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# The DFSA Rulebook

Anti Money Laundering  
Module

**(AML)**

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## Contents

The contents of this module are divided into the following chapters, sections and appendices:

<b>1</b>	<b>INTRODUCTION.....</b>	<b>1</b>
1.1	U.A.E. federal law .....	1
<b>2</b>	<b>APPLICATION AND PURPOSE .....</b>	<b>2</b>
2.1	Application .....	2
2.2	Purpose.....	2
<b>3</b>	<b>ANTI MONEY LAUNDERING COMPLIANCE REQUIREMENTS</b>	<b>3</b>
3.1	General requirements .....	3
3.2	Co-operation with regulators .....	5
3.3	Appointment, responsibilities and duties of the MLRO .....	5
3.4	Customer identification requirements.....	8
3.5	Internal and external reporting requirements .....	17
3.6	Government, regulatory and international findings .....	20
3.7	Money laundering risks .....	22
3.8	Transfer of funds.....	23
3.9	Awareness and training .....	23
<b>APP1</b>	<b>CUSTOMER IDENTIFICATION REQUIREMENTS.....</b>	<b>25</b>
A1.1	Duties and responsibilities .....	25
A1.2	Establishing identity – identification procedures .....	27
<b>APP2</b>	<b>MONEY LAUNDERING RISKS .....</b>	<b>34</b>
A2.1	Risk assessment.....	34
A2.2	Risks regarding corruption and politically exposed persons .....	36
A2.3	Suspicious transactions and transaction monitoring .....	36

## **1 INTRODUCTION**

### **1.1 U.A.E. federal law**

#### **Guidance**

1. In connection with Article 72 of the Regulatory Law 2004, this module relates to regulatory requirements imposed by the DFSA, as opposed to requirements imposed by applicable criminal laws. That is, relevant provisions of the 'Federal Law No. 4 of 2002 - Criminalisation of Money Laundering of the U.A.E.' (U.A.E. Law No. 4), the 'Federal Law No. 1 of 2004' regarding anti-terrorism, the U.A.E. Penal Code and any other Federal Law of the U.A.E. as applicable in the DIFC in relation to anti money laundering compliance. The Rules of this module should therefore not be relied upon to interpret or determine the application of the money laundering laws of the U.A.E.
2. By virtue of Article 3(1) of Federal Law No. 8 of 2004, the U.A.E. Law No. 4 of 2002 applies to all operations in the DIFC. In recognition of this, Article 70(3) of the Regulatory Law 2004 requires an Authorised Firm to comply with the U.A.E. Law No. 4. The defined term of 'Money Laundering' in these Rules follows that in the U.A.E. Law No.4. The legal definition of the offence of 'Money Laundering' is set out in Article 1 of the U.A.E. Law No. 4.

## **2 APPLICATION AND PURPOSE**

### **2.1 Application**

**2.1.1** This module (AML) applies to every Authorised Firm.

**2.1.2** This module also applies to the Money Laundering Reporting Officer (MLRO) of an Authorised Firm in his capacity as an Authorised Individual.

### **2.2 Purpose**

#### **Guidance**

1. These Rules require Authorised Firms to have adequate policies, procedures, systems and controls in place to prevent the activity of money laundering. Money laundering is generally described as the process by which criminals attempt to hide or disguise the true origin and ownership of the proceeds of their criminal activities, thereby avoiding prosecution, conviction and confiscation of criminal funds. This includes the closely related subject of terrorist financing and international efforts to locate and cut off the funding of terrorists and their organisations.
2. Accordingly, where the DFSA uses ‘money laundering’ either as a defined or undefined term, Authorised Firms are required to include terrorist financing in all considerations with regard to their policies, procedures, systems and controls such as those relating to suspicious transaction reporting. [Amended][VER3/06/07][RM43/07]

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## **3 ANTI MONEY LAUNDERING COMPLIANCE REQUIREMENTS**

### **3.1 General requirements**

#### **Guidance**

1. An Authorised Firm's anti money laundering policies, procedures, systems and controls should:
  - a. ensure compliance with the U.A.E. Law No.4 and any other relevant Federal laws;
  - b. enable suspicious customers and Transactions to be detected and reported;
  - c. ensure the Authorised Firm is able to provide an audit trail of a Transaction; and
  - d. ensure compliance with any other obligation in these Rules.
2. An Authorised Firm's anti money laundering compliance arrangements should consist of policies, procedures, systems and controls and may also encompass appropriate anti money laundering programmes and strategies.
3. An Authorised Firm should have a policy statement detailing the duties and obligations of its MLRO.
4. In accordance with GEN Rule 5.3.19 an Authorised Firm should have specific arrangements to consider the fitness and propriety of its staff. The arrangements should take into account criminal convictions, adverse findings by courts or regulatory authorities in the U.A.E. or elsewhere, or engagement in dishonest or improper business practices.
5. Under Article 3 of the U.A.E. Law No.4, an Authorised Firm may be criminally liable for the offence of Money Laundering if such an activity is intentionally committed in its name or for its account.

[Relocated][VER4/10-07][RM50/07]

- 3.1.1**
- (1) An Authorised Firm must establish and maintain effective anti money laundering policies, procedures, systems and controls to prevent opportunities for Money Laundering, in relation to the Authorised Firm and its activities.
  - (2) An Authorised Firm must take reasonable steps to ensure that its Employees comply with the relevant requirements of its anti money laundering policies, procedures, systems and controls.
  - (3) An Authorised Firm must review the effectiveness of its anti money laundering policies, procedures, systems and controls at least annually.

**Guidance**

1. The review process should include an assessment of the Authorised Firm's anti money laundering policies, procedures, systems and controls.
2. This review process may be undertaken:
  - a. internally by the its internal audit or compliance function; or
  - b. by a competent firm of independent auditors or compliance professionals.
3. The review process under Guidance note 1 should cover at least the following:
  - a. a sample testing of 'Know Your Customer' arrangements;
  - b. an analysis of all Suspicious Transaction Reports to highlight any area where procedures or training may need to be enhanced; and
  - c. a review of the nature and frequency of the dialogue between the Governing Body or senior management with the MLRO to ensure that their responsibility for implementing and maintaining adequate controls is satisfactory.

**3.1.2** An Authorised Firm which is a Domestic Firm must ensure that its anti money laundering policies, procedures, systems and controls apply to any branch or subsidiary operating in another jurisdiction.

**3.1.3** If another jurisdiction's laws or regulations prevent or inhibit an Authorised Firm from complying with the U.A.E. Law No.4 or with these Rules, the Authorised Firm must promptly inform the DFSA in writing.

**Guidance**

1. If the DFSA is not satisfied in respect of anti money laundering compliance in the circumstances set out in Rule 3.1.3 it may make it a condition on the Authorised Firm's Licence that it must not operate a branch or subsidiary in that jurisdiction.
2. A Domestic Firm should conduct a periodic review to verify that any branch or subsidiary operating in another jurisdiction is in compliance with the obligations imposed under the U.A.E. Law No. 4 and these Rules.

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## **3.2 Co-operation with regulators**

- 3.2.1** An Authorised Firm that receives a request for information from a Financial Services Regulator or agency responsible for anti money laundering regarding enquiries into potential money laundering related to Financial Services carried on in or from the DIFC, must promptly inform the DFSA in writing.

## **3.3 Appointment, responsibilities and duties of the MLRO**

### **Appointment**

#### **Guidance**

1. The requirement to appoint an individual to the Licensed Function of MLRO is in AUT section 10.3.
2. Pursuant to AUT Rule 10.3.2 the MLRO must be ordinarily resident in the U.A.E.

- 3.3.1** An Authorised Firm must appoint an individual to act as a deputy of the Authorised Firm's MLRO who must fulfil the role of MLRO in his absence.

