THE NATIONAL BOARD OF ACCOUNTANTS AND AUDITORS

ANTI-MONEY LAUNDERING GUIDELINE FOR ACCOUNTANTS AND AUDITORS

JANUARY, 2010

PREFACE

The National Board of Accountants and Auditors (NBAA) welcomed the decision made by the Government of the United Republic of Tanzania to put in place the Anti-Money Laundering Law. It is believed that the increasing money laundering and terrorist financing activities worldwide is a threat to the development of our economy and the historical social set up of our community.

In continuing to recognize and support the Government efforts on anti-money laundering and counter terrorist financing, the Board has prepared this guideline to enable Accountants and Auditors to be part of national efforts in combating money laundering and terrorist financing activities in the country. The increasing awareness of the role played by Accountants and Auditors in our economy is one of the reasons behind the Board's decision to issue this guideline.

The Board has a duty to make sure that Accountants and Auditors clearly know their clients and the nature of businesses they deal with. The Guideline provides members with details on what to carefully look at in the transaction with regard to money laundering and terrorist financing and what steps they should take to avoid being party to such illegal activities. It also spells out how to report suspected money laundering and terrorist financing activities. The Board hopes that this guideline will help members effectively play their role in deterring and/or detecting such activities. The guideline is intended for use by all Accountants and Auditors regardless of their position and responsibility. As professionals, we must play our part and be seen to be doing so to counter money laundering and terrorist financing activities. The guideline is also intended to assist members to comply with the requirement of the Anti-Money Laundering Act, 2006 (Cap. 423) by reporting any suspicious transactions they come across to the Financial Intelligence Unit (FIU).

I urge all members of the accountancy profession to regularly read and comply with the procedures intimated in this guideline. The responsibility for Accountants and Auditors regarding money laundering and terrorist financing exists at several points in the whole process of preparing and auditing financial statements, and this guideline provides tips to work on. While reading this guideline, members are also strongly encouraged to make reference to the Anti-Money Laundering Act, 2006.

The guideline is also freely available for download from the Board's website. www.nbaa-tz.org

Pius A. Maneno
EXECUTIVE DIRECTOR
January 2010

Table of Contents

ABBREVIATIONS

AMLA	Anti-Money Laundering Act, 2006 (Cap. 423)
AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
AMLR	Anti-Money Laundering Regulations, 2007
AMLRO	Anti-Money Laundering Reporting Officer
FIU	Financial Intelligence Unit
ISA	International Standards on Auditing, issued by the International Auditing and Assurance Board (IAASB)
NBAA	National Board of Accountants and Auditors

1.0 INTRODUCTION

1.1 The Anti-Money Laundering Act (AMLA), 2006 (Cap. 423) and its regulations make it mandatory for various individuals and entities to report any transaction related to money laundering and terrorism financing to Financial Intelligence Unit (FIU). The mandatory reporting prescribed in the Act is designed to assist in the detection and prevention of money laundering and terrorist financing activities, as well as to facilitate the investigation and prosecution of money laundering and terrorist financing offences. As such Tanzania's Anti-Money Laundering legislation is part of a larger global trend attempting to fight the illegal movement of capital and the financing of terrorist activities.

1.2 The National Board of Accountants and Auditors (NBAA) has prepared this Guideline to provide guidance to accountants, auditors, accounting and auditing firms when performing their duties. This guideline essentially obligates accountants and auditors to report various activities that could be related to money laundering or terrorist financing offences.

1.3 The expressions used in this Guideline shall, except where expressly defined in the Guideline or where the context otherwise requires, have the same respective meanings as in the Anti-Money Laundering Act, 2006. Accountants, auditors, accounting and auditing firms are reminded that the ultimate responsibility and accountability for ensuring compliance with Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) law, regulations and guidelines rests with themselves as they are covered by the AMLA 2006 as reporting persons.

1.4 Since accountants and auditors are not trained on how to recognize such criminal activity in their core education, this guideline is developed as a knowledge base from which accountants and auditors can exercise their judgment in carrying out their obligations under the Anti-Money Laundering Act, 2006. In carrying out their obligations they are advised also to regularly read the Act and its regulations.

2.0 OBJECTIVE

2.1 As the regulator of the Accountancy Profession in Tanzania, the National Board of Accountants and Auditors takes the view that it has a responsibility to enlighten accountants and auditors of their obligations under the Anti-Money Laundering Act, 2006, and indeed, to provide a guide as to how to meet those obligations. To achieve this, NBAA in consultation with Financial Intelligence Unit (FIU) has prepared this guideline on Anti-Money Laundering. This Guideline defines money-laundering and the financing of terrorism, and summarizes the key points of the Anti-Money Laundering Act, 2006, (AMLA). It also outlines the legal responsibilities of accounting and audit firms and offences for noncompliance. The need for appointing and roles of the Anti-Money Laundering Reporting Officer (AMLRO) within the accounting and audit firms is also provided in this guideline.

2.2 The purpose of this Guideline is to assist accountants, auditors, accounting and auditing firms by explaining their obligations under the anti-money laundering legislation and by suggesting approaches to meeting them. The Guideline represents good practices and a minimum acceptable standard for compliance with the AML legislation. This Guideline has been prepared to properly reflect the provisions in the Anti-Money Laundering Act, 2006 and its regulations.

