



Insurance
Regulatory
Authority

Bima Bora kwa Taifa

I R A

**Anti – Money Laundering & Prevention of
Terrorism Legislations**

**Presentation at Stakeholders
Workshop at College of
Insurance on 4th October 2016**

By: Mathews Odero



Presentation Outline

2

- i. Introduction
- ii. The Proceeds of Crime and Anti-Money Laundering Act, 2009
- iii. Prevention of Terrorism Act, 2012
- iv. Conclusion

10/11/2016

INTRODUCTION

- The Purpose of the two Acts;
 - (a) provide for the offence of money laundering and to introduce measures for combating the offence;
 - (b) to provide for the mechanism for identification, tracing, freezing, seizure and confiscation of the proceeds
 - (c) measures for the detection and prevention of terrorist activities;
- The Authority is formulating its guidelines based on the above legislations;
- The legislations have generally provided for the responsibilities of financial institutions or the reporting institutions
- Guidelines customizes the provisions of the Laws and regulations made under them to specific issues relevant to the Industry.

Definition of Terms

“financial institution” means any person or entity, which conducts as a business, one or more of the following activities or operations—

- (a) accepting deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions;
- (c)
- (l) underwriting and placement of life insurance and other investment related insurance; and
- (m) money and currency changing;

“proceeds of crime” means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence irrespective of the identity of the offender and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains or benefits derived or realized from such property from the time the offence was committed;

“Reporting Institution” means financial institution and designated nonfinancial business and profession.

Money Laundering

- A person enters into any agreement in respect to property or perform any other act with the property whose effect is to-
 - ✓ Conceal or disguise the nature, source, location, disposition or movement of the property or interest therein;
 - ✓ Enable or assist any person who has committed or commits an offence
 - ✓ removes or diminish any property acquired as a result of commission of an offence
- **Tipping off-** when a person who knows that the report is being made under the Act and discloses to another person information or other matters which is likely to prejudice any investigation of offence of Money-laundering.

Anti- Money Laundering Obligations of a reporting Institutions

➤ Some of the obligations of the reporting institutions

- ✓ monitor on an ongoing basis all complex, unusual, suspicious, large or such other transactions as may be specified in the regulations
- ✓ Formulate and enforce standards;
- ✓ Report any suspicious or unusual transactions to the reporting Centre ;
- ✓ Report all cash transactions equivalent to or exceeding US\$ 10,000 or its equivalent in any other currency carried out.

Obligation to verify customer identity – Sec 45

- A reporting institution shall take reasonable measures as to true identity of any applicant seeking to enter into business relationship
- the reporting institution should require an applicant to produce an official record which is capable of establishing the true identity of the applicant.
- In case of an individual customer;
 - ✓ a birth certificate
 - ✓ a national identity card;
 - ✓ a drivers license;
 - ✓ a passport; or
 - ✓ any other official means of identification as may be prescribed

Obligation to verify customer identity cont.....

- In case of body corporate:
 - ✓ Evidence of registration or incorporation;
 - ✓ The Act establishing the body corporate;
 - ✓ Corporate resolution authorizing the person to act on behalf of the body corporate

Additional measures that may be used to identify and verify the identity of the customer include-

- ✓ postal address;
- ✓ current physical or residential address;
- ✓ utility bill including among others an electricity or a water bill;
- ✓ occupation or employment details;
- ✓ source of income;
- ✓ nature and location of business activity;
- ✓ PIN

Risk Assessment Reg. 6

- Every reporting institution shall undertake a Money Laundering Risk Assessment to enable it identify, assess, monitor, manage and mitigate the risks associated with money laundering.
- In undertaking the risk assessment, a reporting institution shall develop and implement systems that will enable it identify and assess money laundering risks consistent with the nature and size of the institution and the outcome of such assessment shall be documented.
- On the basis of the results of the assessment, a reporting institution shall develop and implement Board approved policies, controls and procedures that will enable it to effectively manage and mitigate the identified risks.
- Every reporting institution shall put in place procedures and mechanisms for monitoring implementation of the controls and enhance them, where necessary.
- A reporting institution shall update its risk assessment policies or programs regularly but at least once every two years.

