A Guide to the Anti-Money Laundering Law for Not-for-Profit Entities in Uganda

Diakonia
People Change the World

chapter four

Acknowledgments

This simplified guide to the anti-money laundering law for NGOs in Uganda is a publication of Chapter Four Uganda. Peter Magelah Gwayaka, Ophelia Kemigisha and Anthony Masake contributed to the drafting and editing of the guide. The contents were informed by a review of relevant laws as well as interactions with NGOs and government officials in this area of law. This guide is not intended to serve as a complete statement of the law.

About Us

Chapter Four Uganda is an independent not-for-profit organisation dedicated to the protection of civil liberties and promotion of human rights for all. We provide bold and innovative legal response through representation, litigation and providing counsel to civil society organisations (CSOs), and the most vulnerable and discriminated sections of society.

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Foreword

In parts of the world, Non-Government Organisations (NGOs) including Non-Government Organisations (NGOs) have been as vulnerable conduits and targets for terrorists and terror financing. Some NGOs have been used to finance illicit money transfer including money for commission of crimes. It is for this reason that the international community moved to require states to put in place measures that address money laundering.

In 2012, the Financial Action Task Force (FATF) made several recommendations that states have to implement. Recommendation 8 of FATF requires governments throughout the world to review laws and regulations that govern non-profit organisations so that these organisations cannot be abused for the financing of terrorism. These were adopted by many states and based on these, Uganda passed the Anti-Money Laundering Act, 2013 (as amended) and in 2015 made Regulations to guide its implementation. These pieces of legislation put in place several requirements for NGO's, that are also listed as accountable persons under the law.

This guide collates particular legal requirements for NGOs with regard to addressing money laundering. We hope that it will provide a useful tool for NGO leaders to appreciate the law and take steps to adhere to the requirements. This guide has summarised the legal requirements and placed them into what an NGO/NPO would be practically expected to do. These requirements may change with amendments of the law or requirements of the Financial Intelligence Authority (FIA) or even FATF practices. It is advisable for accountable persons, and the money laundering control officers in particular, to regularly read the laws for specific requirements and also keep themselves updated with what the Financial Intelligence Authority (FIA) and FATF might require of them.

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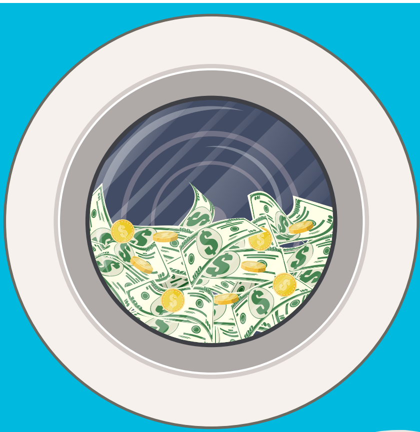
List of Abbreviations

AML	Anti-Money Laundering
AMLA	Anti-Money Laundering Act
CDD	Customer Due Diligence
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FIA	Financial Intelligence Authority
KYC	Know Your Customer
MLCO	Money Laundering Control Officer
NGO	Non-Governmental Organization
NPO	Not-for-Profit
TF	Terror Financing

1



Key Definitions and Concepts

What is money laundering?

Money laundering is the process of turning illegitimately obtained proceeds of crime into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime. It is an offence to knowingly participate or assist in any of these actions.

Who is in charge of fighting money laundering?

The Financial Intelligence Authority (FIA) is the body charged with ensuring compliance with the laws and regulations in place to fight money laundering. This is done in collaboration with other government agencies such as the Bank of Uganda, the National Bureau for Non-Governmental Organisations (NGO Bureau), and other regulatory authorities in Uganda.

Why does it matter for NGOs?

Some NGOs in several parts of the world have been used for money laundering; thus, Ugandan NGOs need to take the necessary steps to avoid being abused in this context.

As a measure to curb this, the Anti-Money Laundering Act of 2013 (the Act) names non-governmental organisations, faith-based institutions, and other charitable organisations as accountable persons, thereby creating certain obligations for them to fight money laundering.

Who is an accountable person?

The second schedule to the Act lists a number of persons as accountable persons. Some of those listed include:

- NGOs
- Heads of Faith-Based Organizations
- Advocates
- Bankers
- Insurance companies
- Real estate agents; among others.

What are the roles of the Accountable person?

