

2020

Anti-Money Laundering and Combating Financing of Terrorism Regulations for Cost and Management Accountants Reporting Firms

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**INSTITUTE OF COST AND MANAGEMENT
ACCOUNTANTS OF PAKISTAN**

Anti-Money Laundering and Combating Financing of Terrorism Regulations
for Cost and Management Accountants Reporting Firms
Issued by Institute of Cost and Management Accountants of Pakistan (ICMA Pakistan)
under Section 6(A)(2) of AML Act

Short Title, Extent and Commencement

1. These Regulations shall be called the Anti-Money Laundering and Combating Financing of Terrorism Regulations for Cost and Management Accountants Reporting Firms.
2. They shall come into force at once.

Definitions

3. (1) In these Regulations, unless there is anything repugnant in the subject or context,-
 - (a) "**AML/CFT**" means Anti-Money Laundering and Counter Financing of Terrorism
 - (b) "**AML Act**" means the Anti-Money Laundering Act, 2010 (VII of 2010);
 - (c) "**Client or Customer**" means any person engaging a reporting firm (RF) for the purposes of requesting, acquiring, or using Accountant or Trust Services or carrying out any transaction or business with the reporting firm (RF).
 - (d) "**Close associate**" of a PEP means—
 - (i) an individual known to have joint beneficial ownership of a legal person or a legal arrangement or any other close business relations with a PEP;
 - (ii) any individual(s) who have beneficial ownership of a legal person or a legal arrangement which is known to have been set up for the benefit of a PEP.
 - (e) "**Enhanced Due Diligence**" or **EDD** means taking additional CDD measures and may include the measures set out in Sub-section (2) of Section 21 of this Regulation.
 - (f) "**Family member**" of a politically exposed person includes—
 - (i) a spouse of the PEP;
 - (ii) lineal descendants and ascendants and siblings of the PEP;
 - (g) **ML** means money laundering
 - (h) "**Member in Practice**" – means a member of the Institute having certificate of practice and:
 - (a) Practicing as a "Cost and Management Accountant" individually (i.e. as a sole-proprietor) or in partnership with Cost and Management Accountants.
 - (b) Practicing as a "Management Consultant".
- (i) "**Politically exposed person**" or **PEP** means an individual who is or has been entrusted with a prominent public function either domestically or by a foreign country, or in an international organization and includes but is not limited to:
 - (i) For foreign PEPs, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and political party officials;

- (ii) For domestic PEPs, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, political party officials;
 - (iii) For international organization PEPs, members of senior management or individuals who have been entrusted with equivalent functions.
- (j) **“Reporting Firm or RF”** – means a Member in Practice when they conduct any activity as specified in AMLA in sections (2) (xii) (c) (d)
- (k) **“Reasonable measures”** means appropriate measures which are commensurate with the money laundering or terrorist financing risks;
- (l) **“Senior management”** includes:
- (a) A sole proprietor of the Reporting Firm;
 - (b) Individual holding the position of chief executive officer/ managing partner, chief operating officer in a Reporting Firm;
 - (c) Individual holding the position of AML / CFT compliance officer in a Reporting Firm;
 - (d) A partner or employee of the Reporting Firm with sufficient knowledge of the Reporting Firm’s money laundering and terrorist financing risk exposure, and of sufficient authority, to take decisions affecting its risk
- (m) **“Simplified due diligence”** SDD means taking reduced CDD and may include the measures set out in Sub-section (2) Section 23 of this Regulation.
- (n) **“TF”** means financing of terrorism.
- (o) **“Third Party”** means any reporting entity as defined in section 2 (xxxiv) of the AML Act.

(2) The definitions in the AML Act also apply in these Regulations.

Risk Assessment and Mitigation

4. The reporting firm shall take appropriate steps in accordance with section 7F of the AML Act to identify, assess, and understand their risks (for customers, countries or geographic areas; and products, services, transactions or delivery channels). The reporting firm shall:
 - (a) document their risk assessments;
 - (b) consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied;
 - (c) keep these assessments up to date; and
 - (d) have appropriate mechanisms to provide risk assessment information to ICMA Pakistan.
5. The reporting firm shall:
 - (a) have policies, controls and procedures, which are approved by senior management, to enable them to manage and mitigate the risks that have been identified in its own

risk assessment and any other risk assessment publicly available or provided by ICMA Pakistan.

