

# Understanding Your Role and Responsibility in Financial Crime Prevention



ABU DHABI GLOBAL MARKET  
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Financial Crime Prevention Unit

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FINANCIAL SERVICES REGULATORY AUTHORITY  
سلطة تنظيم الخدمات المالية

# Introduction

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# Introduction



- Establishing the ADGM Financial Crime Prevention Unit (FCPU)
- Recent Industry Cases: Panama papers, Paradise papers:
  - Role of “gatekeepers” i.e. lawyers, auditors, companies services providers
  - Foreign accounts and offshore centres, ultimate beneficiary ownership
- Having a robust Anti-Money Laundering and Counter-terrorism (AML/CTF) framework is a fundamental obligation of IFCs
- Opportunities in UAE, Abu Dhabi as a major business hub in the region, and the challenges created from various threats and vulnerabilities
- Ready for OECD assessment (Q3 2018) and FATF assessment (June/July 2019)

# UAE Federal AML/CTF framework

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## UAE Federal AML/CTF Framework

- Federal Law No. 4 of 2002 Concerning Criminalisation of Money Laundering
- Federal Law No. 9 of 2014 Concerning Combating Money Laundering and Terrorism Financing Crimes
- Federal Law No. 1 of 2004 Concerning Combating Terrorism Offences
- Federal Law No. 7 of 2014 Concerning Combating Terrorist Crimes
- Cabinet Resolution No. 38 of 2014 Concerning the Executive Regulation of the Federal Law No. 4 of 2002

## UAE Federal AML/CTF Framework - cont.



- National Anti-Money Laundering and Combating Financing of Terrorism Committee (NAMLCFTC) or The National Committee:
  - Formed under Federal Law
  - Supreme body responsible for AML/CTF policy in the UAE (including free zones and financial free zones)
  - Chaired by Central Bank Governor
  - Over 20 senior members representing relevant federal and local departments
- Financial Intelligence Department is the UAE FIU that is under the Central Bank and reports directly to the Governor

# ADGM legislative framework, AML Rules

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# ADGM Legislative Framework



