

Designated Non-Financial Businesses and Professions (DNFBPs) in relation to AML/CFT

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Introduction:

In view of the development of the legislative frameworks to combat Money Laundering (ML) and Terrorist Financing (TF) in several countries around the world and since financial institutions implement measures to prevent the misuse of their services in ML/TF operations, money launderers resorted to the non-financial sector to try to conceal laundered proceeds and revenues of crimes. Thus, the risks related to this sector lie in the potential misuse for ML/TF. Some countries realized these risks and, therefore, adopted measures in an attempt to prevent the misuse of non-financial businesses and professions in ML/TF. They found that these businesses and professions comprise real estate agents, accountants, lawyers, casinos, dealers in automobiles and boats and horse races.

Subsequently, the Financial Action Task Force (FATF) conducted several studies and researches through the Working Group on Typologies (WGTYP) on the possibility of misusing non-financial businesses and professions in ML/TF operations and the risks related thereto starting from the typologies report issued in February 1998. The FATF believed that these risks required the extension of the international requirements relating to Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) to some of these non-financial businesses and professions. This was reaffirmed by the typologies experts in the report issued in February 2002.

In this light, four recommendations (12, 16, 24 and 25) were created in relation to the preventive measures that a number of non-financial businesses and professions, supervisory authorities/self-regulatory organizations, and other authorities concerned should adopt to combat ML/TF in designated situations. This was one of the most important amendments to the 40 Recommendations in 2003. Non-financial businesses and professions designated were: casinos, real estate agents, dealers in precious metals, dealers in precious stones, lawyers, notaries, other independent legal professionals and accountants, trusts and company service providers.

The Middle East and North Africa Financial Action Task Force (MENAFATF)¹ has been concerned also with this topic and decided to form an ad-hoc committee in April 2007 to study this topic and draft a guidelines to help member countries.

This paper should be considered as a tool, member countries may consult in full or in part, depending on the circumstances and the status of each country, when reviewing and developing their procedures, legislations, regulations and their AML/CFT regimes; and to strengthen their compliance with the related FATF recommendations.

This paper includes a presentation of risks related to Designated Non-Financial Businesses and Professions (DNFBPs), AML/CFT international requirements in

¹ The MENAFATF was founded as a regional body with a voluntary and co-operative nature for AML/CFT by a ministerial meeting held in the Kingdom of Bahrain on 30 November 2004. MENAFATF membership includes 17 Arab countries, and 12 entities and countries enjoy observer status.

relation to DNFBPs, implementation of the risk-based approach by DNFBPs and the other concerned entities, some guidelines to the countries regarding DNFBPs in relation to AML/CFT, and examples to help some DNFBPs identify unusual transactions.

First: Risks Related to DNFBPs.

ML/TF operations, whether executed through the financial sector or DNFBPs, are undoubtedly connected to several risks and negative effects. Hereinafter are some aspects of the risks of misusing DNFBPs in ML/TF operations and potential forms of such misuse:

1- Lawyers and accountants

The risks connected to lawyers, accountants (as independent professions) and some other professions in the ML/TF field lie basically in the potential misuse of these professions in concealing the identities of the beneficiary owners of the transactions done through them. Therefore, countries are required to impose certain obligations on these categories to combat ML/TF, when they carry out the stated activities in the FATF 40 Recommendations (See the second item in this paper). The services offered by lawyers and accountants, which may be misused in ML operations, include the following:

- Establishment of companies or other complex legal arrangements (like trusts), as such services may conceal the link between the proceeds of the crimes and the criminals.
- buying and selling of real estates, as the transfer of the real estate ownership is used to cover the illicit funds transfer (layering phase of ML)² or the final investment of the proceeds passed through laundering operations (integration phase).
- Execution of financial operations on behalf of customers, like cash deposit or withdrawal, foreign currency exchange operations, sale and purchase of shares, sending and receiving international money transfers.
- Filing of fictitious lawsuits to obtain a judgment to legitimize the funds.

