



Financial Intelligence Unit

Government of the Cook Islands

Financial Transactions Reporting Act 2017 Practice Guideline for Accountants

1. Introduction

The purpose of this document is to provide some guidance specifically for the accounting sector.

This document is designed to assist you with your Anti Money Laundering and Terrorist Financing (AML/CFT) obligations and should be read in conjunction with the Financial Transactions Reporting Act 2017 (FTRA), the Financial Transactions Reporting Regulations 2017 (Regulations) and the Practice Guidelines for the Financial Transactions Reporting Act 2017 (Guidelines).

In addition to the FTRA, the Regulations and the Guidelines it is recommended you refer to the following for further guidance:

- 2008 Financial Action Taskforce (FATF) report Risk Based Approach for Accountants¹.

It should be noted these guidelines are not law and do not constitute legal advice. They should not be relied upon as evidence of you complying with your obligations under the FTRA and the Regulations. You should seek your own independent legal advice on the interpretation and requirements of the FTRA and the Regulations.

If you have any questions or require more information concerning these guidelines, the FTRA, the Regulations and the Guidelines please contact the Financial Intelligence Unit.

2. Who has obligations under the FTRA?

As an Accountant or Accountancy firm (or practice) you must establish and operate policies, systems and procedures in accordance with the FTRA **if you are involved** in preparing or carrying out transactions for clients in the following circumstances:

- conveyancing transactions²; or

¹ <http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20accountants.pdf>

² Under the FTR Regulations **conveyancing transaction** means a transaction that facilitates the legal process of transferring ownership of land in the Cook Islands or in any other country whether or not the land is improved in any way and includes—

- (a) purchase;
- (b) a sale;
- (c) the grant of any lease or sublease;
- (d) the grant of any mortgage or other charge.

- managing client money, securities or other assets; or
- managing bank, savings or securities accounts; or
- creating, operating or managing legal persons or legal arrangements; or
- buying and selling business entities

This does not apply to any person employed as an accountant in an “in-house” capacity, i.e their duties relate solely to the provision of accountancy services to his or her employer.

It should be noted that managing assets of a client does not include where those assets only represent advance payment of professional fees for the reporting institution.

3. What are your obligations under the FTRA?

You must develop internal policies, procedures, controls and systems to ensure the following obligations are met:

- internal compliance programme and risk assessments under Part 2, including;
 - appointing a Money Laundering Reporting Officer (MRLO) to oversee your compliance programme;
 - training employees to be aware of the policies, procedures and audit systems adopted by your organisation to deter money laundering and the financing of terrorism;
 - screening directors and key employees before appointing them; and
 - establishing an internal review function to test the effectiveness of your compliance programme and its compliance with the FTRA.
- customer due diligence including identifying Politically Exposed Persons (PEPs) and record keeping under Part 3;
- reporting of cash transactions and suspicious activities under Part 4.

Please refer to the Guidelines for further information and assistance in relation to each of the obligations mentioned above.

4. What are some of the risks specific to accounting sector?

Guidance in relation to conducting risk assessments is provided in the FTRA practice guidelines. This section aims to provide further guidance to the risks generally unique to this sector.

In many jurisdictions services of the accounting sector may be used by money launderers to provide an additional layer of legitimacy to the criminal’s financial arrangements, especially where the sums involved may be larger. While accountants do not (ordinarily) handle funds or even participate in a financial transaction they will, given their role, often be able to see a bigger overall picture of a customer’s affairs.

In terms of vulnerability, money launderers or terrorist financiers may attempt to use the services of an accountant to provide an additional layer of legitimacy to their financial arrangements, particularly where the sums involved may be larger or revenue more frequent.

Certain activities that may be performed by accountants are more susceptible to financial misconduct. Such activities include:

- The use of pooled client bank accounts;
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- Carrying out transactions on behalf of customers such as depositing/withdrawing cash or issuing/cashing cheques; and / or;
- Providing introductions to financial institutions.

5. High Risk Indicators

As with all types of risk assessment, a holistic approach should be taken and the indicators below should be taken into consideration along with the following factors:

