WHY SHOULD REPORTING PERSONS HAVE PCPs?

Principally, amongst other reasons, because:

- It is a **legal obligation** under Section 17A. of FIAMLA to have PCPs which are proportionate to the size and nature of the business.
- Through the PCPs, reporting persons are able to set out their processes to **identify, mitigate and manage the risks** of their business facilitating ML or TF; and
- the PCPs, established as per FIAMLA, enable reporting persons to ensure compliance with AML/CFT laws & regulations, **operate within a risk-based approach framework**, promote high ethical & professional standards, and provide guidance for decision-making at all levels in day-to-day operations (relevant officers know what they are responsible for and what is expected of them).

WRITTEN PCPs?

- **Yes**, under Section 17A.(1)(c) of FIAMLA, the PCPs should be **should be put in writing**, i.e reporting persons should document:
 - **the PCPs** established to mitigate and manage effectively the risks of ML & TF identified in any risk assessment undertaken by the reporting person under section 17 of FIAMLA;
 - **any changes to those PCPs** made as a result of a review and update; and
 - the steps taken to internally **communicate those PCPs**, or any changes made.
- The documented PCPs are usually named and known as '**Compliance Manual**' or '**AML/CFT Policy**' or '**AML/CFT Compliance Manual**', amongst others.

WHAT SHOULD PCPs INCLUDE?

- The **documented PCPs** should provide a clear approach on **how the reporting person shall fulfil its AML/CFT obligations** under the relevant Acts, Regulations and Guidelines. These include, amongst others:
 - Risk Assessment, Mitigation & Monitoring
 - Customer Due Diligence, including identification of Beneficial Owners
 - Dealing with High-Risk relationships (e.g PEPs)
 - Role of Key Officers such as Compliance Officer and Money Laundering Reporting Officer (MLRO)
 - Suspicious Transaction Reporting
 - UN Sanctions List Screening & Reporting
 - Employee Screening & Training
 - Record Keeping
 - Independent Audit & Review of PCPs
- The [FIU Sectorial Guidelines](#) provide a template to assist supervised reporting persons in the development of their internal PCPs.

TIP OF THE MONTH

AML-CFT Policies, Controls and Procedures (Continued)

MONITOR, REVIEW AND UPDATE OF PCPs

- As per section 17A.(1)(b) of the FIAMLA, every reporting person shall **monitor the implementation of, regularly review, update** and, where necessary, **enhance the PCPs** established under paragraph 17A.(1)(a) of the FIAMLA.
- The Compliance Officer (CO) and MLRO, who are senior officers within the organisation, play a key role in fulfilling the aforesaid obligation. They need to **continuously monitor the implementation of the PCPs**, regularly review, conduct gap analysis, propose updates to the PCPs and report their recommendations to the senior management & the board of directors for approval.
- Pursuant to Regulation 22(1)(d) of the Financial Intelligence and Anti-Money Laundering Regulations 2018 ('FIAMLR'), a Reporting person should also carry out an **independent audit review** of its PCPs to ensure conformity with the FIAMLA and FIAMLR.
- The **FIU Sectorial Guidelines** provides guidance on this requirement and reporting persons under its regulatory purview are advised to conduct the independent audit review at least every two years.

RECORDS TO KEEP – PCPs

- Reporting persons have the legal obligation to maintain records for at least 7 years and these include:
 - the written PCPs;
 - any changes to those PCPs made as a result of a review & update (including reports from Compliance Officer and MLRO, reports of independent audit); and
 - the steps taken to communicate those policies, controls and procedures, or any changes to them, internally. (For e.g. staff training records)
- Record keeping would include all concrete actions taken by reporting persons to make their **PCPs 'live'**,

i.e, effectively implementing the PCPs and fulfilling their AML/CFT obligations. For example, keeping records/documentary evidence for:

- Risk assessment conducted for entity and clients;
- CDD or EDD conducted on clients;
- UN Sanctions list screening;
- Job Description of MLRO and CO
- Transaction Monitoring;
- Training and Employee screening.

REMEMBER

- Strong leadership and engagement by senior management and the board of directors is crucial to the application of risk-based PCPs. Senior management must create a **culture of compliance**, ensuring that relevant officers are **well aware of and adhere to the PCPs** designed to identify, mitigate and manage the risks being involved in ML or TF.
- Reporting Persons are ultimately responsible for their PCPs even if a third party assisted them in the drafting or reviewing. Reporting persons, their relevant officers and the Board of Directors have to be well across the PCPs and ensure adherence to same.
- PCPs have to be **proportionate to the size and nature of the business**. Reporting persons must develop their own program, **tailored to their situation to mitigate ML & TF risks**, recognising that not all aspects of the business present the same level of risks. The reporting person is in the best position to assess the risk of its clients, products and services and to allocate resources to mitigate the identified high-risk areas through well-established PCPs.
- It is an offence for any reporting person not to comply with the FIAMLA concerning PCPs and on conviction, shall be liable to a fine not exceeding 10 Million rupees and imprisonment for term not exceeding 5 years.