3.0 PROFESSIONAL OBLIGATION

Accountants and auditors hold a particularly prominent position in society. Based on the premise of high ethical practice, entities and the public at large put their trust in these professionals for their honesty, integrity, and in the client secrecy which is normally associated with such relationship. In most cases such trust is justified by the very fact of their solid reputations which may also be the target of money launderers, who will seek to hide behind their reputation and client secrecy, in order to carry out their illicit activities. Money launders are likely to target accountants and auditors in the hope of using their professional status to minimize suspicion.

4.0 LEGAL BASIS AND STATUS OF THE GUIDELINE

4.1 The NBAA was established by the Parliamentary Act No. 33 of 1972 to be responsible for regulating the accountancy profession in Tanzania. Section 3 of Anti-Money Laundering Act, 2006, termed NBAA as a “reporting person” under category of regulator. Being the regulator, it has the responsibility of instituting measures designed to reduce the possibility of accountants and auditors being used for any purpose connected with an offence involving fraud, theft or money laundering.

4.2 The NBAA being a regulator of the accountancy professional, is confident that if this guideline is properly followed, breaches of the Anti-Money Laundering Act, 2006 and Anti-Money Laundering Regulations, 2007 (AMLR) would be avoided, which may also realize added benefits to the accountancy profession in Tanzania. However, under AMLA, the designated authority for receiving reports of suspicious transactions from a reporting person rests with the Financial Intelligence Unit (FIU). FIU is the competent authority for handling money laundering and terrorist financing activities within the United Republic of Tanzania.

5.0 SCOPE AND APPLICABILITY OF THE GUIDELINE

5.1 This Guideline is directed to all accountants, auditors, accounting and auditing firms in Tanzania. The guideline is designed to reduce the possibility of accountancy profession being used for any purpose connected with an offence involving fraud, theft or money laundering; this means that any person registered as accountant or auditor comes under the ambit of this Guideline. Branches of accounting and auditing firms (where applicable), are considered not to be legally distinct from their head office, and are therefore, subject to Anti-Money Laundering Act, 2006. A failure for branches to comply with the Act and its regulations will be considered as a failure to manage group risks which may result in action being taken by the professional regulatory body (NBAA) and legal action that will include penalties as provided in section 13 of the Anti-Money Laundering Act, 2006.

5.2 This Guideline covers also accountants and internal auditors employed in both public and private sectors with the exception that they can use other guidelines that are issued by their respective employers to supplement this Guideline when they encounter suspicious transactions that may seem to be money laundering and terrorism financing nature. Non compliance will cause action as indicated in para 5.1 above.

6.0 MONEY LAUNDERING, PREDICATED OFFENCES AND FINANCING OF TERRORISM UNDER AMLA, 2006

6.1 General Meaning of Money Laundering

Money laundering can be defined as any act or attempted act to disguise the source of money or assets derived from criminal activity. Essentially, it is the process where ***"dirty money"*** is transformed into ***"clean money."***

It is important to note that the individuals and entities involved in money laundering treat it as a business. In this regard, they have a variety of costs associated with conducting their business and some of these costs may be the indicators for any reporting person to conclude that the business activity or transaction in question might be related to a money laundering offence.

6.2 Money Laundering Under AMLA, 2006

Money Laundering means "engagement of a person or persons, direct or indirectly in conversion, transfer, concealment, disguising, use or acquisition of money or property known to be of illicit origin and in which such engagement intends to avoid the legal consequence of such action and includes offences referred in section 12" of AMLA, 2006.

6.3 Predicate Offences Under AMLA, 2006

The AMLA illustrates predicate offence to mean-

(a) Any dealing which amounts to illicit drug trafficking under the law for the time being relating to narcotic drugs and psychotropic substances. (b) terrorism, including terrorist financing; (c) illicit arms trafficking; (d) participating in an organized criminal group and racketeering; (e) trafficking in human beings and smuggling immigrants; (f)sexual exploitation, including sexual exploitation of children; (g) illicit trafficking in stolen or other goods; (h) corrupt practice; (i) counterfeiting; (j) armed robbery; (k) theft; (l) kidnapping, illegal restraint and hostage taking; (m) smuggling; (n) extortion; (o) forgery; (p) piracy; (q) hijacking; (r) insider dealing and market manipulation; (s) illicit trafficking or dealing in human organs and tissues; (t) poaching; (u) tax evasion; (v) illegal fishing; (w) illegal mining; (x) environmental crimes; or (y)any other offence which the Minister responsible for Finance may, by notice publish in the Gazette, declare, whether committed within the national boundaries of the United Republic of Tanzania or outside the country.