- (b) monitor the implementation of those controls and to enhance them if necessary;
 - (c) take enhanced measures to manage and mitigate the risks where higher risks are identified.
6. The reporting firm may take simplified measures to manage and mitigate risks, if lower ML/ TF risks have been identified. Simplified measures should not be permitted whenever there is a suspicion of ML/ TF.
7. The reporting firm shall:
- (a) identify and assess the ML and TF risk that may arise in the development of new products, businesses and practices, including new delivery mechanism, and the use of new and pre-existent technology.
 - (b) prior to the launch or use of product, practice or technology, shall undertake the risk assessment and take appropriate measures to manage and mitigate the risks.

Customer Due Diligence (CDD) and Beneficial Ownership

8. (1) Reporting firm who engage in the following activities shall conduct CDD in the circumstances and matters set out in section 7A(1) of the AML Act:
- a) When they prepare for, or carry out, transactions for their client concerning the activities described in Section 2(xii)(c) of the AML Act.
 - b) When they prepare for, or carry out, transactions for their client concerning the activities referred to in Section 2(xii)(d) of the AML Act.
- (2) For the purposes of conducting CDD as required under section 7A(2) of the AML Act in the circumstances set out under subsection (1), every reporting firm shall comply with sections 9-23 of these Regulations.
9. The reporting firm shall:
- (a) Identify the customer; and
 - (b) Verify the identity of that customer using reliable and independent documents, data or information.
10. Where the customer is represented by an authorized agent or representative, the reporting firm shall:
- (a) Identify every person who acts on behalf of the customer; and
 - (b) Verify the authority of that person to act on behalf of the customer.
11. The reporting firm shall also identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner by using reliable and independent document, data or sources of information, such that the reporting firm is satisfied that it knows who the beneficial owner is.

12. For customers that are legal persons or legal arrangements, the reporting firm shall:
 - (1) understand the nature of the customer's business and its ownership and control structure
 - (2) identify the customer and verify its identity by obtaining the following minimum information in addition to the information required in section 15,
 - (a) name, legal form and proof of existence;
 - (b) the powers that regulate and bind the legal person or arrangement, as well as the names of the relevant persons having a senior management position in the legal person or arrangement; and
 - (c) the address of the registered office and, if different, a principal place of business.
13. For customers that are legal persons, the reporting firm shall identify and take reasonable measures to verify the identity of beneficial owners by:
 - (a) identifying the natural person(s) (if any) who ultimately has a controlling ownership interest (as defined under relevant laws) in a legal person; and
 - (b) to the extent that there is doubt under (a) as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means; and
 - (c) where no natural person is identified under (a) or (b) above, the identity of the relevant natural person who holds the position of senior managing official.
14. For customers that are legal arrangements, the reporting firm shall identify and take reasonable measures to verify the identity of beneficial owners as follows:
 - (a) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership);
 - (b) for Waqfs and other types of legal arrangements, the identity of persons in equivalent or similar positions as specified in (a).
 - (c) Where any of the persons specified in (a) or (b) is a legal person or arrangement, the identity of the beneficial owner of that legal person or arrangement shall be identified.
15. (1) For the purposes of verification of identity of customers or beneficial owners in sections 9 - 14, reliable and independent document, data or sources of information may include as applicable:
 - (a) For natural person, copy of:
 - (i) Computerized National Identity Card (CNIC) issued by NADRA; or
 - (ii) National Identity Card for Overseas Pakistanis (NICOP) and/or Passport issued by NADRA for Non-resident / overseas Pakistanis or those who have dual nationality; or
 - (iii) Pakistan Origin Card (POC) issued by NADRA and/ or Passport for Pakistanis who have given up Pakistan nationality; or

- (iv) Form B or Juvenile card issued by NADRA to children under the age of 18 years; or
- (v) where the natural person is a foreign national, either an Alien registration card (ARC) issued by NADRA or a Passport having valid visa on it or any other proof of legal stay along with passport.