#### **Guidance**

A deputy of the Authorised Firm's MLRO need not apply for Authorised Individual status for performing this function subject to Rules in AUT section 9.4.

- 3.3.2** An Authorised Firm must ensure that the MLRO is of sufficient seniority within the Authorised Firm to enable him to:

- (a) act on his own authority;
- (b) have direct access to the Governing Body and senior management;
- (c) have sufficient resources including, if necessary, an appropriate number of appropriately trained Employees to assist in the performance of his duties in an effective, objective and independent manner;
- (d) have unrestricted access to information the Authorised Firm has about the financial and business circumstances of a customer or any Person on whose behalf the customer is or has been acting; and

- (e) have unrestricted access to relevant information about the features of the Transaction which the Authorised Firm has entered into or may have contemplated entering into with or for the customer or that Person.

**Guidance**

GEN Rule 5.3.18 requires an Authorised Firm to establish and maintain systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it.

**Responsibilities**

- 3.3.3** (1) An Authorised Firm must ensure that its MLRO is responsible for all of its anti money laundering activities carried on in or from the DIFC.
- (2) An Authorised Firm must ensure that its MLRO carries out and is responsible for the following:
  - (a) establishing and maintaining the Authorised Firm's anti money laundering policies, procedures, systems and controls and compliance with anti money laundering legislation applicable in the DIFC;
  - (b) the day-to-day operations for compliance with the Authorised Firm's anti money laundering policies, procedures, systems and controls;
  - (c) acting as the point of contact to receive internal Suspicious Transaction Reports from the Authorised Firm's Employees pursuant to Rule 3.5.1;
  - (d) taking appropriate action pursuant to Rule 3.5.2 following the receipt of an internal Suspicious Transaction Report from the Authorised Firm's staff;
  - (e) making, in accordance with U.A.E. Law No. 4, external Suspicious Transaction Reports to the Anti Money Laundering Suspicious Cases Unit (AMLSCU) of the U.A.E. and sending corresponding copies to the DFSA under Rule 3.5.2;
  - (f) acting as the point of contact within the Authorised Firm for competent U.A.E. authorities and the DFSA regarding money laundering issues;
  - (g) responding promptly to any request for information made by competent U.A.E. authorities or the DFSA;



- (h) receiving and acting upon findings under Rules 3.6.1 and 3.6.2; and
- (i) establishing and maintaining an appropriate anti money laundering training programme and adequate awareness arrangements pursuant to Rules under section 3.9.

**Guidance**

In accordance with GEN Rule 5.3.21 where an Authorised Firm outsources specific anti money laundering tasks of its MLRO to another suitable individual of a third party provider, including within a corporate Group, the MLRO of the Authorised Firm remains responsible for ensuring compliance with the duties imposed on the MLRO.

**Reporting**

**3.3.4** The MLRO must report at least annually to the Governing Body or senior management of the Authorised Firm on the following matters:

- (a) the results of the review under Rule 3.1.1(3);
- (b) the Authorised Firm's compliance with applicable anti money laundering laws including Rules;
- (c) the quality of the Authorised Firm's anti money laundering policies, procedures, systems and controls;
- (d) any findings under Rules 3.6.1 and 3.6.2 and how the Authorised Firm has taken them into account;
- (e) any internal Suspicious Transaction Reports made by the Authorised Firm's staff pursuant to Rule 3.5.1 and action taken in respect of those reports, including the grounds for all decisions;
- (f) any external Suspicious Transaction Reports made by the Authorised Firm pursuant to Rule 3.5.2 and action taken in respect of those reports including the grounds for all decisions; and
- (g) any other relevant matters related to money laundering as it concerns the Authorised Firm's business.

- 3.3.5** An Authorised Firm must ensure that its Governing Body or senior management promptly:
- (a) assess the report provided under Rule 3.3.4;
  - (b) take action, as required subsequent to the findings of the report, in order to resolve in identified deficiencies; and
  - (c) make a record of their assessment in (a) and the action taken in (b).
- 3.3.6** (1) The report provided under Rule 3.3.5 and the records of the assessment and actions pursuant to Rule 3.3.5(c) must be documented in writing.
- (2) A complete copy of each must be provided to the DFSA promptly.

## **3.4 Customer identification requirements**

### **Duties and responsibilities**

- 3.4.1** (1) Subject to the exception under Rule 3.4.5, an Authorised Firm must establish and verify the identity of any customer with or for whom the Authorised Firm acts or proposes to act.
- (2) In establishing and verifying a customer's true identity, an Authorised Firm must obtain sufficient and satisfactory evidence having considered:
- (a) its risk assessment under Rule 3.7.1 in respect of the customer; and
  - (b) the relevant provisions of App1 and App2.
- (3) An Authorised Firm must update as appropriate any customer identification policies, procedures, systems and controls.

### **Guidance**

An Authorised Firm should adopt a risk-based approach for the customer identification and verification process. Depending on the outcome of the Authorised Firm's money laundering risk assessment of its customer, it should decide to what level of detail the customer identification and verification process will need to be performed.

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- 3.4.2** (1) Subject to the exception under Rule 3.4.6, whenever an Authorised Firm comes into contact with a customer with or for whom it acts or proposes to act, it must establish whether the customer is acting on his own behalf or on the behalf of another Person.
- (2) An Authorised Firm must establish and verify the identity of both the customer and any other Person on whose behalf the customer is acting, including that of the Beneficial Owner of the relevant funds, which may be the subject of a Transaction to be considered, and must obtain sufficient and satisfactory evidence of their identities.

**Guidance**

1. An Authorised Firm should obtain a statement from a prospective customer to the effect that he is, or is not, acting on his own behalf. In cases where the customer is acting on behalf of third parties, it is recommended that the Authorised Firm obtain a written statement, confirming the statement made by the customer, from the parties including that of the Beneficial Owner.
2. Further Guidance is set out in App1 on how to identify any other Persons on whose behalf the customer is acting, including the Beneficial Owner.

- 3.4.3** (1) The obligations under Rules 3.4.1 and 3.4.2 must be fulfilled before the Authorised Firm effects any Transaction on behalf of the customer.
- (2) It is an Authorised Firm's responsibility when it next has contact with a customer who was an existing customer, prior to the Authorised Firm's authorisation by the DFSA, to assess whether it has performed the identification of that customer which would have been required had these Rules been applicable when the customer became a customer, and to obtain without delay any missing information or evidence about the true identity of all relevant parties.
- (3) With regard to Insurance Business carried on in or from the DIFC, if it is necessary for sound business reasons to enter into an insurance contract before the identification requirements under Rules 3.4.1 and 3.4.2 can be completed:
- (a) an Authorised Firm must have controls which ensure that any money received is not passed on to any Person until the customer identification requirements have been fulfilled; or
  - (b) a member of the senior management of an Authorised Firm may authorise in writing the payment of the money.

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- 3.4.4** (1) An Authorised Firm must ensure that the information and documentation concerning a customer's identity remains accurate and up-to-date.
- (2) If at any time an Authorised Firm becomes aware that it lacks sufficient information or documentation concerning a customer's identification, or develops a concern about the accuracy of its current information or documentation, it must promptly obtain appropriate material to verify the customer's identity.

**Guidance**

1. An Authorised Firm should undertake a periodic review to ensure that customer identity documentation is accurate and up-to-date.
2. An Authorised Firm should undertake a review particularly when:
  - a. the Authorised Firm changes its 'Know Your Customer' documentation requirements;
  - b. a significant Transaction with the customer is expected to take place;
  - c. there is a material change in the business relationship with the customer; or
  - d. there is a material change in the nature or ownership of the customer.
3. Additional elements concerning the customer identification which an Authorised Firm should take into account are set out as further Guidance in App1.

