Chapter 5 – AML and Combating the Financing of Terrorism

14 Questions

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Offences

Money Laundering

Any person who has knowledge of and commits any of the following is guilty of money laundering

- conducting any transaction with the aim of **concealing or disguising** their illegal source
- concealing or disguising the **true** nature, source or location of the proceeds
- **acquiring, possessing** or using **proceeds** upon receipt, or
- **assisting** the **perpetrator** of the predicate offense to escape punishment

Federal Law No. 20 of 2018, articles 2-4

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Offences

Money laundering is an **independent crime** –the punishment of the perpetrator for the predicate offence **is not required and does not prevent** punishment for money laundering.

A person doing any of the above with knowledge that the funds are wholly, or partly, owned by a **terrorist organisation**, or intended to finance a terrorist organisation, a terrorist person or a terrorist act is guilty of **financing terrorism.**

Providing, collecting, preparing or obtaining funds with the **intent** to use them for terrorist purposes, is financing terrorism.

Or even **while knowing** that such proceeds will be used in whole or in part for the **commitment of a terrorist offence** is financing terrorism.

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Role of the Financial Services Industry

- **Financial** institutions, and **designated non-financial businesses,** are all required to report suspicions of money laundering and terrorist financing.
- A detailed report should be submitted to the **UAE's Financial Intelligence Unit (FIU),** the financial intelligence department at the UAE Central Bank.
- These reports **must include all data and information** available regarding the transaction and the parties involved, with **no right to object under confidentiality provisions.**
- **Lawyers, notaries, other legal professionals and independent legal auditors are exempted** from this provision if the information obtained is subject to professional confidentiality.

Role of the Financial Services Industry

To facilitate the suspicion reporting, financial institutions and designated non-financial businesses and professions are obliged to:

- Identify the crime risks faced and continuously **assess, document, and update** such assessments.
- Take the necessary **due diligence** measures and procedures, considering the various **risk factors** and **retain the records** related to this process.
- **Refrain** from opening or conducting any financial or commercial transaction under an **anonymous or fictitious name** and maintaining a relationship or providing any services to such clients.
- Develop **internal policies, controls and procedures** approved by senior management.

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Role of the Financial Services Industry

To facilitate the suspicion reporting, financial institutions and designated non-financial businesses and professions are obliged to:

Promptly **apply the directives** issued by the competent authorities in the State for implementing the decisions issued by the **UN Security Council under Chapter 7** of the UN Convention for the Prohibition and Suppression of the Financing of Terrorism and Proliferation of Weapons of Mass Destruction, and other related directives.

Maintain all **records, documents, and data** for all transactions, whether local or international.

Comply with **any other obligations** stipulated in the implementing regulations of the law.

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Customer Due Diligence (CDD)

Customer due diligence (CDD) is the act of performing **background checks** on the customer to ensure that they are properly risk assessed before being onboarded.

Article (6) of Decision No. 10 of 2019 requires financial institutions and designated non-financial businesses and professions (DNFBPs) to undertake the following:

when establishing a **business relationship**

when carrying out occasional transactions in favour of a customer for amounts equal to or **exceeding AED 55,000**

when carrying out occasional transactions in the form of wire transfers for amounts equal to or exceeding **AED 3,500**

whenever there is a **suspicion of crime**

where there are doubts about **the veracity or adequacy** of the identification data previously obtained for the customer.

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Customer Due Diligence (CDD)

The customer due diligence (CDD) measures require **verification of identity** of the customer and the beneficial owner **before or during the establishment of a business relationship, opening of an account, or before executing a transaction** for a customer with whom there is no business relationship.

It is only in cases where there is a low crime risk that verification of customer identity is allowed to take place after the establishment of the business relationship, which must meet the following conditions:

The verification will be conducted in a **timely manner** as of the commencement of business relationship or the implementation of the transaction.

The **delay is necessary** in order not to obstruct the natural course of business.

The **implementation of appropriate and effective** measures to control the risks of crime.

Customer Due Diligence (CDD)

Financial Institutions and DNFBPs should also undertake **ongoing supervision of business relationships and CDD measures**, including:

- **Auditing transactions** that are carried out throughout the period of the business relationship.
- Ensure that the **documents, data or information** obtained under the CDD measures are **up-to-date and appropriate.**
- **Applying the CDD measures** to customers with ongoing business relationships prior to the implementation of this requirement (in 2019).

