

The FATF Standards (ie, 'regulation') requires 'designated firms' (incl. those with large trust account balances and transactional work areas) to:

- (a) Screen staff (incl. accounts staff) prior to employment and on an ongoing basis,
  - (b) Train staff in assessing risks, monitoring risks and understanding the consequences of non-compliance,
  - (c) Accurately identify clients and their agents – (contractually and ethically, must know who your client is before you can negotiate a retainer with them.)
  - (d) Collecting, verifying and retaining for extended periods 'know your client' [KYC] information.
  - (e) Agree to Financial Disclosure (also known as reporting of 'suspicious matters' ['suspicious transaction reporting' or STR])
- [Failure to comply would involve civil penalties for the law firm, and probable disciplinary proceedings against the lawyers as individuals]

“Central to the ability of legal professionals to seek to train and guard against money laundering effectively in a risk-based approach, is the provision of realistic [client factor] typologies, particularly where there is unwitting involvement.” FATG *Guidance*, para 97

#### Client Risk Factors

- (a) Where cash operations dominate,
- (b) Complicated legal structures – where it's hard to identify the real owners of businesses,
- (c) Where apparently uneconomic transactions are proposed,
- (d) No apparent underlying legal services requested or provided,
- (e) Where the client is a 'politically exposed person' (PEP),
- (f) Where clients use intermediaries to give you your instructions,
- (g) Where the client is an NGO/ NFPO without a recorded pedigree,
- (h) Where the client has multiple addresses or convictions or changes settlement instructions without notice or explanation,

**Each of these issues must be assessed before each client retainer commences.**

#### Service Risk Factors

- (a) Potentially, all property and complex financial deals, especially those involving unexplained use of express trusts where the real owners are hidden or difficult to identify or where cash payments are used,
- (b) Where transactions are artificially divided to place the nominal N\$ value of each one under a financial threshold for mandatory reporting,
- (c) Where the lawyer also acts as a financial intermediary and uses their trust account to conduct the client's business,
- (d) Where real estate is transferred in a very short time period,
- (e) Where there is no or inadequate transactional consideration,
- (f) Where clients offer extraordinary fees,
- (g) Where the transaction or work would be unusual for the particular legal professional.

#### Geographic and Delivery Factors

Where is the client? Is a proposed client's geographical location in a known high-corruption area (eg Somalia), or in a jurisdiction with a low integrity rating under the *Transparency International* index, or is client contact essentially anonymous or on-line?

### **STR (SUSPICIOUS TRANSACTION REPORTING) S21 & S23**

\*Suspicious transaction reports – immediately upon commencement of the Act ( 05 May 2009)

\*Any person who carries on any business or the business of an AI (Accountable

Institution), or is in charge of, or manages a business undertaking, or a business undertaking of an AI .....

\*Knows or ought reasonably to have or suspects that as a result of a transaction concluded by it, has received or is about to receive the proceeds of unlawful activities or is about to receive the proceeds of unlawful activities or is about to be used in any way for ML purposes, must, within the prescribed period after the suspicion or belief arose, report to the Bank:

- the ground for the suspicion or belief; or
- prescribed particulars concerning the transaction.

\*An AI or business which made or is to make a report I.t.o this section must not disclose:

- that fact or any information pertaining the content of that report to any other person, including the person I.t.o whom the report is or to be made otherwise than:
- within the scope of the powers and duties of the AI or business I.t.o any legislation;
- for the purpose of carrying out this Act;
- for the purpose of legal proceedings, including any proceedings before a judge in chamber; or
- in terms of an order of court.

## **FIR 18 INFORMATION TO BE REPORTED**

\*4 main components on STR

- information pertaining the person/entity submitting the report;
- Information pertaining the transaction;
- description of the suspicious activity;
- description of the action taken.

## **FIR 19 PERIOD FOR REPORTING (report under S21 & S23 of the Act)**

-must be sent to the Bank asap, but not later than 15 days, excluding Saturday, Sunday and public holidays, after the suspicion or belief arose concerning the transaction that gave rise to the requirement to report, unless the Bank approve in writing the sending of the report after the expiry of this period.

