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DNFBPs

Who are DNFBPs?

The Financial Action Task Force (FATF) outlines the following entities as Designated Non-Financial Businesses and Professions (DNFBPs):

* Casinos (which also include internet casinos);
* Real Estate Agents;
* Dealers in Precious Metals and Stones;
* Lawyers, Notaries, other Independent Legal Professionals and Accountants – these refer to sole practitioners, partners or employed professionals within professional firms. They are not meant to refer to 'internal' professionals who are employees of other types of businesses, or to professionals working for government agencies, who may already be subject to measures that combat money laundering;
* Trust and Corporate Service Providers refer to all persons or businesses that are not covered elsewhere under the FATF Forty (40) Recommendations, and which as a business, provide any of the following services to third parties:

  - acting as a formation agent of legal persons;
  - acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
  - providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
  - acting as (or arranging for another person to act as) a trustee of an express trust;
  - acting as (or arranging for another person to act as) a nominee shareholder for another person.

Risk Related to DNFBPs

Money Laundering/Terrorist Financing risks may exist, whether executed through the financial sector (banks, credit unions, money services businesses, insurance companies and investment companies) or through DNFBPs. Here are some aspects of the risks of misusing DNFBPs to conduct money laundering/terrorist financing.

Topics Discussed:

Lawyers and Accountants

The risks relative to money laundering/terrorist financing connected to lawyers and accountants (as independent professions) and some other professionals lie basically in the potential misuse of these professions to conceal the identities of the beneficial owners. The services offered by lawyers and accountants, which may be misused by individuals for money laundering/terrorist financing, include the following:

* Incorporation/Registration of companies or other complex legal arrangements (such as trusts). These services may assist individuals in creating legal entities which conceal the link between the proceeds of criminal activities and the individuals who committed these activities;
* Buying and selling of real estate. The transfer of the real estate ownership may be used to cover the illicit funds transfer or the final investment of the proceeds passed through transactions/activities associated with money laundering/terrorist financing;
* Conduct of financial operations on behalf of customers/clients, such as cash deposits or withdrawals, foreign currency exchange operations, sale and purchase of shares and sending and receiving international money transfers.

Real Estate Agents

Money Laundering through real estate may take several forms:-

* Engaging in a series of complex transactions designed to conceal the proceeds gained from illegal activities;
* Investing in tourist complex and investment projects in order to conceal the true origin of illicit funds and to acquire a legitimate appearance;
* Buying and selling of real estate properties in fictitious names;
* The advertised price of purchase is less than the real value of the property; however, the sale is made at the real price, as the money launderer searches for a real estate seller who would cooperate with him, agree to declare the sale of the real estate property at a specific price (less than the real value of the estate property) and accept to take the difference “under the table”.

Dealers in Precious Metals and Stones

The misuse of precious stones and metals increases the risk for money laundering. Gold has a high actual value and can be found in relatively small sizes, thus facilitating its transport, purchase and sale in several regions around the world. Gold also preserves its value regardless of its form (whether it comes in the form of bullions or golden articles). Dealers are often interested in gold more than gems as it may be melted to change its form while preserving its value.

Diamonds can also be traded around the world easily as the small size of diamond stones and their high value facilitate their concealment and transport. It is one of the most precious gems and jewels with the risk of being misused by money launderers.

Casinos

Casinos are cash intensive entities, with their major activity being gambling. These entities are misused by money launderers during the first phase of money laundering (placement), where the funds gained from illegal activities are used to purchase chips for playing table games within the casino. When the money launderer becomes successful in his/her games, he/she will return the chips to the casino and request payment through a check drawn on the account of the casino (making it a legitimate transaction).

In addition, if bets are placed at the casinos using the funds gained from illegal activities, the money launderer would request his/her winnings through a check drawn on the account of the casino; making it a legitimate transaction.

Compliance Program

The above mentioned DNFBPs are listed as regulated entities on the First Schedule of the Proceeds of Crime Act (POCA), Cap 4.28 and are regulated and supervised by the Financial Services Regulatory Commission (FSRC). These entities are required to develop and establish an effective compliance program in accordance with the Anti-Money Laundering Regulations (AMLR), No. 46 of 2011, Anti-Terrorism (Prevention of Terrorist Financing) Regulations, No. 47 of 2011 and Financial Services (Implementation of Industry Standards) Regulations (FSR), No. 51 of 2011 . This Program should be approved by the Management/Board of Directors of the entity. In addition, all staff members should be aware of the entity's compliance program and the various aspects of this program within the operations of the entity.

All DNFBPs are required to appoint a Compliance Officer/Money Laundering Reporting Officer who is responsible for the implementation of the entity's compliance program. The name and relevant qualifications should be submitted to the FSRC for approval by the Board of Commissioners of the FSRC.

Components of a Compliance Program

An effective Compliance Program of a DNFBP should comprise of the following:

* Customer Due Diligence (CDD)/Know Your Customer (KYC) – the DNFBP should establish procedures to obtain the origin and background of the customer. In the case of the corporate customer, the DNFBP should obtain the nature of the business of the corporate customer and an understanding of its corporate structure and its beneficial owners. The DNFBP should also determine the risk level of the customer and the risk associated with establishing a business relationship with this customer;
* Recognition of Suspicious Activity– the DNFBP should develop procedures to recognize suspicious activities associated with the transactions of their customers. This may include periodic monitoring of transactions/activities of customers and conducting background checks;
* Reporting of Suspicious Activities– the DNFBP should establish procedures for reporting suspicious activities noted by the entity to the Financial Intelligence Unit (FIU). The suspicious activities should be reported by the Compliance Officer of the entity directly to the FIU. The staff members should be aware of their obligation to report suspicious activities internally to the competent person, when noted. The entity should also establish a Suspicious Transaction Report (STR) Register and Register of Enquiries in accordance with the Anti-Money Laundering (AML)/Countering the Financing of Terrorism (CFT) Laws and Regulations of St. Kitts and Nevis.
* Record Keeping– the DNFBP should establish procedures regarding the time period in which files should be maintained and the type of records that should be maintained. The types of files which should be maintained include:
  - Identification documents;
  - Transactions;
  - Background checks;
  - STR reports;
  - Register of Enquiries documents.

  Files should be maintained for a minimum of five (5) years in accordance with the AML/CFT Laws and Regulations of St. Kitts and Nevis.
* Training– the DNFBP should develop an annual Training Schedule which outlines the training objectives and the types of training staff members of the entity should receive.

DNFBPs should have internal controls that guide the operations of the entity. The entity should develop and implement an AML/CFT Policies and Procedures Manual which outlines all aspects of the above mentioned Compliance Program.

In accordance with the AML/CFT Laws and Regulations, the DNFBP should conduct an independent audit on its operations to ensure its operations are consistent with the internal procedures of the entity .

The Financial Services Regulatory Commission (FSRC) has developed Guidelines for DNFBPs to assist with ensuring adequate operations with appropriate measures for Anti-Money Laundering and Countering the Financing of Terrorism. These Guidelines can be found on the FSRC's website.

Legislative References:

* *Proceeds of Crime Act Cap 4.28*
* *Anti-Money Laundering Regulations (AMLR), No. 46 of 2011*
* *Anti-Terrorism (Prevention of Terrorist Financing) Regulations (ATR), No. 47 of 2011*
* *Financial Services (Implementation of Industry Standards) Regulations (FSR) , No. 51 of 2011*

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