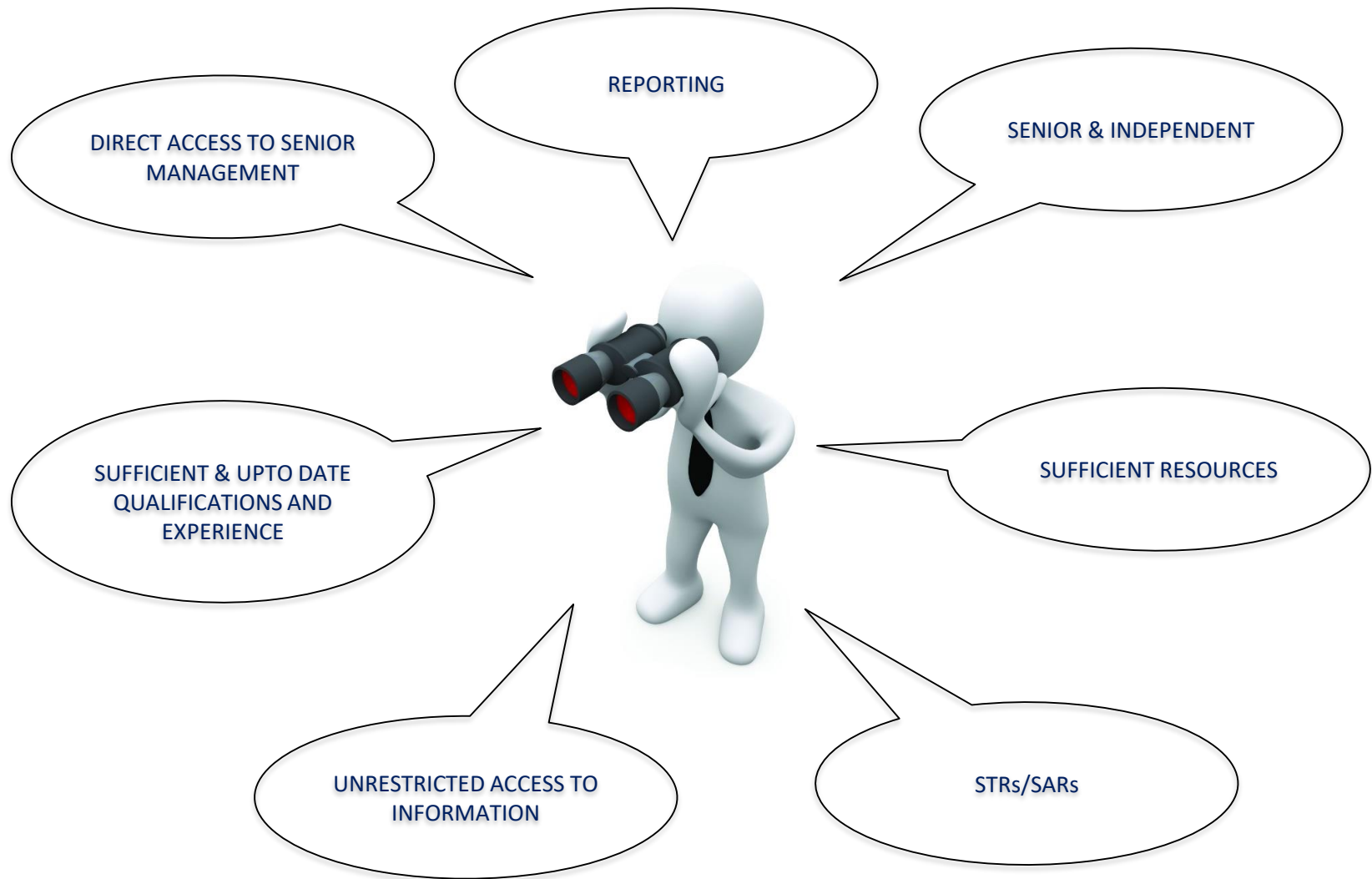
- Abu Dhabi Law No. 4 of 2013
- Financial Services and Market Regulations (FSMR) 2015
- FSRA AML Rulebook – Proposed Amendments
  - AML Rulebook is currently under review to be in full compliance with recent changes in Federal Law and Resolutions, FATF Recommendations and new methodology.

# FSRA AML Rules – Application



Relevant Person	Applicable Chapters			
Authorised Person and Recognised Body	1 - 15			
Representative Office	1 - 6	11 - 15		
Real estate developer or agency	1 - 9	11 - 15		
Law firm, notary firm, or other independent legal business	1 - 9	11 - 15		
Accounting firm, audit firm or insolvency firm	1 - 9	11 - 15		
Company service provider	1 - 9	11 - 15		
Dealer in precious metals or precious stones	1 - 9	13	14*	15
Dealer in high-value goods	1 - 9	13	14*	15

# Money Laundering Reporting Officer



# UAE upcoming FATF assessment

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# UAE Mutual Evaluation Assessment



- Run by Financial Action Task Force “FATF”
- National and international commitment
- Measures countries’ compliance with AML/CTF practices (FATF 40 Recommendations + 11 Immediate Outcomes)
- Promote country’s reputation and support economic growth on the long run
- Lead to: Regular Follow-up, Enhanced Follow-up, or ICRG/High Risk Countries.



