

INSURANCE BROKERS' ASSOCIATION OF UGANDA (IBAU). COMPLIANCE WITH AML/CFT OBLIGATIONS.



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Structure of Presentation

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1. AML / CFT Legal Regime

- FATF Recommendations (International Standards which include the 40 recommendations and the 9 special recommendations on terrorism financing)
- Anti-Money Laundering Act, 2013
- Anti-Money Laundering Act, 2017
- Anti-Money Laundering Regulations, 2015
- Anti-Terrorism Act, 2002
- Anti-Terrorism Regulations, 2016
- Any other laws

2. Rationale for the AML Act 2013

- The Act received presidential assent on the 2nd October 2013 and commenced on the 1st November 2013
- It was enacted among other things to provide for:-
 - Prohibition and prevention of ML
 - Establishment of the FIA and its Board to combat ML activities
 - To impose certain duties on institutions and other persons, businesses and professions which might be used for ML purposes
 - To make orders in relation to proceeds of crime and properties of offenders.
 - To provide for international cooperation in investigations, prosecution and other legal processes of prohibiting and preventing ML
 - To designate ML as an extraditable offence.

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- Objectives of the FIA – S.19
- Functions of the FIA – S.20
- General powers of the FIA – S.21
- Independence of the FIA – S.22

- FIA is the central national agency, for receipt and analysis of financial disclosures from Accountable persons and dissemination of such intelligence to competent authorities and LEA's.
 - Increasingly more money is being laundered today then ever before, thus the need for Financial Intelligence .
 - Financial intelligence helps to identify and document the movement of money during the course of criminal activity, because criminals are mostly motivated by Proceeds of crime/Money. This is why asset recovery is the ultimate solution in this fight.

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3. Meaning of Money Laundering (ML)

Section 1 and 116 of the AMLA

A person commits the offence of ML if;

1. the person knowing or having reasonable grounds to believe that any property in whole or in part, directly or indirectly represents proceeds of crime.
2. Converts or transfers that property for the purpose of concealing or disguising the illicit origin of the property or assisting any person who is involved in the commission of the crime to evade the legal consequences of his actions.
3. Conceals or disguises the true nature, source, location, disposition, movement rights with respect to or ownership of that property.

3. Stages of ML

It should be noted that Money Laundering has often led to terrorist financing.

Criminalization of both individuals and organizations has been catered for in both the local and international laws hence reference should be made to Anti-Terrorism Act and Regulations for the local coverage.

ML process is normally accomplished in 3 stages which may comprise numerous transactions by the Launderers. The stages may occur as separate and distinct phases **but** they may also occur simultaneously, or more commonly, they may overlap.

The stages are;

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1. Placement Stage – Involves the physical disposition of the initial proceeds (normally cash) derived from illegal activities into the financial system.

E.g. Payment of premiums i.e. Life Insurance is more prone to ML/TF. Most life insurance firms offer flexible policies and investment products that offer opportunities for customers to deposit and subsequently withdraw large amounts of cash.

- It may be converted into financial instruments, or co-mingled with legitimate funds to divert suspicion. Placement may also be accomplished by a cash purchase of property or a security or exchanging small bills for large bills.

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- 2. Layering Stage** - Is the 2nd stage after the ill-gotten gains have entered the financial system,
- Illegal funds are separated from its source by creating complex layers of transactions designed to disguise the audit trail and provide anonymity.
 - Funds can then be transferred to other accounts or jurisdictions and/or used to pay for goods and services. The aim is to make detection difficult by breaking the linkage between the crime and the proceeds of the crime.

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3. Integration Stage:

- This 3rd and final stage involves integrating funds into the legitimate economy. Provides apparent legitimacy to criminally derived wealth. It may be accomplished through the purchase of assets, like real estate or securities, or as often, luxury goods. At this stage, the funds get integrated into the economy through the financial system and appear as normal business funds.



