SECURITIES AND EXCHANGE COMMISSION, GHANA

AND

FINANCIAL INTELLIGENCE CENTRE

**ADMINISTRATIVE SANCTIONS / PENALTIES**

FOR

ANTI-MONEY LAUNDERING / COMBATTING THE FINANCING OF TERRORISM & COMBATING THE FINANCING OF THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION (AML/CFT& CPF)

FOR

CAPITAL MARKET OPERATORS IN GHANA

Contents

Introduction

[**LEGAL PROVISIONS (Specific Section)** 2](#_Toc503860958)

[**APPLICABILITY** 3](#_Toc503860959)

[**EFFECTIVE DATE** 3](#_Toc503860960)

[COMPLIANCE DATE 3](file:///C:\Users\esappiah\Downloads\SANCTIONS%2011TH%20JAN,%202018%20(1).docx#_Toc503860961)

[**RELATIONSHIP WITH EXISTING POLICIES** 4](#_Toc503860962)

[**DEFINITIONS** 4](#_Toc503860963)

[**INTRODUCTION** 5](#_Toc503860964)

[**OBJECTIVE** 6](#_Toc503860965)

[**PENALTIES/SANCTIONS** 7](#_Toc503860966)

[IONS (FINANCIAL PENALTIES): 23](#_Toc503860967)

[APPENDIX B: 25](#_Toc503860968)

[APPENDIX C: 26](#_Toc503860969)

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| **LEGAL PROVISIONS (Specific Section)** |

This document is issued pursuant to:

a) Sections 39 (5) & (6) of the Anti-Money Laundering Act, 2008 (Act 749) as amended. **Section 39 (5) provides that “*A person subject to an obligation under this Act who intentionally or by gross negligence fails to comply with the obligation, commits an administrative violation and is subject to administrative sanctions by the competent supervisory body*.”**

**Section 39 (6) provides that “*Where applicable, administrative proceedings may be carried out in parallel to criminal proceedings under subsections (1) to (3).”***

b) Section 138 of the Securities Industry Act, 2016 (Act 929)

**Section 138 provides that “A broker-dealer, a fund manager and any other licensed person shall ensure that it operates in a manner that will ensure compliance with the provisions of the Anti-Money Laundering Act, 2008 (Act 749) as amended, the Anti-Terrorism Act, 2008 (Act 762) and the regulations made under these enactments”.**

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| **APPLICABILITY** |

This document shall apply for contraventions of provisions in the Act 749 as amended and any other directives issued by Securities and Exchange Commission, Ghana and Financial Intelligence Centre.

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| **EFFECTIVE DATE** |

This document comes into effect on 28/02/2018

# COMPLIANCE DATE

Compliance to the requirements outlined in this document shall take effect immediately, unless otherwise specified by Securities and Exchange Commission, Ghana.

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| **RELATIONSHIP WITH EXISTING POLICIES** |

This document shall be read together with other documents issued by the Securities and Exchange Commission, Ghana and the Financial Intelligence Centre relating to compliance with AML/CFT requirements.

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| **DEFINITIONS** |

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| AIs | ACCOUNTABLE INSTITUTIONS |
| AML | ANTI-MONEY LAUNDERING |
| AML/CFT &PF | Anti-Money Laundering, Countering the Financing of Terrorism and Combating the Financing of the Proliferation of weapons of mass destruction (AML) |
| AMLRO | ANTI-MONEY LAUNDERING REPORTING OFFICER |
| CFT | COMBATTING FINANCING OF TERRORISM |
| CMO | CAPITAL MARKET OPERATOR |
| FIC | FINANCIAL INTELLIGENCE CENTRE |
| ML | MONEY LAUNDERING |
| SEC | SECURITIES AND EXCHANGE COMMISSION |
| TF | TERRORISM FINANCING |
| PF | Proliferation of Weapons of Mass Destruction. |

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| **INTRODUCTION** |

1. Money Laundering and terrorism financing (ML/TF) are ongoing threats which have the potential to adversely affect Ghana’s reputation and financial sector.

Ghana in recent years has taken tremendous strides to combat ML/TF through the passage of numerous laws and directives. Securities and Exchange Commission, Ghana and Financial Intelligence Centre, the two competent authorities do ensure reporting institutions are in compliance with AML/CFT requirements.

As part of its supervisory role in enforcing AML/CFT requirements, SEC and FIC introduce these penalties and sanctions in the foregoing paragraphs.

1. Reporting institutions must conduct their businesses with high ethical standards and avoid undertaking business relationships that may facilitate ML/TF.

