

# **AML/CFT OPERATIONAL GUIDANCE FOR DEALERS IN PRECIOUS METALS AND STONES (JEWELLERS)**

## **PURPOSE AND CONTENTS**

The Federal Ministry of Industry Trade and Investment (FMITI)<sup>1</sup> provides the following summary of the obligations under the Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) regime of Nigeria for dealers in precious metals and stones (Jewelers).

The purpose of this guidance is to provide industry specific guidance for Jewelers on their legal obligations for measures to deter and detect money laundering and financing of terrorism activities. Because AML/CFT obligations are contained in several laws, amendments and regulations, it is easier for Jewelers to access in one place the relevant provisions pertaining to their obligations.

This guidance uses plain language to explain the most common situations under the specific laws and related regulations which impose AML/CFT requirements. It is provided as general information only. It is not legal advice, and is not intended to replace the Acts and Regulations.

This guidance, which is divided into ELEVEN (11) Parts, includes:

1. Clarification on the business activities to which it applies.
2. The listed activities
3. About the FIU.
4. What the FIU does.
5. About the FMITI/SCUML.
6. What is Money Laundering?
7. What is Financing of Terrorism?
8. Why are Jewelers a listed business?
9. Your obligations
10. Offences & penalties for non-compliance
11. Additional resources.

---

<sup>1</sup> The Federal Ministry of Industry Trade and Investment (FMITI) refers to the Special Control Unit against Money Laundering (SCUML)

## **PART 1**

### **DO THESE OBLIGATIONS APPLY TO YOU?**

These obligations apply to you if you are an individual or company or partnership or firm that buys sells or receives precious metals or precious stones, in the course of your business activities. If you are an employee of such individual, company or partnership or firm, these obligations are the responsibility of your employer, Money Laundering (Prohibition) Act 2011 as amended.

Precious metals include, but are not limited to bullion, platinum, gold and silver coins, and jewellery made from same. Precious stones include but are not limited to diamonds, rubies, precious and semi- precious stones and man-made gemstones. Jewellery means objects made of precious metals and/or precious stones intended for personal adornment.

Here are a few key concepts:

1. you need to be buying, selling, or receiving these items in the course of your business activities. Both the purchase and the sale of precious metals, precious stones, or jewellery are covered.
2. The concept of personal adornment is key as regards jewellery e.g., earrings, rings, bracelets, necklaces.

## **PART 2**

### **LISTED ACTIVITIES**

Legal obligations are imposed on certain individuals and businesses that are faced with greater risk of coming across crime proceeds and terrorist property than others, business sectors which have been identified by the ML(P)A 2011 as amended as more vulnerable include Attorneys-at-Law and Accountants when performing certain specific functions, Real Estate agents, Dealers in precious metals and precious stones dealers(s) and Trust and Company service providers, etc. as set out in section 25 of ML(P)A 2011 as amended.

If you carry on the business activities described in Part 1, you are a Listed Business; you have to comply with legal obligations under the AML/CFT laws of Nigeria and the Federal Ministry of Industry Trade and Investment (FMITI) as your Supervisory Authority which monitors your compliance.

The AML/CFT laws of Nigeria in which you will find your obligations are:

1. ML(P)A 2011 as amended Section 2, 3, 5(4), 6, 7, 9, 10
2. Terrorism Prevention Act 2011 as amended- establishes several offences about engaging in or facilitating terrorism, as well as raising or possessing funds for terrorism purposes. The Anti- Terrorism Act applies to all persons.
3. Anti money Laundering /Combating the Financing of Terrorism (AML/CFT) Regulations for Designated Non Financial Business and Professions in Nigeria 2013 as recommended by the Honorable Minister of Industry Trade and Investment.

### **PART 3**

#### **ABOUT THE FIU**

The Nigerian Financial Intelligence Unit (NFIU) is domiciled in the EFCC. The FIU was established pursuant to Recommendation 29 of the FATF Recommendations of the Financial Action Task Force (the FATF). Recommendation 29 mandates every country in the world to have a FIU to serve as the information related arm in efforts to combat money laundering, terrorism and related crimes. The NFIU was created as an administrative type FIU. It is a specialized intelligence agency which is legally responsible for producing financial intelligence for Law Enforcement Authorities (LEAs).

The NFIU was established in June, 2004 and became operational in January, 2005 and it is currently domiciled in the EFCC.

