

The Republic of the Union of Myanmar

Anti-Money Laundering Central Body

Financial Intelligence Unit

Instruction No. 1/2019

Nay Pyi Taw, the 15th Waning of Tazaungmon 1381 ME

Reporting Obligation Guideline

(26th November 2019)

Introduction

1. Myanmar promulgated Anti-Money Laundering Law and Anti-Money Laundering Rules in order to eradicate money laundering and financing of terrorism. In order to perform the measures described in those law and rules, Anti-Money Laundering Central Body and Financial Intelligence Unit. Myanmar is now performing its anti-money laundering and counter financing of terrorism measure by means of reporting organizations report money laundering and financing of terrorism related money and property transactions to Financial Intelligence Unit, regulatory authorities supervise the reporting organization in respect of anti-money laundering and counter financing of terrorism measures under this law, relevant law enforcement agencies identify and take action on money laundering offences or financing of terrorism offences and attempt to commit those offences
2. In the implementation of anti-money laundering and counter financing of terrorism tasks, to obtain money/property transaction which are relating to money laundering and financing of terrorism is fundamental requirement. The persons or organizations who are able to know this kind of information are financial institutions (FIs) and designated non-financial business and professions (DNFBPs). So those businesses and persons are designated as reporting organizations according to sub section (e, g, w) of section 3 of Anti-Money Laundering Law. The reporting organizations require to understand very well their reporting obligation.

Objectives

3. The reporting obligation guideline is intended to support the reporting organizations that are fundamental of the whole of anti-money laundering system in exercising and understanding the reporting obligations under the Anti-Money Laundering Law.

Responsible persons and organization to report

4. The responsible persons and organization to submit money laundering and financing of terrorism related information are designated as reporting organization in the Anti-Money Laundering Law. Types of business and persons included in reporting organizations list are described in sub section (e, g, w) of section 3 of Anti-Money Laundering Law as follows;

- (a) In section 3(e) of Anti-Money Laundering Law, it is described that “**Reporting organization**” means banks and financial institutions, non-financial business and professions stipulated by this Law to report. In this expression, an organization assigned to report, by notification from time to time by the Central Body is also included;
- (b) In section 3(g) of Anti Money Laundering Law, it is described that “**Banks and financial institutions**” means banks and financial institutions established by the Myanmar Financial Institutions Law and other relevant laws. In this expression, commercial banks or development banks, credit societies, finance companies, securities exchange companies, money changers, microfinance institutions, insurance companies and other institutions that conduct one or more of the following activities as a business for or on behalf of a customer are also included:
 - (i) private banking and receiving deposits and return funds from the public;

- (ii) financing of commercial transactions including forfeiting and lending money including consumer credit and mortgage credit;
- (iii) operating lending money business and lending financial right other than arrangements relating to consumer activities;
- (iv) transferring money or any value;
- (v) paying, issuing and managing by credit and debit cards, traveller's cheques, money orders, bank drafts and electronic means;
- (vi) issuing financial guarantees and commitments;
- (vii) trading the following financial instruments:
 - (aa) transacting money market instruments including cheques, bills, certificates of deposit and derivatives, foreign currency, interest rate and price index instruments and transferable securities;
 - (bb) trading commodities for future;
- (viii) participating in issuing securities and providing financial services relating to such issues;
- (ix) managing individual or collective portfolio;
- (x) keeping safe deposit box and administering of money or liquid securities on behalf of other persons;
- (xi) managing, administering or investing money or funds on behalf of other persons;
- (xii) underwriting other investment-related insurance, life and general insurance including insurance intermediation by agents and mediator;
- (xiii) exchanging money and currency;

- (c) In section 3(w) of Anti Money Laundering Law, it is described that designated non-financial business and profession includes the followings:
- (i) Casinos;
 - (ii) Real estate agents;
 - (iii) Dealers in precious metals and precious stones;
 - (iv) Lawyers, notaries and accountants or other independent legal professionals who carry out transactions for their client concerning the following activities in respect of transfer, receipt and entrust of money and property:
 - (aa) buying and selling immoveable property;
 - (bb) managing money, securities or other assets of the client;
 - (cc) managing banks, savings or securities accounts;
 - (dd) organizing contributions for the establishment, operation or management of companies;
 - (ee) establishing, operating and managing legal organizations or arrangements and buying and selling of business entities;
 - (v) Trust and company service providers who carry out as a business for other persons of the following services:
 - (aa) acting as formation agent of legal organizations;
 - (bb) acting as a director or secretary of a company, a partner of a partnership, or as a person in a similar position in other legal organization or arrangement;
 - (cc) providing a registered office or accommodation or business address or correspondence or administrative address for a

company, a partnership or any other legal organization or arrangement;