## FATF Recommendations

Assessing risks & applying a risk-based approach	National cooperation and coordination	Money laundering offence	Confiscation and provisional measures
Terrorist financing offence	Targeted financial sanctions related to terrorism & terrorist financing	Targeted financial sanctions related to proliferation	Non-profit organisations
Financial institution secrecy laws	Customer due diligence	Record keeping	Politically exposed persons
Correspondent banking	Money or value transfer services	New technologies	Wire transfers
Reliance on third parties	Internal controls and foreign branches and subsidiaries	Higher-risk countries	Reporting of suspicious transactions
Tipping-off and confidentiality	DNFBPs: Customer due diligence	DNFBPs: Other measures	Transparency and beneficial ownership of legal persons
Transparency and beneficial ownership of legal arrangements	Regulation and supervision of financial institutions	Powers of supervisors	Regulation and supervision of DNFBPs
Financial intelligence units	Responsibilities of law enforcement and investigative authorities	Powers of law enforcement and investigative authorities	Cash couriers
Statistics	Guidance and feedback	Sanctions	International instruments
Mutual legal assistance	Mutual legal assistance: freezing and confiscation	Extradition	Other forms of international cooperation



# Immediate outcomes



## 1 | Risk, Policy and Coordination

Money laundering and terrorist financing risks are understood and, where appropriate, actions coordinated domestically to combat money laundering and the financing of terrorism and proliferation.

## 2 | International cooperation

International cooperation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets.

## 3 | Supervision

Supervisors appropriately supervise, monitor and regulate financial institutions and DNFBPs for compliance with AML/CFT requirements commensurate with their risks

## 4 | Preventive measures

Financial institutions and DNFBPs adequately apply AML/CFT preventive measures commensurate with their risks, and report suspicious transactions.

## 5 | Legal persons and arrangements

Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments

## 6 | Financial intelligence

Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations.

## 7 | Money laundering investigation & prosecution

Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions.

## 8 | Confiscation

Proceeds and instrumentalities of crime are confiscated.

## 9 | Terrorist financing investigation & prosecution

Terrorist financing offences and activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate and dissuasive sanctions.

## 10 | Terrorist financing preventive measures & financial sanctions

Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector.

## 11 | Proliferation financial sanctions

Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant UNSCRs.