2- Real estate agents

ML through the real estate sector is considered a traditional way of ML, especially in cash-based societies. ML through real estates may have several forms:

- Engaging in a series of transactions designed to conceal the illicit source of funds; these transactions may be classified as of the layering phase.
- Investing in tourist complexes in order to acquire a legitimate appearance (integration phase).
- Buying and selling of real estate properties in fictitious names.

² It is known that money is laundered in three phases: placement, layering and integration.

- The announced price of purchase is less than the real value of the property and then 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 real estate property) and accept to take the difference “under the table”. The money launderer buys for instance a real estate property worth USD 2 million at USD 1 million and pays secretly to the seller another million; then, he would sell the property at its real value of USD 2 million and it would appear that the seller achieved a profit of USD 1 million. This fund would falsely appear to be legitimate.

3- Dealers in precious stones and metals

The risks of misusing the dealers in precious stones and metals are due to the fact that precious metals, particularly gold, attracts money launderers, as it 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 and make it one of the most gems and jewels with the risk of being misused as a ML means. In some cases, it was noted that diamonds are used as a means to finance terrorist acts and groups.

Gold is used in ML operations whether it is acquired in an illicit manner (like theft or smuggling) where it constitutes proceeds of a crime and is therefore deemed to be an illicit fund, or is used as a ML means through the purchase of gold against illicit funds.

4- Casinos

Usually, gambling in Casino takes place in cash, which encompasses high risks that gamblers may use them in ML since they give money launderers a ready justification for obtaining a fortune with no legitimate source. Casinos are misused in ML operations in the first phase of ML (placement) where the funds intended to be laundered are transformed from cash money into cheques by the money launderer purchasing chips with the proceeds of a crime. The money launderer will later request repayment through a cheque drawn on the account of the casino.

Second: AML/CFT international requirements in relation to DNFBPs.

The FATF issued four Recommendations, 12, 16, 24 and 25, on DNFBPs to help countries impose the necessary controls on these businesses. The interpretative notes of these Recommendations include the following general information:

- Recommendations 5-16, 21 and 22 provide that financial institutions and designated non-financial businesses and professions should take certain actions. These Recommendations require countries to take measures that oblige financial institutions and designated non-financial businesses and professions to comply with each Recommendation. The basic obligations under Recommendations 5, 10 and 13 should be set out in laws or regulations, while more detailed elements in those Recommendations, as well as obligations under other Recommendations, could be required either by laws, regulations, or other enforceable means.
- To comply with Recommendations 12 and 16, countries do not need to issue laws or regulations that relate exclusively to lawyers, notaries, accountants and the other designated non-financial businesses and professions so long as these businesses or professions are included in laws or regulations covering the underlying activities.
- The Interpretative Notes that apply to financial institutions are also relevant to designated non-financial businesses and professions, where applicable.

Hereinafter are the texts of the aforementioned recommendations:

Recommendation 12³

The customer due diligence and record-keeping requirements set out in Recommendations 5, 6, and 8 to 11 apply to designated non-financial businesses and professions in the following situations:

- a) Casinos – when customers engage in financial transactions equal to or above the applicable designated threshold.
- b) Real estate agents - when they are involved in transactions for their client concerning the buying and selling of real estate.

³ The interpretative note of this recommendation provided that the designated thresholds for transactions (under Recommendation 12) are as follows:

- Casinos, including internet casinos (under Recommendation 12) - USD/EUR 3000
- For dealers in precious metals and dealers in precious stones when engaged in any cash transaction (under Recommendations 12 and 16) - USD/EUR 15,000.

Financial transactions above a designated threshold include situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

- c) Dealers in precious metals and dealers in precious stones - when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.
- d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities:
 - buying and selling of real estate;
 - managing of client money, securities or other assets;
 - management of bank, savings or securities accounts;
 - organisation of contributions for the creation, operation or management of companies;
 - Creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
- e) Trust and company service providers when they prepare for or carry out transactions for a client concerning the activities listed in the definition in the Glossary.

Recommendation 16⁴

The requirements set out in Recommendations 13 to 15, and 21 apply to all designated non financial businesses and professions, subject to the following qualifications:

- a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d). Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.
- b) Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.