**Exception to customer identification requirements**

- 3.4.5** (1) Subject to Rule 3.4.7, an Authorised Firm is not required to establish the identity of a customer pursuant to Rule 3.4.1 if the customer is one of the following:
- (a) another Authorised Firm;
  - (b) an Ancillary Service Provider to whom chapter 8 of the ASP module applies or a Person who is subject to anti money laundering legislation equivalent to the provisions of chapter 8 of the ASP module or is subject to equivalent international standards applying in FATF countries;
  - (c) an Authorised Market Institution; or
  - (d) a credit institution or other financial institution covered by equivalent identification requirements as set out in (2).

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- (2) An institution falls within (1)(d) if it is:
- (a) a credit institution or other financial institution whose entire operations are subject to regulation, including anti money laundering, by:
    - (i) a Financial Services Regulator in an FATF Country; or
    - (ii) another relevant authority in a FATF Country; or
  - (b) a subsidiary of a credit institution or other financial institution referred to in (2)(a), provided that the law that applies to the parent company ensures that the subsidiary also observes the same provisions.

**Guidance**

1. The DFSA would expect an Authorised Firm to take reasonable steps to determine whether or not a customer falls within the exceptions under this Rule, and to keep records of the basis on which a customer was considered to be exempt.
2. For the purposes of Rule 3.4.5(1)(d) and 3.4.5(2) proof of a prospective customer by a Financial Services Regulator or another relevant authority should be obtained. In cases of doubt, the DFSA expects an Authorised Firm to perform the complete identification of a prospective customer as specified in Rule 3.4.1.
3. For the purposes of Rule 3.4.5(2)(b), an Authorised Firm should obtain a written statement from both the parent company and the subsidiary in question, stamped with the company's seal and signed by authorised signatories, confirming that the subsidiary falls under the same anti money laundering provisions as the parent company.

**3.4.6** Subject to Rule 3.4.7, an Authorised Firm is not required to establish the beneficial ownership pursuant to Rule 3.4.2 if the Authorised Firm's customer is a Person falling within Rule 3.4.5.

**3.4.7** (1) Rules 3.4.5 and 3.4.6 do not apply where the Authorised Firm:

- (a) knows or suspects; or
- (b) has reasonable grounds to know or suspect;

that a customer or a Person on whose behalf he is acting is engaged in Money Laundering.

- (2) The Authorised Firm will be taken to know or suspect or to have reasonable grounds to know or suspect, if:
- (a) any Employee handling the Transaction or potential Transaction; or
  - (b) anyone managerially responsible for it;
- knows or suspects or has reasonable grounds to know or suspect that a customer or a Person on whose behalf he is acting is engaged in Money Laundering.

### **Documentation and records**

- 3.4.8** (1) All relevant information, correspondence and documentation used by an Authorised Firm to verify a customer's identity pursuant to Rules 3.4.1 and 3.4.2 must be kept for at least six years from the date on which the business relationship with a customer has ended.
- (2) If the date on which the business relationship with a customer has ended remains unclear, it may be taken to have ended on the date of the completion of the last Transaction.

### **Guidance**

The records maintained by an Authorised Firm should be kept in such a manner that:

- a. the DFSA or another competent third party is able to assess the Authorised Firm's compliance with legislation applicable in the DIFC;
  - b. any Transaction which was processed by or through the Authorised Firm on behalf of a customer or other third party can be reconstructed;
  - c. any customer or third party can be identified;
  - d. all internal and external Suspicious Transaction Reports can be identified; and
  - e. the Authorised Firm can satisfy, within an appropriate time, any regulatory enquiry or court order to disclose information.
- 3.4.9** All relevant details of any Transaction carried out by the Authorised Firm with or for a customer must be kept for at least six years from the date on which the Transaction was completed.

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**Reliance on others to verify identity**

**3.4.10** An Authorised Firm may delegate technical aspects of the customer identification process to a qualified professional.

**Guidance**

1. Pursuant to GEN Rule 5.3.21 the delegation of aspects of the identification process to qualified professionals does not release the Authorised Firm from any of its obligations under applicable laws including Rules.
2. Any Person in Rule 3.4.5 is considered as a qualified professional.
3. The following aspects of customer identification or identity verification fall under this Rule:
  - a. to undertake the identification process under Rules 3.4.1 and 3.4.2 and to obtain any additional 'Know Your Customer' information from a customer in the course of a business relationship with a customer, or
  - b. to confirm the identification details if the customer is not resident in the U.A.E.
4. An Authorised Firm should have in place a co-operation agreement with the relevant qualified professional that defines which tasks are to be delegated, specifying that they are to be carried out in accordance with these Rules.
5. If the identification process has not been performed in accordance with these Rules, the Authorised Firm is expected to perform the identification process itself.

- 3.4.11** (1) Where a customer is introduced by another member of the Authorised Firm's Group, an Authorised Firm need not re-identify the customer, provided that:
- (a) the identity of the customer has been verified by the other member of the Authorised Firm's Group in a manner consistent with these Rules or equivalent international standards applying in FATF Countries;
  - (b) no exception from identification obligations has been applied in the original identification process; and
  - (c) a written statement is received from the introducing member of the Authorised Firm's Group confirming that:
    - (i) the customer has been identified with the relevant standards under (a) and (b);

- (ii) any identification evidence can be accessed by the Authorised Firm without delay; and
    - (iii) that the identification evidence is kept for at least a six years.
  - (2) If an Authorised Firm is not satisfied that the customer has been identified in a manner consistent with these Rules, the Authorised Firm must perform the verification process itself.
- 3.4.12** (1) Where customer identification records are kept by the Authorised Firm or other Persons outside the U.A.E., an Authorised Firm must take reasonable steps to ensure that the records are held in a manner consistent with these Rules.
- (2) An Authorised Firm must verify if there are secrecy or data protection legislation that would restrict access without delay to such data by the Authorised Firm, the DFSA or the law enforcement agencies of the U.A.E. Where such legislation exists, the Authorised Firm must obtain without delay certified copies of the relevant identification evidence and keep these copies in a jurisdiction which allows access by all those Persons.

#### **Business partner identification**

- 3.4.13** (1) Prior to establishing the business relationship an Authorised Firm must establish and verify its business partners' identities in accordance with Rules 3.4.1 and 3.4.2 by obtaining sufficient and satisfactory evidence of the identity of any business partner it relies upon in carrying on its Financial Services.
- (2) In the context of this Rule, a 'business partner' includes:
- (a) a qualified professional as specified in Rule 3.4.10;
  - (b) a member of the Authorised Firm's Group;
  - (c) a Correspondent Bank; or
  - (d) any other service provider.



- (3) An Authorised Firm that establishes, operates or maintains, a Correspondent Account for a Correspondent Banking Client must ensure that it has arrangements to:
- (a) conduct due diligence in respect of the opening of a Correspondent Account for a Correspondent Banking Client including measures to identify its:
    - (i) ownership and management structure;
    - (ii) major business activities and customer base;
    - (iii) location; and
    - (iv) intended purpose of the Correspondent Account;
  - (b) identify third parties that will use the Correspondent Account; and
  - (c) monitor Transactions processed through a Correspondent Account that has been opened by a Correspondent Banking Client, in order to detect and report any suspicion of money laundering.