6.4 Financing of Terrorism

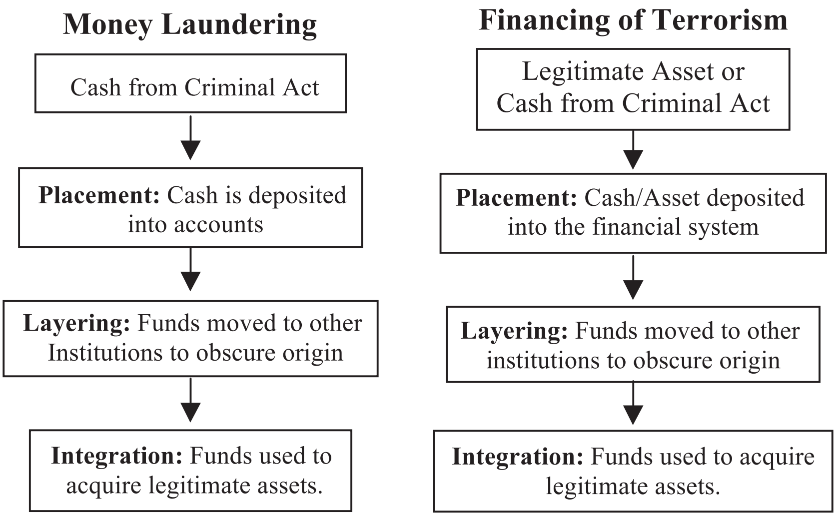
As provided in the AMLA 2006, terrorist financing means –

(a) the provision of, or making available such financial or other related services to a terrorist, group or entity which is concerned with terrorist act; or
(b) Entering into or facilitating, directly or indirectly, any financial transaction related to dealing in property owned or controlled by or on

behalf of any terrorist or any entity owned or controlled by a terrorist.

6.5 Money Laundering and Financing of Terrorism

In the process of understanding the linkage between money laundering and financing of terrorism, accountants and auditors should know that the techniques used to launder money are essentially the same as those used to conceal the sources of and uses for terrorist financing. Funds used to support terrorism may originate from legitimate sources, criminal activities or both. If the source can be concealed, it remains available for future terrorist financing activities. Similarly, it is important for terrorists to conceal the use of the funds so that the financing activity goes undetected. The diagram below indicates the relationship or linkage between money laundering and financing of terrorism.



7.0 STAGES OF MONEY LAUNDERING AND FINANCING OF TERRORISM

Accountants and auditors need to understand that the process of money laundering is ongoing. Dirty money is constantly being introduced into the system in an effort to clean it. To complete the process, there are three recognized stages in the money laundering cycle:

7.1 Placement Stage

This stage involves the placing of the proceeds of crime (***'dirty money'***) into the system. This is typically the first stage of the money laundering cycle. This can include depositing money into bank accounts or purchasing money orders or bank drafts, which can be converted into ***'clean money'*** once negotiated. It can also include money being put into a business and mixed with other ***'clean money'*** before it is deposited into the business' bank account or perhaps used by the business to acquire supplies or products that are then sold — thus converting the dirty money into clean money.

7.2 Layering Stage

This stage is typically the second stage of the cycle, although it also happens on a continuous basis, even after the third stage has been completed. Layering involves executing a variety of transactions intended to disguise the audit trail and the source of ownership of the funds or property. The money launderer also does this so that it will be more difficult to trace funds back to the original criminal activity that gave rise to the proceeds.

7.3 Integration Stage

The third stage of the cycle is the placing of the laundered proceeds back into the economy. Not only does this create a perception of legitimacy, the investing of these proceeds into otherwise legitimate business activities earns additional so-called ***"legitimate"*** business profits on top of the criminal proceeds being earned by the owner of the funds. By their nature, the layering and integration stages are the most likely stages in which an accountant may be involved in the money laundering process. The potential involvement of accountants and auditors stem from the fact that the layering and integration transactions normally involve real businesses that file their taxes and have financial statements prepared.

8.0 CUSTOMER DUE DILIGENCE

8.1 Know Your Client

8.1.1 Appropriate identification procedures, as required by the AMLR 2007, are mandatory when accepting appointment as auditor. The extent of information collected about the client and verification of identity undertaken will depend on the client risk assessment. Auditing standards on quality control for audits state that acceptance of client relationships and specific audit engagements includes considering the integrity of the principal owners, key management and those charged with governance of the entity is of paramount. This involves the auditor making appropriate enquiries and may involve discussions with third party, the obtaining of written reference and searches of relevant databases. The procedure may provide some of the relevant client identification information but may need to be extended to comply with the AMLR, 2007.

8.1.2 Accountants and auditors may use various sources of information to enhance business knowledge of their client, including direct discussion with the client. Information sources (*e.g.* websites, brochures, reports etc) prepared by the client may help to judge the type of the client. Accountants and auditors need to consider whether there are any particular steps they wish to specify for use in higher risk cases to increase the depth of customer due diligence. Accountants and auditors might, as appropriate to their risk assessment, wish to check the names of new clients against lists of known terrorists and other sanctions information elsewhere if they deem appropriate. Full details of name and address as well as the details of the identity document provided should also be keenly observed.

8.1.3 If a transaction is being undertaken on behalf of another person, identification evidence of all the persons concerned should be obtained and copies of all documents called for verification should be kept on record. Auditors should make sure that they also adhere to the requirements of International Standards on Auditing (ISA 315) – *Obtaining an understanding the entity and its environment and assessing the risk of material misstatements.*

8.2.1 On-Going Monitoring of Business Relationships

8.2.2 For accountants and auditors, ongoing monitoring of the business relationship is very important. This comprises scrutiny of activity during the relationship, including enquiry into source of funds if needed, to ensure all is consistent with expected behaviour based on accumulated customer due diligence information. Accountants and auditors may wish to consider updating customer information on a more routine basis as appropriate opportunities arise. Examples of such opportunities may include:

(a) At the start of new engagements and when planning for recurring engagements.

