
Ten things to retain from the FSC Handbook on Anti-Money Laundering and Countering the Financing of Terrorism

Introduction

In the wake of the recent spate of legislative update, the Financial Services Commission (the “FSC”) issued its much awaited Anti-Money Laundering and Countering the Financing of Terrorism Handbook (the “Handbook”). In its press release announcing the issuance of the Handbook, the regulator posits that this document “consolidates the Commission’s guidance on anti-money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction”. The Handbook touches on a number of key items ranging from corporate governance to record keeping and employee screening.

We do not purport to provide an all-encompassing summary of the Handbook but instead propose to delve into a selection of ten key points which are in our view of significant importance.

1 Scope and Applicability

The Handbook is designed to provide guidance to all financial institutions. It applies to special categories of persons including but not limited to holders of financial services licences, management companies, global legal advisory service providers, insurers, collective investment schemes, investment managers and investment banking licence holders. Its applicability does not extend to simple investment holding structures which only hold a Global Business Licence.

2 Legal Status

The Handbook provides that the guidance included therein is not enforceable but is illustrative to the extent that conforming conduct would tend to indicate compliance with the legislative framework. That being said, the Handbook goes on to say that the FSC will take this Handbook into account when assessing the level of compliance with the Financial Intelligence and Anti-Money Laundering Act 2002 (the “FIAMLA”), Financial Intelligence and Anti-Money Laundering Regulations 2018 (the “FIAMLR”) and the Code on the Prevention of Money Laundering & Terrorist Financing (the “Code”) while conducting its onsite visits.

3 Compliance Officer

The enactment of the FIAMLR brought about the introduction of the designation of a compliance officer at senior management level who would be responsible for inter alia ensuring continued compliance with the requirements of the legislative framework, undertaking day-to-day oversight of the program for combating money laundering and terrorism financing.

A major contribution of the Handbook is the clarity that it brings as to the role of the compliance officer. As such, a financial institution must ensure that the compliance officer has timely and unrestricted access to the records of the financial institution and has sufficient resources to perform his or her duties. The compliance officer should have the full co-operation of the staff. In addition, he or she should be fully aware of his or her obligations and those of the financial institution and should have regular contact with the board.

Where owing to the size of the financial institution, the compliance officer holds additional functions or bears other responsibilities, the financial institution must ensure that any conflicts of interest between the responsibilities of the compliance officer role and those of any other functions are identified, documented and appropriately managed. An overarching obligation is that the compliance officer should be independent of the core operating activities of the financial institution and should not be engaged in soliciting business.

4 Risk Based Approach

The risk-based approach expected from financial institutions has been significantly canvassed in the Handbook. Risk is seen to be broken down into three limbs which are namely threat, vulnerability and consequence. Building on this premise is the weightage which should be allocated to the various risk factors and how financial institutions can apply these principles in practice. In essence, the six factors that are set out in Section 17(2)(b) of the FIAMLA are each considered in depth.

5 Risk Rating

The FSC would expect a financial institution to avoid a tick box approach when assessing risks and consider each customer on a case by case basis or in group risk-rated buckets based on their profiles, looking at any risks they pose along with any mitigating factors. A risk rating matrix may be used but the factors used should be documented and details

should be provided on how any risks identified would be mitigated. The FSC would have no objection to templates or forms being used during the risk assessment, however how these work should be clear, what the scoring system is and how the score is reviewed or overridden.

6 Third Party Reliance

It is common practice to have a third party reliance arrangement. In order to ensure that such arrangements meet the FSC's expectations, the Handbook considers an example of an arrangement between a fund or its administrator and a relevant third party. The arrangement should be couched in clear and unambiguous terms. Further, it should be written, signed and be free of any conditional language whether explicit or implied.

7 Electronic Identification and Verification

Consideration is given to the use of systems which are used to carry out electronic verification of natural persons and guidance is provided as to the steps that could potentially be used to ensure the adequacy of the system.

8 Technological Factors

To keep up with the rapid pace and evolution of technology, the Handbook also sheds some light as to the operational, reputational and legal risks which are posed by the use of new and pre-existing products such as:

- (a) digital information storage including cloud computing;
- (b) digital or electronic documentation storage;
- (c) electronic verification of documentation;
- (d) data and transaction screening systems; or
- (e) the use of virtual or digital currencies.

9 Appropriate Scrutiny

Regulation 28(2) of the FIAMLIR requires conduct of 'appropriate scrutiny' of any unusual activity and enhanced due diligence measures in appropriate cases. Financial institutions are provided with some tips that should be borne in mind when conducting 'appropriate scrutiny' and also certain instances which are likely to cause suspicion after conducting said appropriate scrutiny.

10 Employee Screening and Training

Employee screening and training has always been considered an effective component of AML/CFT measures in an organisation. In the Handbook it is stated that the guiding principle of all AML and CFT training should be to encourage directors, officers and

employees, irrespective of their level of seniority, to understand and accept their responsibility to contribute to the protection of the financial institution against the risks of money laundering and terrorism financing. There is also a particular section of the Handbook devoted to those categories of employees who are to be provided with additional training.

Conclusion

The Handbook then is the result of the FSC's efforts to uphold the country's reputation as a sound international financial centre and sheds light on the enhanced approach to fighting money laundering and terrorist financing. The Handbook sets the tone on the regulator's expectations from its licensees.

This article should not be construed as legal advice and is made for information purposes only.

Should you require legal advice on AML/CFT related matters, please contact chambers@blc.mu.