**Guidance**

1. The requirement to identify the business partner is meant to cover only those business partners who may pose any relevant money laundering risk to the Authorised Firm. Hence, an Authorised Firm would be not required to establish and verify the identity of, for example, its maintenance or cleaning service.
2. The DFSA may take into account the identity of an Authorised Firm's business partner and the nature of their relationship in considering the fitness and propriety of an Authorised Firm.
3. 'Know your business partner' is as important as 'Know Your Customer'. An Authorised Firm is therefore required to verify the identity of a prospective business partner and to obtain evidence of it. The same documentation used to identify customers should be obtained from the business partner prior to conducting any business. Further details are set out in App1.
4. Before entering into a business relationship, an Authorised Firm should conduct a due diligence investigation, which includes ensuring that the business partner is an existing Person, authorised to conduct the kind of business in question and, if applicable to verify that this Person is duly regulated by a Financial Services Regulator or other relevant regulatory authority. In accordance with 'The Wolfsberg Anti Money Laundering Principles for Correspondent Banking', the Authorised Firm should thereby take into account, and verify the nature of:



## ANTI MONEY LAUNDERING (AML)

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- a. the business to be conducted and the major business activities;
  - b. the jurisdiction where the business partner is located as well as that of the parent;
  - c. the transparency and the nature of the ownership and the management structure; and
  - d. it may also gather information about the reputation of the business partner, including whether it has been subject to investigation or regulatory action in relation to money laundering or terrorist financing.
5. An Authorised Firm should adopt a risk-based approach when verifying its business partners' identities. Depending on the money laundering risk assessment of the Authorised Firm's business partner, the Authorised Firm should decide to what level of detail the business partner identification and verification process will need to be performed, further details are set out in App2.
  6. With regard to Correspondent Banking Clients and, if applicable other qualified professionals, specific care should be taken to assess their anti money laundering arrangements, that is regarding customer identification, Transaction monitoring, terrorist financing and other relevant elements and to verify that these business partners comply with the same or equivalent anti money laundering requirements as the Authorised Firm. Information on applicable laws and regulations regarding the prevention of money laundering should be obtained. An Authorised Firm should ensure that a Correspondent Banking Client does not use the Authorised Firm's products and services to engage in business with Shell Banks, see Rule 3.4.14.
  7. If applicable, information on distribution networks and delegation of duties should be obtained.
  8. An Authorised Firm should verify if any secrecy or data protection law exists in the country of incorporation of the business partner that would prevent access to relevant data.
  9. An Authorised Firm should have specific arrangements to ensure that adequate due diligence and identification measures with regard to the business relationship are taken.
  10. The Authorised Firm should conduct regular reviews of the relationship with its business partners.
  11. The senior management or Governing Body of an Authorised Firm should give their approval before it establishes any new correspondent banking relationships.

**3.4.14** An Authorised Firm must not:

- (a) establish a correspondent banking relationship with a Shell Bank;
- (b) establish or keep anonymous accounts or accounts in false names; or
- (c) maintain a nominee account which is held in the name of one Person, but controlled by or held for the benefit of another Person whose identity has not been disclosed to the Authorised Firm.

**Guidance**

An Authorised Firm should also have arrangements to guard against establishing a business relationship with business partners who permit their accounts to be used by Shell Banks.

**3.5 Internal and external reporting requirements****3.5.1** (1) An Authorised Firm must have appropriate arrangements to ensure that whenever any Employee, acting in the ordinary course of his employment, either:

- (a) knows or suspects; or
- (b) has reasonable grounds for knowing or suspecting;

that a Person is engaged in Money Laundering, that Employee makes an internal Suspicious Transaction Report to the Authorised Firm's MLRO.

- (2) An Authorised Firm must have policies and procedures to ensure that disciplinary action can be taken against any Employee who fails to make such a report.

**Guidance**

The requirement for Employees to make an internal Suspicious Transaction Report should include situations when no business relationship was developed because the circumstances were suspicious.

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**3.5.2** If an Authorised Firm's MLRO receives an internal Suspicious Transaction Report he must without delay:

- (a) investigate the circumstances in relation to which the report was made;
- (b) determine whether in accordance with U.A.E. Law No. 4 a corresponding external Suspicious Transaction Report must be made to the AMLSCU; and
- (c) if required, make such an external report to the AMLSCU; and
- (d) provide a copy of such an external report to the DFSA at the time of provision under U.A.E. Law No. 4.

**Guidance**

- 1. An Authorised Firm may allow its Employees to consult with their line managers before sending a report to the MLRO. The DFSA would expect that such consultation does not prevent making a report whenever an Employee has stated that he has knowledge, suspicion or reasonable grounds for knowing or suspecting that a Transaction may involve money laundering.
- 2. Authorised Firms are reminded that the failure to report suspicions of Money Laundering may constitute a criminal offence that is punishable under the laws of the U.A.E.
- 3. External Suspicious Transaction Reports under U.A.E. Law No. 4 should be faxed to the AMLSCU and a copy faxed to the DFSA. The dedicated fax numbers and the template for making Suspicious Transaction Reports are available on the DFSA website.

**3.5.3** The MLRO must document:

- (a) the steps taken to investigate the circumstances in relation to which an internal Suspicious Transaction Report is made; and
- (b) where no external Suspicious Transaction Report is made to the AMLSCU, the reasons why no such report was made.

**3.5.4** All relevant details of any internal and external Suspicious Transaction Report pursuant to Rules 3.5.1 and 3.5.2 must be kept for at least six years from the date on which the report was made.

**3.5.5** An Authorised Firm must ensure that if the MLRO decides to make an external Suspicious Transaction Report in accordance with Rule 3.5.2, his decision is made independently and is not subject to the consent or approval of any other Person.

**3.5.6** Authorised Firms must not carry out Transactions which they know or suspect or have reasonable grounds for knowing or suspecting to be related to Money Laundering until they have informed the AMLSCU and the DFSA pursuant to Rule 3.5.2.

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**Guidance**

1. In preparation of an external Suspicious Transaction Report, if an Authorised Firm knows or assumes that the funds which form the subject of the report do not belong to a customer but to a third party, this fact and the details of the Authorised Firm's proposed course of further action in relation to the case should be included in the report.
2. If the Authorised Firm has reported a suspicion to the AMLSCU, it may instruct an Authorised Firm on how to proceed with the Transaction. If the customer in question expresses his wish to move the funds before an Authorised Firm receives instruction from the AMLSCU on how to proceed, the Authorised Firm should immediately contact the AMLSCU for further instructions.
3. Pursuant to Article 4 of the U.A.E. Law No.4:
  - a. the Central Bank of the U.A.E. may order the freezing of suspected Property for a maximum of seven days;
  - b. the public prosecutor office of the U.A.E. may order seizure of suspected Property, proceeds or instrumentalities; or
  - c. a competent court of the U.A.E. may order provisional attachment for undetermined periods on any Property, proceeds or instrumentalities, if they have resulted from, or are associated with, a Money Laundering offence.
4. Further, and pursuant to Article 4 of the U.A.E. Law No. 4, the Attorney General of the U.A.E. has the exclusive authority to initiate criminal action against a perpetrator of offences set out in the law.

**3.5.7 Tipping-off****Guidance**

1. Authorised Firms are reminded that in accordance with Article 16 of the U.A.E. Law No. 4, Authorised Firms or any of their Employees must not tip-off any Person, that is, inform any Person that his Transaction is being scrutinised for possible involvement in suspicious Money Laundering operations, or that any other competent authority is investigating his possible involvement in suspicious Money Laundering operations.
2. If an Authorised Firm reasonably believes that performing the 'Know Your Customer' process will tip-off a customer or potential customer, it may choose not to pursue that process and should file a Suspicious Transaction Report in accordance with Rule 3.5.2. Authorised Firms should ensure that their Employees are aware of and sensitive to these issues when considering the KYC process.

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## **3.6 Government, regulatory and international findings**

**3.6.1** An Authorised Firm must have arrangements to ensure that it obtains and makes appropriate use of any findings issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) the Financial Action Task Force (FATF); and
- (d) the DFSA;

which contain:

- (e) a finding or other conclusion concerning arrangements for restraining money laundering in a particular country or jurisdiction; and
- (f) an assessment that those arrangements assessed to be materially deficient in comparison with one or more of the relevant, internationally accepted standards, including any recommendations published by the FATF, required of or recommended to countries and jurisdictions.