The NFIU works in very close partnership with Financial Institutions and Listed Businesses to ensure that those individuals and entities, comply with their obligations to report certain information to the NFIU and supervises and monitors Listed Businesses for compliance with their AML/CFT obligations.

## **PART 4**

### **WHAT THE FIU DOES**

#### **1. Analyses & Produces Intelligence Reports**

Essentially, the FIU is responsible for producing financial intelligence that is then disclosed to LEAs for investigation. To do this, the FIU receives reports from reporting entities (REs) and such as banks and other financial institutions as well as Designated Non-Financial Businesses and Professions (DNFBPs) through the FMITI such as accountants, attorneys-at-law, jewelers, precious metal dealers, money services businesses, art dealers, motor vehicle sales, real estate etc.

On receipt of the information, the FIU analyses it and looks for links between the financial information received, other relevant information from different sources, intelligence provided by LEAs, as well as other international partners. Once the analysis leads to the belief that the transaction is related to suspicions of money laundering or terrorist financing, the FIU sends an intelligence report to LEAs who will investigate the matter.

The FIU receives many reports of suspicious transactions from reporting entities; but within those reports are legitimate transactions. The FIU's analysis is therefore, to ensure that only those transactions on which there are reasonable grounds to suspect are related to money laundering or terrorist financing are disclosed to LEAs.

#### **2. Supervises for AML/CFT Compliance**

Another important function of the FIU is the responsibility of ensuring compliance with obligations under the ML(P)A 2011 as amended and Terrorism Prevention Act 2011 as amended.

Such compliance activities include providing AML/CFT guidelines, enhancing public awareness on money laundering, terrorist act and terrorism financing, ensuring that reporting entities (RE) keep to their AML/CFT obligations. The FIU also provide guide for RE's compliance programmes, conducts on-site inspections and recommends sanctions to regulatory authorities where necessary.

## **PART 5**

### **ABOUT FMITI/SCUML**

#### **Introduction of SCUML**

The Special Control Unit against Money Laundering (SCUML) was established as a specialized unit of the Federal Ministry of Industry, Trade and Investment by the Federal Executive Council of Nigeria [Decision No. EC 286 (2005)] in September 2005.

SCUML has the responsibility to carry out the statutory role of the Ministry under the provisions of the Money Laundering (Prohibition) Act 2011 (as amended), to monitor, supervise and regulate the activities of Designated Non- Financial Institutions (DNFIs) across the country. Operationally, it is domiciled within the EFCC and located in all zones, including Bauchi and Gombe.

SCUML regulates all professional firms, hotels, Car dealers, Estate Valuers / Surveyors, business outfits dealing in jewellery, dealers in luxury goods, supermarkets, and any other sector as maybe designated by the Minister for Industry, Trade and Investment.

#### **SCUML Mandate**

The Mandate of the Special Control Unit is to ensure that business activities of the DNFIs are not used to launder the proceeds of crime or illegally acquired wealth. The steps being taken by the unit to actualize its mandate are as follows:

- Register, certify and sensitize DNFIs on their obligations under the MLPA, 2011 (as amended).
- Monitor, regulate and supervise the activities of DNFIs as it relates to AML/CFT regime.
- Conduct onsite, off-site and spot checks Inspection of DNFIs.
- Collection of statutory reports; Cash based transaction reports (CBTs) and CTRs for onward forwarding to the NFIU
- Provide a database of DNFIs and their financial transactions to support tactical, operational and strategic policy options in combating ML/FT.
- Provide relevant / valuable information developed from the strategic analysis of available data that identifies emerging trends and patterns in money laundering and terrorist financing.
- Serve as a structure for fighting economic and financial crimes within the DNFIs in Nigeria, by adding value to criminal investigations through the provision of information relating to DNFIs money trails.

## **PART 6**

### **WHAT IS MONEY LAUNDERING?**

Money Laundering is the process by which funds derived from criminal activity (“dirty money”) are given the appearance of having been legitimately obtained, through a series of transactions in which the funds are ‘cleaned’. Its purpose is to allow criminals to maintain control over those proceeds and, ultimately, provide a legitimate cover for the source of their income.

For money laundering to take place, first, there must have been the commission of a serious crime which resulted in illegitimate benefits/gains (illegal funds) to the perpetrator. The perpetrator tries to disguise the illegitimacy of the funds by concealing the original source injecting such funds through various processes and transactions which may also involve other individuals into legitimate businesses and judicious investments.