The different roles of accountable persons are to:

1. Fill Form 1 to register with the Financial Intelligence Authority (FIA). After registration, the FIA will issue a Certificate which has a registration number. These may be required by different actors such as NGO Bureau, banks and donors. In case of changes to the name of the NGO, fill Form 2 to notify FIA of the change to get an updated FAI certificate with the new name.
2. Appoint a Money Laundering Control Officer (MLCO) and fill Form 3 to duly register him or her with the FIA. In case of any change, fill Form 2 to notify the FIA of the changes.
3. Put in place measures and policies to control money laundering.
4. Maintain appropriate accounts and records of all clients, keeping them on file for a minimum of 10 years.
5. Undertake Know Your Customer (KYC) and Client Due Diligence (CDD) measures for all persons and customers of the organization.
6. Develop training programmes for staff to prevent money laundering and Terror Financing (TF).
7. Ensure the Money Laundering Control Officer (MLCO) takes measures to record and report suspicious transactions and cash transactions. In particular, fill Form A to report all cash and monetary transactions equal to or above UGX. 20,000,000 in any currency to the FIA as soon as possible.
8. Carry out regular risk assessments and take appropriate steps to identify, assess and monitor money laundering and terrorism financing risks to manage and mitigate any risks that may arise, as well as submit risk assessment reports to FIA.
9. Provide information to FIA whenever called upon in relation to transactions within the organization.

Who is a Money Laundering Control Officer?

A Money Laundering Control Officer is a person identified by the institution and registered with the FIA to carry out Money Laundering Control related activities at the organizational level. This person is in charge of implementing Anti Money Laundering Policies in the organization.

Do I need to recruit someone for the MLCO role?

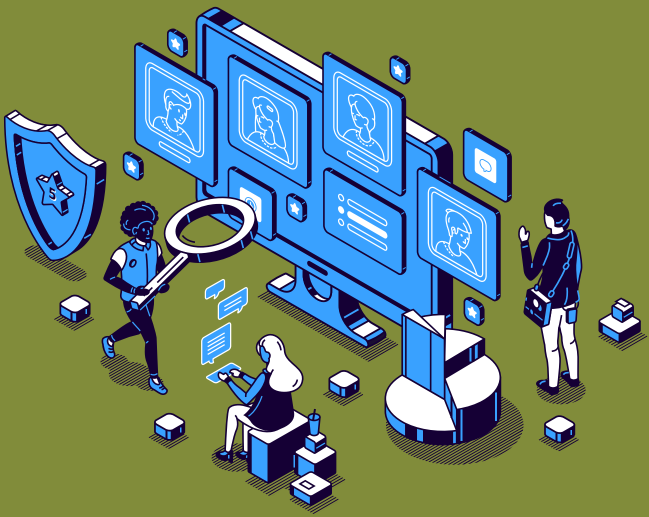
No! The role can be assumed by any employee who is part of the top management of the organisation; for example, the Finance Manager, or the Administration Manager. Note that the person designated to this role must NOT be an Internal Auditor or the Executive Director or the Chief Executive of the organisation.

What is the role of the Money Laundering Control Officer (MLCO)?

Generally, the duty of the person identified and registered as the MLCO is to take measures aimed at controlling money laundering at institutional level and be the link between FIA and the organisation. Some of the roles of the MLCO are provided under Rule 7 of the Anti-Money Laundering Regulations, 2015. Below is a summary of duties of the MLCO.

1. To act as the liaison person between the accountable person and the FIA in matters relating to coordination and compliance to anti-money laundering and combating terrorism financing.
2. To develop and implement systems, mechanisms and procedures to ensure that the staff of the accountable person (of the institution) immediately report any suspicious money laundering or suspected financing of terrorism activity.
3. To notify the FIA, on behalf of the accountable person, of any suspicious money laundering or suspected financing of terrorism activity.
4. To implement Anti-Money Laundering and, or Anti-Fraud Policies within the organization.
5. Together with the accountable person, develop implementation, and maintenance of an anti-money laundering program within their institution.
6. To develop and maintain a risk assessment framework for the organization, submit risk assessment reports to the FIA, and ensure the implementation of recommendations from the reports.
7. To maintain records of high-risk customers, and report any suspicious activities to the FIA.
8. To regularly report and share information with the organization's management on issues relating to compliance, directives and guidance from the FIA, internal policies and procedures.
9. To develop and implement staff training programs aimed at fighting money laundering, terror financing and fraud.
10. To ensure staff of the accountable persons are carrying out customer due diligence and know your customer measures before initiating transactions with the customer.