⁴The interpretative note of this recommendation provided that:

1. It is for each jurisdiction to determine the matters that would fall under legal professional privilege or professional secrecy. This would normally cover information lawyers, notaries or other independent legal professionals receive from or obtain through one of their clients: (a) in the course of ascertaining the legal position of their client, or (b) in performing their task of defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings. Where accountants are subject to the same obligations of secrecy or privilege, then they are also not required to report suspicious transactions.
2. Countries may allow lawyers, notaries, other independent legal professionals and accountants to send their STR to their appropriate self-regulatory organisations, provided that there are appropriate forms of co-operation between these organisations and the FIU.

- c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to Recommendation 12(e).

Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.

Recommendation 24

Designated non-financial businesses and professions should be subject to regulatory and supervisory measures as set out below:

- a) Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary AML/CFT measures. At a minimum:
- casinos should be licensed;
 - competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino
 - Competent authorities should ensure that casinos are effectively supervised for compliance with requirements to AML/CFT.
- b) Countries should ensure that the other categories of designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring their compliance with requirements to AML/CFT. This should be performed on a risk-sensitive basis. This may be performed by a government authority or by an appropriate self-regulatory organisation, provided that such an organisation can ensure that its members comply with their obligations to AML/CFT.

Recommendation 25⁵

The competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to AML/CFT, and in particular, in detecting and reporting suspicious transactions.

⁵ When considering the feedback that should be provided, countries should refer to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.

Third: Implementation of the Risk-Based Approach by DNFBPs and the Other Competent Authorities.

The disparity in AML/CFT risk degrees related to particular types of DNFBPs, customers or transactions is significantly considered in the FATF recommendations. The recommendations contain language that permits countries, to a certain degree, to adopt a risk-based approach for AML/CFT. They entail them to permit DNFBPs to use the risk-based approach in certain of their combating obligations, as countries may decide to implement some or all the requirements under one or more of the recommendations on a strictly limited and justified basis if there is a proven low risk of ML/TF. By adopting the risk-based approach, the applied measures for controlling the ML/TF risks are ensured to be commensurate with the risks identified, which helps in allocating resources to priorities in the most efficient ways according to the resources management principle, so that the higher risks receive the greatest care.

There are internationally agreed methodologies describing the nature and the scope of the risk-based approach. As the FATF has issued guidelines for some DNFBPs in this regard. An efficient risk-based approach must include identifying and classifying ML/TF risks and establishing reasonable monitoring systems according to the risks identified. The implementation of the risk-based approach requires DNFBPs to have a good understanding of the risks and to be able to reach the right judgment. Trying to apply the risk-based approach without sufficient experience could lead to wrong judgments. For example, DNFBPs might overestimate the risks, which might lead to the waste of resources, or underestimate these risks, which would result in weaknesses.

Fourth: Guidelines to the Countries Regarding DNFBPs in relation to AML/CFT.

1. Countries should regulate the DNFBPs categories that are not subjected to regulation. This is particularly important as the first and essential step to control and monitor them, through governmental supervisory authorities or self-regulatory organizations. In addition, AML/CFT requirements should be extended to cover them in the cases and according to the conditions mentioned in the FATF Recommendations.
2. Countries should ensure that all existing DNFBPs categories are subject to AML/CFT obligations according to the terms stated in the FATF Recommendations and the activities stated therein which they perform. If a country is planning to allow a certain category (not currently existing in the country) to pursue its activities, it should ensure that this category is bound by the AML/CFT measures upon its authorization, according to conditions stated in FATF Recommendations.
3. Countries should raise the awareness of supervisory authorities for DNFBPs regarding the related Recommendations and the implementation

of the risk-based approach to rely on it in their supervisory programs, if possible.