There is no one single method of laundering money. Methods can range from the purchase and resale of a luxury item (e.g., cars or jewellery) to passing money through legitimate businesses and “shell” companies.

Money Laundering involves three key processes. These processes include:

#### **1. Placement**

Criminally derived funds are brought into the financial system. In the case of drug trafficking, and some other serious crimes, such as robbery, the proceeds usually take the form of cash which needs to enter the financial system. Examples of Placement are depositing cash into bank accounts or using cash to purchase assets. Techniques used include Structuring - breaking up a large deposit transaction into smaller cash deposits and Smurfing – using other persons to deposit cash.

#### **2. Layering**

This takes place after the funds have entered into the financial system. It involves the movement of the money. Funds may be shuttled through a web of multiple accounts, companies and countries in order to disguise their origins. The intention is to conceal, hide, and obscure the money trail in order to deceive law enforcement agencies and to make the paper trail very difficult to follow.

### **3. Integration**

The money comes back to criminals as apparently legitimate funds. The laundered funds are used for activities such as investment into real estate, jewelries, precious metals, luxury assets, and business ventures, to fund further criminal activity or spent to enhance the criminal's lifestyle. At this stage, the illegal money has achieved the appearance of legitimacy.

Successful money laundering allows criminals to use and enjoy the income from the criminal activity without suspicion.

## **PART 7**

### **WHAT IS FINANCING OF TERRORISM?**

Financing of Terrorism is the process by which funds are provided to an individual or group to fund terrorist activities. Unlike money laundering, funds can come from both legitimate sources as well as from criminal activity. Funds may involve low amount, appear very unsuspecting and from different sources. This include personal donations, profits from businesses and charitable organizations e.g., a charitable organization may organize fundraising activities where the contributors to the fundraising activities believe that the funds will go to relief efforts abroad, but, all the funds are actually transferred to a terrorist group. Funds may come, as well as from criminal sources, such as the drug trade, smuggling of weapons and other goods, fraud, kidnapping and extortion.

However, like money launderers, terrorism financiers also move funds to disguise their source, destination and purpose for which the funds are to be used. The reason is to hide trail and incriminating evidence - to distance the funds from the crime or the source, and to obscure the intended destination and purpose.

## **PART 8**

### **WHY ARE JEWELLERS A LISTED BUSINESS?**

The FATF, the body which sets standards internationally for money laundering and financing of terrorism, in evaluating risks and vulnerable activities has found that money laundering and financing of terrorism activities have involved precious metals and precious

stones. Dealers in precious metals and precious stones have been identified as a sector that is very vulnerable.

Precious metals and stones, particularly gold and diamond, offer a high intrinsic value in a compact form. They can be “cashed” easily in most areas of the world. Hence, they are vulnerable to be used in money laundering for the ease in which they can be hidden and transported. Terrorist groups have engaged in the gemstone trade for a long time. Historically, they engaged extensively in the profit- making trade in diamond, tanzanite, amethyst, ruby and sapphire. However, according to recent intelligence, gemstones, gold and diamonds in particular, are being used as a way of storing terrorist assets outside the formal financial sector. The aim is no longer only in turning a profit but also acquiring as many stones as possible with crime proceeds that are being kept out of banks and businesses.

FATF has acknowledged the vulnerability of dealers in precious metals and precious stones by recommending that such business activity should be subject to AML/CFT requirements. All countries in the world must have laws and legislations that regulates selling and buying of precious metals.

## **PART 9**

### **YOUR OBLIGATIONS**

As a Jeweler, your main obligations under the AML/CFT laws are summarized below:

1. Register with the FMITI;
2. Submit Reports to FMITI and NFIU;
3. Conduct proper KYC (depending on the value of jewelry in question, i.e. if the value of jewelry is up to threshold amount)
4. Ascertain whether the customer is acting for a Third Party
5. Appoint a Compliance Officer
6. Develop an effective Compliance Programme and submit to FMITI

7. Implement your Compliance Programme and conduct periodic reviews
8. Effective and efficient internal controls
9. Search for name matches for designated persons
10. Keep proper records of all transactions for a least 5 years after cessation of business

## **1. REGISTRATION WITH THE FMITI**

You must register with FMITI for the purpose of identifying yourself as an entity which is supervised; you must also notify FMITI of a change of address of your registered office or principal place of business.