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Customer Due Diligence (CDD)

For natural persons
• The **name, nationality, address, place of birth, name and address of employer**, attaching a copy of the original and valid identification card. • Approval of senior management is also required where either the customer or the **beneficial owner is a PEP.**

For legal persons and legal arrangements
• The **name, legal form and memorandum of association.** • **Headquarters office address** or the principal place of business (name and address of **legal representative in the UAE for a foreigner**). • **Articles of association attested** by the competent authority in UAE. • **Names of relevant persons** holding senior management positions in the legal person or legal arrangement.

Customer Due Diligence (CDD)

Financial institutions and DNFBPs are required to verify that any person purporting to act on behalf of the customer is so **authorised** and **verify the identity** of that person.

Financial institutions and DNFBP's are required to understand the **intended purpose and nature of the business relationship**, and obtain information related to this purpose.

They are also required to understand the **nature of the customer's business** as well as the customer's ownership and control structure.

For a legal person from a **high-risk country**, financial institutions and DNFBPs must **undertake enhanced CDD measures** based on the level of risk that might arise from the business relationship.

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Question Time

CDD measures should be carried out for wire transfer of amounts equal to or exceeding

A. AED 5,000.

B. AED 7,500.

C. AED 10,000.

D. AED 3,500.

Beneficial Ownership

Financial institutions and DNFBPs are required to verify the identity of beneficial owners of legal persons & legal arrangements. **For legal persons**, beneficial ownership verification involves:

Obtaining and verifying the identity of the natural person, who has a **controlling ownership interest** in the legal person of **25% or more.**

In the event of **failing to verify the identity** of the natural person exercising control, or where the person(s) with the **controlling ownership interest is not the beneficial owner**, the identity shall be verified for the relevant natural person(s) **holding the position of senior management officer.**

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Beneficial Ownership

For **legal arrangements**, beneficial ownership validation involves:

verifying the **identity of the settlor, the trustee(s), the identity of the beneficiaries, the identity of any other natural person** exercising ultimate effective control over the legal arrangement.

If customer or the owner holding the controlling interest is either a **company listed on a regulated stock exchange or a subsidiary where most of the equity is held by a holding company**, they are **exempted** from being verified as beneficial owners.

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Beneficial Ownership

Financial institutions are required to **conduct CDD measures and ongoing monitoring** of the beneficiary of life insurance policies and other fund generating transactions.

This should be performed **as soon as the beneficiary is identified** & will involve the following:

- Where the **beneficiary is identified by name**, the name of the person, whether a natural person, legal person or legal arrangement, must be obtained.
- Where the **beneficiary is designated by characteristics or by class**, the financial institution is required to obtain sufficient information concerning the beneficiary to ensure that it will be able to establish the identity of the beneficiary at the time of the pay out.

Prohibitions

Financial institutions and DNFBPs are **prohibited from executing any transaction** where they are unable to **undertake CDD measures.**

In such circumstances, they should consider **reporting** a suspicious transaction to the **financial intelligence unit (FIU)**.

Even where there is suspicion of a crime, financial institutions and DNFBPs should not apply CDD measures if they have reasonable grounds to believe undertaking such measures **would tip off the customer.**

They should **report a suspicious transaction to the FIU** including the reasons that prevented them from undertaking CDD measures.

Financial institutions and DNFBPs are prohibited from **dealing with shell banks.**

Financial institutions **must not create** or keep records of **bank accounts using pseudonyms**, **fictitious names** or **numbered accounts** without the account holder's name.

Politically Exposed Persons (PEPs)

- A PEP is defined as a natural person that has been entrusted with a **prominent public function** in the UAE **(domestic PEP)** or any other foreign country **(foreign PEP).**
- E.g., **heads of state or government, senior politicians, senior government officials, judicial or military officials**, etc.
- PEPs also include **direct family members of a PEP**, which includes the **spouse, children, spouses of children and parents.**
- **Associates** known to be close to a PEP, are also within the definition
- e.g., individuals having joint-ownership rights in a legal person or arrangement or any other close business relationship with a PEP, and individuals having individual ownership rights in a legal person or arrangement established in favour of a PEP.

