

AML UPDATE ... EXAMINATION REGULATIONS FOR THE LEGAL PROFESSION BY RPAS

The Public Accountancy Board Approach

Public Accountancy Board

26th July 2023

OBJECTIVES OF THE EXAMINATION

- (a) To test the adequacy of the programmes, policies, procedures, controls and systems implemented to ensure compliance with the POCA Part V and the POCA (MLP) Regulations;
- (b) To test if records are consistent with the declaration submitted; and
- (c) To report on the findings

OBJECTIVES OF THE EXAMINATION

Examination is carried on in three stages:

- Scoping and Planning;
- Execution; and
- Reporting

The length and complexity of each stage is dependent on the specifics of each examination

THE EXAMINATION PROCEDURE

- Scoping & Planning –
 - Develop an understanding of (AML/CFT) risk profile.
 - Identify the AML/CFT examination and testing procedures to be completed.
 - Obtain & review :
 - Declaration of Activities
 - Questionnaire for Risk Based Approach
 - Prior examination reports, supporting workpapers, responses to any previous AML/CFT examination, and any recommendations for the next examination

RISK PROFILE AND IMPLICATIONS

- Examinees who **do not** perform listed activities - **lowest** level of risk for AML/CFT vulnerability.
- Examinees who **do** perform the listed activities but who identify, assess and understand the AML/CFT risks to which they are exposed & take the required measures to effectively and efficiently mitigate and manage the risks - **medium** risk
- Examinees who **do** perform the listed activities but who do not identify, assess and understand the AML/CFT risks which they are exposed and do not take the required measures to effectively and efficiently mitigate and manage the risks - **high** risk

RESPONSIBILITIES OF THE INSPECTOR

- Carry out an examination and complete requisite form on the findings based on the evidence obtained.
- The nature, timing and extent of the procedures selected depending on the Inspector's judgment, including the risk of material misstatements, whether due to fraud or error.
- Document in the AML/CFT examination plan the rationale regarding the extent and type of testing to be performed. The scope of testing can be expanded to address any issues or concerns identified as part of examination activities. Inspectors should also document the rationale for changes to the scope of testing.

NOTIFICATION OF EXAMINATION BY SUPERVISOR - AT LEAST 2 WEEKS PRIOR TO EXAMINATION

1. The Authorising body under which the examination is to be performed
2. Name of the inspector;
3. Date of commencement and expected duration; and
4. Name, address & email to which queries should be directed

THE EXAMINATION PROCEDURE

PREPARE ENGAGEMENT LETTER!

THE EXAMINATION PROCEDURE

PREPARE & SIGN EXAMINER'S POLICY/DECLARATION ON INDEPENDENCE AND CONFIDENTIALITY (Can be separate document or incorporated in EL)

1. Independence
2. Confidentiality
3. Security Precautions in Place to Protect the Loss, Misuse or Alteration of the Examinee's Information
4. Data Protection
5. Financial Interests In Examinee
6. Interest In Examinee As Executor Or Trustee
7. Business & Personal Relationship With examinee
8. Gifts or Favours From Examinee
9. Professional Bodies
10. Other Professional Services To Examinee
11. Conflicts of Interest

RISK-FOCUSED AML/CFT EXAMINATION

Determine if:

1. Senior Management approved the AML/CFT Procedure.
2. Examinee requires that employees and affiliates confirm that they have read and understood the policy and confirm compliance annually
3. Policy includes specific reporting procedures regarding AML/CFT issues.
4. Senior Management and staff received adequate training and have knowledge of the AML/CFT obligations
5. Examinee has collected customer due diligence (CDD) data on new and existing customers commensurate with the level of risk i.e. Simplified CDD, Standard CDD or Enhanced CDD.
6. Examinee has collected beneficial ownership information on a sample of legal entity clients by reviewing examinee's client lists.
7. Examinee has implemented pre-employment processes to ensure that adequate employee data is captured at the time of employment.

DEVELOPING THE AML/CFT EXAMINATION PLAN

- Plan the examination so that it will be performed effectively
- Based on the risk profile, develop and document the AML/CFT examination plan, including the AML/CFT examination and testing procedures to be completed.
 - Request Letter Items
 - The Date and Duration
 - Officers to be Interviewed
 - The Records/Information to be provided by the examinee

THE RECORDS/INFORMATION TO BE PROVIDED BY EXAMINEE

- Organisational Structure;
- Documented AML/CFT procedures;
- Know-Your-Client (KYC)/Customer Due Diligence (CDD) Checklist;
- Name & Responsibilities of Nominated Officer (Money Laundering Reporting Officer (MLRO));
- Description of examinees source of information on money-laundering;
- Client List with names, Trading as names, addresses, nature of trading activities & services rendered and associated risk-profile;
- Client List with names of domestic or foreign Politically Exposed Persons (PEP's) (or persons closely associated with or related to PEPs, who are considered as higher risk (if any));

THE RECORDS/INFORMATION TO BE PROVIDED BY EXAMINEE

- Politically Exposed Person (PEP)
- *Foreign PEPs* are individuals who are or have been entrusted with prominent public functions by a **foreign country**, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials.
- *Domestic PEPs* are individuals who are or have been entrusted **domestically** with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials.