## **FIR 19 CONSULTATION & INTERVENTION**

in terms of facilitating the application of S 27 & S 28 of the Act and the recognition and handling by AI of suspected money laundering transaction:-

-if suspicion or belief arises that is the basis for an AI making a report under S 21 of the Act regarding a transaction;and

-if its reasonably foreseeable that carrying out that transaction or other related transactions will jeopardize any significant law enforcement or regulatory interest under Namibian law, including, but not limited to, forfeiture of the proceeds of crime under POCA,2004 (Act No.29 of 2004) where such proceeds have been put beyond the reach of Namibian authorities,

then the AI, in addition to making such report within the time period specified in S 27 of the Act, must contact asap the Director of the FIC , or his or her authorized representative, at such contact details as may be specified in writing by the FIC from time to time for the purpose of consultation and intervention as provided for under S28 of the Act

- if after the consultation referred to above the FIC does not consider it necessary to direct the AI to refrain from the carrying out of that transaction or any other transaction, in respect of the funds contemplated in S28 of the Act, the AI may continue and carry out any such transaction as provided under S27 of the Act

## **FIR 20 EXEMPTION IF REPORTED INTERNALLY**

Provides:

\*any person, AI, or SB (Supervisory Body), which required to report a suspicious transaction under S21 of the Act may comply by internally;

-reporting the matter to the compliance officer of that business for the purpose of FIA; or

-reporting the matter to his or her superior, if any, if;

\*the business had not appointed such a compliance officer;

\*the business failed to provide training to the person to enable the person to comply with an alternative reporting procedure; or

\*the internal rules do not apply to that person.

## **FIR 22 COMPLIANCE PROGRAMMES**

\*every AI must implement a regime for complying with FIA and any regulations made thereunder;

\*a natural person who is an AI and who is in a partnership with another natural person, or in a company or close corporation, is exempted from the provisions of FIA regarding establishing identity, record keeping, CAP, and this provision regarding compliance programmes, subject to the condition that those provisions are complied with by another person employed by that partnership, company or close corporation.

AI must adopt and implement the internal rules that must:-

-confirm the responsibility of the management of the institution in respect of compliance with the Act and the internal rules;

-provide the necessary procedures to insure that persons are identified and the required particulars concerning the identities are verified under the Act;

-provide for the necessary procedures to enable staff to recognise potentially suspicious and unusual transactions or series of transactions and to report such suspicious transactions in terms of these regulations;

-allocate responsibilities and accountability to ensure that staff duties concerning record keeping are complied with;

-provide for disciplinary steps as part of the compliance programme envisaged in this regulation against the relevant staff members for non-compliance with the Act and the internal rules; and

-take into account any guidelines concerning these duties that may apply to that institution.

-where the AI has employees or agents or persons authorised to act on behalf of the AI, the programme shall furthermore include, as far as practical, an ongoing compliance training programme for those employees, agents or persons to ensure that institution is able to comply with the institutional obligations under FIA;

-an institution that designates a comply officer under S25(3) of FIA shall take reasonable steps to ensure that the person has the training and resources to discharge his or her obligation;

-by way of exemption, an AI or business that is an individual who neither employs nor acts in association with any other person, is not required to adopt detailed policies, internal rules, programmes, procedures, controls and functions or designate a compliance officer under S25 of FIA, but must adopt reasonable and practical measures to ensure compliance in accordance with relevant guidance, if any, issued by the Bank.

## **SECTION 13 IDENTIFICATION WHEN B/NESS RELATIONSHIP IS ESTABLISHED OR SINGLE TRANSACTION IS CONCLUDED**

\*As from the commencement of the Act (05 May 2009) an AI may not establish a b/ness relationship or conclude a single transaction with a prospective client, unless the AI took reasonable steps to establish & verify:

- the identity of the prospective client;
- the prospective client's authority to establish the b/ness relationship.