Politically Exposed Persons (PEPs)

For PEPs, **in addition to undertaking CDD measures**, financial institutions and DNFBPs must carry out the following:

Foreign PEPs

- Put in place suitable risk management systems to **determine whether a customer is considered a PEP.**
- Obtain **senior management approval** before establishing a business relationship with a PEP.
- Take reasonable measures to establish the **source of funds of customers** and beneficial owners **identified as PEPs.**
- Conduct **enhanced ongoing monitoring** over such relationship.

Domestic PEPs

- Take **sufficient measures** to identify whether the customer or the beneficial owner is considered one of those persons.
- Take the **same steps as for foreign PEPs when there is a high-risk business relationship** accompanying such persons.

Politically Exposed Persons (PEPs)

PEPs

- If the beneficiary or beneficial owner of **life insurance policies and family takaful** insurance is identified as a **PEP**,
  - **senior management** should be informed **before paying out** on the policies.
  - Additionally, a **suspicious transaction report to the FIU** should be considered.

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Suspicious Transaction Reports (STRs)

If financial institutions and DNFBPs have **reasonable grounds** to suspect that a transaction is related to a crime, **they must submit a suspicious transaction report (STR)** to the FIU.

Adherence to these requirements is **not a breach of banking or contractual secrecy.**

Lawyers, and other legal stakeholders are exempt from STR requirements if obtaining information relates to the assessment of their customer's legal position.

Financial institutions and DNFBPs are **not subject to any administrative, civil or criminal liability** for reporting suspicions to the FIU.

Financial institutions and DNFBPs, their managers, officials or staff, **must not disclose to any person** that they have reported, or are intending to report a suspicious transaction.

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Question Time

A suspicious transaction report is submitted to:

A. Securities and Commodities Authority.

B. Financial Intelligence Unit.

C. Financial Action Task Force.

D. None of the above.

Practical Measures – 3rd Party Service Providers

Financial institutions and DNFBPs can utilise the services of a third-party service provider to undertake the required CDD measures, but only with the following caveats, the financial institution or DNFBP must:	remain **responsible for the validity** of the measures undertaken
	immediately **obtain all the necessary information** collected through CDD measures, and
	ensure that the **third party is regulated and supervised**, and that it adheres to the required CDD measures.
	Financial institutions and DNFBPs can **rely on third parties that are part of the same group.**

Practical Measures

Internal Supervision, Foreign Branches & Subsidiaries

- Financial institutions and DNFBPs should **implement internal policies, procedures and controls for combating money laundering and the financing of terrorism**. These policies, procedures and controls must include the following:
  - **CDD measures** towards customers, including **procedures for the risk management** of business relationships prior to completing the verification process.
  - Procedures for the **reporting of suspicious transactions.**
  - Appropriate arrangements for **managing compliance, including appointing a compliance officer.**

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Practical Measures

Internal Supervision, Foreign Branches & Subsidiaries

- Financial institutions and DNFBPs should **implement internal policies, procedures and controls for combating money laundering and the financing of terrorism.** These policies, procedures and controls must include the following:
  - **Screening procedures** to ensure the competence of new members of staff.
  - The provision of **periodic programmes and workshops** to build the capabilities of the compliance officer and other competent employees.
  - An **independent audit function** to test the effectiveness and adequacy of internal polices, controls and procedures.

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Practical Measures

Compliance Officer Tasks:	**Detecting money laundering and terrorist financing transactions.**
	Reviewing and scrutinising data concerning potentially suspicious transactions and notifying the FIU whilst maintaining confidentiality.
	Reviewing the **internal rules and procedures** and their consistency with the law and other regulatory requirements and decisions. Preparing and submitting **semi-annual reports** to senior management.
	Preparing, executing and documenting ongoing training and development programmes and plans for the institution's employees on money laundering and the financing of terrorism and illegal organisations.
	Collaborating with the supervisory authority and the FIU, **allowing their authorised employees to view the necessary records and documents** that will allow them to perform their duties.

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Record Keeping Requirements

Financial institutions and DNFBPs must retain all records, documents, data and statistics for all financial transactions for a period of **at least five years** from the date of completion of the transaction.

