

Anti-Money Laundering and Counter-Financing of Terrorism AML/CFT Legal Obligations for Accountants - Dr. Talal Abu-Ghazaleh



The Financial Action Task Force (FATF), the global money laundering and terrorist financing watchdog, first introduced in 2017 a guidance document titled “Risk Based Approach to Combating Money Laundering and Terrorism Financing,” outlining the importance of implementing the risk-based approach as part of the Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) program in international banking and other sectors. This document was revised in 2019. The FATF Recommendations 10, 11, 12, 15, 17, 18 to 23 apply to all Designated Non-Financial Businesses and Professions (DNFBPs) including accountants. In the case of accountants, these Recommendations apply in the following situations:-

- Buying and selling of real estate;
- Managing of client money, securities, or other assets;
- Management of bank, savings, or securities accounts;
- Organization of contributions to the creation, operation, or management of companies; and
- Creation, operation, or management of legal persons or arrangements and buying and selling of business entities.

The objectives of the FATF Recommendations, as they relate to accounting professionals, are consistent with their ethical obligation as professionals to avoid assisting criminals or facilitating criminal activity.

1. Accountants Should Know their ML /TF Risks

The Arab region is at risk of being targeted by international criminal networks to inject the proceeds of crime into the international financial system. Money

laundering and financing of terrorism are not solely international crimes. Domestic criminals use a variety of methods to conceal the proceeds of their criminal activities from authorities in the Arab countries.

Undetected financial crime reduces the integrity of national and international financial systems, distorts the economy and diminishes opportunities for legitimate economic activities. Governments lose tax revenue, while people are rewarded for criminal behavior.

Using accounting professionals is attractive to some criminals because these professionals are required for the completion of certain kinds of transactions and because their specialized skills can be misused to assist in the laundering of criminal proceeds or funding terrorism. Accountants can add respectability and a veneer of legitimacy to transactions.

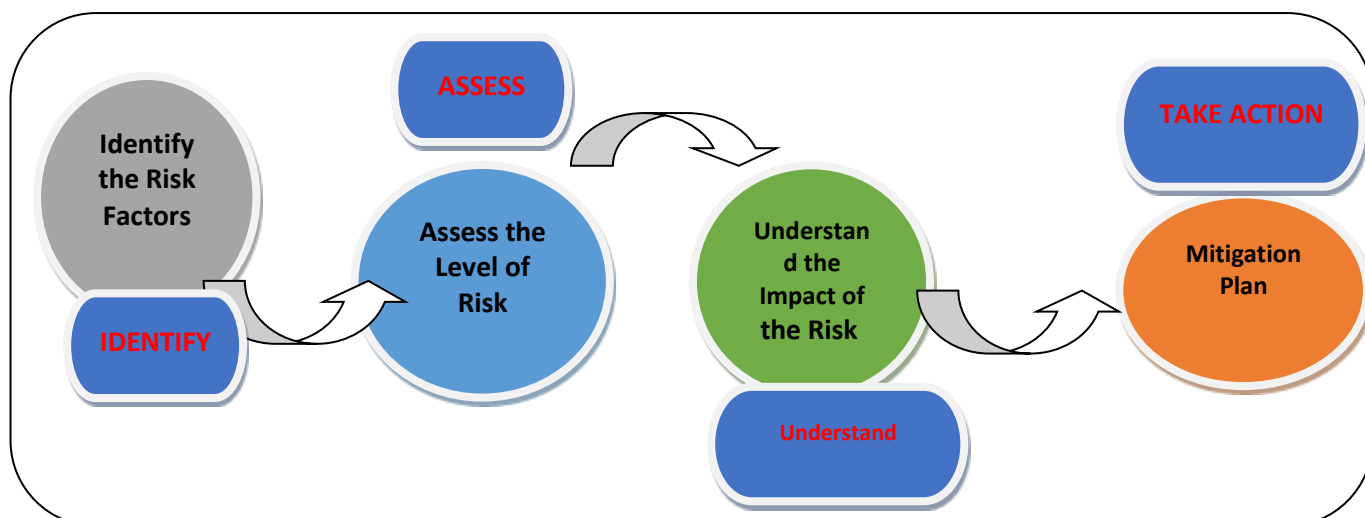
Therefore, accountants and other professionals are encouraged to develop an understanding of the ML/TF risks in the wider sectors and industries in which they have business dealings with as well. Given these risks and the FATF recommendations, gatekeeper professions are chosen to be engaged in the collective efforts to deter and detect these crimes. The more eyes and ears attuned to the indicators (or red flags) of these crime types, the more likely people will struggle to benefit financially from criminal activities. By expanding the AML/CFT system to include the gatekeeper professions, the IASCA aims to help that gatekeepers better to protect themselves from customers who launder money and finance terrorism.

2. Risk-based Approach Should be Adopted

The Risk-Based Approach (RBA) to Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) is fundamental to the effective implementation of the FATF Recommendations. It requires countries, competent authorities, and Designated Non-Financial Businesses and Professions (DNFBPs), including accountants, to implement a Risk-based Approach (RBA) to:-

1. Identify the existence of risk(s) the profession is exposed to;
2. Undertake an assessment of the risk(s);
3. Understand the impact of the risk, and
4. Develop strategies to manage and mitigate the identified risk(s).