(b) When a previously delayed engagement restarts.

(c) Whenever there is a change of control and/or ownership of the client.

(d) When there is a material change in the level, type or conduct of business; and

(e) Where any cause for concern, or suspicion, has arisen (in such cases, care must be taken to avoid making any disclosure which could constitute *tipping off)*.

8.2.3 It may be helpful for the auditor to explain to the client the reason for requiring evidence of identity and this can be achieved by including an additional paragraph in the audit engagement letter. Where client identification procedures start before the engagement letter is drafted it might be helpful for the auditor to address this in pre-engagement letter communications with the potential client.

8.3 Client Identification

8.3.1 As with other professional services, firms, accountants and auditors are required to identify their clients for the purposes of the anti-money laundering legislation. They are likely to request from their client, and retain some information and documentation and/or to make searches of appropriate information of their clients. If the accountant or auditor is not able to obtain satisfactory evidence of identifying the client within a reasonable time, there may be circumstances in which an accountant or auditor is not able to proceed with the assignment. It may also be helpful to inform the client of the accountant or auditor's responsibilities under AMLA, 2006 to report knowledge or suspicion, or reasonable grounds to know or suspect, that a money laundering offence has been committed and the restrictions created by the 'tipping' off (section 20 of the AMLA, 2006) on the auditor's ability to discuss such matters with their clients.

8.3.2 Partners, audit managers and staff in audit firms have to comply with the AMLA which includes provisions that may require auditors to make a money laundering disclosure in relation to information they obtain as part of their normal audit work. It is not the practice to inform client when such a disclosure is made or the reason for it because of the restrictions imposed by the 'tipping off' provisions of the legislation. Whether or not to include these illustrative paragraphs in the audit engagement letter is a policy decision to be taken by auditing firms.

8.4 Further Client Identification

1.4.1 Once the accountant or auditor suspects a possible breach of AMLA or its regulations, the accountant or auditor will need to make further enquiries to assess the implications of the breach in the financial statements. Auditing standards require that when the auditor becomes aware of information concerning a possible instance of non-compliance of laws and regulations, the auditor should obtain an understanding of the nature of the act and the circumstances in which it has occurred, and sufficient other information to evaluate the possible effect on the financial statements.

8.4.2 Where the accountant or auditor knows or suspects, or has reasonable grounds to know or suspect, that another person is engaged in money laundering, a disclosure must be made to the firm's AMLRO or for sole practitioners to FIU. The anti-money laundering legislation does not require the accountant or auditor to undertake any additional enquiries to determine further details of the predicate criminal offence. If the accountant or auditor is genuinely uncertain as to whether or not there are grounds to make a disclosure, the accountant or auditor should bring the matter to the attention of the senior accountant or audit engagement partner who may seek advice from the AMLRO.

8.4.3 Reporting to FIU does not relieve the auditor from other statutory duties. Examples of statutory reporting responsibilities include:

(a) Auditors of entities in the banking sector have statutory duty to report matters of 'material significance' to the Bank of Tanzania which come to the auditor's attention in the course of the audit work.

(b) Auditors of entities in the public sector have statutory duty to report matters of 'material significance' according to the Public Audit Act, 2008 which come to the auditor's attention in the course of the audit work.

(c) Auditors of other types of entities are also required to report matters of 'material significance' to their respective regulatory authorities.

9.0 IDENTIFYING SUSPICIOUS TRANSACTIONS

The number of different activities, customer types and individual transaction circumstances, makes it impossible to produce an exhaustive list of indicators of suspicious or unusual transactions. A single indicator may not necessarily, when taken on its own, be grounds for regarding the transaction as suspicious or unusual. However, when other indicators are taken together they may point to the potential of a transaction or series of transactions as being suspicious or unusual, which would required the accountant or auditor to play safe and take a closer look at other factors prior to making a decision as whether to report or not.

The indicators have to be looked at in the context in which the transaction occurs, and whilst contributing to the development of a suspicion that a transaction or series of transaction may involve money laundering or terrorist financing, when looked at from the perspective of the customers business, financial history and past activities, such indicators may not lead to the conclusion that the transactions are anything other than normal for that particular client.

9.1 Client General Indicators

There are several indicators that an accountant or auditor can use to identify transactions that may be related to money laundering and terrorism financing activities when carrying out profession assignments. In this guideline some examples are intimated to help accountants and auditors to identify suspicious transactions which include;

(a) Client is known to be involved in, or indicates his involvement in criminal activities

(b) Client does not want correspondence sent to home address

(c) Client has accounts with several banks in a particular jurisdiction for no obvious reason, or has recently established relationships with different financial institutions.

(d) Client uses same address but frequently changes the names involved.

(e) Client appears to have only a vague knowledge of the amount of the transaction and the client goes to unnecessary lengths to justify the transaction

(f) Client presents information or details which are confusing

(g) Client is secretive, nervous or reluctant to meet in person.