The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.

THE RECORDS/INFORMATION TO BE PROVIDED BY EXAMINEE- CONT'D

- Whether or not any Suspicious Transaction Reports (STRs) were submitted to the Chief Technical Director of the Financial Investigation Division (FID); **NOT THE ACTUAL STR's**
- Evidence of staff training/guidance regarding AML/CFT including documentation on training provided and information on attendance records;
- List of Bank accounts held– Bank, Account number, Name, Purpose of account (identify Operating account) (including bank accounts maintained for client if any)
- List of Investment Accounts held - Bank, Account number, Name, Purpose of account;
- General Ledger listing for Bank and Investment accounts mentioned above for specified period; and
- Monthly Bank Statements for specified period.

THE RECORDS/INFORMATION TO BE PROVIDED BY EXAMINEE- CONT'D

- Client List with names for which payment is received via Virtual Assets - considered as higher risk (if any);

- **Virtual Asset**

Digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes

THE RECORDS/INFORMATION TO BE PROVIDED BY EXAMINEE- CONT'D

- Client List with names for Virtual Asset Service Provider client - considered as higher risk (if any);
- **Virtual Asset Service Providers**

Virtual asset service provider is any natural or legal person who is not covered in the FATF Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- *i. exchange between virtual assets and fiat currencies;*
- *ii. exchange between one or more forms of virtual assets;*
- *iii. transfer of virtual assets;*
- *iv. safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and*
- *v. participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset*

AML/CFT RISK ASSESSMENT EXAMINATION PROCEDURES

Sampling

- May be required to examine the General Ledger listing and Bank Statements for the Bank and Investment accounts for the specified period as well as documents supporting the bank and investment account details.
- Sampling should be used to select a sample for review. The objective when using sampling is to provide a reasonable basis to draw conclusions about the population from which the sample is selected. The sample methodology and the sample selected should be documented.

Generally, smaller sample sizes may be selected for lower-risk Examinees

AML/CFT RISK ASSESSMENT EXAMINATION PROCEDURES

1. Perform internet search of the client, authorized personnel, and executive management of the client/client company to see if there are any pending actions or other red flags.
2. Confirm whether or not clients are located in high-risk countries.
3. Examine for PEPs and high-risk clients.
4. Confirm Customer Due Diligence (CDD) procedures performed after determining whether Simple, Standard or Enhanced Due Diligence required

AML/CFT RISK ASSESSMENT EXAMINATION PROCEDURES

Evidence of Staff Training/Guidance

- Confirm with staff that training/guidance took place & confirm understanding of procedures.

Request the following information:

1. General Ledger listings of bank, cash & investment accounts; and
 2. Relevant Bank statements.
- Select sample of 3 months or examine large/unusual transactions (e.g. > \$1M) and determine source/destination such as invoices supporting receipts of amounts
 - For deposits into operating account confirm that depositors are clients. If paid in cash ensure not > \$1M.
 - Select sample of 3 months or examine large/unusual transactions and determine source/destination

AML/CFT RISK ASSESSMENT EXAMINATION PROCEDURES

Representation and Sign-off

- The Inspector should obtain written representations, as appropriate. Written confirmation of oral representations reduces the possibility of misunderstandings. During an examination, the Examinee may make representations to the Inspector, either unsolicited or in response to specific inquiries.

Recommendations

- Recommendations arising from the review detailed in a separate document. Examinee may be required to submit an Action Plan depending on findings.

AML/CFT RISK ASSESSMENT EXAMINATION PROCEDURES

Documentation

Prepare on a timely basis engagement documentation that provides a record of the basis for the completion of Form submitted that is sufficient and appropriate to enable an experienced practitioner, having no previous connection with the engagement, to understand:

- (a) The nature, timing and extent of the procedures performed to comply with applicable legal and regulatory requirements;
- (b) The results of the procedures performed, and the evidence obtained; and
- (c) Significant matters arising during the engagement, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions

Thank you