Collection of "Dirty" Money from Drugs



PLACEMENT



"Dirty" Money enters
the Financial System

MONEY LAUNDERING SCHEME

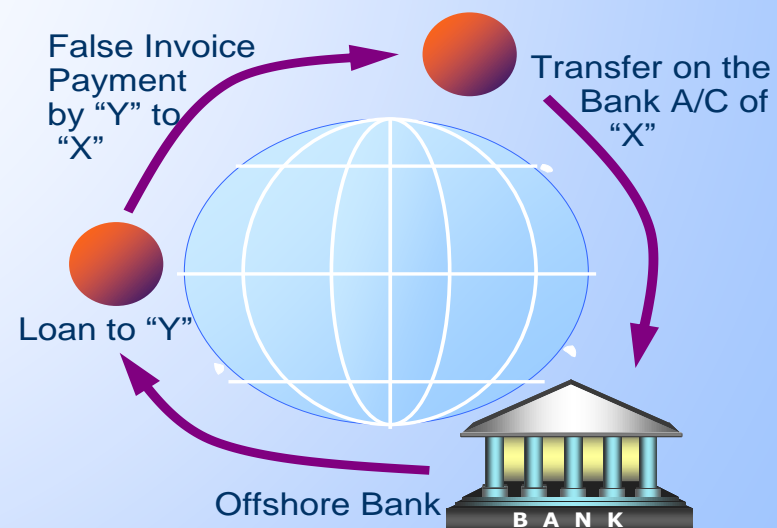
LAYERING



Purchase of Property &
Luxury Assets with "Clean"
Money



INTEGRATION



5. ML emanates from Predicate offences

12 ML is a global problem involving proceeds generated from several crimes commonly known as predicate offences. These include:-

- Drug trafficking
- Corruption & Embezzlement
- Fraud and Counterfeiting
- Human Trafficking & smuggling
- Arms, antiques, gold smuggling
- Prostitution rings
- Financial frauds
- Tax Evasion, or
- Illegal sale of wild life products and other predicate offences.

6. Why combat ML?

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- 1. Undermines the Integrity of Financial System.** Reputation of the Financial sector can be seriously undermined if funds from criminal activity can be easily processed thus turning Banks and Insurance companies into vehicles of crime .
- 2. National Security Threat,** Failure to prevent ML allows criminal organizations to accumulate considerable economic and financial power, which can ultimately undermine national peace, security and stability.
- 3. Undermines the integrity and stability of the global financial systems,** discourages foreign FDI,s and distorts international capital flows and stability.

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4. **ML perpetrates more crime.** The laundered funds provide financial support for drug dealers, terrorists and other organized criminals to operate and expand their criminal activities.
5. **Leads to Distortion of market prices** by fueling inflationary tendencies, increasing money supply that is not matched by production of goods and services;
6. Unfair competition against genuine businesses etc.

7. Insurance Brokers as Accountable Persons

15 **Section 1 of the AMLA, 2013** defines an accountable person to mean any person listed in **the Second Schedule to the AMLA, 2013**

This list includes, an insurance company licensed under the Insurance Act (**Paragraph 9**) and any person dealing in underwriting and placement of life insurance and other investment related insurance , including non-life insurance business (**Paragraph 14(I)**)

NOTE: There is a recent inclusion to the list known as the Virtual Assets Service Providers (VASPs)

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8. AML/CFT & Insurance Common principals

- **The International Association of Insurance supervisors (IAIS)** international standard-setting body responsible for the insurance sector under ICP 22.
- Requires all Insurance players to implement AML/CFT measures. This is because the funds used to purchase insurance may be proceeds of crime.
- By policy underwriters, assessors, brokers and agents being cautious when establishing client relationships, they help to unearth cases of intentionally hidden money.

9. Indicators of ML in the insurance sector

- Annuity policies or high regular premium savings: After paying premiums with criminal funds, money launderers can receive legitimate income from annuity policies or premium savings products.
- Cooling-off periods: Money launderers can request refunds of premiums during a cooling-off period or can deliberately overpay premiums to trigger a refund.
- Policy surrender: Money launderers can surrender their policies at a loss to regain their deposited money.
- Top-ups: After paying a small initial premium in order to avoid regulatory attention, money launderers can top up their policy payments to offload more criminal funds.