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| **OBJECTIVE** |

This document is formulated to give guidance on compliance to Capital Market Operators on AML/CFT & PF. It has been prepared in accordance with the provisions of the:

1. Securities Industry Act, 2016 (Act 929)
2. Anti-Money Laundering Act, 2008 (Act 749) as amended by Anti-Money Laundering (Amendment) Act, 2014 (Act 874) and
3. SEC/FIC’s Anti-Money Laundering/Combating the Financing of Terrorism Compliance Manual for Capital Market Operators (AML/CFT Compliance Manual) and
4. The FATF Revised Recommendations.

In addition, it provides a guideline to the sanctions that may be imposed on a capital market operator being regulated by the Securities and Exchange Commission (SEC) for contraventions of Anti-Money Laundering Legislation and other relevant regulations and directives/guideline issued by SEC or the FIC.

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| **PENALTIES/SANCTIONS** |

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| S/NO. | SECTION | OFFENCE | SUGGESTED ADMINISTRATIVE PENALTY |
|  | **Section 41(b) of Act 749 as amended by Section 20 (1)(b)and (2) of AML Amendment Act**  **Part A 3(i) of SEC/FIC AML/CFT Guidelines** | **Non designation of a compliance officer (AMLRO) at management level;** | * **A minimum of 1000 penalty units** |
|  | **Section 19(2) of AML amendment Act 874**  **Part A 2ii(9) of SEC/FIC AML/CFT Guidelines** | **Failure to develop and implement internal risk assessment programme;** | * **A minimum of 500 penalty units** |
|  | **Section 41 of Act 749 as amended by Section 20 (1)(b)and (2) of AML Amendment Act**  **Section 18(1)(c-d) of AML amendment Act 874** | **Failure to provide the Commission access to information;**  **CMOs are to allow competent authorities, either domestically orinternationally access to information to perform their AML/CFT functions.** | * **A minimum of 500 penalty units** |
|  | **Section 23 of Act 749 as amended by Section6(1)(2)(3)(4) of AML Amendment Act, Act 874**  **Part B(1-2) of SEC/FIC AML/CFT Guidelines** | **Failure to perform Customer Due Diligence(CDD) by CMOs including**  **identification and verification of** **existing** **customers, occasional customers and the ultimate beneficiary of corporate entities** **during** **on-boarding** **of new customers;** | * **A minimum of 500 penalty units** |
|  | **Section 23 of Act 749 as amended by Section (5) of AML Amendment Act, Act 874**  **Regulation 16 of AML Regulations.**  **Part B 2.6(i) of SEC/FIC AML/CFT Guidelines** | **Failure of CMOs to perform enhanced due diligence (EDD)** **on any of their Higher Risk Customers;**  **CMOs shall perform enhanced due diligence on all high risk rated customers, business** **relationships and transactions based on the institutions Internal Risk Assessment Framework.** | * **A minimum of 500** **penalty units** |
|  | **Section 6(14) of AML Amendment Act, Act 874**  **Part B 2.7 (b) 0f SEC/ FIC AML/CFT Guidelines** | **Failure to perform CDD on Cross- Border Securities Trading.**  **CMOs shall perform CDD requirements on all cross border securities trading relationships.** | * **A minimum of 1,000** **penalty units** |
|  | **Section 23(16) of AML Act, 749 as amended**  **Part C (i) of SEC/FIC AML/CFT Guidelines** | **Failure to implement appropriate policies and internal risk assessment for new technologies and non-face to face products and distribution channels;**  **CMOs shall have in place policies and internal risk assessment framework with appropriate mitigating measures to prevent the misuse of such technological developments in ML/TF.** |  |
|  | **Part B 2.5(iv) of SEC/FIC AML/CFT Guidelines** | **Failure to conduct simplified CDD;**  **CMOs shall adopt CDD procedures on a risk sensitive basis, simplified CDD procedures shall apply to lower risk customers, transactions and products.** | * **A minimum of 500 penalty units** |
|  | **Section 6 (16) and Section 19 (2)(d) of AML Amendment Act, Act 874**  **Part C (2) of SEC/FIC AML/CFT Guidelines** | **Failure of CMOs to maintain records of transactions;**  **CMOs shall maintain records of transactions for seven (7) years.** | * **A minimum of 4,000** **penalty units** |
|  | **Section 24 to 32 of the Securities Industry Act 2016 (Act 929) and Section 24 of 749 as amended by Section (8) of AML Amendment Act, Act 874**  **Part B 2.11 of SEC/FIC AML/CFT Guidelines** | **1. Failure to report Unusual and Complex Large / Suspicious Transactions to FIC;**  **CMOs shall review complex and unusually large transactions or unusual patterns and suspicious transactions and report to FIC within 24 hours after arriving at a decision.**  **2. Failure to document decisions and reasons for not filling STRs with FIC;** | * **A minimum of 3,000** **penalty units** |
|  | **Section 23 of Act 749 as amended by Section 6(6) of AML Amendment Act, Act 874**  **Section 11(1)(2) of AML Amendment Act, Act 874**  **Part A 2(i) of SEC/FIC AML/CFT Guidelines** | **Failure of CMOs to establish internal policies and procedures to prevent money laundering and financing of terrorism;** | * **A minimum of 1,000** **penalty units** |
| 1. 9 | **Section 40 of Act 749 as amended by Section 19(1)(2) of AML Amendment Act, Act 874** | **Doing Business with Shell Banks, prohibited customers and countries;**  **Prohibition of un-numbered or anonymous account, accounts in fictitious names, shell banks, prohibited customers and countries;** | * **3500 penalty units on the Managing Director** * **5000 penalty units on the CMO** |