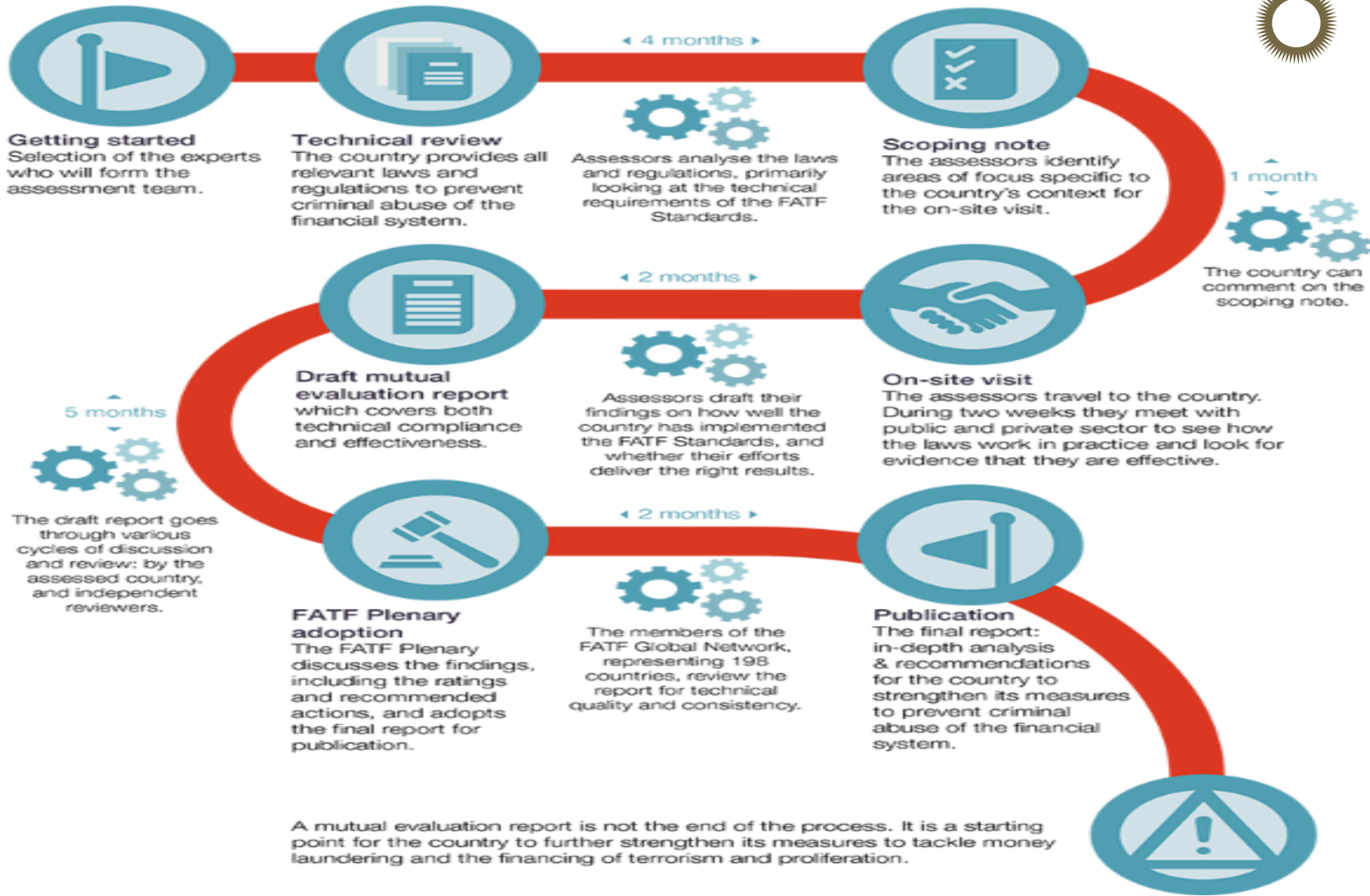


# UAE Mutual Evaluation Assessment - cont.



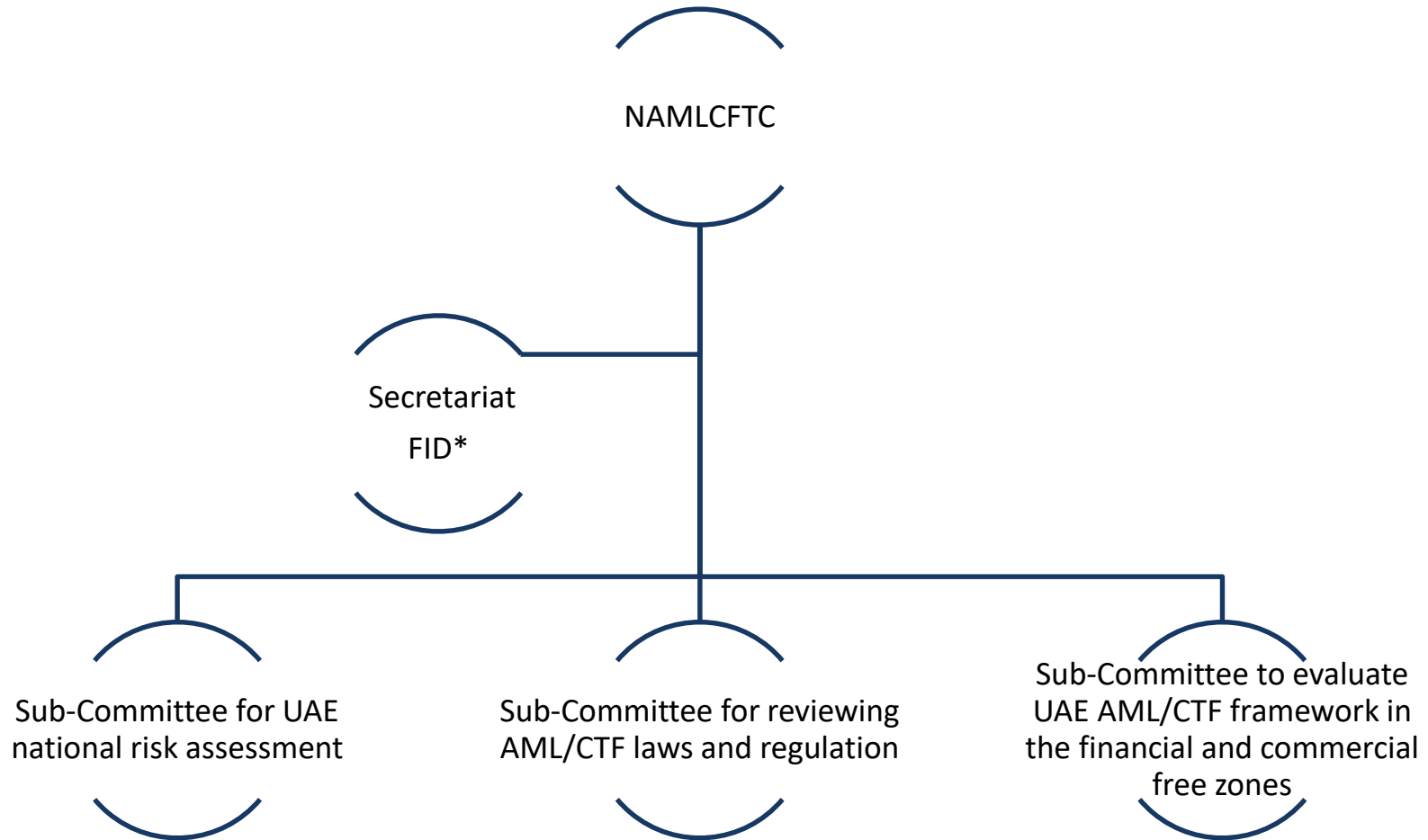
- Key recommendations (Technical):
  - R3 (ML offence), R5 (TF offence), R10 (CDD), R11 (Record keeping), R20 (Reporting of suspicious transactions).
- Immediate Outcomes (Effectiveness):
  - 11 IOs that measures the effectiveness of AML/CTF
- Thresholds:
  - Technical: 8 or more NC/PC on any Recommendations; or NC/PC on any one or more of 5 key recommendations
  - Effectiveness: low or moderate level of effectiveness for 7 or more immediate outcomes; or low level of effectiveness for 4 or more immediate outcomes.
  - **High Risk: 20 or more NC/PC, or NC/PC on 3 or more of key recommendations, or low or moderate level of effectiveness for 9 or more immediate outcomes, or low level of effectiveness for 6 or more immediate outcomes.**

# The Mutual Evaluation Process



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# National Anti-Money Laundering and Combating Financing of Terrorism Committee



# UAE National Risk Assessment



- Prepare the country for the mutual evaluation
- One of the key considerations for the assessors, and – usually – lead to better results
- Engage all relevant authorities and shape the country's AML/CTF policy
- Prepared by NRA / Support by International Experts
- Examples (hypothetical):
  - Threats: Drug Trafficking (VH, H), Professional ML (VH, H), Theft and Robbery (H), Extortion (H, M), Murder (M, L)
  - Vulnerabilities: Banking (VH), DNFBPs (VH, H), Financial Advisors (H, M)

# Role of private sector, expectations from FIs & DNFBPs

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# Role of Private Sector: Financial Institutions and Designated non-Financial Businesses and Professions



How they can help in the ME process, both Technical (e.g. CDD, STRs) and Effectiveness (e.g. Preventive measures)



Self-assessment of your own AML/CFT systems, processes and procedures.