### **a. How to Register**

The registration process is very simple and free of charge. On-line registration is available through the FMITI/SCUML website (insert FMITI/SCUML web address). You may also visit FMITI/SCUML offices at the following addresses:

**ABUJA HQ:** No 1 Obosi street, off Ladoke Akintola Boulevard, Beside PHCN Garki II office, Abuja.

**LAGOS OFFICE:** 15 Awolowo Road, Ikoyi, Lagos.

**KANO OFFICE:** GP 360 Bida Road, Civic Centre, Kano.

**PORTHARCOURT OFFICE:** 8, Bank Road, off Moscow Road, Port Harcourt, River State.

**ENUGU OFFICE:** Plot 106, Federal Government College Road, Independent Layout, Enugu State.

**GOMBE OFFICE:** No 4, EFCC Street, New GRA, Gombe State.

Please refer to the Central Bank of Nigeria Circular to Financial Institutions on operators under the FMITI regulations

### **b. Offences**

Failure to comply is subject to punishment prescribed in section 16 of the ML(P)A 2011 as amended.

## 2. SUBMITTING REPORTS TO FMITI/ NFIU

FTRs: Foreign Transaction Reports (FTRs) are reports on transactions to and from a foreign country of funds or securities by a person or body corporate including money service business of a sum exceeding \$10,000 or its equivalent shall be reported to the CBN

CBTRs: Cash Based Transaction Reports (CBTRs) are reports on transactions of \$1,000 and above or its equivalent; and should be reported to the FMITI

CTRs: Currency Transaction Reports (CTRs) are reports on transactions exceeding the statutory threshold (state the amount clearly) ; they are to be submitted to NFIU within seven (7) days from the date of transaction.

STRs: Suspicious Transaction Reports (STRs) are filed only to the NFIU when transactions with a customer(s) involve a frequency which is unjustifiable or unreasonable and is surrounded by conditions of unusual or unjustified complexity which appears to have no economic justification or lawful objective.

Failing to report to the NFIU knowledge or suspicion of crime proceeds or terrorist property is a criminal offence. If you continue to deal with such a transaction or funds knowing or having reasonable grounds to believe that the funds are crime proceeds or terrorists' funds and you do not report it to the NFIU then you may have committed the offence of money laundering or financing of terrorism.

### a. Reporting Suspicious Transactions/Activities

- i. You must submit a suspicious transaction or activity report (STR) immediately to the NFIU where you know or have reasonable grounds to suspect:
  - that funds being used for the purpose of a transaction are the proceeds of a crime; or
  - a transaction or an attempted transaction is related to the commission or attempted commission of a money laundering offence; or
  - That funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.
- ii. You **must submit an STR to the NFIU immediately** if a designated entity\*

attempts to enter into a transaction or continue a business relationship. **You must not enter into or continue a business transaction or business relationship with a designated entity.**

\*A designated entity means any individual or entity and their associates designated as terrorist entities by the Security Council of the United Nations. **You may access the Security Council of the United Nations List (“the UN list”)** by checking this link: [http://www.un.org/sc/committees/1267/aq\\_sanctions\\_list.shtml](http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml)

### **iii. Attempted Transactions**

You also have to pay attention to **suspicious attempted transactions**. If a customer attempts to conduct a transaction, but for whatever reason that transaction is not completed, and you think that the attempted transaction is suspicious, you must report it to NFIU.

Example of suspicious attempted transaction: a customer wants to purchase a \$10,000 necklace, and to pay in cash, and you, as a Jeweler, ask for some identification from the customer who refuses to provide it. If you think that this cash is related to drug money or some other crime you have to report that attempted transaction to NFIU. On the other hand, a customer simply asking how much the necklace costs would not be sufficient for it being an attempted transaction.

Therefore, an attempt is only when concrete action has been taken to proceed with the transaction.

**NOTE:** It is only when you know or reasonably suspect that the funds are criminal proceeds or related to money laundering or financing of terrorism that you have to report: you do not have to know what the underlying criminal activity is or whether illegal activities occurred.

### **iv. How to Identify a Suspicious Transaction/Activity**

You are the one to determine whether a transaction or activity is suspicious based on your knowledge of the customer and of the industry. You are better positioned to have a sense of particular transactions which appear to lack justification or cannot be rationalized as falling within the usual parameters of legitimate business. You will need to consider factors such as; is the transaction normal for that particular customer or is it a transaction which is atypical i.e. unusual; and the payment methods. Industry-specific indicators would also help you and your employees to better identify suspicious transactions whether completed or attempted.