### **Guidance**

1. The purpose of this Rule is to ensure that when an Authorised Firm makes a decision about its anti money laundering policies, procedures, systems and controls, it takes into account any findings of inadequacy, for example from the FATF list of Non Cooperative Countries and Territories, concerning the approach to money laundering of individual countries or jurisdictions.
2. Authorised Firms should examine and pay special attention to any Transactions or business relations with Persons located in such countries or jurisdictions.
3. Authorised Firms considering Transactions or business relationships with Persons located in countries or jurisdictions that have been identified as deficient, or against which the U.A.E. or the DFSA have outstanding advisories, should be aware of the background against which the assessments, or the specific recommendations have been made. These circumstances should be taken into account in respect of introduced business from such jurisdictions, and when receiving inward payments for existing customers or in respect of inter-bank Transactions from Correspondent Banking Clients.
4. The Authorised Firm's MLRO is not obliged to report all Transactions from these countries or jurisdictions to the AMLSCU and the DFSA if they do not qualify as suspicious pursuant to U.A.E Law No. 4.

5. Transactions with counterparties located in countries or jurisdictions which have been relieved from special scrutiny, for example taken off the FATF list of NCCTs, may nevertheless require attention which is higher than normal.
6. In order to assist Authorised Firms, the DFSA will, from time to time, publish U.A.E. national, FATF or other findings. However, the DFSA expects that an Authorised Firm takes its own steps in acquiring relevant information from various available sources.

**3.6.2** An Authorised Firm must have arrangements to ensure that it obtains and makes appropriate use of any findings issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) U.A.E. enforcement agencies; and
- (d) the DFSA;

which contain a finding or other conclusion concerning names of Persons, groups, organisations or entities or any other body where suspicion of Money Laundering or terrorist financing exists.

**Guidance**

1. An Authorised Firm should be proactive in obtaining and appropriately using available national and international information, for example suspect lists or databases from credible public or private sources with regard to Money Laundering and terrorist financing. The DFSA encourages Authorised Firms to perform checks against their customer databases and records for any names appearing on such lists and databases as well as to monitor Transactions accordingly.
2. The risk of terrorists entering the financial system can be reduced if Authorised Firms apply effective anti money laundering strategies, particularly in respect of 'Know Your Customer' procedures, see Rules under sections 3.4 and 3.7 in conjunction with App1 and App2. Authorised Firms should assess which countries carry the highest risks and should conduct an analysis of Transactions from countries or jurisdictions known to be a source of terrorist financing.
3. The DFSA may require Authorised Firms to take any special measures it may prescribe with respect to certain types of Transactions or accounts where the DFSA reasonably believes that any of the above may pose a money laundering risk to the DIFC.

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## **3.7 Money laundering risks**

### **Risk assessment**

- 3.7.1** (1) The anti money laundering policies, procedures, systems and controls of an Authorised Firm must adequately address the money laundering risks which take into account any vulnerabilities of its products, services and customers.
- (2) In assessing the risks in relation to money laundering, an Authorised Firm must have regard to the relevant provisions of App1 and App2.
- (3) An Authorised Firm must assess its risks in relation to money laundering and perform enhanced due diligence investigations for higher risk products, services and customers.
- (4) An Authorised Firm must be aware of any money laundering risks that may arise from new or developing technologies that might favour anonymity and take measures to prevent their use for the purpose of money laundering.

### **Risks regarding corruption and politically exposed persons**

- 3.7.2** (1) An Authorised Firm must have systems and controls to determine whether a customer is a Politically Exposed Person.
- (2) When an Authorised Firm has a customer relationship with a Politically Exposed Person, it must have specific arrangements to address the risks associated with corruption and Politically Exposed Persons.

### **Guidance**

Guidance on how an Authorised Firm may address this risk is set out in App2 section A2.2.

### **Suspicious transactions and transaction monitoring**

- 3.7.3** An Authorised Firm must establish and maintain policies, procedures, systems and controls in order to monitor for and detect suspicious Transactions.

### **Guidance**

1. An Authorised Firm should apply an intensified and ongoing monitoring programme over higher risk transactions and accounts.
2. Various risk aspects about Transaction monitoring and about the detection of suspicious Transactions, which the Authorised Firm should take into account, are set out as further Guidance in App2 section A2.3.



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## **3.8 Transfer of funds**

- 3.8.1** (1) Where an Authorised Firm is a financial institution and makes a payment on behalf of a customer to another financial institution using an electronic payment and message system, it must include the customer's name, address and either an account number or an unique reference number in the payment instruction.
- (2) The requirement in (1) does not apply to an Authorised Firm which:
- (a) provides financial institutions with messages or other support systems for transmitting funds; or
  - (b) transfers funds to a financial institution where both the originator and the beneficiary are financial institutions acting on their own behalf.

### **Guidance**

1. 'FATF Special Recommendation Number 7' seeks to ensure that national or international electronic payment and message systems, including fund or wire transfer systems such as SWIFT, are not misused as a means to break the money laundering audit trail. Therefore, the information about the customer as the originator of the fund transfer should remain with the payment instruction through the payment chain.
2. Authorised Firms should monitor for and conduct enhanced scrutiny of suspicious activities including incoming fund transfers that do not contain complete originator information, including name, address and account number or unique reference number in accordance with App2.

## **3.9 Awareness and training**

- 3.9.1** An Authorised Firm must have arrangements to provide periodic information and training to all Employees to ensure that they are aware of:
- (a) the identity and responsibilities of the Authorised Firm's MLRO and his deputy;
  - (b) applicable legislation relating to anti money laundering;
  - (c) the potential effect on the Authorised Firm, its Employees and its customers of breaches of applicable legislation relating to money laundering;
  - (d) the Authorised Firm's anti money laundering policies, procedures, systems and controls and any changes to these;

- (e) money laundering risks, trends and techniques;
- (f) the types of activity that may constitute suspicious activity in the context of the business in which an Employee is engaged that may warrant an internal Suspicious Transaction Report pursuant to Rule 3.5.1;
- (g) the Authorised Firm's arrangements regarding the making of an internal Suspicious Transaction Report pursuant to Rule 3.5.1;
- (h) the use of findings pursuant to Rules 3.6.1 and 3.6.2; and
- (i) customer identification requirements pursuant to the Rules in section 3.4.

**3.9.2** Information described under Rule 3.9.1 must be brought to the attention of new Employees and must remain available to all Employees.

- 3.9.3** (1) An Authorised Firm must have arrangements to ensure that:
- (a) its anti money laundering training is up-to-date with money laundering trends and techniques;
  - (b) its anti money laundering training is appropriately tailored to the Authorised Firm's different activities, services, customers and indicates any different levels of money laundering risk and vulnerabilities; and
  - (c) all Employees receive anti money laundering training.
- (2) An Authorised Firm must conduct anti money laundering training sessions with sufficient frequency to ensure that within 12 months it is provided to all Employees.

- 3.9.4** (1) All relevant details of the Authorised Firm's anti money laundering training must be recorded, including:
- (a) dates when the training was given;
  - (b) the nature of the training, and
  - (c) the names of the Employees who received the training.
- (2) These records must be kept for at least six years from the date on which the training was given.