Recommend each firm pays particular attention to their CDD procedures (FATF Recommendation no.10) and Suspicious Activity Reporting (FATF Recommendation no.20)



## UAE Cabinet of Ministers' Resolutions

### No. 18 of 2017

- Letter sent by e-mail on 13/6/2017 to 18 FI's and 50 DNFBP's identifying 52 individuals and 12 entities.
- Letter sent by e-mail on 27/7/2017 to 18 FI's and 50 DNFBP's identifying 9 individuals and 9 entities

### No. 45 of 2017

- Letter sent by e-mail on 31/10/2017 to 24 FI's and 55 DNFBP's identifying 11 individuals and 2 entities

### No. 53 of 2017

- Letter sent by e-mail on 15/1/2018 to 33 FI's and 61 DNFBP's identifying 11 individuals and 2 entities

“Search and report” request sent by e-mail on 9/11/2017 to 24 FI's regarding 19 Saudi individuals.

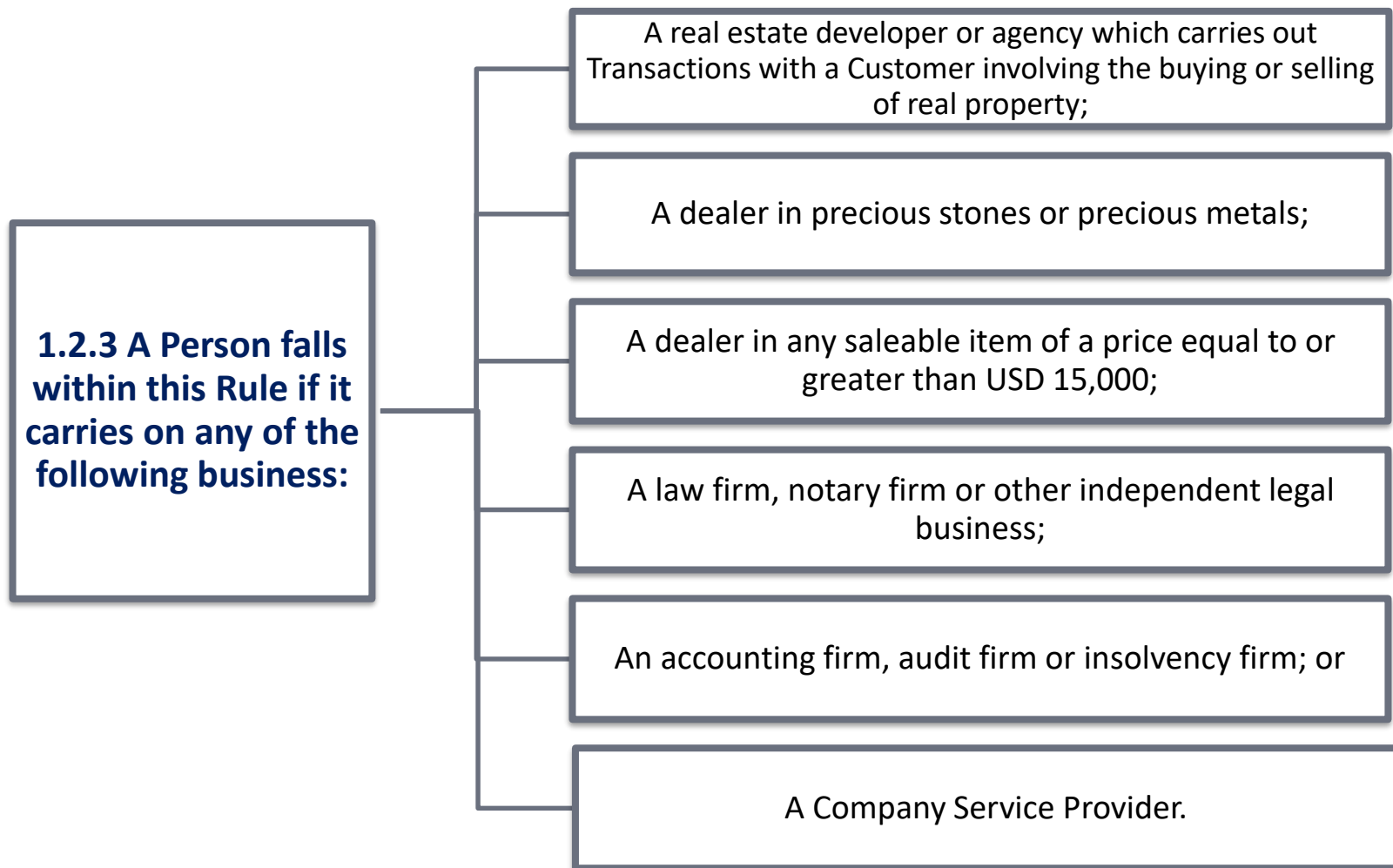
# FSRA's AML and Sanctions Rules and Guidance