(h) A transaction is suspicious but the client seems to be blind to the fact that he might be involved in money laundering

(i) Client provides a telephone contact which either does not exist or has been disconnected.

(j) Client is involved in an activity unusual for that client or business

(k) Client insists that a transaction be done quickly.

(l) Client attempts to develop a close relationship with staff

(m) Client uses different names and addresses

(n) Client attempts to bribe or offer unusual favours to provide services which are suspicious or unusual

9.2 Client Specific Indicators

In addition to the client general indicators mentioned above, there may be other more specific indicators relating to each particular industry, which either alone, or when taken together with other general indicators, will lead also to the conclusion that a particular transaction is suspicious. There can be no hard and fast rule for the classification of a transaction as suspicious; it may be a single condition or a combination of factors, both general and specific that results in suspicion. These specific indicators may include the following;

(a) Client appears to be living well beyond his/her means in the light of his/her employment, profession or business.

(b) Client conducting business transactions inconsistent with the nature of their employment, profession or business or where business activity is inconsistent with industry average or financial ratios.

(c) Client requests anonymity

(d) Client wants accountant or auditor to coordinate international transactions, including currency exchanges, or to coordinate cross-border movement of funds, when this type of transaction is inconsistent with the ordinary business practice of the client

(e) Client is unconcerned about fees to be paid in respect to an aborted transaction.

(f) Client requests accountant or auditor to establish a nominee company or trust for deposit of funds, when this type of transaction is inconsistent with the ordinary business practice of the client.

(g) Client makes unusual requests for placement of funds into trust accounts for safekeeping.

(h) Client refuses to discuss the business purpose of the transaction.

(i) Client seeks to obtain trust account information and is prepared to pay unusually high fees to use this information and account.

(j) Client offers to pay a much higher fee than is usually charged or than accountant or auditor quotes for similar assignments.

(k) Client has cheques inconsistent with sales

(l) Client has a history of changing accountants or auditors

(m) Client is uncertain as to the location of the company or business records

(n) Client has no employees, which is unusual for the type of business

(o) Client is paying unusual consulting or similar fees to offshore companies

(p) Client records consistently reflect sales at less than cost, but entity continues in business without reasonable explanation of the continued loss.

(q) Client makes large payments or transfers to subsidiaries or other controlled entities that are not within the normal course of business.

(r) Examination of source documents shows misstatements of business activity that cannot be readily traced through the company books.

(s) Client is undertaking activities inconsistent with its commercial registration license and Memorandum and Articles of Association

(t) Client acquires large consumer assets (i.e. luxury automobiles, personal residences etc.) when this is inconsistent with the ordinary practice of the company or industry.

(u) Client is invoiced by organizations located in territories that do not have adequate anti-money laundering systems, or are known to be highly secretive banking and tax havens.

9.3 Detecting Suspicious Transaction

9.3.1 There may be numerous reasons why a particular transactions, or group of transactions, are considered suspicious or unusual, reasons which may be unrelated to the value of such transaction. The bottom line is that all transactions suspicious or unusual for any reason are to be reported. Under AMLA, 2006 there is no value threshold under which suspicious or unusual transactions need not be reported. The implication being that all suspicious transactions, no matter what their value are subject to the reporting requirement. A transaction may be considered as suspicious or unusual as the result of a combination of different indicators, which individually are relatively insignificant, but when taken together raise an alert that the transaction may be connected with money laundering or terrorist financing.

The context in which the transaction occurs may also be significant, and this will vary depending on the type of business and the nature of the client.

9.3.2 Accountants and auditors must evaluate transactions in terms of what seems appropriate and is within the normal practices in a particular business or industry. In the event that transactions do not appear normal, then there may be reasonable grounds for considering such transactions as suspicious or unusual in the context of money laundering or terrorist financing. When considering whether a transaction or group of transactions is suspicious or unusual, accountants or auditors need to consider all aspects of the entity's business, financial history, background and also his behavior. Any or all of these and other factors, may lead to consider that the transactions should be reported.

9.3.3 Accountants and auditors should be always vigilant against money laundering transactions at all times. A transaction may be of suspicious nature irrespective of the amount involved. If in any doubt, or if there is any element of a transaction or group of transactions, which makes accountant or auditor feel uncomfortable with the transaction(s), then take initiative to report.

10.0 APPOINTMENT OF ANTI-MONEY LAUNDERING REPORTING OFFICER

10.1 All accounting and auditing firms should appoint Anti-Money Laundering Reporting Officer (AMLRO). An AMLRO is appointed by the accounting or auditing firm for monitoring transactions and ensuring compliance with the Anti-Money Laundering Law. The role of the AMLRO carries significant responsibility and should be undertaken by an appropriately experienced individual with sufficient authority to enable decisions to be taken independently. The AMLRO is required to:

(a) Consider internal reports of money laundering

(b) Decide if there are sufficient grounds for suspicion to pass those reports on to FIU.

(c) Act as the key liaison point with FIU and law enforcement agencies including dealing with consent and disclosure issues.

(d) Advice on how to proceed with work once an internal report has been issued to guard against risks of tipping off or prejudicing an investigation; and

(e) The design and implementation of internal anti-money laundering systems and procedures.