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## **App1 CUSTOMER IDENTIFICATION REQUIREMENTS**

### **A1.1 Duties and responsibilities**

#### **Guidance relating to Rules 3.4.1 and 3.4.2**

1. Pursuant to Rule 3.4.1, an Authorised Firm is required to be satisfied that a prospective customer is who he claims to be and obtain evidence to prove this.
2. 'Know your Customer' and knowing the Persons with or for whom the customer acts or proposes to act, pursuant to Rule 3.4.2 consists of several aspects:
  - a. personal details: an Authorised Firm should obtain and verify details which include the true full name or names used and the current permanent address;
  - b. the nature and level of business to be conducted: an Authorised Firm should ensure that sufficient information is obtained regarding the nature of the business that the customer expects to undertake, and any expected or predictable pattern of Transactions. This information should include the purpose and reason for opening the account or establishing the business relationship, the anticipated level and nature of the activity that is to be undertaken and the various relationships of signatories to the account and the underlying Beneficial Owners;
  - c. the origin of funds: an Authorised Firm should identify how all payments were made, from where and by whom. All payments should be recorded to provide an audit trail; and
  - d. the source of wealth: an Authorised Firm should establish a source of wealth or income, including how the funds were acquired, to assess whether the actual Transaction pattern is consistent with the expected Transaction pattern and whether this constitutes any grounds for suspicion of money laundering.
3. It is important for an Authorised Firm to obtain such information because this process should allow for the risk of being exploited for the purpose of money laundering to be reduced to a minimum. It should also enable suspicious Transactions to be detected because they are incompatible with the information received.
4. Any unusual facts of which an Authorised Firm becomes aware during the identification process may be an indication of money laundering and should prompt the Authorised Firm to request supplementary information and evidence.
5. The DFSA expects an Authorised Firm to establish the full identity of all relevant parties to the business relationship. Further, an Authorised Firm should apply adequate measures to understand the relationship between the counterparties involved. The following list includes some identification checks for particular relationships:

- a. joint account holders and joint applicants: identification should be performed and evidence obtained for all applicants and account holders;
  - b. pooled accounts which are managed by professional intermediaries such as mutual funds, pension funds, money funds, lawyers, stockbrokers on behalf of entities or other Persons: all Beneficial Owners of the account held by the intermediary should be identified;
  - c. power of attorney: identification and evidence should be obtained for the applicants and account holders as well as for the holder of the power of attorney; and
  - d. minors: an account for a minor should be opened by a family member or guardian whose identification evidence should be obtained in addition to the birth certificate or passport of the minor.
6. In addition to the requirements specified above, a Trust Service Provider must carry out verification, where reasonably possible, in respect of all the parties related to a trust including the settlor, the protector, the enforcer, beneficiaries and any Person entitled to receive a distribution whether or not such Person is a named beneficiary. [Added][VER2/01-06]
7. With regard to insurance companies, the following 'Know Your Customer' verification and identification should be taken into account:

**Verification**

- a. In accordance with Rules 3.4.1 and 3.4.2, an insurance company undertaking verification should establish to its satisfaction that every verification subject exists. All verification subjects of joining applicants for insurance business should normally be verified. In the case of arrangements such as trust, nominee companies and front companies, verification should include an assessment of the substance of the arrangement, for example in relation to settlors, trustees and beneficiaries.
- b. An insurance company should carry out verification in respect of the parties entering into the insurance contract. On some occasions there may be underlying principals and if this is the case, the true nature of the relationship between principals and the policyholders should be established and appropriate enquiries performed about the former, especially if the policyholders are accustomed to acting on their instructions. 'Principal' should be understood in its widest sense to include, for example, Beneficial Owners, settlors, controlling shareholders, directors and major beneficiaries.

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**Customer Identification**

- c. A customer includes the person or entity that holds a policy with the insurance company or, when it appears that the person or entity asking for a policy to be opened or a Transaction to be carried out, might not be acting on its own behalf, those on whose behalf a policy is maintained; and the beneficiaries of policies held by professional financial intermediaries and any Person connected with a policy who could pose a significant reputational or other risk to the insurance company.
- d. Insurance companies should establish a systematic procedure for verifying the identity of customers and should not issue a policy until the identity of a new customer is satisfactorily established, see Rule 3.4.3.

**Guidance relating to Rule 3.4.4**

- 8. Pursuant to Rule 3.4.4, an Authorised Firm must ensure that the information and evidence concerning a customer's identity is accurate and up-to-date.
  - a. An Authorised Firm is expected to ensure that the information and the evidence obtained from a customer is valid and has not expired, for example, when obtaining copies of identification documentation such as a passport or identification card.
  - b. The customer identification process does not end at the point of application. Following the start of the customer relationship, an Authorised Firm should ensure that all relevant evidence and information is kept up-to-date including, for example, the list of authorised signatories who can act on behalf of a corporate client.
  - c. If a customer account is dormant or an Authorised Firm has had no contact with the customer within the previous twelve months, an Authorised Firm should take reasonable steps to verify whether available information, documentation and evidence concerning the customer is still valid and up-to-date.

**A1.2 Establishing identity – identification procedures****Guidance relating to Rules under section 3.4**

- 1. In accordance with Rules 3.4.1 and 3.4.2, an Authorised Firm is expected to establish to its satisfaction the true identity of a customer and any other Person on whose behalf the customer is acting, including that of the Beneficial Owner of the relevant funds which may be the subject of a Transaction to be considered. The Authorised Firm should verify that it is dealing with a true and existing Person. It also should obtain evidence of verification that is sufficient to establish that the Person is indeed who he claims to be.
- 2. The following list, which is not meant to be exhaustive, should be considered as Guidance regarding the type of information and evidence which should be obtained by an Authorised Firm to establish and verify the identity of a customer.

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**Individuals**

- a. Evidence to be obtained in either documentary (hard copy) or electronic form:
  - i. true full name or names used;
  - ii. complete current permanent address, including all relevant details with regard to country of residence;
  - iii. telephone, fax number and email address;
  - iv. date and place of birth;
  - v. nationality;
  - vi. fiscal residence;
  - vii. occupation or profession, name of employer and location of activity;
  - viii. information regarding the nature of the business to be conducted;
  - ix. information regarding the origin of the funds; and
  - x. information regarding the source of wealth or income.
- b. The address of a prospective customer should enable an Authorised Firm to physically locate the customer. If P.O. Box numbers are customary to a country, additional methods of physically locating the customer should be applied.
- c. Documentary evidence of identity:
  - i. current, signed passport;
  - ii. current, signed ID card; or
  - iii. other identification documentation that is customary in the country of residence, such as driving licence, including a clear photograph of the prospective customer.
- d. An Authorised Firm should ensure that any documents used for the purpose of identification are original documents.
- e. Where personal identity documents, such as passport, ID card or other identification documentation cannot be obtained in original form, for example because an Authorised Firm has no physical contact with the customer the identification documentation provided should be certified as a true copy of the original document by any one of the following:
  - i. a registered lawyer;
  - ii. a registered notary;
  - iii. a chartered accountant;
  - iv. a government ministry;
  - v. a post office;
  - vi. a police officer; or
  - vii. an embassy or consulate.
- f. The individual or authority undertaking the certification under (e) should be contactable if necessary.
- g. Where a copy of an original identification document is made by an Authorised Firm, the copy should be dated, signed and marked with 'original sighted'.

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- h. Documentary evidence of address:
    - i. record of home visit;
    - ii. confirmation from an electoral register search that a Person of such a name lives at that address;
    - iii. tenancy agreement;
    - iv. utility bill; or
    - v. local authority tax bill.

**Unincorporated businesses or partnerships**

- i. Evidence to be obtained in either documentary or electronic form:
  - i. true full name or names;
  - ii. complete current registered and trading address, including relevant details with regard to country of establishment;
  - iii. telephone, fax number and email address;
  - iv. fiscal residence;
  - v. business activity;
  - vi. information on the nature of the business to be conducted;
  - vii. trading licence, with renewal date;
  - viii. list of authorised signatories of the business or partnership;
  - ix. regulatory body, if applicable;
  - x. information regarding the origin of funds; and
  - xi. information regarding the source of wealth/income.
- j. Documentary evidence of identity:
  - i. latest annual report and accounts, audited where applicable, and
  - ii. certified copy of the partnership deed, to ensure that it has a legitimate purpose and to ascertain the nature of the business or partnership.
- k. Evidence of the trading address of the business or partnership should be obtained and may be verified with a visit to the place of business.