(b) For legal person, certified copy of:

- (i) resolution of board of directors for establishing of business relationship with the Reporting firm;
- (ii) memorandum of association;
- (iii) articles of association, wherever applicable;
- (iv) certificate of incorporation;
- (v) Securities and Exchange Commission of Pakistan (SECP) registered declaration for commencement of business as required under the Companies Act, 2017 (XIX of 2017), as applicable; and
- (vi) list of directors required to be filed under the Companies Act, 2017 (XIX of 2017), as applicable;
- (vii) identity documents as per sub-clause (a) of all the directors, beneficial owners and persons authorized to operate the business relationship.
- (viii) any other documents as deemed necessary including its annual accounts and financial statements or disclosures in any form which may help to ascertain the detail of its activities, sources and usage of funds in order to assess the risk profile of the prospective customer;

(c) For a legal arrangement, certified copies of -

- (i) the instrument creating the legal arrangement
- (ii) registration documents and certificates;
- (iii) the legal arrangement's by-laws, rules and regulations;
- (iv) documentation authorizing any persons to open and operate the business relationship;
- (v) identity document as per sub clause (a) above of the authorized persons, beneficial owners and of the members of governing body, board of trustees or executive committee, if it is ultimate governing body, of the legal arrangement; and
- (vi) any other documents as deemed necessary including its annual accounts and financial statements or disclosures in any form which may help to ascertain the subject of the trust, the detail of its activities, sources and usage of funds in order to assess the risk profile of the prospective customer;

(d) In respect of government institutions and entities not covered herein above. -

- (i) CNICs of the authorized persons; and
- (ii) letter of authorization from the concerned authority.

16. The reporting firm shall identify and verify the identity of the customer and beneficial owner before establishing a business relationship or conducting transactions for occasional customers.

17. The reporting firm may complete verification after the establishment of the business relationship, provided that:

- (a) this occurs as soon as reasonably practicable;
 - (b) this is essential not to interrupt the normal conduct of business; and
 - (c) the risks are low.
18. The reporting firm shall adopt risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification.
19. The reporting firm shall conduct ongoing due diligence on the business relationship, including:
- (a) scrutinizing transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting firm's knowledge of the customer, their business and risk profile, including where necessary, the source of funds; and
 - (b) undertaking reviews of existing records and ensuring that documents, data or information collected for the CDD purposes is kept up-to-date and relevant, particularly for higher risk categories of customers.
20. The reporting firm shall apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct ongoing due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.
21. (1) The reporting firm shall apply EDD in the following circumstances, including but not limited to:
- a) business relationships and transactions with natural and legal persons when the risks are higher
 - b) business relationships and transactions with natural and legal persons from countries for which this is called for by the FATF.
 - c) PEPs and their close associates and family members.
- (2) EDD measures may include but shall not be limited to the following measures:
- (a) Obtaining additional information on the customer (e.g. volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial owner;
 - (b) Obtaining additional information on the intended nature of the business relationship;
 - (c) Obtaining information on the source of funds or source of wealth of the customer;
 - (d) Obtaining information on the reasons for intended or performed transactions.
 - (e) Obtaining the approval of senior management to commence or continue the business relationship; and / or
 - (f) Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.
- (3) In relation to sub-section 1(c), the reporting firm shall:

- (i) implement appropriate risk management systems to determine if a customer or beneficial owner is a PEP or a close associate or family member of a PEP, both prior to establishing a business relationship or conducting a transaction, and periodically throughout the course of the business relationship;
 - (ii) apply at minimum the following EDD measures:
 - (a) obtain approval from senior management to establish or continue a business relation where the customer or a beneficial owner is a PEP, close associate or family member of a PEP or subsequently becomes a PEP, close associate and family member of a PEP;
 - (b) take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as a PEP, close associate or family member of a PEP; and
 - (c) conduct enhanced ongoing monitoring of business relations with the customer or beneficial owner identified as a PEP, close associate and family member of a PEP.
22. The Reporting firm shall apply the countermeasures sanctioned by the Federal Government, pursuant to recommendations by the National Executive Committee when required.
23. (1) The reporting firm may apply SDD, when identifying and verifying the identity of a customer or beneficial owner, only where lower risks have been identified through an adequate analysis through its own risk assessment and any other risk assessments publicly available or provided by ICMA Pakistan in accordance with section 4 of these regulations and commensurate with the lower risk factors.
- (2) SDD measures may include but shall not be limited to:
- (a) Verifying the identity of the customer and the beneficial owner after the establishment of the business relationship;
 - (b) Reducing the degree of on-going monitoring and scrutinizing transactions;
 - (c) Not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship but inferring the purpose and nature from the type of transactions or business relationship established.
24. (1) The reporting firm may rely on a Third Party, as provided under section 7B of the AML Act, for identification and verification of a customer as set out in provisions 8 to 16 of these regulations, provided that the reporting firm:
- (a) will remain liable for any failure to apply such CDD measures as indicated above;
 - (b) shall immediately obtain from the Third Party the required information concerning CDD as set out in section 15,
and
 - (c) satisfies itself that the Third Party is supervised by a AML/CFT regulatory authority or an equivalent foreign authority and has measures in place for compliance with AML Act obligation of CDD and record keeping.

