



**GUIDANCE NOTES**

**FOR**

**SECURITIES COMPANIES**

**Guideline No. 4 – 2016**

## LEGISLATIVE REQUIREMENTS EFFECTIVE AUGUST 2009

The following is a summary of the legislative requirements under the Anti-Money Laundering and Countering the Financing of Terrorism (AMLCFT) Act 2009 applicable to Securities Companies. A securities company is a company which carries on a business of trading in securities on behalf of others and, without limiting the generality of the foregoing, includes a company which carries on business as:

- (i) A broker;
- (ii) A dealer;
- (iii) An underwriter;
- (iv) An investment adviser; or
- (v) Any combination of two or more of the foregoing.

### A. REPORTING

- **Suspicious Transactions**

A Suspicious Transaction Report (STR) must be sent to the FIU where a Reporting Entity<sup>1</sup> has reasonable grounds to suspect that funds, a transaction or attempted transaction are connected to the proceeds of criminal activity, money laundering or terrorist financing offences. (*Section 19(4) of the Anti-Money Laundering and Countering the Financing of Terrorist (AMLCFT) Act, 2009*). See also *Guideline on STR*

- **Terrorist Property**

A Terrorist Property Report (TPR) must be sent to the FIU when a Reporting Entity knows or believes that it has in its possession, funds or other assets (property) of a person or entity designated pursuant to the United Nations Security Council resolution (UNSCR)

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<sup>1</sup> “Reporting Entity” means any person whose regular occupation or business is the carrying on of – (a) any activity listed in the First Schedule of the AMLCFT Act 2009; or (b) any other activity defined by the Minister responsible for Finance as such by an order published in the Gazette amending the First Schedule.

1267(1999) and its successor resolutions or specified by the Minister responsible for Finance under section 2(2) of the AMLCFT Act 2009 pursuant to UNSCR 1373(2001). *(Regulation 5(3) of the AMLCFT Regulations No. 4 of 2015)* See also *Guideline on Terrorist Property Reporting*.

- **Threshold Transactions**

Monthly Threshold Transactions must be reported to the FIU for any transaction between a Reporting Entity and its customer involving amounts of \$2m or more. *(Regulation 12(3)(c) of AMLCFT Regulations No. 4 of 2010)*.

## **B. RECORD KEEPING (S. 16 of the AMLCFT Act 2009)**

A Reporting Entity must establish and maintain records of -

- (a) All business transactions;
- (b) Identification information relating to customer; and
- (c) Account files and business correspondence in relation to transactions.

The records must contain particulars sufficient to identify the following:

- (a) The customer's name, date of birth, address and occupation or where appropriate, business or principal activity;
- (b) The nature and date of the transaction;
- (c) The type and amount of currency involved;
- (d) The type and identifying number of any account with the Reporting Entity involved in the transaction;
- (e) If the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee, if any, the amount and date of the instrument, the number, if any, of the instrument and details of any endorsements appearing on the instrument; and

- (f) The name and address of the Reporting Entity, and of the officer, employee or agent of the Reporting Entity who prepared the report.

**Note:** All records must be kept by the Reporting Entity for at least seven years from the date the relevant transact was completed, or on the termination of business relationship, whichever is later.

## **C. ASCERTAINING IDENTITY AND BENEFICIAL OWNERSHIP INFORMATION**

A Reporting Entity must take specific measures to identify and verify the identity of all its customers by requiring the customer to produce an identification record<sup>2</sup> or other reliable, independent source documents as may be requested by the FIU.

### ***When must a Reporting Entity request identification record?***

A Reporting Entity must request identification when -

- Establishing a ‘business relationship’<sup>3</sup>. Or, in the absence of such a relationship, when the Reporting Entity conducts any threshold transaction. For example, for securities companies - transactions of \$2m or more.
- There is a suspicion of money laundering or terrorist financing.
- There are doubts about the veracity or adequacy of previously obtained customer identification data.

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<sup>2</sup> “Identification record” means any reliable and independent source documents, data or information or other evidence as is reasonably capable of establishing the true identity and verifying the identity of a person transacting business with a reporting entity, including, but not limited to, a driver’s licence, a national identification card, a passport and in the case of a body corporate, a certified copy of the Memorandum and Articles of Association, a certificate of incorporation, Articles of Incorporation and by-laws of the company together with the latest annual return to the Registrar of Companies.

<sup>3</sup> ‘Business relationship’ means any arrangement between any person and a reporting entity, the purpose of which is to facilitate the carrying out of financial and other related transactions on a regular basis.

When establishing a business relationship, a Reporting Entity must also obtain information on the purpose and nature of the business relationship.

- If a transaction is conducted by a natural person, the Reporting Entity must adequately identify and verify the person's identity including information relating to (i) the person's name, date of birth and address; and (ii) the national identification card, passport or other applicable official identifying document.
- If a transaction is conducted by a legal entity, the Reporting Entity must adequately identify the beneficial owner<sup>4</sup>, take reasonable measures to identify the verify its beneficial ownership and control structure, including information relating to (i) the customer's name, legal form, address and directors; (ii) the principal owners and beneficiaries and control structure; and (iii) provisions regulating the power to bind the entity and to verify that any person purporting to act on behalf of the customer is so authorized and identify those persons.
- If a customer or beneficial owner is a Politically Exposed Person<sup>5</sup>, the Reporting Entity must –
  - (a) adequately identify and verify the person's identity;
  - (b) have appropriate risk management systems to determine whether the customer is a politically exposed person;
  - (c) obtain the approval of senior management before establishing a business relationship with the politically exposed person;
  - (d) take reasonable measures to establish the source of wealth and source of property; and

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<sup>4</sup> "Beneficial ownership" means ownership by a natural person or persons who ultimately exercise individually or jointly voting rights representing at least twenty-five per cent of the total shares, or otherwise have ownership rights of a legal entity; or ownership by a natural person or persons who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement.

