

SECURITIES AND EXCHANGE COMMISSION, GHANA,
AND FINANCIAL INTELLIGENCE CENTRE



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

ADMINISTRATIVE SANCTIONS / PENALTIES FOR MARKET OPERATORS IN GHANA

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OBJECTIVE

This document is formulated to give guidance on compliance to Market Operators (MOs) on AML/CFT/CPF. It has been prepared in accordance with the provisions of the:

- i. Securities Industry Act, 2016 (Act 929)
- ii. Anti-Money Laundering Act, 2020 (Act 1044)
- iii. SEC/FIC Anti-Money laundering/Combating the Financing of Terrorism Guidelines.

In addition, it provides Guidelines to the sanctions that may be imposed on an MO being regulated by the Securities and Exchange Commission for contraventions of AML/CFT/CPF Legislation.

LEGAL PROVISIONS

This document is issued pursuant to:

Sections 52 (4) (a) & 53 of the Anti-Money Laundering Act, 2020 (Act 1044) and Section 209 and Section 138 of the Securities Industry Act, 2016 (Act 929).

Section 52 (4) (a) of Act 1044 provides as follows:

“The supervisory body shall, further to an examination of an accountable institution:

“Impose an administrative sanction for non-compliance”.

Section 53 (1) of Act 1044 also provides as follows:

“The Centre or supervisory body impose an administrative penalty on an accountable institution or any other person to whom this Act applies, where the Centre or supervisory body is satisfied on available facts and information, that that accountable institution or person has failed to comply with a provision of this Act”.

APPLICABILITY

This document shall apply for contraventions of provisions in Act 1044 and any other directives issued by the Securities and Exchange Commission, Ghana and the Financial Intelligence Centre.

EFFECTIVE DATE

This document comes into effect on **01/01/2022**.

COMPLIANCE DATE

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

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/CPF requirements.

DEFINITIONS

AMLRO	ANTI-MONEY LAUNDERING REPORTING OFFICER
CFT	COMBATting FINANCING OF TERRORISM
MO	MARKET OPERATOR
FIC	FINANCIAL INTELLIGENCE CENTRE
ML	MONEY LAUNDERING
SEC	SECURITIES AND EXCHANGE COMMISSION
TF	TERRORISM FINANCING
AIs	ACCOUNTABLE INSTITUTIONS
AML	ANTI-MONEY LAUNDERING
AML/CFT/CPF	ANTI-MONEY LAUNDERING, COUNTERING THE FINANCING OF TERRORISM AND COMBATting THE FINANCING OF PROLIFERATION OF WEAPONS OF MASS DESTRUCTION (AML/CFT/CPF)

INTRODUCTION

1.1 Money Laundering and Terrorist Financing and Proliferation of Weapons of Mass Destruction (ML/TF /PF) are ongoing threats which have the potential to adversely affect Ghana's reputation and the financial sector.

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

As part of its supervisory role in enforcing AML/CFT/CPF requirements, SEC and FIC introduce these penalties and sanctions in the foregoing paragraphs. MOs must conduct their businesses with high ethical standards and avoid undertaking business relationships that may facilitate ML/TF/PF.

S/N.	SECTION	OFFENCE	ADMINISTRATIVE PENALTY
1.	<p>Section 50 (1) (b) of Act 1044</p> <p>Part A (1.5) (a) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Non designation of a compliance officer (AMLRO) at management level.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units.
2.	<p>Section 52 (5) (c) of Act 1044.</p> <p>Part A (1.2) (a) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to provide access to information to SEC, FIC and any other competent authority.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
3.	<p>Section 30 of Act 1044.</p> <p>Part A (1.6) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to perform Customer Due Diligence (CDD) by MOs including identification and verification of existing customers, occasional customers and the ultimate beneficiary of corporate entities during on-boarding of new customers.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
4.	<p>Section 49 (2) (a) (viii) of Act 1044.</p> <p>Part A (1.3) of SEC/FIC</p>	<p>Failure of MOs to implement Internal Risk Assessment Framework.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.

	AML/CFT/CPF Guidelines.		
5.	<p>Section 30 (4) & (5) (b) of AML Act 1044.</p> <p>Regulation 10 of Anti-Money Laundering Regulations, 2011, LI. 1987.</p> <p>Part A (1.8) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure of MOs to perform enhanced due diligence (EDD) on any of their High Risk Customers.</p>	<ul style="list-style-type: none"> A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.

6.	<p>Section 32 of Act 1044.</p> <p>Part A (1.19) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure of MOs to maintain records of transactions.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
7.	<p>Section 38 of Act 1044.</p> <p>Part A (1.1) (b) and 1.1(e) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to report Suspicious Transactions to FIC within 24 hours after arriving at a decision.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
8.	<p>Section 8 (b) & 30 (5) (b) of AML Act 1044.</p> <p>Part A (1.7) (j) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to put in mechanisms to screen for PEPs, high risk clients using UN Sanctioned Persons/Entities Lists and other official lists.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.

9.	<p>Section 49 (2) (a) (v) (vi) of Act 1044.</p> <p>Part A (1.1) (b) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to put in place policies, procedures and controls to monitor transactions, and report suspicious and other transactions.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
10.	<p>Section 49 of Act 1044.</p> <p>Part A (1.3) (c) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure of MOs to establish internal policies and procedures to prevent money laundering and financing of terrorism.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
11.	<p>Section 49 (i) of Act 1044.</p> <p>Part A (1.25) (a) (b) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure of the Board to ensure an effective implementation of the MO's AML/CFT&PF Compliance Programme.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
12.	<p>Section 40 & 43 of Act 1044.</p> <p>Part A (1.5) (iii) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure of MOs to file Cash and Electronic Transaction Reports.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.