- the customer:
 - uses an agent or intermediary without good reason;
 - actively avoids personal contact without good reason;
 - is reluctant to provide or refuses to provide information, data and documents usually required;
 - provides false or counterfeited documentation; and /or;
 - consideration should be given as to whether customers who demand strict confidentiality relating to their financial and business affairs are evading tax or seeking to mask the true beneficial ownership of their assets.
- the customer is known to have convictions for an acquisitive crime (meaning a crime that generates proceeds), known to be currently under investigation for an acquisitive crime, or have known connections with criminals;
- there are attempts to disguise the true ownership of legal persons or related parties;
- transactions involve a disproportional amount, bearer instruments or cash without any logical reason;
- the transactions are inconsistent with the socio-economic profile of the individual or the business's economic profile;
- the customer or a third party is contributing a significant sum in cash as collateral provided by the borrower/debtor rather than simply using those funds directly, without logical explanation;
- the source of funds is unusual; such as a third party funding asset purchases, fees or taxes involved especially with no apparent connection or legitimate explanation;
- the customer is using multiple bank accounts or foreign accounts without good reason;
- private expenditure is funded by an unrelated person, business or government;
- mortgages are repeatedly repaid significantly prior to the agreed maturity date, with no logical explanation;
- asset(s) are purchased with cash and then rapidly used as collateral for a loan;
- finance is provided by a lender, either a natural or legal person, other than a credit institution, with no logical explanation or economic justification;
- there has been a significant increase in capital for a recently incorporated company or successive contributions over a short period of time to the same company, with no logical explanation;
- there has been an increase in capital from a foreign country, which either has no relationship to the company and/or is high risk;
- the business receives an injection of capital or assets in kind which is notably high in comparison with the business, size or market value of the business, with no logical explanation;
- taking on work which is outside the firm's normal range of expertise can present additional risks because a money launderer or terrorist financier might be using the firm to avoid answering too many questions. An inexperienced accountant might be influenced into taking steps which a more experienced accountant would not contemplate. Accountants should be wary of highly paid niche areas of work in which the firm has no background, but in which the customer claims to be an expert;

- there is an excessively high or low price attached to assets or liabilities transferred, with regard to circumstances indicating such an excess (e.g. volume of revenue, trade or business, premises, size, knowledge of declaration of systematic losses or gains) or with regard to the sum declared in another operation with no logical explanation;
- large financial transactions, especially if requested by recently created companies, where these transactions are not justified by the corporate purpose, the activity of the customer or the possible group of companies to which it belongs or other justifiable reasons;
- instruction of an accounting professional at a distance from the customer or transaction without legitimate or economic reason;
- instruction of an accounting professional without experience in a particular specialty or without experience in providing services in complicated or especially large transactions;
- the customer is prepared to pay substantially higher fees than usual, without legitimate reason;
- the customer has changed advisor a number of times in a short space of time or engaged multiple advisers without legitimate reason; and / or;
- the required service was refused by another professional or the relationship with another professional was terminated without logical reason.

The above list is not exhaustive. New methods for laundering money and financing terrorism are constantly being developed. Typologies reports produced by the FIU are available on the FSC's website and you should contact the FIU for the latest information where you are uncertain or have questions on any risk matter.

6. When should you conduct Customer Due Diligence?

Customer due diligence must be undertaken by you at any point a person wishes to undertake a specified activity as listed in paragraph (2) of this document, or if they are not an established client, a person that wishes to transact amounts of \$10,000 NZD or more through the firms account(s).

7. Record Keeping

All copies of customer due diligence information and transactional information must be kept for a minimum period of 6 years from the date of the transaction or the end of an ongoing business relationship.

8. What must be reported to the FIU?

Suspicious Activity

Any activity or requests by a client or intending client that appears to you to be unusual or suspicious in your experience with dealing with that client in particular, or with clients generally, must be reported to the FIU under section 47. The list in Part 5 above provides guidance as to the type and nature of transactions, events and circumstances that might give you reasonable cause to suspect an activity is suspicious.

Cash Transactions

The receipt of any funds on behalf of a client either paid in cash into the Accountant's or the Accounting Firm's account equal to or greater than \$10,000 NZD must be reported to the FIU in the required form and manner.

9. FIU's Approach to Compliance Monitoring & Enforcement

The FIU has a responsibility to ensure that all reporting institutions are complying with all legislative requirements under the FTRA. To do this, the FIU is being empowered under the Financial Intelligence Act 2015 (FIU Act) to examine your compliance with the FTRA. The FIU may request information from you, conduct on-site examinations and provide reports to you for this purpose.

The FIU is empowered under section 31 of the FIU Act to enforce compliance on reporting institutions that have failed to comply in whole or in part with any of the obligations under the FTRA, or have failed to undertake directives issued by the FIU to take remedial actions.

10. Penalties for Non-Compliance

Failure to comply without reasonable excuse may cause the FIU to bring legal proceedings including prosecution of which a penalty of up to \$250,000 or a term of imprisonment of up to 5 years may be applied to an individual, or a penalty of up to \$1,000,000 for a body corporate.

11. FIU Contact

For further information about your obligations under the Act, or the FIU and its activities, contact the FIU Office on (682) 29182 or email: intel@cifu.gov.ck

12. Other resources

- FATF Report on Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals (which includes advice for Accountants and Tax Advisors)

<http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20Legal%20professions.pdf>

- Chartered Accountants – Australia and New Zealand

<http://www.charteredaccountants.com.au/industry-topics/anti-money-laundering>

- Institute of Chartered Accountants – England and Wales

<http://www.icaew.com/en/technical/legal-and-regulatory/money-laundering>