## **SECTION 14 IDENTIFICATION WHEN TRANSACTION IS CONCLUDED IN THE COURSE OF A BUSINESS RELATIONSHIP**

\*If an AI establishes a b/ness relationship with a client before the Act took effect, it must within a period prescribed by the Bank (3 years), take such reasonable steps to:

- Establish & verify the identity of the client;
- if client is acting on behalf of another person, the AI must establish:
  - \*the identity of that other person
  - \*the client's authority to conclude that transaction on behalf of that other person; and
  - \*obtain or verify further information about that other person; and
- if another person is acting in the transaction in question on behalf of the client, the AI must establish:
  - \*the identity of that other person
  - \*that other person's authority to act on behalf of the client
- if an AI is within a reasonable period unable to establish the identity of an existing client, it must not conclude any further transaction with such client and must immediately inform the FIC
- the provision of this section does not apply in respect of a b/ness relationship which an AI knows or reasonably believes to have ended prior to the commencement of the Act.
- if after the Act took effect, an AI recommence a b/ness relationship with a client, the AI must not conclude a transaction in the course of that b/ness relationship unless the AI has taken reasonable steps to identify and verify the identity of the client.

## **IF THE PROSPECTIVE CLIENT IS A LEGAL ENTITY, THE AI MUST TAKE REASONABLE STEPS TO ESTABLISH ITS LEGAL EXISTENCE AND STRUCTURE, INCLUDING VERIFICATION OF:-**

- the name of the legal entity, its legal form, address and directors
- the principle owners and beneficiaries
- provisions regulating the power to bind the entity and to verify that any person purporting to act on behalf of the legal entity is so authorised, and identify those person
- an AI must maintain the accounts in the name of the account holder and must not open, operate or maintain any anonymous account or any account which is fictitious false or incorrect name.

## **SECTION 15 KEEPING OF RECORDS**

\*When an AI establishes a b/ness relationship or concludes a transaction with a client, whether the transaction or concluded in the course of a b/ness relationship the AI must keep records of:

- the identity of the client
- if the client is acting on behalf of another person
- \*the identity of the person on whose behalf the client is acting; and
- \*the client's authority to establish that b/ness relationship or to conclude that single transaction on behalf of that other person
- if another person is acting on behalf of the client
- \*the identity of that other person
- \*that other person's authority to act on behalf of the client
- the manner in which the identity of the above persons were established
- the nature of that b/ness relationship or transaction
- all accounts at that AI that are involved in
- \*transactions concluded in the course of that b/ness relationship
- \*a single transactions
- records may be kept in electronic form

## **THE RECORDS MAY INCLUDE THE FOLLOWING INFORMATION FOR EACH TRANSACTION:**

- identity and address of the beneficiary or the person on whose behalf the transactions is concluded
- the identity and address of the person in whose name the transaction is concluded
- the identity of the accounts affected by the transaction, if any
- the type of transaction involved, such as deposit, withdrawal, exchange of currency, cheque cashing, purchase of cashier's or money orders or other payments or transfer by, or to that AI
- the identity of the AI where the transaction occurred
- the date, time and amount of the transaction; and
- any other information which the Bank may specify in writing.

## **SECTION 15 PERIOD FOR WHICH RECORD MUST BE KEPT**

- 5 years as from date on which b/ness relationship was established
- 5 years as from date on which a transaction was concluded

## **SECTION 25 OBLIGATIONS OF AI'S**

*NB:-*

*an AI must adopt, develop and implement a CAP, internal rules, programmes, policies, procedures and controls as prescribed to protect its systems against any money laundering activities.*

The various programmes may include:-

- the establishment of procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of those employees;
- on-going employee training programmes, such as "Know Your Customer" (KYC) programmes, and instructing employees with regard to responsibilities under this Act; and
- an independent audit function to check compliance with those programmes.

\*AI must designate compliance officers at management level who will be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of STR

\*AI must implement compliance programmes at its branches and subsidiaries within or outside Namibia.

\*AI must develop audit functions to evaluate any policies, procedures and controls developed under this section to test compliance with the measures taken by the AI to comply with this Act and the effectiveness of those measures.

\*the internal rules must include:-

- the establishment and verification of the identity of persons whom the institution must identify in terms of part iv of this Act;
- the information of which record must be kept in terms of part iv of this Act;
- identification of reportable transaction; and
- the training of employees of the institution to recognise and handle suspected money laundering activities;
- internal rules must comply with the prescribed requirements and be available to each employee of an AI