

A Snapshot of AML/CFT Regulations by FBR for Designated Non-Financial Businesses & Professions

Introduction

These regulations have come into force on September 29, 2020 in respect of Designated Non-financial Businesses and Professions (DNFBP) as '*the Federal Board of Revenue Anti Money Laundering and Countering Financing of Terrorism Regulations for DNFBP, 2020*'.

The DNFBP include the following:

- Accountants
- Jewellers
- Real Estate Agents

Definitions

"Accountants" means, other than those regulated by the Institute of Chartered Accountants of Pakistan (ICAP) and the Institute of Cost and Management Accountants of Pakistan (ICMAP), sole practitioners, partners or employed professionals within professional firms when they carry out the activities as specified in the AML Act.

Explanation:

The term 'Accountant' is not meant to refer to internal professionals who are employees of other types of businesses, nor to professionals working for government agencies.

"Jewellers" means a person who is a bullion dealer or engaged in sale of jewelry, precious stones and metals including all articles made wholly or mainly of gold, platinum, diamonds of all kinds, precious or semi-precious stones, pearls whether or not mounted, set or strung and articles set or mounted with diamonds, precious or semi-precious stones or pearls, when they engage in a cash transaction with a customer of a value equivalent to Rs. 2 million or more.

"Real Estate Agent" includes builders, real estate developers and property brokers and dealers when execute a purchase and sale of a real property, participate in a real estate transaction capacity and are exercising professional transactional activity for undertaking real property transfer.

Registration and Market Entry Control of DNFBP

Every DNFBP shall be registered with the Board by providing requisite information including criminal records of senior management and beneficial owners.

The DNFBP shall notify the Board if it ceases operations within thirty business days after ceasing operations.

Risk Assessment and Mitigation

The DNFBP shall take appropriate steps to identify, assess, and understand their risks for customers, countries or geographic areas, and products, services, transactions or delivery channels.

The DNFBP shall make policies, control and procedures to control and mitigate risks and monitor the implementation of those controls and take enhanced measures to manage and mitigate the risks.

New Products, Practices and Technologies:

The DNFBP shall:

- a) Identify and assess the Money Laundering and Terror Financing Risk that may arise in the development of new products, businesses and practices, including new delivery mechanism, and the use of new and pre-existent technology;
- b) Prior to the launch or use of product, practice or technology, DNFBP shall undertake the risk assessment and take appropriate measures to manage and mitigate the risks.

Record Keeping by DNFBP

1. The record shall be sufficient for reconstruction of each individual transaction.
2. The record shall be maintained in paper or electronic form or microfilm.
3. Identifications data shall be maintained for atleast 5 years obtained through Customer Due Diligence (CDD) and Enhanced Due Diligence (EDD) process.
4. In case transactions, customers or instruments are involved in litigation, retain records till the disposal of case.
5. Satisfy any enquiry or order from the Board, designated law enforcement Agencies and FMU.
6. Copies of documents shall be stamped "Original seen".
7. Keep a list of all such customers where the business transaction was refused or needed to be closed either on account of failure of the customer to provide the relevant documents or the original document for viewing as required.

Internal Policies for Compliance Program

The DNFBP shall implement the following internal policies for the compliance program:

- Compliance management arrangement, including the appointment of compliance officer responsible for the compliance of these regulations
- Screening procedures when hiring employees to ensure integrity, skills and expertise
- An ongoing employee training program
- An independent audit function to test the system

Compliance Requirements for Foreign Associates

The DNFBP shall ensure that their foreign branches and majority-owned subsidiaries apply AML & CFT measures consistent with Pakistan requirements where the minimum AML & CFT requirements are less strict than Pakistan.

In case the foreign country does not permit the proper implementation of AML/CFT measures, additional measures to manage the risks shall be implemented.

Compliance Officer

- Reports to BOD, CEO or Committee
- Access to all consumer record and other relevant information
- Responsible for areas including but not limited to:
 - i. Ensuring that the internal policies are approved and effectively implemented
 - ii. Monitoring, reviewing and updating AML/CFT policies and procedures
 - iii. Providing assistance in compliance to other departments and branches of the regulated person
 - iv. Timely submission of accurate data/ returns as required under the applicable laws
 - v. Monitoring and timely reporting of Suspicious and Currency Transactions to FMU

In the case of a corporate group, following are the additional duties and tasks:

- Policies and procedures for sharing information required for the purposes of CDD and risk management
- The provision, at group-level compliance, audit, and/or AML & CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML & CFT purposes; and
- Adequate safeguards on the confidentiality and use of information exchanged.