- (vi) acting as a trustee of an express trust or performing the equivalent function for any form of legal organization or arrangement;
- (vii) acting as or arranging for another person to act as a nominee shareholder for another person;

5. Moreover, as section 70 of Anti-Money Laundering Law described that Rules, regulations, bye-laws, orders and directives issued by the Control of Money Laundering Law (The State Peace and Development Council Law No. 6/2002) or by any other authority may continue to apply if those are not contradict with this Law, the following organizations designated as reporting organizations by order No. 1/2004, 2/2004, 4/2004, 1/2005, 2/2005, 4/2005, 5/2006, 1/2007, 2/2007, 3/2007, 4/2007, 1/2008, 2/2008 of the Central Control Board on Money Laundering are still remained as reporting organizations;

- (a) Banks and Financial Institutions;
- (b) Department of Agricultural Land Management and Statistics (Settlement and Land Record Department)
- (c) Customs Department
- (d) Department of Human Settlement and Housing Development
- (e) Yangon City Development Committee
- (f) Mandalay City Development Committee
- (g) Nay Pyi Taw City Development Committee
- (h) Countryside Development Affairs Department
- (i) Internal Revenue Department
- (j) Road Transport Administration Department
- (k) Marine Transport Administration Department
- (l) Trade Administration Department

- (m) Investment and Company Directorate Department
- (n) Myanmar Bar Association
- (o) Myanmar Accountants Association
- (p) Notary
- (q) Myanmar Securities Exchange Regulatory Department
- (r) Myanmar Agricultural Development Bank
- (s) Myanmar Small Loan Enterprise
- (t) Myanmar Insurance Enterprise
- (u) Mining Enterprise
- (v) Myanmar Gems and Jewelry Enterprise
- (w) Adman Club Hotel
- (x) Whole Sale and Retail Shops dealing with gold and precious metal
- (y) The Banks which hold money changer license and foreign exchange counter

6. So, it is able to understand that business or professions described above paragraphs (4 and 5) are the reporting organizations according to the Anti-Money Laundering Law and they have to comply with the reporting obligations. The reporting entities and reporting obligations are also described in official website of Financial Intelligence Unit, <https://www.mfiu.gov.mm>.

Situations to report

7. According to the reporting obligation, situations of money and property transactions that should be reported by reporting organizations are prescribed in section 32, 34 of Anti-Money Laundering Law and rules 49, 50, 51, 52 of Anti-Money Laundering Rules as follows;

- (a) In section 32 of the Anti-Money Laundering Law, it is described that reporting organizations shall promptly report to the financial Intelligence Unit according stipulated methods under section 10 sub-section (a) if any money or property were obtained illegally which the transferring of money

and property are exceeded amount or fixed amount to report or the money and property are related to Anti money laundering and Counter Financial Terrorism or reasonable ground to attempt to do so.

- (b) In section 34 of the Anti-Money Laundering Law, it is described that financial institutions shall report to the Financial Intelligence Unit any cash transaction in an amount which is in equal or excess amount by a single transaction or several transactions that appear to be linked.
- (c) In rules 49 of the Anti-Money Laundering Rules, it is described that in relation to wire transfers either ordering bank or beneficiary bank is required to report the following transactions to the FIU:
 - (i) A cross-border wire transfer or electronic transfer of any foreign currency in excess of threshold amount.
 - (ii) A domestic wire transfer or electronic transfer of domestic currency in excess of threshold amount.
 - (iii) A transfer where the originator's information is incomplete or unavailable.
- (d) At rules 49 of the Anti-Money Laundering Rules, it is described that where a reporting organization has reasonable grounds to suspect that the transaction or attempted transaction is money or property obtained by illegal means or is related to money laundering or terrorist financing, it shall submit a report to the Financial Intelligence Unit in the prescribed form (6) specified by section 10(a) of the Law.
- (e) At rules 51 of the Anti-Money Laundering Rules, it is described that in line with the section 32 of the Law, the reporting organizations shall report immediately the transactions that are exceeded threshold amount to the Financial Intelligence Unit by using the prescribed form (7) defined by section 10(a) of the Law for respective sectors. The reporting organization

situated in an urban area shall have to report within 24 hours and within three days for a remote area.