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- Transferring ownership: Customers can purchase life insurance policies and transfer ownership to a criminal third party who subsequently withdraws the money.
- Policy loans: After building up its value with premium payments, money launderers can take out loans from their life insurance policy using its cash value as collateral. Policy loans do not involve stringent AML checks and do not have to be repaid: the value of the loan and interest will be deducted from the death benefit.
- Collateral: Single premium policies can be used as collateral for bank loans. Money launderers can surrender their policies to repay their loans.

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- Secondary life market: Instead of surrendering their policy, customers in poor health can sell their policy to a criminal third party. Insurers must then identify the new policy owner.

10. Obligations of Accountable persons.

- Section 1 and second schedule of the AMLA
- Lists Accountable persons to include insurance companies licensed under the Insurance Act – Brokerage firms.
- These accountable persons have the following obligations under AML/CFT regime.
 - ❖ Registration of Accountable persons within one year from the commencement of the AML Regulations (December 2015) under Form 1 – S.21(pb) as amended and R.4
 - ❖ Must notify the FIA of any changes of the registered particulars within 15 days after the change under Form 2 – R.5 AML Regulations

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- ❖ Must ensure the appointment of a Money Laundering Control Officer (MLCO) – R.6

This kind of person should ideally of a managerial rank so as to be able to make decisions independently.

Such a person should be responsible for the development of procedures relating to CDD, detecting of STs, enforce the reporting obligation, ensure communication of procedures to all staff and ensure that there is on-going staff training – R.7

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- ❖ Carry out Customer Due Diligence of all clients - **S.6 AMLA (as amended)**

This section stipulates when **(R.14)** and how CDD is carried out. It emphasizes the use of simplified CDD for low risk customers and enhanced CDD for the high risk customers – **R.15**

CDD should also be carried out for all existing customers immediately before the commencement of the Regulations (before December 2015) – **R.14(2)**

CDD should be applied at each stage of the process and should be on an on-going basis (continuous)- **R.15**

Must comply with the CDD requirements as its reasonably practical after the commencement of the Regulations – **R.17**

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It is very important to identify the person you are dealing with prior to the transaction otherwise do not deal with or transact at all – R.18

Note

- a) KYC should be carried out at the Claim payout stage and when additional top up remittances are inconsistent with the clients known profile.
- b) Payment of Premium is an important stage to identify inconsistencies , in client profile, cash transactions if more diligence is done.

The particular forms of identity for the particular types of clients are listed in the Regulations – R.19 to 26

Establishment of the authority of the person acting on behalf of another as very important. Documentation like powers of Attorney can be furnished at the counter. Verification of such information is very important – R.27

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It should be noted that reliance on Intermediaries (3rd parties) should be to the extent that you are satisfied that they have conducted CDD to the standards acceptable to you.

However the ultimate responsibility lies with you to verify, to ascertain that all the relevant information has actually been collected and that you are able to access these customer details.

Note - Make reasonable efforts to determine the true identity, beneficial ownership of the policy, Sources of funds, Nature of customers' business, reasonable account activity and at times customer's customer.

- ❖ Must develop, adopt and implement internal control measures, policies and procedures to effectively detect, manage and mitigate the identified risks in future – **S.6 (17)(a) (as amended)** and **R.11 AML Regulations**

Note - In so doing, Brokers can therefore protect the integrity of the insurance sector against all forms of abuse.

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- ❖ Maintenance of Records in an electronic form (with back up and recovery procedures) for a minimum period of 10 years from the date of the transaction. This information kept must enable the transaction to be reconstructed when need avails and these records should not be maliciously altered – **S.7 AMLA**
- ❖ Recording and Reporting cash and monetary transactions exceeding 1,000 currency points (20,000,000/=) in form A to the FIA - **S.8 AMLA**

This form A shall be maintained by the accountable person for a period of 10years from the date of the transaction.