Figure 4: Risk-based Approach Implementation Groundwork



For accountants, identifying and maintaining an understanding of the ML/TF risk faced by the sector as well as specific to their services, client base, the jurisdictions in which they operate, and the effectiveness of actual and potential risk controls that are or can be put in place, will require the investment of resources and training.

The RBA is not a “zero failure” approach; there may be occasions where an accountancy practice has taken reasonable and proportionate AML/CFT measures to identify and mitigate risks, but is still used for ML or TF purposes in isolated instances. Although there are limits to any RBA, ML/TF is a real and serious problem that accountants must address so that they do not, unwittingly or otherwise, encourage or facilitate it.

3. The Rationale for the Risk-based Approach

The RBA allows countries, within the framework of the FATF requirements, to adopt a more tailored set of measures in order to target their resources more effectively and efficiently and apply preventive measures that are commensurate with the nature of risks.

In 2012, the FATF updated its Recommendations to keep pace with evolving risks and strengthen global safeguards. Its purposes remain to protect the integrity of the financial system by providing governments with updated tools needed to take action against financial crime.

There was an increased emphasis on the RBA to AML/CFT, especially in preventive measures and supervision. Though the 2003 Recommendations provided for the application of a RBA in some areas, the 2012 Recommendations considered the RBA to be an essential foundation of a country’s AML/CFT framework.

The application of a RBA is therefore essential for the effective implementation of the FATF Standards by countries and accountants.

4. Develop an AML/CFT Program

Accountants (auditors) shall develop an AML/CFT program, considering AML/CFT risks; size, complexity, and nature of the businesses. The design and implementation of such compliance program is a prerequisite to ensure compliance with the provisions of the AML/CFT Law and meeting all the obligations related to the verification of the customers' identity, record-keeping, and reporting.

The program shall include internal policies, procedures, systems, and controls aiming at preventing ML and TF, such as the following:-

- Appropriate compliance management arrangements, including the appointment of a compliance officer at the office level.
- Adequate screening procedures to ensure high standards of efficiency and integrity when appointing or employing officers and employees.
- Appropriate ongoing training program for officers and employees.
- Independent audit and review function to test compliance with AML/CFT policies, procedures, systems, and controls.
- Appropriate and ongoing review and assessment of policies.

In practice, the accountant shall develop guidance on procedures, systems, and internal controls, aiming at combating money laundering and terrorism financing, provided that it should be disseminated to the relevant employees in order to understand and apply the related requirements.

(A) Appointing a Compliance Officer: The compliance officer is responsible for overseeing and managing the regulated entity's compliance with the AML/CFT requirements stipulated in the AML/CFT Law, and its Implementing Regulations. The compliance officer shall particularly prepare and submit Suspicious Transaction Reports (STRs) to the regulator or any relevant governmental body stated in each country's law; and shall be responsible for the effective implementation of the AML/CFT Program (ensuring that appropriate policies, procedures, systems, and controls are established and developed on a regular basis, risk assessments, audit, and review is conducted to ensure the effectiveness of this Program).

If the accountant is a natural person exercising his activity in an individual establishment or office, he should personally undertake the responsibilities of the senior management and the compliance officer, within his establishment or office, and may designate one of his qualified employees as a compliance officer. If the accountant is exercising his duties under a joint liability company, branch of a company, or a non-local accounting office, the management of the company should appoint a compliance officer to manage the company's compliance with AML/CFT requirements, and submit STRs to the related regulator.

(B) Establishment of Policies, Procedures, and Internal Controls to Ensure Compliance: The accountant, as a DNFBP, shall develop and implement written policies, programs, and controls to ensure compliance with AML/CFT requirements. Such controls must be:-

- In a written form and made available to the concerned entities.
- Updated to keep pace with the latest applicable legislations and non-compliance cases reported, and outcomes of the independent review and testing.
- Approved by the senior management.

Generally, policies, procedures, and controls include all the obligations of the auditors and cases in which a particular procedure or measure is to be taken; in addition to the information that must be disclosed, documented, or taken into account; the measures taken and implemented to ensure compliance, the compliance timeframe, disclosure or reporting obligations and relevant methods.

(C) Development of an Ongoing Training Program: The accountant, as a DNFBP, must develop an appropriate training program for officers and employees, to be fully aware of their obligations by virtue of the AML/CFT **Law** and its Implementing Regulations, and of the **responsibilities** that may be incurred in case of involvement in ML and TF or non-compliance with such obligations, and of the threats, patterns, and trends of ML and TF, and of how to detect suspicious transactions and take relevant actions.

The training program should also ensure that the accountants, auditors, officers, and employees are well acquainted with the procedures, controls, and policies adopted by the office to manage and mitigate ML and TF, in addition to the role of the compliance officer and the importance of applying Customer Due Diligence (CDD) measures and ongoing monitoring.