10.2 The functions of an AMLRO can be delegated, although this does not relieve that AMLRO of his responsibility, and accounting or auditing firm should have contingency arrangements for discharging the duties of an AMLRO during periods of absence or unavailability. It is recommended that businesses appoint an alternate or deputy AMLRO for these situations and ensure that the reporting channels are well known to all relevant employees.

10.3 The AMLRO will also be responsible for reporting of suspicious transactions to the Financial Intelligence Unit (FIU). Any suspicious transaction(s), if undertaken, should have prior approval of AMLRO. The AMLRO shall have reasonable access to all the necessary information/documents, which would help him in effective discharge of his responsibilities. The responsibility of the AMLRO may include:

(a) Putting in place necessary controls for detection of suspicious transactions.

(b) Receiving disclosures related to suspicious transactions from the staff or otherwise.

(c) Deciding whether a transaction should be reported to the appropriate authorities

(d) Training of staff and preparing detailed guidelines or handbook for detection of suspicious transactions.

10.4 All accountants, auditors and other staff of the accounting or auditing firm should first report money laundering/ terrorist financing issues that come to their knowledge to the AMLRO.

11.0 REPORTING OF SUSPICIOUS TRANSACTION

11.1 Reporting of Suspicious Transactions

To the extent possible, all suspicious transactions should be reported to the AMLRO before they are undertaken. Full details of all suspicious transactions whether put through or not should be reported in writing to the AMLRO. Any transaction which seems suspicious may be undertaken only with prior approval of AMLRO. If the AMLRO is reasonably satisfied that the suspicious transaction may have resulted in money laundering, he should make a report to the Financial Intelligence Unit (FIU)

11.2 **Reporting Procedures**

11.2.1 For individual accountants and auditors (internal auditors) while reporting suspicious transactions should follow procedures developed by their respective employers and if no such procedures exist they should advise their employers to put in place reporting procedures and appointment of AMLRO for reporting suspicious transactions and any other money laundering activities. For accounting and auditing firms they should put in place internal reporting procedures for their accountants and auditors. Those internal procedures should clearly set out what is expected of individual accountants and auditors who discover suspicions or obtain knowledge of possible money laundering.

11.2.2 The internal reporting procedures can take any form specified by the firm, e.g. phone calls, emails, handwritten, etc, supplemented by copies of third party documents and working papers but firms should ensure that, whatever forms the reporting takes, relevant personnel are aware of the procedures to be used. Consideration should be given to how to minimize the number of copies of reporting information held within firms. Accounting and auditing firms may wish to consider whether it is advisable to specify telephone or face to face contact with the AMLRO as the preferred initial reporting step, with the reporting records being created by the AMLRO pursuance to section 17 of the Act.

11.2.3 It is recommended under this guideline that all details of internal reports are held by the AMLRO and excluded from client files. Exclusion of information from client files assists in avoiding inappropriate disclosure of information and provides some protection against the threat of tipping off. Client files should retain only that information relevant to, and required for the professional work being undertaken.

11.2.3 **The AMLRO Reporting Procedures to FIU**

The AMLRO is responsible for making decisions on whether the information contained in the suspicious transactions need to be relayed to FIU. The role of the AMLRO carries significant responsibility and should be undertaken by a senior person within the accounting and auditing firm who has sufficient authority to take independent decisions, and who is properly equipped with sufficient knowledge, and resources, to undertake the role. The key role is that of receiving information on suspicious transactions and reporting to FIU as applicable. It is for accounting and auditing firms to determine the format of their internal reports but reports to FIU must be made in pursuance to section 17 of the Act and Regulation 21.

11.2.4 Feedback from FIU

When AMLRO, accountant or auditor reports suspicious transactions or any matter related to money laundering he may want to know the feedback of whatever he has reported to the FIU. As stipulated in Regulation 31, the FIU is responsible for providing the accountant or auditor with feedback which includes;

(a) Acknowledgement of the receipt of the suspicious and unusual transactions reports and results of investigation;

(b) Whether a matter is closed because of prosecution;

(c) Whether a report was found to relate to a legitimate transaction;

(d) Information on the decision or result;

(e) Information on current techniques, methods and trends of money laundering and terrorism financing and;

(f) Examples of actual money laundering and terrorism financing cases, if any.

12.0 TIPPING OFF

Tipping off offence may be committed if a person knowing or suspecting that a report has been made either to an AMLRO or to FIU, and• making any disclosure which he knows or suspects is likely to prejudice any investigation that might follow that report. Section 20 of the Anti-Money Laundering Act, 2006 prohibits accountants and auditors from disclosing to an authorized third party the fact that a suspicious transaction report or related information is being reported to the FIU.

13.0 RECORD KEEPING AND RETENTION

For all accounting and auditing firms, records must be kept of clients' identity, the supporting evidence of verification of identity (in each case including the original and any updated records), the firm's business relationships with them (i.e. including any non-engagement related documents relating to the client relationship) and details of any occasional transactions and details of monitoring of the relationship. These records must be kept for at least five years after the end of the relevant business relationships or completion of the transactions. Care is needed to ensure retention of historic, as well as current records. Retention of any record (s) related to money laundering and terrorist financing should be in pursuance to Regulation 29.

