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COMPLIANCE | CONSULTING

The Financial Services Commission, the regulator for non-banking financial services in Mauritius, has come forward on 1st April 2021 with an amended AMLCFT Handbook (initially issued at the start of year 2020).

The amendments concern the Independent AMLCFT Audit, required under Regulation 22(1) (d) of the FIAML Regulations 2018 and the Business Risk Assessment, required under Section 17(1) of the FIAMLA. Below are the salient features of these amendments

Reference	*Details of amendments*	*Implications for licensees*
Chapter 4.3 Business Risk Assessment (“BRA”)	The followings have been added (***emphasis ours***): a) While performing business, ***Management, Compliance and Risk Management should all work together on performing the Business Risk Assessment***. Primarily, responsibility for the quality and execution of the risk analyses lies with the first line of defence. This is the business, as risks manifest themselves first there. *The role of Compliance is process monitoring, facilitating and testing*. *Other functions or departments such as Audit can also provide the necessary input. The ultimate responsibility for the Business Risk Assessment lies with the board of directors.* b) It is expected that this risk assessment is reviewed at least annually and ***in case of trigger events*** and this review should be documented to evidence that an appropriate review has taken place. c) Risk management requires a systematic approach, it is a cyclical process. This means that a financial institution is expected to perform ***the whole cycle of identification, analysis and testing of the effectiveness of controls at regular intervals.*** This is because ***risks are not static***. Risks to financial institutions may change as a result of both internal and external factors. The financial institution’s activities may for instance be expanded or changed, specific trends may emerge in the financial and economic world, or laws and regulations may be amended. d) Since the risks of ML/FT vary from business to business and are not static, it is the responsibility of the financial institution to identify the vulnerabilities and risks faced, ***maintain an up to date understanding of these risks, and develop and implement appropriate strategies to mitigate and control those identified risks***. This includes ***adjustment of such mitigation*** when needed. The appropriate strategy in order to manage and control those risks is to have an ***effective internal compliance culture under the board of directors’ ultimate responsibility.*** e) The above risk factors are non-exhaustive list and it is for the financial institution to assess and decide what is appropriate and relevant in the circumstances of the business. In cases, where not all the risk elements have been considered when conducting the business risk assessment, the financial institution has to demonstrate how effective and robust its business risk assessment is in line with its inherent risks and vulnerabilities and the Commission will assess to what extent the business risk assessment conducted reflect residual risks faced by the financial institution.	a) While the eventual responsibility must be assumed by the Board, the responsibility for the conduct of the BRA exercise must be shared by at least Management, Compliance and Risk Management. A licensee must be able to demonstrate this on the conduct of its BRA b) The BRA was originally an annual exercise. With addition of trigger events, there is the possibility that it may occur on a frequency of less than a year c) These amendments imply that risks, risks identification and mitigation exercises need to be constantly reviewed and adapted to fit emerging risks and the enterprise’s reality. d) The role of the board is again emphasized. A suggested course of action may be hence that the board receives and reviews periodic reports about AMLCFT risks. e) It is incumbent on the licensee to demonstrate that it has ensured that all relevant risks have been considered in its BRA. The Commission retains the right to verify that the business risk assessment so conducted reflects residual risks faced

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Chapter 13, Independent Audit	This chapter is a newly added one **(emphasis ours).** a) Every independent audit should mandatorily test compliance in the following non-exhaustive areas: • AML/CFT policies and procedures; • Internal Risk Assessment; • Risk Assessment on the use of third-party service providers (Outsourcing); • Compliance Officer function and effectiveness; • MLRO function and effectiveness; • Implementation and Effectiveness of Mitigating Controls, including customer due diligence and enhanced measures; • AML/CFT Training; • Record Keeping Obligations; • Targeted Financial Sanctions; and • Suspicious Transaction Monitoring and Reporting.	a) These must be covered by the auditor, and the licensee must ensure same from the auditor.
	b) The person or firm conducting the audit should be independent and must **not be involved in the development of a financial institution's AML/CFT risk assessment, or the establishment, implementation or maintenance of its AML/CFT programme.** The audit function should therefore be independent of, and separate from the operational and executive team dealing with the AML/CFT processes of the financial institution. An independent audit review may be conducted by an internal or external audit professional. The person or firm conducting the audit should have the **necessary skills, qualifications, relevant experience of the audit process, have a proper understanding of the FIAMLA and its supporting regulations as well as sufficient knowledge of the financial institution industry**. In order to ensure that the audit is properly conducted as required under the FIAMLA and FIAML Regulations 2018, the audit professional needs to provide quality recommendations, so that the financial institution can use the findings and recommendations to improve upon deficient areas. • Factors to assess the independence are, among others: • Audit professional's involvement in the development of the entity's risk assessment or creation, implementation or maintenance of the AML/CFT programme • Financial interest the audit professional has in the business • Audit professional relationship with any shareholder, director, senior management and or employees	b) The independence of the auditor is emphasized and must be maintained by the licensee. He can be someone internal or external as well, but it is important that he is seen to be independent and no conflict-of-interest situation must be allowed. The auditor must hold the appropriate qualifications, experience and skill to ensure that he is fit and proper for the assignment.

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Chapter 13, Independent Audit	c) Frequency: to **commensurate with the licensee's size, nature, context, complexity and internal risk assessment.** The financial institutions can determine for themselves the frequency to have their audits conducted. The greater the AML risk of the financial institution, and of the rate of change of the financial institution's business, the greater should be the frequency of audit. Business that does not have clients during the reporting period: the audit cycle can be extended if the financial institution has no clients and no clients have been onboarded or exited since the previous independent audit is conducted. Financial institution that is in process of being wound up: recommended that at least one final independent audit is carried out until the financial institution is no more considered as a reporting entity under the FIAMLA.	c) The frequency is left at the discretion of the licensee, depending on its circumstances. It can consider the leeway given when there are no new conditions. Besides, the condition when it is to be wound up must also be considered.
	d) Audit reporting: must be signed and cover results of reviews on above mentioned areas. Must be reported to senior management and board. **Follow up is key** - Failure to address recommendations and findings of previous audits should be red flagged to the board or audit committee	d) Licensee must ensure to take remedial measures on the recommendations. The auditor must otherwise flag non follow up actions to the board – this will not impact good on the regulatory standing of the licensee
	e) Financial institutions are not required to file their independent audit report with the Commission periodically. However, the financial institution shall file its independent audit report for a specified period, upon the request of the Commission.	e) No filing of report to the Commission, unless requested.

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