## Our Notices now include the following instructions:

- Articles 1.1 and 14 of the FSRA's Anti-Money Laundering and Sanctions Rules and Guidance (AML) are applicable to all recipients of this notification and failure to comply with these instructions will expose you to legal accountability under the laws of the United Arab Emirates.
- Therefore, all financial institutions are required to immediately comply with Actions 1, 2, 3 and 4 above and provide your confirmation on the implementation of these instructions, including any NIL findings.
- Any Person who specifically falls within Rule 1.2.3 of the FSRA's Anti-Money Laundering and Sanctions Rules and Guidance (AML) are required to report on any dealings, relationships or transactions, your firm may have had with those names appearing on the list to the Financial Crime Prevention Unit (FCPU). In addition, you are required to provide your confirmation on the implementation of these instructions, including any NIL findings.

# FSRA's AML and Sanctions Rules and Guidance



# Highlights on international tax obligations: FATCA and CRS reporting

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## What is FATCA?

- In 2010, the United States government enacted the Foreign Account Tax Compliance Act (FATCA). The purpose of the act was to increase income tax reporting by US taxpayers on assets held in offshore accounts and through non-US entities.
- FATCA is used to locate U.S. citizens (usually non-U.S. residents) and U.S. persons for tax purposes and to collect and store information such as social security numbers, tax identifier numbers (TIN), and other personal data.
- FATCA imposes obligations on non-U.S. (foreign) financial institutions (FFI's) to seek, identify and report accountholders who are considered to be a “US Person”.
- Under FATCA, FFI's are required to register with the Internal Revenue Service (IRS) to obtain a Global Intermediary Identification Number for reporting purposes.



## Definition of a US person by FATCA?

FATCA defines a U.S. Person as an individual who may exhibit any of the following indicia:

- A U.S. place of birth
- Identification of the Account Holder as a U.S. citizen or resident
- A current U.S. residence or mailing address (including a U.S. PO box)
- A current U.S. telephone number
- Standing instructions to pay amounts from a non U.S. account to an account maintained in the United States
- A current power of attorney or signatory authority granted to a person with a U.S. address
- A U.S. "in-care-of" or "hold mail" address that is the sole address with respect to the account holder



## What has happened in the UAE?

- The UAE's Ministry of Finance (MOF) signed an Inter-Governmental Agreement Model 1B (IGA 1B) on 17th June 2015. A Model 1B is a variation of Model 1 and is not reciprocal (this was previously agreed in substance on 21/5/2014).
- MOF issued FATCA Guidelines in July 2015. Financial institutions then had to conduct detailed due-diligence on all their customers to determine if any possessed characteristics of a U.S. Person.
- Financial institutions requested their customers to complete "self-certification" forms.
- FATCA dictated a de-minimus threshold for individuals as US\$ 50,000 and for corporates as US\$250,000.
- All accounts of an individual within the same financial institution are aggregated.
- UAE financial Institutions commenced reporting US Persons to their respective regulators in 2015 for balances as of 31st December 2014.
- The regulators then reported the data to the MOF who in turn transferred the information to the IRS.





