



Compliance Programmes for the Securities Market

As part of our focus on Anti-Money Laundering and Combating the Financing of Terrorism (“AML/ CFT”), last week we explained the respective roles of the Regulator and Registrants in ensuring compliance with AML/ CFT requirements. In this week’s article, we delve further into what constitutes an effective Compliance Programme.

Registrants are required to establish AML/CFT Compliance Programmes (“CPs”) in an effort to combat against Money Laundering (“ML”) and Terrorist Financing (“TF”). The AML/CFT CP must be based on applicable legislation, regulations and guidelines and among other things, should outline internal control measures to prevent, detect, monitor and report on complex, unusual and suspicious activities and transactions.



The AML/CFT CP must be based on applicable legislation, regulations and guidelines. Section 55 (C) of the Proceeds of Crime Act (“POCA”) states that every financial institution shall develop and implement a written CP, approved by the financial institution’s senior management and reasonably designed to ensure compliance with the POCA. Pursuant to the Financial Obligation Regulations (“the FORs”), which is a subsidiary legislation of the POCA, Regulation 10 requires that the CP be reviewed by the internal and external auditors. The external auditor is required to evaluate the CP for compliance with relevant legislation and guidelines and shall submit reports and recommendations annually or at such frequency specified by the Supervisory Authority (in this instance, the TTSEC). The role of the internal auditor is to ensure that policies, procedures and systems are in compliance with the POCA and the FORs and that the level of transaction testing, is in line with the risk profile of the customer.

Section 55(6) of POCA also requires the CP to include: a system of internal controls to ensure ongoing compliance; internal or external independent testing for compliance; training of personnel in the identification of suspicious transactions; and appointment of a staff member responsible for ensuring the institution’s continual compliance with POCA and the FORs.

Information gathered within the AML/CFT CP should be submitted to the Registrant's Board of Directors, Management team and employees to ensure compliance with the governing AML/CFT legislative and regulatory framework. The scope of a CP should ensure the establishment of effective controls to prevent the Registrant from being used as a vehicle for ML and TF activities. In addition, the AML/CFT CP should also be designed to include measures to detect and alleviate the ML/TF risks associated with the organisation's business profile and activities.

Regulation 7(1) of the FORs states that a CP established under the POCA shall be appropriate for the respective financial institution and shall be designed to include policies, procedures and controls for the following:

- Customer identification, documentation and verification of customer information and other customer due diligence measures;
- Identification and internal reporting of suspicious transactions and suspicious activities;
- Adoption of a risk-based approach to monitoring financial activities, which would include categories of activities that are considered to be of a high risk;
- External and independent testing for compliance;
- An effective risk-based audit function to evaluate the compliance programme;
- Internal control and communication as may be appropriate for the purposes of forestalling money laundering;
- Retention of transaction records and other information;
- A list of countries, published by the Financial Intelligence Unit, which are non-compliant, or do not sufficiently comply with the recommendations of the Financial Action Task Force; and
- Adoption of risk-management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.

Section 89 of the Securities Act, 2012 ("SA 2012") permits the TTSEC to conduct Compliance Reviews to assess Registrants' compliance with the POCA, FORs and any other laws/regulations in relation to AML/CFT. Reviews have been conducted and have allowed the Commission to arrive at an assessment of the Registrants' compliance with AML/CFT legislation. The following are some deficiencies observed during Compliance Reviews:

- CPs are not reviewed periodically;
- CPs do not relate to the business activity of the registrant;
- CPs are not appropriately approved by those charged with oversight of the organisation;
- CPs do not incorporate a risk-based approach to monitoring AML/CFT risks;
- CPs are not reviewed by External Auditors; and
- CPs are not updated based on current legislative requirements.

CPs must be tailored to the business model adopted by each registrant. The following list provides some further requirements that should be included in the CP:

- Overview and definitions of ML and TF Crimes;
- Legal Framework outlining Offences and Penalties;
- Policy, Procedures and Controls for Customer Due Diligence ("CDD"), Know Your Customer ("KYC"), Enhanced Due Diligence ("EDD") etc;
- Record Keeping and Reporting Obligations;
- List of Suspicious Indicators;
- Duties and Functions of the Compliance Officer;

- Identification of risks within the organisation;
- Requirements related to “Tipping Off”;
- Guidance on how Suspicious Transactions are to be detected;
- Requirements related to transaction monitoring;
- Provisions related to the training and recruitment of staff; and
- Provisions related to the register of enquiries.

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