- (f) At rules 52 of the Anti-Money Laundering Rules, it is described that the reporting organizations shall immediately report anonymous accounts or accounts in obviously fictitious names to the Financial Intelligence Unit.

Threshold Amount to report;

8. Threshold amount to report is designated by respective notifications of Central Control Board on Money Laundering, regarding to Myanmar currency transaction, if the transaction amount is equal and or excess to 100 million kyats, and although it is not excess to 100 million kyats, if it is unordinary or it has suspicious ground to ML/TF must be reported to FIU according to order no. 1/2004 dated on 12-1-2004 of the Central Control Board on Money Laundering, regarding to property transaction, if the value of unmovable property described in document is equal and or excess to 100 million kyats, and although the value described in document is not excess to 100 million kyats, the value found by authority's on ground inspection is excess to 100 million kyats, and unordinary or suspicious transaction of unmovable property must be reported to FIU according to order no. 2/2004 dated on 12-1-2004 of the Central Control Board on Money Laundering, regarding to foreign currencies, if the transaction amount is equal and or excess to 10000 USD, and or the value of any other foreign currencies is equal or excess to 10000 USD must be reported to FIU according to order no. 4/2004 dated on 1-7-2004 of the Central Control Board on Money Laundering.

Money and Property obtained by illegal means

9. According to sub section q of section 3 of Anti-Money Laundering Law, money and property obtained by illegal means money or property obtained directly or indirectly by committing an offence related to this law or act or omission related to committing any such offence. In this expression it also includes money or property and interests based and derived from such any property; and money or property

transferred. Moreover, section 5 of the law described that laundering of money and properties getting from commission of any of the following offences shall be applicable to this Law;

- (a) offences committed by organized criminal group;
- (b) offences relating to sexual exploitation including sexual exploitation of children;
- (c) offences relating to infringement of the Intellectual Property Right (offences relating to Intellectual Property);
- (d) offences relating to environmental crime;
- (e) offences relating to tax evasion and other tax crimes;
- (f) offences relating to piracy;
- (g) offences relating to terrorism;
- (h) offences relating to insider trading to get illicit profits by a person who is the first to know the information by using the said information himself or providing it to another person and market manipulation;
- (i) committing of any offence punishable with imprisonment for a term of a minimum of one year and above under any existing law of the State;
- (j) offences prescribed by the Union Government that are applicable to this Law by notification from time to time. In exercise of the power conferred by sub-section (j) of section 5 of the Anti-Money Laundering Law, the Union Government of the Republic of the Union of Myanmar hereby issues Notification and the following offences are prescribed as predicate offences of the Anti - Money Laundering Law:
 - (i) terrorism, including terrorist financing;
 - (ii) trafficking in human beings and migrant smuggling;
 - (iii) illicit trafficking in narcotic drugs and psychotropic substances;

- (iv) illicit arms trafficking;
 - (v) illicit trafficking in stolen and other goods;
 - (vi) corruption and bribery;
 - (vii) fraud;
 - (viii) counterfeiting currency;
 - (ix) murder, grievous bodily injury;
 - (x) kidnapping, illegal restraint and hostage-taking;
 - (xi) robbery or theft;
 - (xii) tax crimes (related to direct taxes and indirect taxes), smuggling (including in relation to customs and excise duties and taxes);
 - (xiii) extortion;
 - (xiv) Forgery;
- (k) offences relating to cooperation, abetting, supporting, providing, managing, advising and being the gang of commission of, committing or attempting to commit or conspiring to commit by action or omission of any offence contained in sub-sections (a) to (j) and by any other means.

10. According to the provisions, threshold amount for reporting that shall be reported to Financial Intelligence Unit is 100 million kyats and above or 10000 USD and above in respect of money and property transactions. Although such kind of transaction is not exceeds the designated threshold by a single transaction, it shall be reported to FIU if the amount is equal to or exceeds 100 million kyats or 10000 USD by several transactions that appear to be linked. Moreover it shall be reported to FIU, if it has a reasonable suspicious ground to believe that any transaction of money and properties are relating to money laundering or terrorist financing. It shall also be reported to FIU, if it has a reasonable suspicious ground to believe that the money or properties involved in transaction are obtained by illegal means. In the meaning of money and property transaction, the attempted transaction is also included even though it is not competed and shall be reported to the Financial Intelligence Unit.