Internal control of the Reporting Institutions

- A reporting institution shall formulate, adopt and implement internal control measures and other procedures to combat money laundering and these measures include-
- ✓ program for assessing risks relating to money laundering;
- ✓ formulation of a control policy that will cover issues of timing, degree of control, areas to be controlled, responsibilities and follow-up;
- ✓ monitoring program in relation to complex, unusual or large transactions or suspicious activities;
- ✓ enhanced due diligence procedures;
- ✓ Providing anti-money laundering employee – at management level;
- ✓ making employees aware of the procedures under the Act, these Regulations or directives, codes and guidelines issued;
- ✓ establishing and maintaining a manual of compliance procedures in relation to anti-money laundering

Life insurance Related Business

- In Case of life and other investment related insurance, in addition to the measures on due diligence required for customer and beneficial owner, should conduct due diligence on beneficiaries of the policies-
- ✓ as soon as they are identified;
 - ✓ For a beneficiary that is identified as specifically named natural or legal persons or legal arrangements, taking the name of the person;
 - ✓ for the beneficiary that is a legal arrangement or designated by characteristics or by category such as spouse or children.
 - ✓ The information to be maintained as required by law.

Legitimacy of the Source of funds

- A reporting institutions to consider the following in order to determine the legitimacy of the source of funds;
 - ✓ for large, frequent or unusual cash deposits or withdrawals, written statement from the customer confirming that the nature of his business activities – determine the ability to generate the cash;
 - ✓ for large, frequent or unusual currency exchanges , written statement from the customer confirming the reason and need for acquired currencies;
 - ✓ for multiple or nominee accounts, or similar or related transactions, written statement from the customer confirming the reason and need for multiple or nominee accounts, or similar or related transactions;
 - ✓ for large, frequent or unusual transfers or payments of funds, appropriate documentation as to the identity of the recipient or sender of the transferred or paid funds, and the reason for the transfer or payment;
 - ✓ for large or unusual investments or requests for advice or services, written statement from the customer confirming that the investments or advice or services being requested are bona fide;
 - ✓ Reporting institution to come up with policies in consultation with supervisory institution- Issue guidelines

PREVENTION OF TERRORISM ACT

- Some definitions include:
 - **“terrorist property” means—**
 - ✓ proceeds from the commission of a terrorist act, money or other property which has been, is being, or is intended to be used to commit a terrorist act;
 - ✓ money or other property which has been, is being, or is intended
 - ✓ to be used by a terrorist group; or any property belonging to a specified entity;
 - Specified entity – that entity IG has reasonable suspicion to believe that the entity has committed, attempted to commit or participate in or in facilitation of a terrorism Act or an entity acting on behalf of, at the direction of or in association with an entity described earlier.
 - If the CS gazette the specified person as determined by the IG

The Function of Ministerial committee on Anti-Money Laundering

- Committee shall, upon receipt of the designation or sanctions list and without delay, circulate the designation or sanctions list to—
 - ✓ the supervisory bodies specified under the First Schedule to the Proceeds of Crime and Anti-Money Laundering Act, 2009;‘
 - ✓ the national security organs specified under Article 239 of the Constitution;
 - ✓ such law enforcement agencies as it may consider necessary; and
 - ✓ any other person who is authorized –
 - a) to detect, freeze or seize the funds or the property of a designated entity under any written law; or
 - b) to take such action as may be necessary to give effect to Resolution 1267, 1373, 1718, 1988 or such othe relevant Resolutions.
 - ✓ A supervisory body shall, upon receipt of the designations or sanctions list submitted to under the Act shall-
 - a) circulate the designations or sanctions list to the reporting institutions under its purview for their information and action;

The Function of Ministerial committee on Anti-Money Laundering cont.....

- a) where necessary, provide guidance to the reporting institutions holding funds or other assets of a designated person, in relation to their obligations under these Regulations; and
- b) ensure that the reporting institutions comply with then requirements of these Regulations.

Conclusion

It is the responsibility of all reporting institution to develop functional systems that will help in identification of suspicious transactions and to act appropriately to combat Money Laundering and Financing of Terrorism.

Questions

17



10/11/2016

Thank you



The Insurance Regulatory Authority
Zep-Re Place, Longonot Road, Upper Hill
+ 254 20 4996000 / +254 727 563110
Email: commins@ira.go.ke
<http://www.ira.go.ke>

10/11/2016