13.	<p>Section 50 (1) (a) of Act 1044.</p> <p>Part A (1.16) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to develop a regular training program and conduct training for its Board/management.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
14.	<p>Section 49 (3) of AML Act 1044.</p> <p>Part A (1.1) (j) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to communicate AML/CFT&PF compliance program to staff.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
15.	<p>Section 49 (2) (b) of AML Act 1044.</p> <p>Part A (1.17) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure of MOs to screen and monitor Employees before and after employment.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.

16.	<p>Section 49 (1) (4) of Act 1044.</p> <p>Part A (1.1) (b) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure MOs to establish written internal policies, procedures and controls to prevent ML/TF/PF.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
17.	<p>Section 52 (e) (iii) (j) of Act 1044.</p> <p>Part A (1.16) (d) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to participate in all AML/CFT&PF programmes or activities organized by SEC in collaboration with FIC, ACAMRO and other bodies.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
18.	<p>Part A (1.25) (b) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to obtain Board Approval of AML/CFT&PF documents and allocate adequate resources (e.g. Skilled staff and budgetary allocation) to the AML/CFT&PF Compliance Function.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.

19.	Part A (1.25) (d) of SEC/FIC AML/CFT/CPF Guidelines.	Failure of the AMLRO to submit periodic reports on AML/CFT&PF compliance to the Board. This includes training report, Currency Transaction report, etc.	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
20.	Section 49 (2) (e) Act 1044. Part A (1.14) of SEC/FIC AML/CFT/CPF Guidelines.	Failure to develop and implement risk assessment for New Technologies and Non-Face to Face products, services and delivery channels.	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
21.	Section 52 (5) (C)(6) Act 1044.	Matters on submission of required reports:	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.

	Part A (1.28) of SEC/FIC AML/CFT/CPF Guidelines.	<p>a. non-submission of reports</p> <p>b. submission of incomplete or inaccurate reports,</p> <p>c. delayed submission.</p>	
22.	<p>Sections 36 & 37 of Act 1044.</p> <p>Part A (1.2) of SEC/FIC AML/CFT/CPF Guidelines</p>	Failure to cooperate with SEC, FIC and other Competent Authorities.	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
23.	<p>Sections 38 (4) of Act 1044.</p> <p>Part A (1.1) (f) of SEC/FIC AML/CFT/CPF Guidelines.</p>	Disclosing information on reports submitted to FIC to third parties.	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.

<p>24.</p>	<p>Section 38 (6) of AML Act 1044.</p> <p>Part A (1.18) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to put in place and implement policies to protect staff when they report STRs in good faith.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
<p>25.</p>	<p>Section 30 (1) of Act 1044.</p> <p>Part A (1.6.2) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Opening of anonymous accounts or accounts in a fictitious name for a customer.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
<p>26.</p>	<p>Section 30 (5) of Act 1044.</p> <p>Part A (1.13) (a) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to put in mechanisms to identify PEPs and other high risk clients.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.

27.	<p>Section 49 (2) (c), 50 (1) and 51 of Act 1044.</p> <p>Part A (1.16) (c) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to develop and implement end of year employee training program submitted to FIC and SEC.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
28.	<p>AML Regulations, 2011 Regulation 8.</p> <p>Part A (1.13) b of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to obtain Senior Management approval to establish business relationships with PEPs and other High Risk customers.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
29.	<p>Section 30 (10) of AML Act 1044.</p> <p>Part A (1.7) (c) (e) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to obtain information on the beneficial owner of accounts where a customer is an intermediary or authorized representative of another party.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
30.	<p>Section 49 (5) and (6) of Act 1044.</p> <p>Part A (1.23) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to ensure Foreign Branches and Subsidiaries comply with AML/CFT&PF provisions.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.

<p>31.</p>	<p>Section 49 (2) (f) of Act 1044.</p> <p>Part A (1.20) of SEC/FIC AML/CFT/CPF Guidelines.</p>	<p>Failure to conduct Independent Test on the AML/CFT/CPF Compliance Programme.</p>	<ul style="list-style-type: none"> • A minimum of 1000 penalty units and maximum of 100,000 penalty units in the case of an entity.
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SANCTIONS

A. PECUNIARY SANCTIONS (FINANCIAL PENALTIES):

Refer to penalties/sanctions.

B. ADMINISTRATIVE 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.

- i. Administrative penalty of not less than 500 penalty units and not more than 20,000 penalty unit for **individual** (i.e. Managing Director (MD), Anti-Money Laundering Reporting Officer (AMLRO) or any officer) who is identified as being responsible for the breaches as provided in Section 53 of AML Act 1044.
- ii. Administrative penalty for an **entity** not less than one thousand (1,000) penalty units and not more than one hundred thousand (100,000) penalty units.
- iii. Blacklisting of AMLRO from working in any financial institution for one (1) or more years depending on severity of the offence
- iv. Naming and shaming in the media to act as deterrent for future breaches of the AML/CFT&PF regime in Ghana.
- v. Refusal to develop new products and/or branches or other restriction of license.
- vi. Suspension of license.
- vii. Revocation of license.
- viii. Written warning.

C. 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, (Compliant, Largely Compliant, Partially Compliant and Non-Compliant). This rating would be published yearly.

These are;

COMPLIANT - (These are MOs 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

APPENDIX B:

DEFINITIONS

Please refer to AML Legislation as defined in the Guidelines 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 53 of the Anti-Money Laundering Act 2020 (Act 1044) and Section 138 and Section 209 of the Securities Industry Act, 2016 (Act 929).

APPENDIX C:

The following in the MOs would be equally responsible for any sanctions violated.

- i. BOARD
- ii. SENIOR MANAGEMENT
- iii. AMLRO
- iv. STAFF