14.0 THE AUDITOR'S REPORT ON FINANCIAL STATEMENTS

14.1 Where it is suspected that money laundering has occurred the auditor will need to apply the concept of materiality when considering whether the auditor's report on the financial statements needs to be qualified or modified, taking into account whether:

(a) The crime itself has a material effect on the financial statements;

(b) The consequences of the crime have a material effect on the financial statements; or

(c) The outcome of any subsequent investigation by the police or other investigatory body may have a material effect on the financial statements.

14.2 If it is known that money laundering has occurred and that directors or senior employees of the firm were knowingly involved, the auditor will need to consider whether the auditor's report is likely to include a qualified opinion on the financial statements. In such circumstances, the auditor considers whether disclosure in the report on the financial statements, either through qualifying the opinion or referring to fundamental uncertainty, could alert a money launderer.

14.3 Timing may be the crucial factor. Any delay in issuing the audit report pending the outcome of an investigation is likely to be impracticable and could in itself alert a money launderer. The auditor seeks advice from the AMLRO who acts as the main source of guidance and if necessary is the liaison point for communication with FIU and other relevant law enforcement agency.

15.0 RESIGNATION AND COMMUNICATION WITH SUCCESSOR AUDITORS

15.1 The auditor may wish to resign from the position as auditor if he believes that the client or an employee is engaged in money laundering or any other illegal act, particularly, where a normal relationship of trust can no longer be maintained. Where the auditor intends to cease to hold office there may be a conflict between the requirements under section 177, 178 and 179 of the Companies Act 2002 for the auditor to deposit a statement at a company's registered office of any circumstances that the auditor believes need to be brought to the attention of members or creditors and the risk of 'tipping off'. This may arise if, for example, the circumstances connected with the resignation of the auditor include knowledge or suspicion of money laundering and an internal or external disclosure being made.

15.2 Where such disclosure of circumstance may amount to 'tipping off', the auditor should preferable seek advice from the AMLRO who acts as the main source of guidance and if necessary is the liaison point for communication with lawyers, FIU and the relevant law enforcement agency. The auditor may as a last resort need to seek legal advice.

15.3 Where the only information which needs to be disclosed is the underlying circumstances which gave rise to the disclosure, there are two scenarios to consider:

(a) Where the auditor only wishes to disclose the suspicions about the underlying criminal conduct and the basis for those suspicions, the auditor will not commit an offence under AMLA if that information only is disclosed. For example, if audit files are made available to the incoming auditor containing working papers that detail circumstances which have lead the audit team to suspect the management of a fraud and this suspicion is noted on the file, this will not constitute a 'tipping off' offence.

(b) If the auditor wishes to disclose any suspicions specifically about money laundering (for example, if the working papers in the example above indicated that the suspected fraud also constituted a suspicion of money laundering), then as a matter of prudence, reporting should follow procedure indicated in the AMLA and AMLR.

15.4 The offence of 'tipping off' may also cause a conflict with the need to communicate with the prospective successor auditor in accordance with legal and ethical requirements relating to changes in professional appointment. For example, the existing auditor might feel obliged to mention knowledge or suspicion regarding suspected money laundering and any external disclosure made to FIU. Although the AMLA and its regulations are silent on this, but best practice would not constitute 'tipping off' if it was done to prevent the incoming auditor from committing a money laundering offence.

16.0 STAFF TRAINING AND TRAINING PROGRAMS

16.1 All employees of the accounting and auditing firms must be trained to be aware of the policies and procedures relating to prevention of money laundering, provisions of the AMLA and the need to monitor all transactions to ensure that no suspicious activity is being undertaken under the guise of money laundering. The steps to be taken when the accountant or auditor comes across any suspicious transactions (such as asking questions about the source of funds, checking the identification documents carefully, reporting immediately to the AMLRO, etc.) should be carefully formulated by the accounting and auditing firms, and suitable procedure laid down. All accounting and auditing firms should have an ongoing training program for consistent implementation of the AML measures.

16.2 Section 19 of the AMLA, 2006 provide that all relevant employees are required to be made aware of law relating to money laundering and terrorist financing, and regularly given training in how to recognize and deal with transactions which may be related to money laundering or terrorist financing. In considering a training plan need to keep in mind the objectives they are trying to achieve, which is to create an environment effective in preventing money laundering and which thereby help protect individuals and the firm. In particular, AMLROs and members of senior management may require supplementary training in a customized approach.

16.3 All accounting and auditing firms should develop and implement a training program for their employees to be aware of the Anti-Money Laundering Act and build capacity for employees to implement regulations and guidelines issues from time-to-time by competent authorities. At minimum the training program should focus on the following aspects:

(a) The company's anti-money laundering reporting policy and procedure.

(b) A description of the nature and processes of money laundering.

(c) An explanation of the underlying legal obligations of both the employee and employer under the anti-money laundering law and guidelines;

(d) An explanation of the existing system to prevent and detect money laundering and terrorist financing with particular emphasis on the recognition of suspicious transactions and the submission of suspicious transaction reports to the AMLRO in a timely manner.