4. Countries should direct the supervisory authorities/self-regulatory organizations to have working manuals for the supervisory procedures.
5. Countries should eliminate any confusion or misunderstanding some DNFBPs might have, especially, lawyers, accountants, notaries, and other independent legal professions regarding a contradiction between the professional secrecy privilege and the reporting of STRs.
6. Countries should work on providing a list of suspicious indicators to the various categories of DNFBPs to help them detect suspicious transactions. This could take place by coordination amongst supervisory authorities and Financial Intelligence Unit (FIU).
7. Countries should have forms designed for reporting suspicious transactions and distribute them to all categories of DNFBPs which conduct activities mentioned in the FATF Recommendations. This could be made through designing an unified form for these categories or a special form for each category. Countries should direct the categories in this respect, by specifying reporting methods, the way of filling the reporting form, the minimum information required, and the competent authority responsible for receiving the reports.
8. Countries should raise the awareness of all DNFBPs' occupational levels in the AML/CFT field through:
 - Providing them with appropriate and efficient training in a periodical manner through organizing training programs and sessions whether within or outside the country. Due care should be taken to use the various and advanced training methods, the conformity of training programs to the size of each sector and its cultural level, the participation of the supervisory authorities and FIU in these programs are taken into consideration, and the frequency of such training.
 - Launching websites and publishing awareness-raising materials on them, depending on other means like circulars and manuals, and issuing periodical bulletins.
9. Countries should reach out to representatives of DNFBPs and supervisory authorities regularly, and, if necessary, maintain this communication through meetings and gatherings during which problems and obstacles facing effective application of the laws, regulations or instructions on the national level can be identified and training priorities essentials are determined. This outreach could be achieved through forming national committees that include representatives (as compliance officers and others) from DNFBPs and their supervisory authorities.

10. Countries should direct DNFBBs categories to perform the financial operations and activities they carry out through bank accounts – if possible - and lessen their reliance on cash in order to reduce the related risks and make monitoring and follow up procedures easier.
11. Countries should encourage and direct the competent authorities to help DNFBBs in implementing the risk-based approach. Countries may resort to the FATF Guidance papers on DNFBBs concerning the implementation of the risk-based approach.

Fifth: List of Examples to help some DNFBBs Identify Unusual Transactions.

1) Lawyers

- Appointing a lawyer in financial or commercial transactions and requesting the concealment of the client's name in any of these transactions.
- The client resorts to lawyers to create companies, particularly international business companies, from outside the country (offshore) in a way that shows that the objective of creating the company is to conceal the illicit source of the funds.
- The client resorts to lawyers to invest in the real estate market while the purchase or sale prices are not commensurate with the real estate market value.
- The client requests, upon hiring a lawyer to incorporate a company, to transfer/deposit the incorporation fees or the capital to/in the bank account of the lawyer through multiple accounts that he has no relation to without a reasonable justification.
- The lawyer manages investments portfolios, in countries allowing such conduct, and receives instructions from the customer to make buying/selling transactions that has no clear economic reason.

2) Accountants

- The client's disinterest in incurring losses or realizing extremely low profits in comparison with persons engaged in the same business, persisting in pursuing his activities.
- High volume of foreign transfers from/to the client's accounts or the increase of the revenues and cash amounts he obtains in a sudden manner that is not commensurate with his usual incomes without any justification.

- Client's receipt of cash money or high value cheques, which do not suit the volume of his work or the nature of his activity, particularly if they come from certain people who are not clearly or justifiably connected to the client.
- Unjustified amounts or deposits in the client's accounts whose origin or cause is difficult to identify.
- Disproportionate amounts, frequency and nature of transactions carried out by the customer that are not commensurate with the nature of his business, profession or known and declared activity, particularly if these transactions are carried out with suspicious countries that are not connected to his apparent business domain.
- Repeated large-amount cash transactions including foreign exchange transactions or cross-border fund movement when such types of transactions are not commensurate with the usual commercial activity of the client.

3) Real estate agents

- Buying or selling real estate property at a price not commensurate with its actual value, whether by increase or decrease, in comparison with the market prices or the prices of similar real estates in the same area.
- Repeated buying of real estate properties whose prices do not suit the buyer's usual capacity according to the information available on him or as expected from him (due to the nature of his profession or business), which causes doubts that he is carrying out these transactions for other persons.
- Trying to register the real estate property at a price less than the actual value or the amount that will be paid, and pay the difference "under the table".
- Client's disinterest in inspecting the real estate to check its structural condition prior to the completion of the purchase operation.
- Client's disinterest in verifying the legal status of the real estate property he intends to buy.
- Purchase of a number of real estate properties in a short period of time without expressing any interest in their location, condition, costs of repair and otherwise.
- Sale of the real estate property directly after buying it at a price less than the price of purchase.