- (2) Where a reporting firm relies on a third party that is part of the same corporate group, the reporting firm may deem the requirements of subsection (1) to be met if:
- (a) the corporate group applies CDD and record-keeping requirements in accordance with the AML Act and its associated regulations
 - (b) the implementation of the requirements in paragraph (a) is supervised by an AML/CFT regulatory authority or an equivalent foreign authority; and
 - (c) the corporate group has adequate measures in place to mitigate any higher country risks.
- (3) In addition to sub-section (1), when determining in which country a third party may be based, the reporting firm shall have regard to available information on the level of country risk.

TFS Obligations

25. Pursuant to section 7H of the AML Act, in order to comply with TFS, the Reporting firm shall:

- (i) develop mechanisms, processes and procedures for screening and monitoring customers and potential customers to detect any matches or potential matches with the stated designated/ proscribed person – or if beneficial owners of the designated/ proscribed person – in the SROs and notifications issued by MoFA, NACTA and MoI.
- (ii) If during the process of screening or monitoring of customers or potential customers a positive or potential match is found, the Reporting firm shall:
 - a) freeze the relevant funds and assets, without delay, in accordance with the respective SRO;
 - b) not provide any services, property or funds to the person in question in accordance with the respective SRO; and
 - c) reject the transaction or attempted transaction or the onboarding of the customer, if the relationship has not commenced
- (iii) In all cases referred to in (ii), the reporting firm shall file a suspicious transaction report to the FMU under Section 7 of the AML Act, 2010 and notify ICMA Pakistan in the manner as may be directed by ICMA Pakistan from time to time.
- (iv) Implement any other obligation under the AML Act 2010, United Nations (Security Council) Act 1948 and Anti-Terrorism Act 1997 and any regulations made there under.

Reporting of STR and CTR

26. The Reporting firm shall file STR and CTR to FMU, as per requirements prescribed by FMU as required under Section 7 of AML Act.

Internal Controls

27. (1) In order to implement compliance programs as set out in 7G of the AML Act, the reporting firm shall implement the following internal policies, procedures and controls:
 - (a) compliance management arrangements, including the appointment of a compliance officer at the management level, as the individual responsible for the reporting firm's compliance with these Regulations;
 - (b) screening procedures when hiring employees to ensure the integrity and conduct, skills, and expertise of such employees to carry out their functions effectively;
 - (c) an ongoing employee training program;
 - (d) an independent audit function to test the system.
28. The reporting firm shall ensure that its foreign branches apply AML & CFT measures consistent with Pakistan requirements where the minimum AML & CFT requirements are less strict than Pakistan, to the extent of that host country laws. If the foreign country does not permit the proper implementation of AML/ CFT measures consistent with that of Pakistan requirements, reporting firm should apply appropriate additional measures to manage the risks, and inform ICMA Pakistan.

Record Keeping

29. The records maintained by reporting firms as set out in section 7C of the AML Act shall be sufficient to permit reconstruction of individual transactions including the nature and date of the transaction, the type and amount of currency involved and the customer involved in the transactions so as to provide, when necessary, evidence for prosecution of criminal activity.
30. Where transactions, customers or instruments are involved in litigation or where relevant records are required by a court of law or other competent authority, the Reporting firm shall retain such records until such time as the litigation is resolved or until the court of law or competent authority indicates that the records no longer need to be retained.
31. The Reporting firm shall promptly provide any records, documents or information upon request from ICMA Pakistan, any investigating or prosecuting agency, or the FMU.

Sanctions

32. Any violation of any provision of these regulations will be subject to sanctions in accordance with the AML/CFT Sanctions Rules, 2020 and imposed by ICMA Pakistan according to Clause (h) of Sub-section (2) of Section 6A of AML Act.