Where must report to?

11. It is expressly defined in section 32 and 34 of the Anti-Money Laundering Law and rule 49, 50, 51 and 52 of the Anti-Money Laundering Rules that all kinds of threshold and suspicious transaction reports shall be reported to Financial Intelligence Unit.

12. While it is described at section 9 of the Anti-Money Laundering Law that the Central Body shall form the Financial Intelligence Unit as a Unit which may operate freely to serve as the central national agency of Myanmar to receive, request and analyze the reports and other information related to money laundering, terrorist financing and predicate offences and to disseminate the result of analysis, and related information urgently to relevant persons or organizations or internal and external counterpart agencies upon request, if it suspects that it relates to money laundering, terrorist financing, or any offences applicable to this law, the Anti-Money Laundering Central Board designated the Anti-Financial Crime Division to serve the functions of Financial Intelligence Unit by the order no. 3/2016 dated on 16-1-2016.

13. Therefore, the reporting organizations shall report to Financial Intelligence Unit and the address of Financial Intelligence Unit is Kyun Shwe Myaing St, 1000 Acres (near Ingyin Market), Danatheiddi Quarter, Zabuthiri Township, Nay Pyi Taw. Telephone numbers are 067-3421761, 067-3421756, and Fax Mail No. is 067-3421761. Email addresses to contact are as follows;

- (a) mfiu.str1@gmail.com
- (b) str2.mfiu@gmail.com
- (c) mfiu.str3@gmail.com
- (d) mfiu.str4@gmail.com

How to Report?

14. Regarding how to report is described in sub-section (a) of section 10 of the Anti-Money Laundering Law by which the Financial Intelligence shall issue, from time to time, the reporting forms, contents of the reports, procedures that should be conducted after reporting and methods of reporting which should be conducted by the reporting organizations.

15. In rules 50 of the Anti-Money Laundering Rules, it is described that where a reporting organization has reasonable grounds to suspect that the transaction or attempted transaction is relating to money or property obtained by illegal means or money laundering offences or terrorist financing offences, it shall submit a report to the Financial Intelligence Unit by using suspicious transaction reporting form, form (6), described in appendix (a) of this Rules.

16. At rules 51 of the Anti-Money Laundering Rules, it is described that the reporting organizations shall report immediately the transactions that are exceeded threshold amount to the Financial Intelligence Unit by using the prescribed form (7) defined by section 10(a) of the Law for respective sectors. See appendix (b).

17. The ways to report is that the reporting organization has to fill up completely the relevant reporting form prescribed in the Anti-Money Laundering Rules, and send it to FIU as confidential. The reporting organization can submit the report through the post office as well as through electronic way by using MFIU Online Reporting System via designated email address. The report must be sent to the address described in paragraph 13, if it is sent through post office. If the reporting organization considers to submitting the report by electronic way, it firstly needs to get the MFIU Online Reporting System Software from FIU Office without any charges. MFIU will explain about how to use the reporting software while it is issuing the software including the MFIU Online Reporting System User Manual to the agent of reporting organization. The reporting organizations which have difficulties to access internet connection can send CD which includes the report created by reporting software to FIU by courier. If it is

require to get more information, please call the phone numbers described in above paragraph 13.

Tipping Off and Confidentiality

18. To identify the information related to ML/TF and to report it to FIU is the obligations of reporting organizations. There are some specific provisions as follows to protect the person who report to FIU and to comply with reporting obligations without violating the confidential and secrecy acts which have to follow by the organizations;

- (a) In sub-section (a) of Section 59 of the Anti-Money Laundering Law, it is described that no prosecution and taking action by criminal, civil, disciplinary or administrative means on reporting organizations or their directors, officers or staff who submit reports or provide information in good faith in accord with the provisions of this Law for the breach of the provisions of banking, professional secrecy and agreement.
- (b) In sub-section (b) of Section 59 of the Anti-Money Laundering Law, it is described that the provisions of this law shall prevail the provisions of financial and professional secrecy and confidentiality to be followed by the reporting organizations or their directors, officials or staff.

