

Anti-money laundering and combatting the financing of terrorism (AML/CFT)

Internal Manual: AML/CFT Enforcement Policy for:

- Real Estate Agents & Letting Agents; and
- High Value Goods Dealers



This document is intended for internal use by OFT officers.

This manual is published.

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1. Purpose of this Policy

This manual sets out the OFT's policy in respect of enforcement for non-compliance with AML/CFT obligations by:

1. Real Estate Agents and/or Letting Agents (**REAs**); and/or
2. High Value Good Dealers (to include a potential High Value Dealers and High Risk Dealers) (**HVGDs**),

each a "**Regulated Entity**" and together the "**Regulated Entities**".

This policy has been established as a means of setting up a consistent approach to addressing non-compliance by REAs and HVGDs with their AML/CFT obligations as set out in the Proceeds of Crime Act 2015 (**POCA**) and the OFT's AML/CFT Guidance for REAs and HVGDs. The policy also aims to ensure that the OFT's enforcement actions are commensurate and proportionate to the gravity of the non-compliance identified.

Under the powers afforded to the OFT by POCA and the Supervisory Bodies (Powers etc.) Regulations 2017 (the "**Regulations**") the OFT may impose disciplinary measures, penalties and financial fines to non-compliant businesses. Enforcement in the context of this policy shall not however be limited exclusively to the imposition of sanctions and penalties, but shall also include mechanisms whereby the OFT can support REAs and HVGDs to reach compliance.

This enforcement policy sets out the OFT's approach towards enforcement and penalties within the following three enforcement phases:

1. Consultation;
2. Enforcement and sanctioning; and
3. Dissemination of action taken.

While the OFT will seek to follow the general principles set out in this policy wherever possible it may depart from the same where it is reasonable, in the OFT's discretion, to do so taking into account the circumstances surrounding any particular matter.

2. Phase 1 - Consultation

The OFT's Supervisory powers are set out in Part 3 of the Regulations.

Upon the identification of non-compliance or non-adherence of AML/CFT requirements, the Regulated entity is to be contacted as a means of commencing a consultation process. Contact may be made with the Regulated entity through a meeting (onsite or otherwise) or in writing via e-mail or mail.

The purpose of early consultation with the non-compliant entity is to attempt to resolve the transgression without the need for further enforcement or sanctions, while at the same time guiding and assisting the Regulated entity to encourage compliance with the breach being investigated.

A consultation phase will usually be appropriate when non-compliance is minimal and due to the Regulated entity being unaware or not fully understanding their AML/CFT responsibilities.

The consultation process may include the OFT issuing an Action Plan to the Regulated Entity setting out milestones by when the OFT expects the Regulated Entity to rectify or improve any identified shortcomings leading to non-compliance. Action Plans are regarded as a mechanism to support Regulated Entities to meet their AML/CFT obligations.

During the consultation process the OFT shall inform the Regulated Entity that if the OFT takes action against the Regulated Entity for non-compliance or non-adherence of AML/CFT requirements and takes action under regulations 18 to 21 of the Regulations that the OFT must, in accordance with regulation 31, publish a statement specifying:

1. the identity of the Regulated Entity;
2. the type and nature of the Regulated Entity's default or breach; and
3. the action taken by the OFT

Should the Regulated entity adopt changes within their methods of work in order to correct the transgression effectively, the OFT's enforcement action may cease at phase 1 if the OFT considers there is no further concern of non-compliance.

A consultation phase would not however be appropriate where:

1. the risk of money laundering and/or terrorist financing is moderate to high;
2. the transgression has been identified previously and the OFT has already carried out consultation with the business with regard to that or a similar transgression;
3. the nature of non-compliance is significant; and/or
4. the OFT, in its discretion, has reasonable justification for setting aside the consultation process.

Where the consultation phase would not be appropriate the OFT may dispense with the need for consultation and proceed directly to phase 2. Where it does so however it should consider reporting the information to GFIU, or another enforcement body, as set out in phase 4 before proceeding.

3. Phase 2 – Enforcement and Sanctioning

The OFT's enforcement and sanctioning powers are set out in Part 4 of the Regulations. Pursuant to the Regulations the OFT may impose the following disciplinary measures:

1. financial penalties up to EUR 1 million;
2. the suspension or revocation of their business licence;
3. temporary bans for persons in managerial positions; and/or
4. a direction to the business to take/ refrain from taking action

When considering taking enforcement action or the imposition of sanctions the AML/CFT team must consider the nature and severity of the transgression in question

in order to ensure the proposed penalty is proportionate and commensurate to the breach detected. The circumstances listed in regulation 24 shall be taken into consideration in determining this. The AML/CFT team will also consider how the proposed action may be taken in practice and whether, considering the procedural requirements of the Regulations (e.g. the need to give warning letters in regulation 26), this will be appropriate.

Where the OFT has instructed legal advisors it may also seek advice in this regard. Following its assessment, the AML/CFT team will assert which type of penalty under the Regulations is commensurate to the offence.

The guidance criteria provided below is meant as guidance for the OFT's AML/CFT team only. The OFT is not bound by these criteria and may impose different sanctions where it is appropriate taking into account all factors of a particular matter.

3.1 Financial Penalties

With a view to achieving consistency and regularity when imposing financial fines, the OFT will assess transgression against pre-defined guidance criteria covering:

1. administrative non-compliance - for breaches relating to the OFT's regulatory requirements as a supervisory body (paragraph 3.1.1); and
2. POCA non-compliance – for breaches of specific AML/CFT obligations set out in POCA. This is divided into 3 levels, level 1 being for the less serious breaches and level 3 being reserved for the most serious ones (paragraphs 3.1.2 to 3.1.4).