**Corporate entities including financial or credit institutions that are not covered by an exemption, including financial or credit institutions that are not regulated by the DFSA or regulated in a FATF country**

- l. Evidence to be obtained in either documentary or electronic form:
  - i. registered corporate name and any trading names used;
  - ii. complete current registered address and any separate principal trading addresses, including all relevant details with regard to country of residence;
  - iii. telephone, fax number and email address;
  - iv. date and place of incorporation;
  - v. corporate registration number;
  - vi. fiscal residence;
  - vii. business activity;
  - viii. regulatory body, if applicable;

- ix. name and address of Group, if applicable;
  - x. legal form;
  - xi. name of external auditor;
  - xii. information regarding the nature and level of the business to be conducted;
  - xiii. information regarding the origin of the funds; and
  - xiv. information regarding the source of wealth/income.
- m. Documentary evidence of identity:
- i. copy of the extract of the register of the regulator or exchange, or state law or edict creating the entity, in case of regulated, listed or state-owned companies;
  - ii. certified copy of the articles of association or statutes;
  - iii. certified copy of either the certificate of incorporation or the trade register entry and the trading licence including the renewal date;
  - iv. latest annual report, audited and published if applicable;
  - v. certified copies of the list of authorised signatories specifying who is authorised to act on behalf of the customer account and of the board resolution authorising the signatories to operate the account;
  - vi. certified copies of the identification documentation of the authorised signatories;
  - vii. names, country of residence, nationality of directors or partners and of the members of the governing body; and
  - viii. list of the main shareholders holding more than 5% of the issued capital.
- n. If the applying customer is not obliged to publish an audited annual report, adequate information about the financial accounts should be obtained.
- o. An Authorised Firm should verify that the applying customer is active and has not been, or is not in the process of being dissolved, wound-up or terminated.

**Trusts, nominees and fiduciaries**

- p. In addition to the identification documentation listed under 'corporate entities' (l-m), the following information and documentation should be obtained:
- i. identity of any settlor, the trustee and any principal controller who has the power to remove the trustee as well as the identity of the Beneficial Owner;
  - ii. a certified copy of the trust deed, to ascertain the nature and purpose of the trust; and
  - iii. documentary evidence of the appointment of the current trustees.
- q. An Authorised Firm should ensure that it is advised about any changes concerning the individuals who have control over the funds, and concerning the Beneficial Owners.



- r. Where a trustee, principal controller or Beneficial Owner who has been identified is about to be replaced, the identity of the new trustee, principal controller or Beneficial Owner should be verified before they are allowed to exercise control over the funds.

**Authorised Firms, Ancillary Service Providers and Authorised Market Institutions regulated by the DFSA or financial or credit institutions regulated in a FATF country**

- s. Pursuant to Rules 3.4.5 and 3.4.6, identification evidence is generally not required for customers of a firm who are themselves Authorised Firms, Ancillary Service Providers or Authorised Market Institutions registered or regulated by the DFSA or are financial or credit institutions regulated by any FATF member state's relevant Financial Services Regulator or other relevant regulatory authority.
- t. However, the confirmation of the existence of such a relevant firm or institution under Guidance note 2.s. above, its regulatory status, including the application of Rules applying in the DIFC or equivalent anti money laundering provisions, should be verified by the Authorised Firm prior to entering into a customer relationship. Regular professional and commercial checks and due diligence investigations should still be performed. The Authorised Firm should verify the regulatory status of the firm or institution by one of the following means:
  - i. request confirmation from the relevant Financial Services Regulator or other relevant regulatory authority, body, or home country Central Bank; or
  - ii. request a certified copy of a relevant licence or authorisation to conduct financial or banking business from the firm or institution.

**Clubs, cooperative, charitable, social or professional societies**

- u. An Authorised Firm should take steps to satisfy itself as to the legitimate purpose of clubs and societies by, for example, obtaining a certified copy of the constitution of the organisation.
- v. The identity of the principal signatories and controllers should be verified in accordance with the requirements for private individuals. The capacity of the signatories to act on behalf of the club or society and the identity of Beneficial Owners of the funds should be established and verified.
- w. An Authorised Firm should consider the following items while completing the customer identification requirements for a client which is a charitable society:
  - i. Whether the charity is licensed or permitted by a regulatory authority or government entity in its home country. (Note: charities in the UAE are required to obtain from the UAE Minister of Labour and Social Affairs a certificate which confirms their identity, permits them to open bank accounts and states whether they are permitted to collect donations and make financial transfers outside the UAE through such bank accounts) issued by the UAE Minister of Labour and Social Affairs which specifically allows for the opening of bank accounts).

- ii. The type and quality of regulation to which the charity is subject in its home state.
- iii. The structure and overall character of management and trustees.
- iv. Whether the charity allows donors to specify beneficiaries. If yes, then it would be prudent to ascertain that such charities are closely regulated.
- v. The pattern of beneficiaries - a small number of targeted beneficiaries could indicate potential risks.
- vi. Whether the charity and its functioning is dominated by a few large donors and the pattern of donors.
- vii. Whether it is a private foundation as it is more likely to be dominated by a single donor and linked to a small number of beneficiaries which will necessitate scrutiny of both the donor and the beneficiaries.

[Added][VER3/06/07][RM43/07]

- 3. The DFSA will from time to time:
  - a. review the Guidance under App1 in light of changing money laundering legislation issued by the U.A.E. Central Bank, money laundering trends and techniques and according to international standards, in order to keep the Guidance current; and
  - b. provide such other Guidance as it deems appropriate regarding customer identification obligations.
  - c. The DFSA expects that an Authorised Firm will take these changes into account by amending, as appropriate, its policies, procedures, systems and controls.
- 4. Sound 'Know Your Customer' arrangements have particular relevance to the safety and soundness of an Authorised Firm, in that:
  - a. they help to protect its reputation and the integrity of the DIFC by reducing the likelihood of Authorised Firms becoming a vehicle for, or a victim of, financial crime and suffering consequential reputational damage; and
  - b. they constitute an essential part of sound risk management, for example by providing the basis for identifying, limiting and controlling risk exposures to assets and liabilities, including assets under management.
- 5. Any inadequacy of 'Know Your Customer' standards can expose Authorised Firms to serious business operation and control risks.
- 6. In accordance with Rule 3.4.1, an Authorised Firm should adopt a risk-based approach for the customer identification and verification process. Depending on the money laundering risk assessment regarding the Authorised Firm's customer, the Authorised Firm should decide to what level of detail the customer identification and verification process will need to be performed. See also Rules under section 3.7. The risk assessment regarding a customer should be recorded in the customer file.



## ANTI MONEY LAUNDERING (AML)

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7. The risk-based approach does not release an Authorised Firm from its overall obligation to identify fully and obtain evidence of customer identification to the DFSA's satisfaction.
  
8. An Authorised Firm is advised that in cases of doubt it should adopt a stricter rather than a moderate approach in its judgement concerning the risk level and the level of detail to which customer identification is performed and evidence obtained.