These documents should include those obtained through **CDD measures, ongoing monitoring, account files and business correspondence, and copies of personal identification documents, including STRs and the results of any analysis.**

The records and documents must be organised to permit **data analysis and tracking of financial transactions, and all customer information regarding CDD.**

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Penalties

Administrative Penalties

- The following administrative penalties will be imposed **for violations of the law and regulations in relation to money laundering and terrorism financing:**
  - **Warnings.**
  - Administrative penalties of **at least AED 50,000 and maximum AED 5,000,000** for each violation.
  - **Banning the violator** from working in the sector related to the violation for the period determined by the supervisory authority.
  - **Constraining the powers** of those who are responsible for the violation including the appointment of **temporary inspector.**

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Penalties

Administrative Penalties

- The following administrative penalties will be imposed **for violations of the law and regulations in relation to money laundering and terrorism financing:**
  - **Arresting** those who are responsible for the violation for a period to be determined by the supervisory authority or **request their removal.**
  - **Arrest or restrict the activity or the profession** for a period to be determined by the supervisory authority.
  - **Cancel the violator's licence.**

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Penalties – Money Laundering

Any person who commits or attempts to commit money laundering will be sentenced to **imprisonment for a maximum of ten years** and to a fine of **at least AED 100,000** and **maximum AED 5,000,000**, or **either one** of these two penalties.

A temporary imprisonment and a fine of **at least AED 300,000** and **maximum AED 10,000,000** will be applied if the perpetrator of a money laundering crime commits any of the following:

- **abuses the influence** or the power granted by the person's profession
- **commits the crime** through a **non-profit organisation**
- **commits the crime** through an **organised crime group**
- **is a repeat offender.**

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Penalties

Financing Terrorism

- **Life imprisonment** or temporary imprisonment of **at least ten years** and **penalty of at least AED 300,000 and maximum AED 10,000,000** is applied to anyone using funds for **terrorist financing.**
- Temporary imprisonment and a penalty of **at least AED 300,000** applies to anyone using funds **to finance illegal organisations.**
- The court may choose to **commute or exempt** the offenders from a sentence if they provide the judicial or administrative authorities with **information that leads to the disclosure, prosecution, or arrest of the perpetrators.**

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Penalties

Legal Persons

- Legal persons may face a penalty in the form of a fine of **at least AED 500,000 and maximum AED 50,000,000.**
- Additionally, if the legal person is convicted of the crime of financing terrorism, the **court will order its dissolution and closure of its offices.**
- The court will also order **the publishing of a summary** of the judgment by the appropriate means at the expense of guilty party.

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Penalties

Failure to Report Suspicions

- A failure to report suspicions, or gross negligence in implementing processes and procedures in relation to suspicions can result in **imprisonment and/or a fine of at least AED 100,000 and maximum AED 1,000,000.**

Tipping Off

- The offence of tipping off leads to imprisonment for **at least six months and/or a penalty of at least AED 100,000 and maximum AED 500,000.**

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Market Abuse Regulations in the UAE

- Rules relating to the prevention and penalties arising from market abuse in the UAE are derived from **two sources**:

Article 16 (the Regulations as to Trading, Clearing, Settlement, Transfer of Ownership and Custody of Securities)

Article 37 (the Regulations as to Disclosure and Transparency)

- Article 16 says that dealing in securities with the aim of **deceiving other parties** will be null and void

- Any act aimed at **causing a change in the price** of any securities to encourage other parties to join in will also be null and void

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Market Abuse Regulations in the UAE

Article 37 details the potential penalties:

Any person will be imprisoned for a **period of 3 months to 3 years** and has to **pay a fine of between AED 100,000 to AED 1 million** if he:

Furnishes any data or information being untrue	Deals in securities on the basis of **undisclosed information**	Spreads **rumours** regarding the trading of shares	Exploits **unpublicised information** which could affect the prices of securities

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Chinese Walls

- 'Chinese wall' is an arrangement to ensure that information held by an employee **does not get passed around** with other employees in another part of the business

- Accepted practice **requires that** where a firm establishes and maintains a Chinese wall, **it must**:
  - Withhold or **not use the information held**
  - For that purpose, **permit its employees** to withhold information from those employed in another part of the business

Investment Research

- In general, the conflicts management rules on the production and dissemination of investment research **apply to all firms**

- There are **certain exceptions**, for a market maker acting in good faith:
  - They cannot undertake personal account transactions **without prior approval**
  - The firm, and any person involved in research, **must not accept** inducements
  - They **may not promise** issuers favourable research coverage
  - Other than financial analysts, **no one else is allowed** to review draft investment research

Question Time

Legal persons may face a penalty in the form of a fine of maximum AED 50,000,000.

A. AED 10 million.

B. AED 50 million.

C. AED 15 million.

D. AED 30 million.

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