Customer Due Diligence (CDD)

Customer Due Diligence

DNFBP shall conduct CDD when they engage in the following activities:

- (a) **Real Estate Agents** when they are involved in transactions for a client concerning the buying and selling of real estate.
- (b) **Jewelers and Dealers** in precious metals and stones - when they engage in any cash transaction with a customer or client equal to or above Rs. 2 Million.
- (c) **Accountants** when they prepare for, or carry out, transactions for their clients.

Identify Customers & Beneficial Owners

The DNFBP shall identify the customer whether entering into a business relationship or conducting an occasional transaction, and verify the customers identity using reliable, independent sources documents, data or information.

The DNFBP shall also identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner.

In case the customer is represented by agent, identify every person who acts on behalf of the customer and verify the authority of that person to act on behalf of the customer.

Ongoing Due Diligence

The DNFBP shall conduct ongoing due diligence on the business relationship, including:

- scrutinizing transactions undertaken throughout the course of that relationship to ensure that the transaction being conducted is consistent with the DNFBP knowledge of the customer, their business and risk profiles, including where necessary, the source of funds; and
- ensuring that documents, data, or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of customers.

Due Diligence of Legal Persons vis-à-vis Legal Arrangements

For customers that are legal persons or legal arrangements, the DNFBP shall understand:

- The nature of the customer's business and its ownership and control structure
- Name, legal form and proof of existence
- The powers that regulate and bind the legal persons or arrangement, as well as the names of the relevant persons having a senior management position in the legal person or arrangement
- The address of the registered office and, if different, a principal place of business

Legal Person

- (a) Identifying the natural person, if any, who ultimately has a controlling ownership interests as defined under relevant laws in a legal person
- (b) Identifying the natural person, if any, exercising control of the legal persons or arrangements through other means
- (c) In case no natural person is identified, the identity of the relevant natural person who holds the position of senior managing official

Legal Arrangement

- (a) For Trust, the identity of the settler, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural persons exercising ultimate effective control over the trust (including through a chain of control/ownership);
- (b) For Waqf and other types of legal arrangements, the identity of the persons in equivalent or similar positions; and
- (c) Where any of the persons specified in clause (a) or (b) is a legal person or arrangement, the identity of the beneficial owner of that legal person or arrangement shall be identified.

Data to be Compiled for Due Diligence

Following documents are required for the verification of identity of customer or beneficial owner:

(a) For a **natural person**, copy of:

- i. CNIC, NICOP or Passport
- ii. Pakistan origin card (POC) issued by NADRA
- iii. Form B or smart/juvenile card issued by NADRA

In case the natural person is a foreign national:

- iv. Alien Registration Card (ARC) issued by National Aliens Registration Authority (NARA) or Ministry of Interior

(b) For a **legal person**, certified copy of:

- i. Resolution of BOD for opening of account specifying the person authorized to open and operate the account
- ii. Memorandum of Association
- iii. Articles of Associations
- iv. Certificate of incorporation
- v. Certificate for commencement of business from SECP
- vi. List of directors required to be filed under the Companies Act, 2017
- vii. Identity documents of all the directors, beneficial owners and person authorized to open and operate the account
- viii. any other documents as deemed necessary

(c) For a **Legal Arrangement**, certified copies of

- i. The instrument creating the Legal Arrangement
- ii. Registration documents and certificates
- iii. The Legal Arrangement's by laws, rules and regulations
- iv. Documentation authorizing any person to open and operate the account
- v. Any other document as deemed necessary

(d) In respect of **Government institutions** and entities not covered here in above

- i. CNICs of the authorized persons
- ii. Letter of authorization from the authority concerned

Enhanced Due Diligence (EDD)

Application of EDD

The DNFBP shall apply EDD in case of:

- (a) Business relationship and transactions with natural and legal persons when the risks are higher
- (b) Business relationship and transactions with natural and legal persons from countries for which this is called for by the FATF
- (c) Politically Exposed Persons (PEPs) and their close associates and family members.