3.1.1 Administrative non-compliance

Financial Penalty imposed could be between £1,000.00 - £10,000.00 and is appropriate where:

1. the breach is administrative in nature (e.g. non-submission of survey, MLRO form or any other AML/CFT documents);
2. the breach relates to a failure to produce information requested by the OFT generally while carrying out its supervisory functions as a supervisory body (this excludes information requested during the course of an investigation); and/or
3. the AML/CFT team have determined that the transgression is minor and does not require a Level 1 penalty (see below).

This is not an exhaustive list.

3.1.2 Level 1

Financial Penalty imposed could be anything within 0-30% of the maximum penalty applicable under the Regulations (EUR1 – EUR 300,000) and is appropriate where:

1. the contravention was not carried out deliberately;
2. there is no risk of money laundering and/or terrorist financing;
3. the value of loss or profit as a result of the transgression is low or non-existent;

4. there was a self-declaration of non-compliance;
5. the business has been cooperative and has a good history of compliance; and/or
6. there is no risk of money laundering or terrorist financing.

This is not an exhaustive list.

3.1.3 Level 2

Financial Penalty imposed could be anything within 0-60% of the maximum penalty applicable under the Regulations 2017 (EUR1 – EUR 600,000) and is appropriate where:

1. the business has been uncooperative and unhelpful;
2. there is a moderate risk of money laundering and/or terrorist financing;
3. the transgression has taken place over a long period of time and the breaches are significant;
4. the transgression was not a self-declaration of non-compliance;
5. the value of loss or profit as a result of the transgression is moderate/significant; and/or
6. the business was aware of the contravention and it was never reported or only partly reported.

This is not an exhaustive list.

3.1.4 Level 3

Financial Penalty imposed could be anything within 0-100% of the maximum penalty applicable under the Regulations 2017 (EUR1 – EUR 1,000,000) and is appropriate where:

1. the business was intentionally uncooperative and obstructive during investigations;
2. the risk of money laundering and/or terrorist financing is high;
3. the value of loss or profit as a result of the transgression is significant/high;
4. the transgression was discovered by the OFT upon investigation and close monitoring/regulation;
5. the business has a long record of non-compliance and transgressions with the OFT/other supervisory authorities; and/or
6. the transgression poses a serious risk to Gibraltar's reputation.

This is not an exhaustive list.

3.2 Other Sanctions

3.2.1 Suspension or revocation of business licences

The OFT has the power under regulation 19 to suspend, withdraw or revoke the Regulated entity's business licence, should they deem this appropriate after assessing the transgression.

This sanction is serious as it has the effect of preventing the business from operating. It is therefore only appropriate for the more serious AML/CFT infractions, including, but not limited to, situations where:

1. ML/TF has actually been detected through the business;
2. ML/TF issues are endemic in all aspects of the business or in the business's entire structure;
3. The business has had serious AML/CFT breaches multiple times;
4. The business has failed to implement appropriate AML/CFT policies despite this having been raised with the business previously;
5. the business has been set up as part of a ML/TF scheme; and/or
6. allowing the business to continue to operate will result in ML/TF taking place.

This is not an exhaustive list.

Revocations shall result in the business's licence being removed permanently after which the business will not be allowed to operate until it reapplies and obtains a business licence.

Suspensions shall result in the business's licence being removed temporarily. In accordance with regulation 19, the period of suspension of the licence must not exceed 18 months. Once the suspension period lapses the licence will once again be activated.

3.2.2 Temporary bans for persons in managerial positions

The OFT has the power under regulation 20 to temporarily ban relevant individuals from managerial posts. In accordance with subregulation (2) the temporary ban may have effect for a maximum of 18 months.

This sanction shall be appropriate where a specific individual is the cause of the AML/CFT infractions. It is appropriate where the individual being banned:

1. is considered responsible for facilitating ML/TF;
2. is considered largely responsible for the business's AML/CFT contraventions;
3. has been uncooperative and unhelpful with investigations; and/or
4. does not have the capacity to introduce the required AML/CFT policies.

This is not an exhaustive list.

3.2.3 Direction to the business to take/ refrain from taking action

The OFT has the power under regulation 21 to instruct non-complaint Regulated entities to take or refrain from taking specified steps to cease a transgression or comply

with AML/CFT requirements. A direction/notice should be served in writing to the relevant entity.

This sanction shall be appropriate where a specific ML/TF issue is identified or where a specific AML/CFT obligations has not been met, particularly after these have been raised with the business following our consultation phase (Phase 1) and the AML/CFT team have deemed it necessary to issue a formal direction to the Regulated entity.

4. Phase 3 – Dissemination

The dissemination of information by the OFT should only be carried having first had due regard to issues of confidentiality and only in accordance with its data protection obligations.

Where the OFT discovers facts that could be related to money laundering or to terrorist financing, it shall promptly inform the GFIU in accordance with the duties set out in Section 30A of the Proceeds of Crime Act.

The OFT may then, where appropriate, decide to report the information to other law enforcement authorities and consider with these whether the transgressions or suspicions should be referred to the prosecuting authorities for criminal prosecution.

In accordance with regulation 31 of the Regulations where the OFT has taken action under regulations 18 to 21, it must publish on its website (and anywhere else it may deem appropriate) a statement specifying-

1. the identity of the Regulated Entity;
2. the type and nature of the Regulated Entity's default or breach; and
3. the action taken by the OFT

Before doing so however the OFT shall conduct a case by case assessment of the proportionality of the publication taking into account all the factors in regulation 31 (3) to (4A).

The objective of this enforcement policy will at all times be to ensure an effective supervisory and enforcement system, which encompasses both commensurate penalties and remedial actions which promote and encourage compliance. As a result of our commitment to deliver the highest possible level of regulation and enforcement, this enforcement policy will be reviewed and updated regularly, and is therefore subject to change.