|  | **Section 40(5-6) of AML, Act 749 as amended** | **Failure to ensure that foreign branches and subsidiaries of parent companies observe AML/CFT procedures consistent with the provisions of SEC/FIC AML/CFT Guidelines and apply local laws and regulations;** | * **A minimum of 500 penalty units** |
| 1. 1 | **Section 40 of Act 749 as amended by Section 19 (5)(6) of AML Amendment Act, Act 874** | **Failure of CMOs to file Cash Transaction Reports;**  **Financial Institution shall report to the FIC all cash transactions within Ghana in any currency above the stipulated threshold set by the FIC.** | * **A minimum of 6,000** **penalty units** |
|  | **Section 40 of Act 749 as amended by Sections 19(2)(c) and 20(1)(a) of AML Amendment Act, Act 874**  **Part C 7(b) of SEC/FIC AML/CFT Guidelines** | **Failure of CMOs to carry out Employee Education and Training Programme;**  **Failure to develop a regular training program and conduct training for its management/employee;**  **The board shall receive AML training annually.**  **This includes training and fora organized by SEC/FIC.** | * **A minimum of 500 penalty units** |
|  | **Section 23 of Act 749 as amended by Section 6(5) 6(6)(a)(b) of AML Amendment Act, Act 874**  **Part C 7(b)(iii)(b) of SEC/FIC AML/CFT Guidelines** | **Failure to implement and communicate AML/CFT compliance program to staff;**  **Every staff shall have a copy of the CMOs Compliance Program.** | * **A minimum of 3,000** **penalty units** |
| 1. 1 | **Part C 7(b)(iii)(a) of SEC/FIC AML/CFT Guidelines** | **Failure of CMOs to screen and monitor Employees before and after employment;**  **CMOs shall monitor employees for the purpose of money laundering AML/CFT performance review shall be made part of the employee’s annual appraisals.** | * **A minimum of 4,000** **penalty units** |
|  | **Part C(7) of SEC/FIC AML/CFT Guidelines** | **Failure to include policies in AML/CFT Compliance Programme to protect staff from victimization;** | * **A minimum of 1,000 penalty units** |
|  | **Section 40 of Act 749 as amended Section 19(2)(e) of AML Amendment Act, Act 874**  **Part D (i) of SEC/FIC AML/CFT Guidelines** | **Failure to assess areas of AML/CFT risks and policies to mitigate risks;**  **CMOs shall review the AML/CFT policies from time to time with the view of identifying new risks.** | **A minimum of 500 penalty units** |
|  | **Part D (1) (a) (b) and Part D (2)** | **Non documentation of Additional Procedures and Mitigants;**  **CMOs shall design additional procedures & mitigants as contingency plan in their AML/CFT operational guidelines.** | * **A minimum of 3,000** **penalty units.**      * **A minimum of 3,000** **penalty units** |
| 1. 1 | **Section 40 of Act 749 as amended by Section 19(1) of AML Amendment Act, Act 874**  **Part A 2(iii) of SEC/FIC AML/CFT Guidelines** | **Failure to conduct independent audit test of AML/CFT Compliance Program;**  **CMOs shall make it a policy commitment to subject its AML/CFT compliance program to independent testing or require its internal auditor to determine its efficiency.** | * **A minimum of 3,000 penalty units** |
| 1. 1 | **Section 24 of the Securities Industry Act (Act 929)**  **Part A 2(iv) of SEC/FIC AML/CFT Guidelines** | **Failure to obtain Board Approval of AML/CFT Compliance Programme;**  **Management shall ensure that all AML/CFT Programme is approved by the Board.** | * **A minimum of 3,000 penalty units** |
|  | **Part D (8) of SEC/FIC AML/CFT Guidelines** | **Failure to Submit required reports :**  **a. non-submission,**  **b. incomplete submission,**  **c. delayed submission,**  **d. inaccurate submission and other reports** | * **A minimum of 3,000** **penalty units** |
|  | **Section 30(3) of Act 749 as amended by 11of 874**  **Section 39 of Act 749 as amended by Section 18(1)(e)** | **Failure to comply with interventions of the FIC;** | * **4000 penalty units on the Managing Director** |
| 1. 2 | **Section 23(1) of Act 749 as amended by section 6(1) of Act 874** | **Conducting transaction in a manner as to avoid reporting;** | * **A minimum of 500** **penalty units** |
| 1. 2 | **Section 24 of Securities Industry Act, (Act 929)**  **Section 18 (1) (e) of AML Amendment Act 874** | **Disclosing information on reports to FIC to third parties;** | * **A minimum of 2,000** **penalty units** |
| 1. 2 | **Section 9 of Act 874**  **Part D (8) of SEC/FIC AML/CFT Guidelines** | **Failure to respond to the Commission’s requests for information on time;** | * **A minimum of 4,000** **penalty units** |
| 1. 2 | **Section 201 of the Securities Industry Act(Act 929)** | **Making false and/or misleading statements in filings to the Commission;** | * **A minimum of 2,000** **penalty units** |
| 1. 3 | **Section 20 of ACT 874** | **Failure of CMOs to implement Examiner or Auditor’s recommendations;** | * **A minimum of 200** **penalty units** |
| 1. 3 | **Part B 2.10(i-vi) of SEC/FIC AML/CFT Guidelines**  **Section 23 of Act 749 as amended by section 6(5) of Act 874**  **Reg. 8 (1) of Anti-Money Laundering Regulations** | **Failure to put in mechanisms to identify PEPs and other high risk clients;** | * **A minimum of 500** penalty units |
| 1. 3 |  | **Failure to attend designated AML/CFT Training Programme without tangible reason(s);** | **A minimum of 500 penalty units** |