## What action has the ADGM taken?

- Signed Memorandum of Understanding with Ministry of Finance (MOF) on 10th July 2016.
- Posted the MOF FATCA Guidelines on the website.
- Requested authorised firms to obtain GIIN numbers for reporting purposes.



# Common Reporting Standards

<b>AEoI</b>	The Common Reporting Standard (CRS), formally referred to as the Standard for Automatic Exchange of Financial Account Information, is an information standard for the automatic exchange of information (AEoI), developed in the context of the Organisation for Economic Co-operation and Development (OECD). The legal basis for exchange of data is the Convention on Mutual Administrative Assistance in Tax Matters and the idea is based on the USA Foreign Account Tax Compliance Act (FATCA) implementation agreements.
<b>MAC &amp; MCAA</b>	The UAE Cabinet approved the Mutual Administrative Assistance in Tax Matters (MAC) and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA). The MCAA was signed on 22nd February 2017 and the MAC on 21st April 2017.
<b>MoU</b>	ADGM signed a Memorandum of Understanding with MOF on 10th July 2016.



# Information to be exchanged

AEoI does not report based on citizenship but rather tax residency. There is not a de-minimus reporting threshold.

FI's will demand that each accountholder complete a self-certification declaring their tax residency and their taxpayer identification number (TIN) for each country of tax residence.

The UAE has adopted a cut-off date of 31st December each year.

FI's were required to commence due-diligence on new accounts from 1st January 2017.

Based on the content of the response and the due-diligence conducted by the FI the account information may be reported to the regulator for the purpose of reporting.

The UAE has committed to commence exchanging information in September 2018.



## UAE Tax Residency Definitions:

“Resident Person” in the UAE means:

A. An Individual:

a) Any UAE National

b) An individual who is a resident in the UAE with:

i) a valid Emirates ID and

ii) a valid Residency Visa

B. An Entity: An entity which is incorporated, registered, managed and controlled within the territory of the UAE.



# Base Erosion Profit Shifting (BEPS)

Action 1: Addressing the Tax Challenges of the Digital Economy

Action 2: Neutralising the Effects of Hybrid Mismatch Arrangements

Action 3: Designing Effective Controlled Foreign Company Rules

Action 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

**Action 5: Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance**

**Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances**

Action 7: Preventing the Artificial Avoidance of Permanent Establishment Status

Actions 8-10: Aligning Transfer Pricing Outcomes with Value Creation

Action 11: Measuring and Monitoring BEPS

Action 12: Mandatory Disclosure Rules

**Action 13: Guidance on Transfer Pricing Documentation and Country-by-Country Reporting**

**Action 14: Making Dispute Resolution Mechanisms More Effective**

Action 15: Developing a Multilateral Instrument to Modify Bilateral Tax Treaties



## The European Union

- 5th December 2017 the EU Code of Conduct Group (CDG) created the blacklist, greylist and whitelist. The mandate of the body was to “name and shame” those countries that they determined were “non cooperative tax jurisdictions” .
- EU Black list- CDG identified 17 jurisdictions that included the United Arab Emirates
- EU Grey list – CDG designated 47 jurisdictions that they considered to be tax havens that had promised to take their fiscal rules into line with EU expectations.
- On 23rd January 2018, the UAE together with 7 other jurisdictions were removed from the Blacklist and added to the Grey list.



## Closing Remarks – Key messages



- FCPU advocates and supports working in collaboration and partnerships to uphold the integrity of the market
- It is the responsibility of authorised person to abide and practice the federal requirements and FSMR AML expectations
- FSRA will closely monitor the compliance of authorised person to the AML requirements and practice
- The FCPU team is reachable at [fcup@adgm.com](mailto:fcup@adgm.com)

**Thank You**