In making your assessment, consider the following **RED FLAGS** when you buy sell or receive in pawn Precious Metals and Stones:

- Customer indiscriminately purchases or sells merchandise without regard for value, size, or colour.
- A customer paying for high-priced jewellery with cash only but not in other popular and safe methods of payment. (e.g., credit card, debit card certified cheque)
- Unusual buying and selling behaviour/pattern (e.g., repeated purchases of luxury products without apparent reasons)
- Purchases or sales that is unusual for the customer or supplier.
- Unaccompanied minors making purchases or sales
- Unusual payment methods, such as large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's cheques, or payment received from third-parties.
- Attempts by customer or supplier to maintain high degree of secrecy with respect to the transaction, such as request that normal business records not be kept.
- Customer is reluctant to provide adequate identification information when making a purchase.
- A customer orders item, pays for them in cash, cancels the order and then receives a large refund.
- A customer asking about the possibility of returning goods and obtaining a cheque (especially if the customer requests that cheque be written to a third party).
- Customer may attempt to use a third party cheque or a third party credit card.
- Funds come from an offshore financial centre rather than a local bank.
- Large or frequent payments made in funds other than Naira
- Transaction lacks business sense.
- Customer is known to have a criminal background.
- Customer uses or produces identification documents with different names.
- Customer does not want to put his/her name on any document that would connect him/her with the purchase.
- Purchase appears to be beyond the means of the Customer based on his/her stated or known occupation or income.
- Person sells numerous items at the same time.
- Person sells items repeatedly.
- Person sells items with price tags on them.
- Person cannot explain the source of the items they seek to sell.

It is important to note that it is not only cash transactions may be suspicious. Money laundering includes the layering and integrating stages where there is no more cash, but only funds that

are moved around while trying to confuse the Money trail. It can also be of any amount. If you think a N1.00 transaction is suspicious, you must report it to NFIU.

#### **b. Reporting Terrorist Funds**

- i. You **must report immediately** to the NFIU the existence of funds within your business where you know or have reasonable grounds to suspect that the funds belong to an individual or legal entity who:
  - commits terrorist acts or participates in or facilitates the commission of terrorist acts or the financing of terrorism; or
  - is a designated entity.
- ii. You **must report immediately** to the NFIU where you know or have reasonable grounds to believe that a person or entity named on the UN list or the list circulated by the NFIU deals in precious metals in Nigeria.

### **3. NO TIPPING-OFF**

When you have made a suspicious transaction report to the NFIU, you or any member of your staff must not disclose that you have made such a report or the content of such report to any person including the Customer. It is an offence to deliberately tell any person, including the Customer, that you have or your business has filed a suspicious transaction report about the Customer's activities/transactions. You must also not disclose to anyone any matter which may prejudice money laundering or financing of terrorism investigation or proposed investigation

The prohibition applies to any person acting, or purporting to act, on your behalf, including any agent, employee, partner, director or other officer, or any person engaged under a contract for services.

### **4. RECORD KEEPING**

You are required to keep a record of each and every transaction for a specified period. Record keeping is important to anti-money laundering investigation which allows for swift reconstruction of individual transactions and provides evidence for prosecution of money laundering and other criminal activities.

You must keep the following records for a period of five (5) years or such longer period as the enabling laws direct. The records must be kept for five years (5) after the end of the business relationship or completion of a one-off transaction.

- a. All domestic and international transaction records;
- b. Source of funds declarations;
- c. Customer's identification records such as passports, identify cards or similar documents;
- d. Copies of official corporate records;
- e. Copies of Suspicious Transaction Reports submitted by your staff to your Compliance Officer
- f. A register of copies of suspicious transaction reports submitted to NFIU
- g. Copies of all reports sent to the FMITI and the NFIU
- h. A register of all enquiries made by LEAs (date, nature of enquiry, name of officer, agency and powers being exercised) or other competent authority;
- i. The names, addresses, position titles and other official information pertaining to your staff;
- j. All Wire transfers records; (originator and recipient identification data) and
- k. Other relevant records.

#### **5. ASCERTAIN CUSTOMER IDENTITY – KNOW YOUR CUSTOMER**

If you cannot satisfactorily apply your due diligence measures in relation to a Customer, e.g, you are unable to identify and verify a Customer's identity or obtain sufficient information about the nature and purpose of a transaction, you must **NOT** carry out a transaction for that Customer or enter into a business relationship with the Customer and you must terminate any business relationship already established. You must submit a report to the NFIU immediately.