- Client's disinterest in putting his name on any file that may relate him to the property, or use of different names when submitting purchase offers.
- Buying real estate properties in the name of another person who is not clearly or justifiably connected to the client.
- Replacing the buyer's name shortly before the completion of the transaction without sufficient or clear justification.
- To arrange the financing of purchase transactions, partially or in full, through an unusual source or an offshore bank.

4) Dealers in precious stones and metals (jewelers and gold merchants)

- Client's purchase of jewels of high value without selecting any particular specifications or with no clear justification.
- Client's purchase of jewels whose high value does not correspond to what is expected from him (upon the identification of his profession or the nature of his business).
- To regularly purchase high value commodities or large quantities of a specific commodity in a way that does not suit the usual deals carried out by the client or the usual pattern of the business he pursues or his income or appearance.
- Attempt to recover the amount of new purchases without a satisfactory explanation or when the client tries to sell what he recently bought at a price that is much less of the purchasing price.
- Attempt to sell high value jewels at a price much less than their actual or market value.
- Client's willingness to pay any price to obtain jewels of extravagant amounts without any attempt to reduce or negotiate the price.

5) Notaries

- Client's desire to create or buy a company that has a suspicious objective, does not realize profits or does not seem to be connected to his usual profession or related activities without being able to submit sufficient explanations to the notary.
- When the client sells assets or real estate properties repeatedly without realizing any profit margin or submitting a reasonable explanation in this respect.

- The client who creates or wishes to create different companies in a short timeframe for his own interest or the interest of other persons without reasonable financial, legal or commercial grounds.
- The client's use of another person as a facade to complete the transaction without any legitimate financial, legal or commercial excuse.

6) Casinos

- The value being disproportionate to the customer's assumed resources in the light of his/her declared profession.
- The outcome of the operations or the type of used currencies being disproportionate with the customer's profession.
- Changing the gambling routines for a certain customer in disproportion with his/her income that was declared beforehand, e.g. if he purchases chips for a game that he/she does not usually play or if it has been found from the objective circumstances that he/she does not seek profit or is not concerned about losing.
- Buying gambling chips in cash, then requesting to exchange them with a cheque from the casino.

7) General examples

- Connected to customers

- The customer has an unusual comprehensive knowledge of ML issues and the AML Law if he points out, for instance, directly or indirectly, that he wishes to avoid being reported.
- Attempt to divide the amounts of any operations below the applicable designated threshold of reporting to the competent authorities regarding ML/TF suspicion if such threshold exists.
- The client's raising the issue relating to the "cleanness" of the transaction, stating that it does not comprise ML or unnecessarily elaborating in justifying the transaction showing an unusual interest in the internal policies, controls, regulations and supervisory procedures.
- When the client has accounts with several banks or has lately established relationships with different financial institutions in a specific country without clear grounds, particularly if this country does not apply an acceptable AML/CFT system.
- The client is reserved, anxious or reluctant to have a personal meeting.

- The client uses different names and addresses.
- The client requests or seeks to carry out the dealings without disclosing his identity.
- The client refuses to submit the original files particularly those related to his identification.
- The client intentionally conceals certain important information like his address (actual place of residence), phone number or gives an inexistent or disconnected phone number.
- The client uses a credit card issued by a foreign bank that has no branch/headquarters in the country of residence of the client while he does not reside or work in the country that issued this card.

- Connected to transactions

- Cash transactions where banknotes with unusual denominations are used.
- Unusual transactions in comparison with the volume of the previous transactions or the activity pursued by the client.
- Unnecessarily complex transactions or those that do not seem to have an economic feasibility.
- Transactions that comprises a country that does not have an efficient AML/CFT system, that is suspected to facilitate ML operations, or where drug manufacturing or trafficking are widespread.

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