2



Know Your Customer / Client (KYC) for NGOs in Uganda

Know Your Customer / Client (KYC) is the process of verifying the identity of an organisation's client base and assessing potential risks of illegal intentions for the relationship. NGOs being Accountable persons are under obligation to carry out KYC on their customers just like Financial Institutions, Advocates etc do.

Customers of an NGO can be said to be those who provide funds into an NGO and those the NGO pays. These may include;

a. Donors and development partners.
b. Recipients of funds or grantees.
c. Project beneficiaries e.g. village groups, refugees, individuals etc.
d. Consultants and other service providers engaging the entity.

Key basics of KYC

Below are 5 basic steps that one needs to address while designing KYC systems for a not-for-profit entity in Uganda. These are:

1. **Identify:** Know who you are dealing with. This should include having means of identifying and clarifying the identity of the person or entity you are dealing with. In the case of an individual, this can be by asking for National IDs, Passport, and documents that identify the person you are dealing with. In case of an entity such as NGO, Trustee, Company, Partnership etc., this can be through;

    a. Obtaining registration documents of the entity such as registration and incorporation certificates, constitution, memorandum and articles of association etc.

    b. Obtaining documents that identify the promoters of the entities e.g. directors, shareholders, partners, members etc. as the case may be.

2. **Verify:** Where reasonable and the risks are high, take further steps to verify identities. Have means to verify identity in cases of suspicion of identity theft, or in cases where the risk is high. Have in place a system that enables you to do 3rd party verification. The third parties should not be people who need verification themselves.

    This should involve having systems to;

    a) Know what the organization's or individual's business is.

    b) Ensure the kind of business the person or entity is engaged in poses no risk to your organization.

    c) Know and be clear what specific business or engagement you are going to engage with the particular entity or person.

    d) Maintain boundaries to avoid conflicts of interest and protect the organization's independence.

3. **Determine if the person or entity poses any risk:** This requires systems to assess if there is any risk or no risk will arise from the engagement. It may also require conducting Enhanced Customer Due Diligence (EDD).

4. **Ongoing customer due diligence:** Your system must have modes of monitoring continued engagement and where the engagement rises suspicion, you should be able to note and inquire.

5. **Keep records:** Ensure you have records that identify your clients. Records have to be kept for a minimum of 10 years. Such records include the identity of a person as obtained above, transaction documents, all reports made to the FIA, account files, business correspondence, etc. The books and records shall be kept for a minimum period of 10 years and must be maintained in a manner and form that will enable the accountable institution to comply immediately with requests for information from law enforcement agencies or FIA.

   It is important to note that NGOs may need to develop specific KYC checks for different types of customers. Failure to follow the guidelines detailed above is an offence under the law.

What is Enhanced Due Diligence (EDD)?

Enhanced Due Diligence (EDD) is a Know-Your-Client process that involves doing increased or more scrutiny of a person before the organization engages that person or entity. This is done in respect to persons and business relations and transactions carrying high risk. A good example of such a situation is when it involves a Politically Exposed Person (PEP)

Who are Politically Exposed Persons (PEPs)

In addition to the above customer due diligence measures, an accountable person is also required to implement appropriate risk management system to determine whether a customer or beneficial owner is a politically exposed person.

The Act defines a Politically Exposed Person as an individual who is or has been entrusted with a;

a. prominent public function in Uganda or another country,
b. a head of state
c. a head of government,
d. a senior politician,
e. a senior government official,
f. a judicial official
g. a military official
h. a senior executive of a state-owned corporation, and
i. important officials of a political party
j. head of an international organization or person holding prominent position in an international organization including board members and persons holding important positions in such an organization
k. a person related to any of the above

What is expected to be done if the organization establishes that a person is a PEP?

If customer due diligence reveals that a customer is a politically exposed person, the accountable person is required to do the following:

a) For a foreign PEP, take reasonable measures to establish the source of wealth and funds.

b) Apply enhanced ongoing monitoring of the business relationship and obtain the approval of senior management before establishing or continuing a customer business relationship with such a person.

c) For a domestic PEP, and a person who is or has been entrusted with a prominent function by an international organisation, take reasonable measures to establish the source of wealth and funds.

3

Tips on suspicious transactions for NGOs in Uganda

Being accountable persons, NGOs are expected to put in place measures to identify suspicious transactions and where such transactions involve money transfer, report them to the FIA. Failure to report such a transaction as provided in the law is an offence under the law.