##### **a. All Customers**

You must **identify** who is the prospective customer and **verify** the person's identity by reference to independent and reliable source materials. Such material should include documentary identification issued by the Government departments or agencies (Note that the following are the recognised means of identification in Nigeria: Driver's License, International Passport, National ID, Voters registration card). You must also ask the source of funds for the transaction. Customer's identification, also called CDD or Know Your Customer–KYC, must be obtained for customers who are individuals as well as companies. You must obtain satisfactory evidence of the Customer's identity before establishing a business relationship or completing a transaction for occasional customers.

## **b. High Risk Customers/Transactions**

There are customers and types of transactions and products which may pose higher risk to your business and you are required to take additional measures in those cases. The AML/CFT laws have identified certain high risks customers and require you to conduct Enhanced Due Diligence (“EDD”) on these customers. You may also determine that certain customers, transactions and products pose a higher risk to your business and apply EDD. You must take specific measures to identify and verify the identity of the following individuals or entities:

- i. non-resident customers ;
- ii. legal persons or legal arrangements such as trusts that are personal assets-holding vehicles ;
- iii. Politically Exposed Persons (PEPs) ;
- iv. cross-border transactions or activities; and
- v. non face-to-face business relationships.
- vi. any individual or entity who conducts business transactions with persons and Financial Institutions in or from other countries which do not or which insufficiently comply with the recommendations of the Financial Action Task Force (“the FATF”).

EDD measures to apply to high risk customers include but is not limited to:

- i. certification by appropriate authorities and professionals of documents presented ;
- ii. requisition of additional documents to complement those otherwise required ;
- iii. performance of due diligence on identity and background of the customer or the beneficial owner, including the control structure in the case of a corporate customer;
- iv. performance of due diligence on the source of funds and wealth ;
- v. obtaining senior management approval for establishing business relationship
- vi. on-going monitoring of the business relationship.
- vii. gather sufficient information on the respondent institution or client ;
- viii. assess the respondent institution or client’s anti-money laundering and combating the financing of terrorism control measures ; and
- ix. document the nature of business or occupation of each institution or client in this regard.

## **6. IS THE CUSTOMER ACTING FOR A THIRD PARTY?**

You must take reasonable measures to determine whether the Customer is acting on behalf of a third party especially where you have to conduct EDD.

Such cases will include where the Customer is an agent of the third party who is the beneficiary and who is providing the funds for the transaction. In cases where a third party is involved, you must obtain information on the identity of the third party and their relationship with the Customer.

In deciding who the beneficial owner is in relation to a Customer who is not a private individual, (e.g., a company) you should identify those who have ultimate control over the business and the company's assets such as the shareholders.

Particular care should be taken to ensure that any person purporting to act on behalf of the company is fully authorized to do so.

## **7. APPOINTING A COMPLIANCE OFFICER**

You must appoint a senior employee at managerial level as Compliance Officer (CO). The individual you appoint will be responsible for the implementation of your compliance regime.

**You must notify the FMITI on details of the person you have chosen as your CO.** If you change your CO you must equally notify the FMITI immediately.

If you are a small business, employing five (5) persons or less, the CO must be the person in the most senior position. If you are the owner or operator of the business and do not employ anyone, you can appoint yourself as CO to implement a compliance regime.

In the case of a large business (employing over five [5] persons), the CO should be from senior management and have direct access to senior management and the board of directors.

Furthermore, as a good governance practice, the appointed CO **IN A LARGE BUSINESS** should not be directly involved in the receipt, transfer or payment of funds.

Your CO should have the authority and the resources necessary to discharge his or her responsibilities effectively. The CO must:

- a. have full responsibility for overseeing, developing, updating and enforcing the AML/CFT Programme;
- b. have sufficient authority to oversee, develop, update and enforce AML/CFT policies and procedures in all branches of the business; and
- c. be competent and knowledgeable regarding money laundering issues and risks and the anti-money laundering legal framework.

Depending on your type of business, your CO should report, on a regular basis, to the board of directors or senior management, or to the owner or chief operator of the business. The identity of the CO must be treated with the strictest confidence by you and your staff.