17.0 INTERNAL CONTROLS OF AUDIT FIRMS

17.1 Controls should be in place to ensure that detection and reporting procedures are being followed. There should be;

(a) Clear lines of authority and responsibility
(b) Segregation of duties
(c) Rotation
(d) Establishment of limits
(e) Monitoring of activities
(f) Identification and monitoring of key risks
(g) New and ongoing client acceptance process

17.2 Employees of the accounting and audit firms must be aware of the broad policy and the established identification and reporting procedures, and the controls must be applied consistently. Controls should also be in place to prevent unauthorized disclosures of monitoring orders.

18.0 NBAA CONTROLS OF ACCOUNTING AND AUDITING FIRMS

18.1 NBAA as regulator of accountancy profession in Tanzania has put in place a mechanism for reviews to be undertaken for audit firms, which will ensure that requirements under the Anti-Money Laundering Act 2006, Cap. 423 are implemented. These reviews are conducted through Audit Quality Review (AQR). The Audit Quality Review is designed to include the independent testing of money laundering and terrorist financing prevention and detection procedures used by audit firms. Review is normally conducted at least once in every three years for each audit firm with ongoing independent monitoring of the procedures. Steps will be taken to ensure that the AQR is conducted to involve interviews with auditors who handle audit assignments, as well as interviews with their audit managers and partners, and separate interviews with the designated AMLRO will be conducted to explore more on the compliance of the guideline and the Anti-Money Laundering Act 2006.

18.2 For accounting firms, regulatory visit is the control that will be used to test compliance with the requirements under the Anti-Money Laundering Act, its regulations and the procedures provided in this guideline.

18.3 Tests, among other things, will be conducted in order to assess:

(a) Compliance with identification and record keeping procedures

(b) Maintenance of all AML/CFT specific documents

(c) Compliance with monitoring orders

19.0 COMPLIANCE WITH GUIDELINE

In relation to forming business relationships or carrying out one-off transactions, there should be established and documented procedures which require the maintenance of:

(a) Identification procedures

(b) Record-keeping procedures

(c) Procedures for internal controls and reporting to FIU

Accounting and auditing firm should also prohibit a person with whom it forms a business relationship from conducting any transaction by means of an anonymous or a numbered account only.

20.0 PROFESSIONAL CONFIDENTIALITY

The accountant or auditor's professional duty to maintain the confidentiality of client information may preclude reporting suspicious transaction to party outside the client entity. However, the duty of confidentiality may be overridden by statute, the law or courts of law. It is stipulated in section 21 of the Act that the provisions of this party shall have effect, notwithstanding any obligation as to secrecy or other restrictions, upon the disclosure of information imposed by any law or otherwise. Section 21 of the Anti-Money

Laundering Act 2006, override professional confidentiality of accountants and auditors to make communications to law enforcement authorities.

21.0 PROTECTION OF REPORTING PERSON

Generally, the AMLA 2006, provides protection from any liability arising from the disclosures to the designated authority, whether the information was provided as a result of a monitoring order, production order, suspicious transaction, or routine transaction reporting.

Section 22 of the Money Laundering Act, 2006, stipulates that not withstanding any other written law, no action, suit or other proceeding shall lie against any reporting person or any director, officer, employee or representative of the reporting person on grounds of breach of banking or professional secrecy or by reason of any loss resulting from an investigation, prosecution or other legal action taken against any person, following a report or information transmitted in good faith whether or not the suspicion proves to be well founded.

22.0 OFFENCES

22.1 A money laundering offence involves concealing or converting property or the proceeds of property, knowing or believing that the property or proceeds were derived from the commission of another offence (known as a *predicate* offence). An offence is committed by an accountant or auditor if he/she fails to report where he has knowledge, suspicion or reasonable grounds for suspecting money laundering and terrorism financing activity. Section 12(a) of the Anti-Money Laundering Act, states that any person engages directly or indirectly in a transaction that involves property that is proceeds of a predicate offence while he knows or ought to know or ought to have known that the property is the proceeds of a predicate offence is contravening the law. This means that any accountants or auditor who fails to disclose (often referred to as failing to report), while knowing or have the knowledge of money laundering and terrorist financing activities commits offence and specifically liable for penalties as specified in section 13 and 14 of AMLA. Having knowledge means actually knowing that something is the case. More details money laundering offences are intimated in section 12 of the Anti-Money Laundering Act 2006.

22.2 Knowledge or suspicion, or reasonable grounds for knowledge or suspicion, of involvement of the entity's directors in money laundering, or of a failure to comply with the AMLA, 2006 and its regulations would normally be regarded as being of material significance to the accountant and auditors and so give rise to a statutory duty to report to the to FIU. In determining whether such a duty arises, the auditor should follow the requirements of International Standards on Auditing and Customer Due Diligence intimated in this guideline.

22.3 A tipping off offence is not committed when a report is made to that person's supervisory authority or in any other circumstances where a disclosure is not likely to prejudice an investigation.

xxxxx

For further inquiries you may contact Financial Intelligence Unit, Ministry of Finance and Economic Affairs.

THE NATIONAL BOARD OF ACCOUNTANTS AND AUDITORS (NBAA) TANZANIA
Mhasibu House. Bibi Titi Mohamed Street
P.O. Box 5128, Dar es Salaam, **Tel:** +255-22-2151642/2151745/2150648
Fax: 255-22-2151746 **E-mail:** info@nbaa-tz.org **Website:** www.nbaa-tz.org