What amounts to a suspicious transaction in the NGO sector has been an issue of debate since not-for-profit entities deal with a wide range of issues, beneficiaries and payments. Below we highlight some of the transactions that should help you raise suspicion as you engage.

1. The project is vague

This happens where the objects of the donor or the grantee are not clear, in other words, it isn't clear what the project intends to achieve. In some cases, it may include lack of proper or adequate technical and, or financial information. The project may also have vague indicators and other means of verification.

2. The structure or nature of the proposed project makes it difficult to identify the partner or responsible person

Sometimes it is difficult to identify the persons responsible for implementing the project. This applies to the donors and the organization implementing it. It is a suspicious transaction where the identity of the donor or funder is unclear. It may also be a suspicious transaction where the identity of the person(s) implementing the project is unclear.

3. The project involves delegating work or sub granting funds to unknown persons

It may be suspicious where there is a request to sub grant to individuals or organizations whose work, purpose etc. are not clear; i.e. where it is not clear who the beneficiaries of the project are.

4. The funds and the timelines do not match

Where the funds are excessive and cannot be implemented within a certain timeline.

5. The proposal includes delegating work to other unknown partners

The entities may not only be unknown but may also be newly formed and there is little information about them (the new entity may need further recommendations).

In situations where the other partners are unidentified at the time of the proposal, there should be a proper description of who they will be or what the person will be looking out for to identify the partners once the activities set off. It is always good to identify the partners before disbursement of funds.

Note: Not every new entity is suspicious, however it is recommended that steps are taken to know the entity better. It should also be noted that in the age of "briefcase" NGOs in Uganda. One needs to exercise extra caution.

6. Where it is difficult to contact the partner or the beneficiaries

Whereas it may be difficult to contact your partners especially due to technological and other challenges, this should not be the norm. it would be important to look out for situations such as;

a. Where the partner or beneficiary does not have his or her own main address or cannot be contacted at his or her main address.

b. Where the telephone numbers provided are not working, invalid or are registered in other person's names or not registered at all

c. Where the partner always insists on contacting you and doesn't like you initiating the contact.

7. Unjustifiable requests for cash payments

A number of times clients, partners, donors or contractors may ask for cash payments given the situations in which they operate for example where there are no bank services or where the amount is small. However, there are situations where a person can request for cash payment without giving proper justification. This can raise suspicion especially where the huge sums are involved.

8. Request for paying cash to someone who is not related to the project

Whereas a request for a similar payment can be done without it being a case of money laundering, such requests should raise suspicion and would require either the person paying to make more KYC on the payee or to fill a form for suspicious transaction and report to the FIA. Proof of relationship between the person receiving the payment and the person meant to be paid is always important.

This has been common in the NGO sector where payment is by mobile money and the name to which a number is registered do not match the name of the person being paid. In such a case it would be important to establish what the relationship between the person receiving and the person being paid is and where possible, an explanation by email or in writing should be obtained.

9. Requests for money to be paid into an account not held in the name of the partner

This is similar to payment to a party not related to the project or activities being done. It is important to ensure that bank accounts where funds are being paid are in the registered name of the person or entity you contracted.

10. Request for payment in a country in which the partner is not based and not where the project is being carried out

This can also be categorized as an unusual payment that should raise suspicion. There could also be situations where transactions are in a blacklisted territory or a country without proper AML controls as identified by FIA or FATF. Any such payment would need justifiable reason. The reason must be documented.

Reporting and Forms

Report / Purpose	Form	When
Registration of accountable person	Form 1	As soon as practically possible, or as the FIA may direct.
Notification of change of registered particulars of accountable persons	Form 2	Immediately following the change.
Notification of appointment of Money Laundering Control Officer	Form 3	As soon as practically possible, or as the FIA may direct.
Change of Money Laundering Control Officer (MLCO)	No specific form, but one may use Form 3	Immediately following the change.
Cash and monetary transactions that exceed UGX 20 million (or the equivalent in foreign currency).	Form A	As soon as possible
Reporting a suspicious transaction	Form B	To be submitted by mail or physically, not later than 48 hours from the time of noticing the suspicious transaction.
Annual Report	A template can be accessed on the FIA website (www.fia.go.ug)	To be submitted by January 31, each year
Risk Assessment Report	No form	To be submitted to the FIA not later than 48

Note: For every form filled and submitted to the FIA or any other agency, you are advised to keep a copy at the organisation's premises, to be kept in records for a minimum of 10 years.

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