Multiple cash and monetary transactions which all together exceed the prescribed amount and are undertaken by or any one person in one day or such other period prescribed by the minister shall be treated as a single transaction.

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- ❖ Must monitor and report suspicious transactions or activities in Form B as soon as after forming the suspicion but not later than two working days. This should be submitted to the FIA with documentation forming the basis of the suspicion – **S.9 AMLA**

A suspicious transactions is a transaction which is inconsistent with the customers' known legitimate business or personal activities or with the normal business for that type business relationship, or a complex and unusual transaction or a complex and unusual pattern of transactions – **S.1 AMLA**

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Ordinarily, a Suspicious Transaction is a transaction whether or not made in cash which, to you acting in good faith;

- Appears to be made in circumstances of unusual or unjustified complexity; or
- Gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime; or
- Appears to have no economic rationale or bona fide purpose; or
- Gives rise to a reasonable ground to suspect that it may involve terrorism financing.

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STR Indicators in the insurance sector include:-

1. Client who usually purchases small policies, suddenly requests a large lump-sum contract without corresponding business activity .
2. Purchasing one or more single-premium investment-linked policies, then cashing them in a short time later.
3. Customer insisting on anonymity, reluctance to provide identification information, or providing minimal or fictitious information.
4. Inflated or totally fraudulent claims e.g. by arson or other means causing a fraudulent claim to be made to recover part of the invested illegitimate funds.

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5. Making over-payment on a policy, then asking for a refund, This could be deliberate
6. Where the relationship between the policyholder and beneficiary seems unusual – The launderer could be using associates to clean the money.
7. Purchasing products which are inconsistent with the buyer's age, income, employment or history
8. The funds coming from another country, particularly high-risk jurisdictions

Note

- The STR should be submitted with documentation forming the basis of the suspicion.
- Reporting STRs should be made regardless of the amount of the transaction.

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It should be noted that when a report is made or information furnished in good faith, the accountable person its employees officers directors and agents shall not be criminally or civilly or administratively liable for complying with this part (immunity from Liability) – **S.15 AMLA**

Reporting obligations summed up include:-

- Submission of ML/TF Risk assessment reports
- Annual compliance report to be submitted by 31st day of January of every year.
- Large cash report (premium paid above 20m or aggregated to 20 in one week) to be submitted every week.

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- Suspicious transaction report - to be submitted as and when suspicion arises but within 48 hours from the time suspicion is formed.
- AML Audit report (to conduct an AML Audit to assess the company's compliance with AML, to assess the controls in place) – The report to be submitted to FIA on request .
- ❖ Must include accurate originator information and other messages related to those electronic funds transfers and other forms of funds transfers. Such information should remain with the transferor – **S.13 AMLA**
- ❖ Must refrain from doing business with money launderers. Accountable person must take all the necessary measures to ensure that neither it or the services offered by it is used to commit or facilitate a ML offence – **S.16 AMLA**

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- ❖ Must continue with the transaction regardless of the requirement to write a report on that particular transaction – **S.17 AMLA**
- ❖ Must conduct regular risk assessments, document it and furnish a copy of that report to the FIA with 48 hours after conducting the assessment – **S.6A (as amended)** and **R.8 AML Regulations**
- Accurate risk assessment is central to the risk-based approach. In performing risk assessment, Insurance institutions must take into account:
 1. Vulnerability: What money laundering and criminal threats – such as drug trafficking or gambling – is the firm exposed to?
 2. Infrastructure: Does the firm have blind-spots or administrative gaps that allow money-launderers to thrive?

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3. Regulations: Does the firm properly understand and satisfy its regulatory obligations?
4. Business Specifics: Are there more specific risks which the firm might be exposed to e.g. those presented by specific customers, products, or geographic location?