The accountant shall decide on the best training method, taking into account the size of the office. Several methods can be adopted such as face-to-face training, e-learning, self-learning, or a combination of more than one method. The auditor, however, should document the training program, for example by keeping a record of the training attendance. It would be advisable if the training programs are supported by a test (simplified test) to ensure staff is understanding of the relevant content. Moreover, the program shall take into account the different needs of officers and employees, their expertise, qualifications, capacities, tasks, the level of supervision they are subject to (the extent of their independence while performing their functions), and the size of business and the ML/TF risks. The accountant, as a DNFBP, shall update the training program to ensure its compliance with the amended applicable legislations and relevant implementing regulations, as well as the applicable international standards and the emerging typologies of ML.

- (D) **Adequate Screening Procedures to Ensure High Standards of Integrity when Appointing Employees:** The accountant, as a DNFBP, shall develop adequate screening procedures to ensure high standards of efficiency and integrity when appointing or employing officers and employees, as stipulated in the AML/CFT Rules. Enhanced screening procedures must be adopted in particular for individuals entrusted with a prominent role or position at the office of the auditor. In order to comply with this requirement, the auditor should, before appointing officers or employees, obtain information and references about the individual, his employment background, and qualifications, and confirm whether any criminal convictions or disciplinary sanctions are taken against such individual.
- (E) **Independent Audit and Review Function to Test AML/CFT Program:** The accountant, as a DNFBP, should carry out periodic assessment to ensure the effectiveness of the components of the AML/CFT program: policies and procedures, ongoing training program, and risk assessment. This review aims at evaluating and documenting deficiencies and shortcomings of the AML/CFT program for future remedial actions. The review can be conducted by an independent and competent internal or external auditor, qualified to conduct the assessment. If the auditor is internal, he shall be sufficiently independent from the sections in charge of the office's operations, and not directly involved in the implementation of the activities related to the compliance program, and have a direct line of communication to the auditor (the natural person), the Board or the Chief Executive.

The methods carried out to test the effectiveness of the AML/CFT program vary depending on the scale of activity of the auditor's office or company, the complexity of operations conducted, and the nature of customers. The review must be conducted regularly at least once every two (2) years.

5. Develop Checklists to Help Accountants Evaluate their Risks

Countries should develop their own checklists to help accountants evaluate the risks related to their sectors, clients, and jurisdictions in which they operate.

6. Guidance for Supervisors

This short section explains the regulatory approach you can expect from your AML/CFT supervisors. This is to ensure that the AML/CFT system operates in a robust manner and that criminals seeking to launder money and finance terrorism are detected and deterred. More details can be found in the FATF Guidance for a Risk-Based Approach for the Accounting Profession issued in June 2019.

FATF Recommendation 28 (R.28) requires that accountants are subject to adequate AML/CFT regulation and supervision. Supervisors and Self-Regulatory Bodies (SRBs) must ensure that accountants are implementing their obligations under R.1.

A risk-based approach to AML/CFT means that measures taken to reduce ML/TF are proportionate to the risks. Supervisors and SRBs should supervise more effectively by allocating resources to areas of higher ML/TF risk.

R.28 requires that accountants are subject to adequate AML/CFT regulation and supervision, while it is each country's responsibility to ensure there is an adequate national framework in place in relation to the regulation and supervision of accountants, any relevant supervisors, and SRBs should have a clear understanding of the ML/TF risks present in the relevant jurisdiction.

According to R. 28, countries can designate a competent authority or SRB to ensure that accountants are subject to effective oversight, provided that such an SRB can ensure that its members comply with their obligations to combat ML/TF.

A SRB is a body representing a profession (e.g. accountants, legal professionals, notaries, other independent legal professionals, or TCSPs made up of member professionals, which has a role (either exclusive or in conjunction with other entities) in regulating the persons that are qualified to enter and who practice in the profession. A SRB also performs supervisory or monitoring functions (e.g. enforcing rules to ensure that high ethical and moral standards are maintained by those practicing the profession).

Supervisors and SRBs should have appropriate powers to perform their supervisory functions (including powers to monitor and impose effective, proportionate, and dissuasive sanctions), and adequate financial, human, and technical resources.

Supervisors and SRBs should determine the frequency and intensity of their supervisory or monitoring actions on accountants on the basis of their understanding of the ML/TF risks, and taking into consideration the characteristics of the accountants, in particular their diversity and number.

Countries should ensure that supervisors and SRBs are as equipped as competent authorities in identifying and sanctioning non-compliance by its members.

Countries should also ensure that SRBs are well-informed about the importance of AML/CFT supervision, including enforcement actions as needed.

Countries should also address the risk that AML/CFT supervision by SRBs could be hampered by conflicting objectives pertaining to the SRB's role in representing their members, while also being obligated to supervise them. If a SRB contains members of the supervised population or represents those people, the relevant persons should not continue to take part in the monitoring/ supervision of their practice/firm to avoid conflicts of interest.

Supervisors and SRBs should clearly allocate responsibility for managing AML/CFT-related activity, where they are also responsible for other regulatory areas understanding ML/TF risk.