# IONS (FINANCIAL PENALTIES):

Refer to sanctions/penalties document.

1. **ADMINSTRATIVE SANCTIONS**

Where the contravention of offences (as described in the sanctions/penalties document*)* persists after three penalties, the Securities and Exchange Commission, Ghana will exercise one or more of the prerogative actions listed below, in addition to the penalties.

1. Blacklisting of AMLRO from working in any financial institution for one (1) or more years depending on severity of the offence;
2. Direct penalties on the Managing Director (MD), Anti-Money Laundering Reporting Officer (AMLRO) or any officer who is identified as being responsible for the breaches;
3. Naming and shaming in the media to act as deterrent for future breaches of the AML/CFT regime in Ghana;
4. Refusal to develop new products and/or branches or other restriction of license;
5. Suspension of license; and
6. Revocation of license.
7. **SUPERVISORY RATINGS ON AML/CFT COMPLIANCE**

The Commission is setting up a rating system for Financial Institutions (FIs) who are assessed based on their violations of any of the sanctions. The ratings are categorized into four (4) sections, (Compliance, Largely compliance, partially compliance and non-compliance). This rating would be published yearly.

These are;

**COMPLIANT** - (These are CMOs who did not violate any of the sanctions within the year)

**LARGLEY COMPLIANT** – Those that did violate two (2) sanctions

**PARTIALLY COMPLIANT** – Violated between 2 and 5 sanctions

**NON COMPLIANT**– Violated more than 5 sanctions

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| APPENDIX B: |

**DEFINITIONS**

Please refer to AML Legislation as defined in the Manual for guidance.

**Sanctions**

The *Charter of the United Nations* does not expressly define ‘sanctions’, but Article 41 is generally understood as providing a definition. It refers to: “measures not involving the use of armed force”, including a “complete or partial interruption of economic relations”.

Sanctions impose restrictions on activities that relate to particular countries, goods and services, or persons and entities.

**Basis of sanctions**

The sanction regime is being implemented by the Securities and Exchange Commission, Ghana (SEC) and Financial Intelligence Centre(FIC) drawing from its powers as provided by Sections 39 (5) & (6) of the Anti-Money Laundering Act 2008 (Act 749) as amended by Anti-Money Laundering (Amendment) Act, 2014 (Act 874) and Section 138 of the Securities Industry Act, 2016 (Act 929).

In addition Part C, section 29 of the AML/CFT Compliance Manual gives room for sanctions to be imposed for non-compliance of AML/CFT laws.

**Types of sanctions regimes**

Ghana implements United Nations Security Council (UNSC) sanctions regimes and its own autonomous sanctions regimes.

Ghana is obliged to implement UNSC sanctions regimes as a matter of international law.

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| APPENDIX C: |

The following in the FIs would be equally responsible for any sanctions violated;

1. BOARD
2. SENIOR MANAGEMENT
3. AMLRO
4. STAFF