The potential risk that a customer carries depends on:

- i. Identity of the customer including beneficial ownership
- ii. The nature of customer's business and his product profile- jewels, precious metals, arms, antiques
- iii. Location of business
- iv. Technology used plus the Products and services offered
- v. Customer's customer or clients; their location & business

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- ❖ Must take reasonable measures to prevent the use of new technologies for ML and TF. This can be done by carrying out an AML/CFT risk assessment prior to the introduction of a new technology or new business practice. – **R.9 AML Regulations**
- ❖ Must not knowingly establish or maintain a business relationship or conduct any transaction with any person under a false name – **R.12 AML Regulations**
- ❖ Must ensure that all staff receive initial and on-going training on relevant AML legislation, regulations, guidelines and on policies and procedures that your company will put in place. **S.6(17)(d) (as amended)**

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It should however be noted that ML transactions are more vulnerable to detection at the stage of establishing a business relationship with the customer. Therefore adequate training is particularly encouraged to be given to ‘front line’ staff to equip them on how to detect ML as well as inquiry skills.

- ❖ Must pay special attention to business relationships with persons from or in countries which are listed. **S.6(26) (as amended)**
- ❖ Must deal with PEPs with caution (enhanced CDD) **S.6(7) (as amended)**.

PEPs represent an increased AML/CFT risk because their political roles often give them access to significant government funds or make them targets for criminals seeking to leverage their influence to launder money.

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- Therefore, Insurance players must pay attention to PEPs and their associates and put in place appropriate screening and monitoring measures.
- PEPs may seek to use associates for ML by directing them to purchase insurance products on their behalf before transferring ownership or use illegitimate funds acquired by a PEP relative to purchase insurance products directly using cash.

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11. Offences

- a) Money Laundering [s3 & s116]
- b) Tipping-off [s117]
- c) Falsification, concealment, Destruction, etc. of documents [s118]
- d) Failure to identify persons [s 119]
- e) Failure to keep records [s 120]
- f) Facilitating Money laundering [s 121]
- g) Destroying or tampering with records [s122]
- h) Refusal, Omission, Neglect or Failure to give assistance to FIA [s 23]
- i) Failure to report CTs [s124]

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- j. Failure to report STs [s125]
- k. Failure to report conveyance of cash into/out of Uganda [s126]. Defenses for this breach may be raised under provisions of the law in s137.
- l. Failure to send a report to FIA [s127]
- m. Failure to comply with orders made under the Act [s128]
- n. Contravening a restraining order [s129]
- o. Misuse of information obtained from FIA in terms of this Act [s130]
- p. Obstructing an official in performance of functions under this Act [s131]
- q. Influencing testimony [s132]

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- r. General non-compliance with requirements of the Act and conducting transactions to avoid reporting duties [s133]
- s. Unauthorized access to computer systems or application or data [s134]
- t. Unauthorized modification of contents of computer systems, belonging to or under the control of the FIA [s135]

12. Penalties for non-compliance

1. For breach of s3 & s116(1)

a) Natural Persons

; Fine \leq 100,000 curr. Pts (UGX 2,000,000,000)

; Imprisonment \leq 15 years

; Or both.

b) Legal Persons

; Fine \leq 200,000 curr. Pts (UGX 4,000,000,000)

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2. All other offences mentioned above; [s116 – s135]:

a) Natural Persons

; Fine \leq 33,000 Curr. Pts (660,000,000/=)

; Imprisonment \leq 5 yrs

; Or both

b) Legal Persons

; Fine \leq 70,000 Curr. Pts (1,400,000,000/=)

; If continuing offence, then Fine \leq 5,000 Curr. Pts
per day offence continues (100,000,000/=)

13. Conclusion

- Insurance companies/Brokerage firms among other institutions are gatekeepers to the Financial System and highly attractive to Launderers.
- The AML/CFT regime aims at ensuring that the financial system is not used for the purposes of ML/TF.
- As Brokers and representatives of various insurance companies, your commitment is essential in ensuring that insurance companies do not become conduits of crime .

THANK YOU FOR LISTENING.

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14. Q & A SESSION



Developing the habit of asking questions can help you be a better decision maker.