<sup>5</sup> "Politically exposed person" means any individual who is or has been entrusted with prominent public functions on behalf of a State, including a Head of State or of government, senior politicians, senior government, judicial or military officials, senior executives of State owned corporations, important political party officials, including family members or close associates of the politically exposed person whether that person is resident in Guyana or not.

- (e) conduct regular enhanced monitoring of the business relationship;

If a customer is subsequently found or becomes a Politically Exposed Person, the Reporting Entity must require its senior management to approve the continuation of a business relationship with such a person.

**Important Note** – Where a Reporting Entity is unable to obtain satisfactory evidence of the identity of any natural or legal person who wishes to establish a business relationship, the Reporting Entity must not commence such business relationship or perform the desired transaction and must consider making a suspicious transaction report to the FIU. (*S. 15 of the AMLCFT Act 2009 as amended by the AMLCFT (Amendment) Acts No. 1 of 2015 and No. 10 of 2015*)

#### **D. THIRD PARTY DETERMINATION**

Where a Reporting Entity is relying on an intermediary or third party to undertake its obligations relating to the identification and verification of identity of its customer, the Reporting Entity must immediately –

- (a) Obtain all information and documents required under AMLCFT legislation;
- (b) Take adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to Customer Due Diligence requirements will be made available for the third party upon request without delay; and
- (c) Satisfy itself that the third party or intermediary is regulated, supervised, and has measures in place to comply with the AMLCFT legislation.

#### **E. COMPLIANCE REGIME**

A Reporting Entity is required to establish a compliance regime which must include the following five elements:

- (i) The appointment of a compliance officer (**Note that where a Reporting Entity does not employ or act in association with any other person or if all its staff and manage consists of less than five persons, the owner must assume the responsibility/role of the compliance officer**).
- (ii) The development and application of written compliance policies and procedures.
- (iii) The assessment and documentation of risks of money laundering and terrorist financing, and measures to mitigate high risks.
- (iv) Implementation and documentation of an ongoing compliance training program.
- (v) A documented review of the effectiveness of policies and procedures, training program and risk assessment. (*S. 19 of AMLCFT Act 2009*)

#### **ROLE OF A SUPERVISORY AUTHORITY**

Supervisory Authorities are responsible for supervising compliance by their respective Reporting Entities with the requirements of the AMLCFT legislation. Such responsibility includes but is not limited to:

- (a) Examining and supervising the reporting entity, and regulating and overseeing effective compliance with the obligations set out in sections 15, 16, 18, 19 and 20 and any other preventive measures in relation to combating money laundering and terrorist financing;
- (b) Issuing instructions, guidelines or recommendations and provide training to reporting entities on their obligations and requirements under the AMLCFT Act and to make the reporting entities aware of any amendments to the laws relating to money laundering, terrorist financing or proceeds or crime;
- (c) Ensuring that their respective Reporting Entities update their AML/CFT policies in accordance with AML/CFT legislative amendments;

- (d) Developing standards and criteria applicable to the communication of suspicious activities that reflect other existing and future pertinent national and internationally accepted standards; and
- (e) Imposing requirements that the Reporting Entity shall ensure that their foreign branches and subsidiaries adopt and enforce measures consistent with this Act to the extent that local laws and regulations so permit, and where the foreign branch or subsidiary is unable to adopt and observe these measures, to report the matter to the designated supervisory or regulatory authority or the competent disciplinary authority.

In order to secure compliance by their respective Reporting Entities with the requirements of the AMLCFT legislation, Supervisory Authorities have the authority to –

- (a) Enter in the business premises of their respective Reporting Entity during ordinary working hours in order to inspect or take documents or make copies or extracts of information from such documents, inspect premises, and observe the manner in which certain functions are undertaken;
- (b) Require any person on the premises to provide an explanation on any such information; and
- (c) Request and be given information relevant to money laundering and terrorist financing matters from their respective Reporting Entities. *(S. 22(2) of the AMLCFT Act 2009 as amended by the AMLCFT (Amendment) Acts No. 1 of 2015 and No. 10 of 2015)*

The Guyana Securities Council is the appointed Supervisory Authority for Securities Companies.

## **PENALTY FOR NON-COMPLIANCE**

Non-compliance with the requirements of the AMLCFT Act 2009 may result in criminal and administrative penalties. *(Section 23 of the AMLCFT Act 2009 as amended by AMLCFT (Amendment) Acts No. 1 of 2015 and No. 15 of 2016)*



**Frequently Asked Questions – Threshold Transactions Reporting**

Question 1 - **Whose transactions must be reported?**

Answer 1 - Threshold transactions of ALL of the company's customers, whether natural or legal persons/entities.

Question 2 - **Can transactions be accumulated?**

Answer 2 - Yes. Multiple transactions by one customer in a reporting month, which amounts to or exceeds the \$2m threshold, must be reported.

Question 3 - **Does threshold reporting requirement applies to transactions carried out by wire transfer?**

Answer 3 - Yes. All wire transfer transactions that amounts to or exceeds the \$2m threshold in a reporting month must be reported.

Question 4 - **What types of transactions are reportable?**

Answer 4 - Any sale, purchase or acquisition of a security, for consideration, whether the terms or payment are on margin, installment or otherwise that amounts to or exceeds the \$2m threshold.

Question 5 - **What method of payments are reportable?**

Answer 5 - All methods of payments are reportable. These include but are not limited to Cash, Cheques, Wire Transfers.