



CIRCULAR NO: 1/2015

ADDRESSED TO: **INSURERS & INSURANCE INTERMEDIARIES**

SUBJECT: **MONEY LAUNDERING & TERRORIST FINANCING RISK ASSESSMENTS**

EFFECTIVE DATE: **1 October 2015**

STATUTORY REFERENCE: **SECTION 30 (1) (h), SECTION 33 (1) (b) OF FINANCIAL SERVICES REGULATORY AUTHORITY ACT, 2010 & SECTION 18 & 35 OF THE MONEY LAUNDERING & FINANCING OF TERRORISM (PREVENTION) ACT, 2011**

Background

The insurance and other financial services sectors are potentially at risk of being misused, knowingly or unknowingly, for money laundering and the financing of terrorism with the consequence of exposing insurers and insurance intermediaries to legal, operational and reputational risks.

Money Laundering is a process in which funds or property believed to be obtained directly or indirectly through illegal or criminal activities is converted into other assets so as to conceal their true origin, ownership or any other factors that may tend to reveal an irregularity. The main objective is to legitimize income originating from illegitimate sources so that it loses its criminal identity and appear to be legitimately derived.

The process of money laundering comprises three stages, during which there may be numerous transactions that could alert a financial services provider to the money laundering activity. The three stages are as follows:

1. Placement – physical disposal of criminal proceeds or placing dirty money into financial system;
2. Layering – the separation of criminal proceeds from their source by the creation of layers of transactions designed to disguise the origin of funds and provide appearance of legitimacy; and
3. Integration – placing the laundered proceeds back into the economy as apparently legitimate funds.

The financing of terrorism is an act of directly or indirectly providing, whether by giving, lending or otherwise making available or collecting, funds or property with the intention that they should be used, or having reasonable grounds to believe that they are to be used, in full or in part, in order to carry out an act of terrorism.

The Money Laundering and Financing of Terrorism (Prevention) Act No 6 of 2011 (MLFTP Act No 6 of 2011) was passed into law on 6 March 2012. It is an Act that criminalises money laundering and suppresses the financing of terrorism in Swaziland. It establishes the Swaziland Financial Intelligence Unit (SFIU) which is responsible for receiving, requesting, analysing and disseminating to competent authorities disclosures of financial information as required by the Act to combat money laundering and financing of terrorism.

The Financial Services Regulatory Authority (FSRA) is mandated by section 35 (1) of the MLFTP Act as the supervisory authority of non-bank financial services providers to enforce compliance with the provisions of the Act. Accountable institutions are required by law to take preventative measures to deter and detect money laundering and terrorist financing and to ensure that their businesses are not abused by money launderers and terrorist financiers.

Section 2 (m) of the MLFTP Act provides that insurers and insurance intermediaries are accountable institutions. Accountable are

Legal Obligations Relating To Risk Assessments

The Financial Action Task Force (FATF) is an independent inter – governmental body that develops and promotes policies to protect the global financial system against money laundering and terrorist financing.

FATF has developed recommendations on Anti – Money Laundering and Combating the Financing of Terrorism collectively referred to as FATF Recommendations, some of which are applicable to the insurance sector.

FATF Recommendation 1 requires insurers and insurance intermediaries to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks. The MLFTP Act requires insurers and insurance intermediaries to:

- Take appropriate steps to identify, assess and take effective action to mitigate money laundering and terrorist financing risks;
- Document the risk assessments in order to demonstrate their basis and review them periodically; and
- Have appropriate mechanisms to provide risk assessment information to the FSRA, SFIU and other competent authorities: and
- Audit their risk assessments in terms of section 18(1) (d) of the MLFTP Act.

Assessing Money Laundering and Terrorist Financing Risks

Insurers and insurance intermediary's risks assessments will enable them to prepare a comprehensive Risk Based anti – money laundering and the combating of the financing terrorism compliance programme (Risk Based – AML/CFT Compliance Program) in order to meet its obligations under the MLFTP Act. These obligations include the following;

- Section 6 (1) of the Act – Verifying customers (natural or juristic) identity and transactions before entering into a new business relationship or when continuing an existing business relationship (customer due diligence);
- Section 6 (2) of the Act – Establishing the source of wealth and source of property of the customer they are transacting with;
- Section 6 (2) (d) (iii) of the Act – Applying enhanced customer due diligence in relation to high risk customers and to high risk situations and applying simplified CDD in relation to low risk customers and low risk situations;
- Section 8 of the Act – Establishing and maintaining of all transactions carried out by the insurer and insurance intermediary and correspondence relating to the business transaction with customer;
- Section 11 of the Act – Monitoring transactions of customers with complex, unusual, large transactions or have no apparent or visible economic or lawful purpose;
- Section 12 of the Act – Reporting of suspicious transactions to the Swaziland Financial Intelligence Unit; and
- Section 18 of the Act – Provides for an Anti – Money Laundering and Combating the Financing of Terrorism (AML/CFT) compliance risk management function and programme and establishment an audit function to test its anti-money laundering and financing of terrorism procedures and systems.

When identifying aspects of business that makes insurers and insurance intermediaries susceptible to money laundering and terrorists financing, the MLFTP Act and the FATF recommendations requires insurers and insurance intermediaries to consider the following;

- The nature, size and complexity of the businesses;
- The products and services it offers;
- The way they deliver its products and services;
- The type of customers and communities it deals with; and
- The types of institutions it deals with.

Assessing Likelihood of Being Used for Money Laundering and Terrorist Financing

Once risks have been identified, insurers and insurance intermediaries are required to rate the likelihood of their business being used by customers for money laundering and the financing of terrorism. The likelihood rating should correspond to the following methodology;

- Very likely;
- Likely; and
- Unlikely.

By issuing this circular, FSRA requires insurers and insurance intermediaries to conduct money laundering and the financing of terrorism risk assessments. Documented risk assessments must be submitted to the FSRA on or before **31 November 2015**. Insurers and insurance intermediaries should also describe how the risk assessments will be kept up to date. FSRA also requires entities to submit their documented AML/CFT programmes on or before **15 December 2015**.

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FINANCIAL SERVICES REGULATORY AUTHORITY