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## **App2 MONEY LAUNDERING RISKS**

### **A2.1 Risk assessment**

#### **Guidance relating to Rule 3.7.1**

1. Generally, an Authorised Firm is expected to take a risk-based approach when assessing any business relationship or Transaction with respect to its specific money laundering risk and the information and evidence that might be required or validated for this purpose. ‘Know Your Customer’ procedures need to be established and managed according to the perceived money laundering risk.
2.
  - a. The Authorised Firm should take specific and adequate measures necessary to compensate for the higher risk of money laundering which might arise, for example from the following products, services or customers:
    - i. non face-to-face business relationships or Transactions, such as via mail, telephone or the Internet;
    - ii. Internet based products;
    - iii. correspondent banking relationships, see also Rule 3.4.13;
    - iv. customers from FATF ‘Non Cooperative Countries and Territories’ and higher-risk countries, see also Rule 3.6.1; and
    - v. Politically Exposed Persons, see also Rule 3.7.2.
  - b. Pursuant to Rule 3.7.3, an Authorised Firm should apply an intensified monitoring of Transactions and accounts in relation to these products, services and customers.
3. While an Authorised Firm should assess the money laundering risks posed by the products and services it offers and devise its products with due regard to those risks, a risk-based approach does not release the Authorised Firm from its overall obligation to comply with anti money laundering obligations.
4. The highest risk products or services in respect of money laundering are those where unlimited third party funds can be freely received, or where funds can regularly be paid to third parties, without evidence of identity of the third parties being taken.
5. Money laundering risks are increased if a Person is able to hide behind corporate structures such as limited companies, trusts, special purpose vehicles and nominee arrangements. When devising its internal procedures, an Authorised Firm should consider how its customers and operational systems impact upon the capacity of its staff to identify suspicious Transactions. Generally, the lowest risk products in respect of money laundering are those where funds can only be received from a named customer by way of payment from an account held in the customer’s name, and where the funds can only be returned to the named customer.

6. The geographical location of an Authorised Firm's customer may also affect the money laundering risk assessment. The DFSA recommends that where an Authorised Firm has customers located in countries:
  - a. without adequate anti money laundering strategies;
  - b. where cash is the normal medium of exchange;
  - c. which have a politically unstable regime with high levels of public or private sector corruption;
  - d. which are known to be drug producing or drug transit countries; or
  - e. which have been classified as countries with inadequacies in their anti money laundering regulations, see Rule 3.6.1;

it should consider which additional 'Know Your Customer' and monitoring procedures might be necessary to compensate for the enhanced risks of money laundering.
7. Such measures may encompass, for example, the following:
  - a. requiring additional documentary evidence;
  - b. taking supplementary measures to verify or certify the documents supplied;
  - c. requiring that the initial Transaction is carried out through an account opened in the customer's name with a credit or financial institution subject to these Rules or regulated in a FATF Country;
  - d. performing direct mailing of account opening documentation to a customer at an independently verified address; or
  - e. establishing telephone contact with a customer prior to opening the account.
8. An Authorised Firm should be able to aggregate and monitor significant balances and activity in accounts on a consolidated basis, when customers have multiple accounts with the same institution but in offices located in different countries.

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## **A2.2 Risks regarding corruption and politically exposed persons**

### **Guidance relating to Rule 3.7.2**

1. Corruption, especially with the involvement of Politically Exposed Persons, may involve serious crimes and has become the subject of increasing global concern. The risk for an Authorised Firm can be reduced if the Authorised Firm conducts detailed 'Know Your Customer' investigations at the beginning of a relationship and on an ongoing basis where it knows, suspects, or is advised that, the business relationship involves a Politically Exposed Person. An Authorised Firm should develop and maintain enhanced scrutiny and monitoring practices to address this risk, see also App1.
2. Where a customer relationship is maintained with a PEP, detailed monitoring and due diligence procedures should include:
  - a. analysis of any complex structures, for example involving trusts or multiple jurisdictions;
  - b. appropriate measures to establish the source of wealth;
  - c. development of a profile of expected activity for the business relationship in order to provide a basis for Transaction and account monitoring;
  - d. senior management approval for the account opening; and
  - e. regular oversight of the relationship with a Politically Exposed Person by senior management.
3. An Authorised Firm is advised that customer relationships with family members or close associates of Politically Exposed Persons involve similar risks to those with Politically Exposed Persons themselves.

## **A2.3 Suspicious transactions and transaction monitoring**

### **Guidance relating to Rule 3.7.3**

1.
  - a. The Rules in section 3.5 require a Suspicious Transaction Report to be made when there is knowledge or suspicion of money laundering. Suspicion is a personal and subjective assessment. Suspicion of money laundering requires a degree of satisfaction although this may not amount to belief, it should at least extend beyond mere speculation and should be based upon some foundation that money laundering has or is about to occur.
  - b. A member of staff who considers a Transaction to be suspicious would not be expected to know the exact nature of the criminal offence or that the particular funds were definitely those arising from the crime.

- c. The Rules in section 3.5 also make reference to 'reasonable grounds to suspect' which introduces an objective test rather than a subjective test of suspicion by assessing whether or not 'suspicion' was ignored in the way of:
  - i. wilful blindness;
  - ii. negligence, that is wilfully and recklessly failing to make the adequate enquiries; or
  - iii. failing to assess adequately the facts and information that are either presented or available.
  
- 2. a. 'Know Your Customer' requirements form the basis for recognising suspicious Transactions, see Rules under section 3.4 and App1. Sufficient guidance must therefore be given to the Authorised Firm's Employees to enable them to form a suspicion or to recognise when they have reasonable grounds to suspect that money laundering is taking place. This should involve training that will enable relevant Employees to seek and assess the information that is required for them to judge whether a Transaction is suspicious in the circumstances, see Rules under section 3.9.
  
- b. Effective 'Know Your Customer' arrangements may provide the basis for recognising unusual and suspicious Transactions. Where there is a customer relationship, a suspicious Transaction will often be one that is inconsistent with a customer's known legitimate Transactions, or with the normal business activities for that type of account or customer. Therefore, the key to recognising 'suspicions' is knowing enough about the customer and the customer's normal expected activities to recognise when a Transaction is abnormal. Circumstances that might give rise to suspicion or reasonable grounds for suspicion may be:
  - i. transactions which have no apparent purpose and which make no obvious economic sense;
  - ii. transactions requested by a customer without reasonable explanation, which are out of the ordinary range of services normally requested or are outside the experience of an Authorised Firm in relation to a particular customer;
  - iii. the size or pattern of Transactions, without reasonable explanation, is out of line with any pattern that has previously emerged;
  - iv. a customer refuses to provide the information requested without reasonable explanation;
  - v. a customer who has just entered into a customer relationship uses the relationship for a single Transaction or for only a very short period of time;
  - vi. an extensive use of offshore accounts, companies or structures in circumstances where the customer's economic needs do not support such requirements;
  - vii. unnecessary routing of funds through third party accounts; or
  - viii. unusual Transactions without an apparently profitable motive.

3. Pursuant to Rule 3.7.3, an Authorised Firm is required to have Transaction monitoring policies, procedures, systems and controls. On going monitoring of customer activity, that is, monitoring of Transactions and their accounts, either through manual procedures or by computerised systems, is one of the most important aspects of effective 'Know Your Customer' processes. Whether an Authorised Firm should undertake the monitoring by means of a manual or computerised system will depend on a number of factors, including, but not limited to, the Authorised Firm's:
  - a. size and nature of the business and customer base;
  - b. complexity of the Transactions; and
  - c. volume of the Transactions.
4. The extent of KYC information and that of required Transaction monitoring should be assessed taking a risk-based approach. Higher risk accounts and customer relationships will generally require more frequent or detailed monitoring.
5. With regard to enhanced scrutiny to funds transfers, which do not contain complete originator information including name, address and account number or unique reference number, an Authorised Firm should examine the Transaction in more detail in order to determine whether certain aspects related to the Transaction might make it suspicious and thus warrant eventual reporting to the AMLSCU, see Rule 3.8.1.