**The CO's responsibilities include:**

- i. Submitting STR and CTR and to NFIU while CBTRs should be sent to the FMITI and keeping relevant records thereof;
- ii. Acting as Liaison officer between your business and the FMITI;
- iii. Implementing your Compliance Programme;
- iv. Directing and enforcing your Compliance Programme and
- v. Ensuring the training of employees on AML/CFT.

For consistency and on-going attention to the compliance regime, your appointed CO may choose to delegate certain duties to other employees. For example, the officer may delegate an individual in a local office or branch to ensure that compliance procedures are properly implemented at that location. However, where such a delegation is made, the CO retains full responsibility for the implementation of the compliance regime.

Best practice: You should have an alternate CO to perform the CO's functions in the event the CO is absent for any reason. You will need to notify the FMITI on particulars of the person to act as alternate CO.

**8. DEVELOP AND SUBMIT TO FMITI A WRITTEN COMPLIANCE PROGRAMME**

After you have registered with FMITI as a reporting entity, you must develop a written Compliance Programme ("CP"). If you are an organization, the CP also has to be approved by senior management. You must submit the CP to the FMITI for review.

The CP is a written document explaining your system of internal procedures, systems and controls which are intended to make your business less vulnerable to being used by money launderers and terrorism financiers. Your CP will contain measures that ensure that you comply with your reporting, record keeping, customer identification, employee training, and other AML/CFT obligations. These policies, procedures and controls, must be communicated to employees, and when fully implemented, will help reduce the risk of your business being used for money laundering or to finance terrorism. The CP must be reviewed yearly.

The FMITI will examine your CP and approve or recommend amendments if deficiencies are identified.

A well-designed, applied and monitored regime will provide a solid foundation for compliance with the AML/CFT laws. As not all individuals and entities operate under the same circumstances, your compliance procedures will have to be tailored to fit your individual needs. It should reflect the nature, size and complexity of your operations as well as the vulnerability of your business to money laundering and terrorism financing activities.

The following seven (7) elements must be included in your compliance regime:

- a. The appointment of a staff member as CO;
- b. Internal compliance policies and procedures;
- c. Your assessment of your risks to money laundering and terrorism financing, and measures to mitigate high risks;
- d. Ongoing compliance training for staff; and
- e. Periodic documented review of the effectiveness of implementation of your policies and procedures, training and risk assessment.
- f. Ensuring independent audit of the compliance programme and the activities of the compliance officer
- g. Such reviews (both internal and external) must be documented and made available to the FMITI.

## **9. IMPLEMENT AND TEST YOUR COMPLIANCE PROGRAMME**

Your obligations include implementing your written CP. The FMITI may conduct an onsite examination to determine whether the measures outlined in your CP are effectively implemented.

In addition, you must conduct internal testing to evaluate compliance by you and your staff with your CP in particular, CDD, record keeping and suspicious transactions reporting. Best practice indicates that internal testing should be carried by someone other than the CO, to avoid potential conflict since the CO is responsible for implementation of the CP, its measures.

External testing must also be carried out to test the effectiveness of your systems, controls and implementation of same by someone not employed in your business.

If you are the CO as well as the most senior employee (person at the highest level in the organization) an external independent review should be carried out by the FMITI.

**PART 10**

**OFFENCES & PENALTIES FOR NON-COMPLIANCE**

(1) A dealer in precious stones or metals which fails to comply with the provisions of these Regulations shall be sanctioned in accordance with the relevant provisions of the Money Laundering (Prohibition) Act, 2011 (as amended) and Terrorism Prevention Act 2011 (as amended).

(2) The NFIU and the FMITI may apply administrative sanctions where there is a breach of the reporting requirements under these Regulations, the relevant provisions of the Money Laundering (Prohibition) Act 2011 (as amended), the Terrorism Prevention Act 2011 (as amended) and any other relevant laws or Regulations.

(3) The relevant Self Regulatory Organization or professional body, in consultation with the NFIU or FMITI may apply additional administrative sanctions and shall withdraw, revoke, or suspend the license of dealers in precious stones and metals where there is persistent and deliberate breach of the provisions of these Regulations, the relevant provisions of the Money Laundering (Prohibition) Act 2011 (as amended), the Terrorism Prevention Act 2011 (as amended) and any other relevant laws or Regulations.

**PART 11**

**ADDITIONAL RESOURCES**

This summary is intended to guide you in fulfilling your legal obligations under the AML/CFT Laws.

Published on MARCH, 2014

\*\*\*\*\*

**FMITI DOCUMENT**