19. Moreover, the provisions concern with information security are described as follows in the Anti-Money Laundering Law in order to keep safely and not to tip off the information related to ML/TF by authorities who know and access those information;

- (a) In sub-section (a) of Section 12 of the Anti-Money Laundering Law, it is described that the Financial Intelligence Unit shall keep secret of each investigation matter.
- (b) In section 33 of the Anti-Money Laundering Law, it is described that responsible persons of government departments and organizations or reporting organizations shall not disclose any reporting information or

other information and any performance under section 32 to any person except inter-personnel and legal counsel.

- (c) In section 50 of the Anti-Money Laundering Law, it is described that any reporting organization, government department and government organization or a director, an official and staff thereof violates the provisions contained in section 33 shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine or with both.
- (d) In section 66 of the Anti-Money Laundering Law, it is described that the person who is serving or served in the Central Body, Financial Intelligence Unit, the Competent Authority, Reporting Organizations and other government departments and such organizations implementing this Law shall keep of secret any information received within his duty period until the termination of duty, and every responsible person may use the information in accord with the provision of this Law or under the order of a court. It shall be taken action by the Official Secrets Act if this provision is violated.

Penalties

20. The penalties for violation of the provisions relating to preventative measures and reporting obligation are prescribed as follows in the Anti-Money Laundering Law;

- (a) In section 37 of the Anti-Money Laundering Law, it is described that Competent Authority may impose one or more of the following supervision or measure against reporting organizations or directors, board of directors, executive officials or administrator of the reporting organization who fail to comply with the obligations under Chapters VIII of this Law:
 - (i) written warnings;

- (ii) compel by specific instructions;
 - (iii) causing to submit the reports in accord with the stipulation in respect of measures on the identified violation,
- (b) In section 46 of the Anti-Money Laundering Law, it is described that any responsible person from the reporting organization, in reporting to Financial Intelligence Unit under section 32, presents false statement or conceals facts shall, on conviction, be punished with imprisonment from a minimum of three years to a maximum of seven years and may also be liable to a fine. If the offender is a company or an organization, a fine which may extend to three hundred million kyats shall be imposed on such company or organization.
- (c) In section 49 of the Anti-Money Laundering Law, it is described that any responsible person from a bank and a financial institution violates the provisions contained in section 34 shall, on conviction, be punished with imprisonment for a term which may extend to three years and may also be liable to a fine. If the offender is a company or an organization, a fine which may extend to three hundred million kyats shall be imposed on such company or organization.

Miscellaneous

21. Reporting organizations have to develop and implement inter organizational policy, procedures and management program to comply with the provisions described in the Anti-Money Laundering Law. In addition reporting organizations shall designate a compliance officer at the senior management level.
22. The Reporting organization shall identify, assess and understand the risks which may emerge from their product, services and delivery channel and shall lay down the methods to mitigate the risks..

23. Reporting agencies shall exercise, continuously, the customer due diligence measures with respect to each business relationship. Moreover, any transaction shall be closely examined to ensure that they are consistent with their knowledge of their customer, commercial activities and risk profile and, if necessary, source of funds as well. If the facts mentioned in the above paragraph 7, 8, 9, 10 will be found, that should be reported to FIU by prescribed way.

24. Reporting agencies shall maintain business relationship records, transaction records, risk assessment record on ML/FT and reports submitted to FIU for at least five years. And those records should be sufficient for the reconstruction of individual transaction.

25. Reporting organizations shall supervise and examine whether their staffs who perform the money and property transaction comply with the pronounced anti-money laundering and counter financing of terrorism policies and procedures or not. The staffs shall be educated and trained in anti-money laundering and counter financing of terrorism measures.

Conclusion

26. In conclusion, the reporting organizations relating to anti-money laundering and countering the financing of terrorism should understand well and fully comply with the preventive measures and reporting obligations contained in the Anti-Money Laundering Law and Rules, orders, directives and regulation on AML/CFT issued by the Anti-Money Laundering Central Board, Central Bank of Myanmar and Financial Intelligence Unit.

27. Therefore, the reporting agencies which are the foundation of the whole Myanmar anti-money laundering and counter financing of terrorism mechanism shall take the major role of anti-money laundering and counter financing of terrorism task by fully comply with the reporting obligation directives described in this guidance.

Police Brigadier General Kyaw Win Thein
The Head of Financial Intelligence Unit

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Distribution

Reporting Organizations

Competent Authorities