EDD Measures

- (a) Obtaining additional information on the customer (e.g. volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial owner
- (b) Obtaining additional information on the intended nature of the business relationship
- (c) Obtaining information on the source of funds or source of wealth of the customer
- (d) Obtaining information on the reasons for intended or performed transactions
- (e) Obtaining the approval of senior management to commence or continue the business relationship
- (f) Conducting enhanced monitoring of the business relationship

Risk Management System in dealing with PEPs

The DNFBP shall implement appropriate risk management systems to determine a PEPs both prior or after conducting a transaction, and periodically throughout the course of the business relationship.

Apply at minimum the following EDD measures:

- i. Obtain approval from senior management to establish or continue a business relations with PEPs
- ii. Take reasonable measure to establish the source of wealth and the source of funds
- iii. Conduct enhanced ongoing monitoring of business relations

Simplified Due Diligence (SDD)

Application of SDD

The DNFBP may apply SDD in identifying and verifying the identity of a customer or beneficial owner, only where lower risks have been identified through an adequate analysis through its own risk assessment and any other risk assessments publically available or provided by FBR

SDD Measures

- (a) Verifying the identity of the customer and the beneficial owner after the establishment of the business relationship
- (b) Reducing the degree of on-going monitoring and scrutinizing transactions
- (c) Not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but inferring the purpose and nature from the type of transactions or business relationship established.

The DNFBP shall not apply any SDD whenever there is a suspicion of money laundering or terrorist financing.

Reliance on Third Parties

The DNFBP may rely on a third party for identification of customer and CDD, provided relying DNFBP;

- will remain liable for any failure to apply such indicated CDD measures;
- immediately obtain from the third party the required information concerning CDD;
- the reporting entity shall keep those copies of identification; and
- satisfy itself that the Third Party is supervised by an AML/CFT regulatory Authority or an equivalent foreign authority and has measures in place for compliance with AML Act obligation of CDD and record keeping.

Where a DNFBP relies on a third party that is part of the same corporate group, the DNFBP ensure the following

- i. The corporate group applies CDD and record keeping requirements in accordance with AML Act and regulations

- ii. The implementations of requirements in paragraph (i) is supervised by an AML/CFT regulatory authority or an equivalent foreign authority
- iii. The corporate group has adequate measures in place to mitigate any higher country risks.

Targeting Financial Sanctions (TFS)

- The DNFBP shall develop mechanisms for screening and monitoring customers and potential of customers to detect any matches with the list issued by Ministry of Foreign Affairs or National Counter Terrorism
- If potential match is found, the DNFBP shall report to the Board and shall:
 - (i) freeze without delay
 - (ii) not provide any services or property or any other related funds reject the transaction

Reporting of STR & CTR

The DNFBP shall file Suspicious Transactions (STR) and Currency Transaction (CTR) to FMU, as per requirements prescribed by FMU as per AML Act.

Monitoring & Compliance

The record to be maintained and furnished by the Accountants, Real Estate Agents and Jewelers under these rules shall be subject to inspection by FBR, who may be assisted by other law enforcement agencies.

Way Forward

- **Be Aware** of AML/CFT requirements all the time.
- **Develop AML/CFT Program** for your Organization stating policies and procedures for guidance of employee and implementation.
- **Registration** with Federal Board of Revenue.
- **Identify, assess, and understand the risks** for customers, countries or geographic areas, and products, services, transactions or delivery channels.
- **Document and communicate** risk assessment internally and externally as per requirements.
- **Appointment of Compliance Officer.**
- **Conduct customer due diligence** and obtain all relevant documents.
- **Maintain** sufficient and adequate record.
- **Maintain a list of all such customers** where the business transaction was refused or needed to be closed either on account of failure of the customer to provide the relevant documents or the original document for viewing.
- **Develop and implement** compliance program.
- **Ensure ongoing training** of employees.
- **Arrange independent audit** of AML/CFT system.
- **File STR/CTR** to Financial Monitoring Unit.
- **The record to be maintained** shall be subject to inspection by FBR.

Caveat

This document should be read in conjunction with the applicable regulations of AML/CFT law and tax laws applicable in Pakistan. This update aims to provide a general guidelines and should not be considered as a conclusive and enforceable document.

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