

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& P)

ADMINISTRATIVE SANCTIONS / PENALTIES

FOR

MARKET OPERATORS IN GHANA

APRIL, 2019

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OBJECTIVE

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

- i. Securities Industry Act, 2016 (Act 929)
- ii. Anti-Money Laundering Act, 2008 (Act 749) as amended by Anti-Money Laundering (Amendment) Act, 2014 (Act 874) and
- 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 Anti-Money Laundering Legislation.

LEGAL PROVISIONS

This document is issued pursuant to:

Sections 39 (5) & (6) of the Anti-Money Laundering Act, 2008 (Act 749) as amended by Section 18(5) & (6) of the Anti-Money Laundering (Amendment) Act, 2014, Act 874, Section 209 and Section 138 of the Securities Industry Act, 2016(Act 929)

Section 39(5) of Act 749 as amended by Section 18(5) provides as follows:

“A person subject to an obligation under this Act who intentionally or by gross negligence fails to comply with the obligations commits an administrative violation and is subject to administrative sanctions by the competent supervisory body”.

Section 39(6) of Act 749 as amended by Section 28(6) provides as follows:

“Where applicable, administrative proceedings may be carried out in parallel to criminal proceedings under subsections (1) to (3)”

Section 138 of the Securities Industry Act, 2016(Act 929) provides as follows:

“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) as amended and the regulations made under these enactments”.

APPLICABILITY

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

EFFECTIVE DATE

This document comes into effect on **01/05/2019**.

COMPLIANCE DATE

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

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.

DEFINITIONS

AIs	ACCOUNTABLE INSTITUTIONS
AML	ANTI-MONEY LAUNDERING
AML/CFT &P	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
MO	MARKET OPERATOR
FIC	FINANCIAL INTELLIGENCE CENTRE
ML	MONEY LAUNDERING
SEC	SECURITIES AND EXCHANGE COMMISSION
TF	TERRORISM FINANCING

INTRODUCTION

1.1 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 Market Operators 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.

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

PENALTIES/SANCTIONS

S/NO.	SECTION	OFFENCE	ADMINISTRATIVE PENALTY
1.	<p>Section 41 of Act 749 as amended by Section 20 (1)(b) and (2) of AML Amendment Act Part A (1.5) (a) of SEC/FIC AML/CFT Guidelines.</p>	<p>Non designation of a compliance officer (AMLRO) at management level.</p>	<p>• A minimum of 500 penalty units</p>
2.	<p>Section 28 of Act 749 as amended by</p>	<p>Failure to provide access to information to SEC, FIC and any</p>	<p>• A minimum of 500 penalty units.</p>

	<p>Section 9 of Act 874 and Section 29 of Act 749 as amended by Section 10 of Act 874.</p> <p>Part A(1.2)(a) of SEC/FIC AML/CFT Guidelines</p>	<p>other competent Authority.</p>	
3.	<p>Section 23 of Act 749 as amended by Section 6(1)(2)(3)(4) of AML Amendment Act, Act 874 Part A(1.6) of SEC/FIC AML/CFT 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 500 penalty units.

4.	Section 30 of Securities Industry Act, Act 929, Part A(1.7)(i) and Part B(2.14)(a) of SEC/FIC AML/CFT Guidelines	Failure to keep identification and verification documents of clients.	<ul style="list-style-type: none"> • A minimum of 500 penalty units.
5.	Section 40 of Act 749 as amended by Section 19(2)(a)(viii) of AML Amendment Act, Act 874 Part A(1.3) of SEC/FIC AML/CFT Guidelines	Failure of MOs to implement Internal Risk Assessment Framework.	A minimum of 500 penalty units.
6.	Regulation 10 of Anti-Money	Failure of MOs to perform enhanced	<ul style="list-style-type: none"> • A minimum of 500 penalty units.

	Laundering Regulations, 2011, LI. 1987 Part A (1.8) of SEC/FIC AML/CFT Guidelines.	due diligence (EDD) on any of their High Risk Customers.	
7.	Section 24 of Act 749 as amended by Section 8 of Act, Act 874. Part A (1.19) of SEC/FIC AML/CFT Guidelines.	Failure of MOs to maintain records of transactions.	• A minimum of 500 penalty units.
8.	Section 30 of Act 749 as amended by Section 11 of Act 874. Part A (1.10)	Failure to report Suspicious Transactions to FIC within 24 hours after arriving at a decision.	• A minimum of 500 penalty units.

	(b) and 1.1(e) of SEC/FIC AML/CFT Guidelines.		
9.	Part A(1.7)(j) of SEC/FIC AML/CFT Guidelines	Failure to put in mechanisms to screen for PEPs, high risk clients using UN Sanctioned Persons/Entities Lists and other official lists.	A minimum of 500 penalty units.
10.	Anti-Money Laundering Regulations 33 of LI 1987. Part A (1.1) (b) of SEC/FIC AML/CFT Guidelines.	Failure to put in place management information systems to monitor, detect, evaluate and generate STRs.	<ul style="list-style-type: none"> • A minimum of 500 penalty units.

<p>11.</p>	<p>Section 40 of Act 749 as amended by Section 19(1) and (2) of AML Amendment Act, Act 874 Part A (1.3) (c) of SEC/FIC AML/CFT 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 500 penalty units.
<p>12.</p>	<p>Part A(1.25)(a)(b) of SEC/FIC AML/CFT Guidelines</p>	<p>Failure of the Board to ensure an effective implementation of the MO's AML/CFT Compliance Programme.</p>	<ul style="list-style-type: none"> • A minimum of 500 penalty units.

13.	Part A (1.5) (iii) of SEC/FIC AML/CFT Guidelines.	Failure of MOs to file Cash Transaction Reports.	<ul style="list-style-type: none"> • A minimum of 500 penalty units.
14.	Section 41 of Act 749 as amended by Section 20(1) (a) of AML Amendment Act, Act 874. Part A (1.16) of SEC/FIC AML/CFT Guidelines.	Failure to develop a regular training program and conduct training for its Board/management/employee.	<ul style="list-style-type: none"> • A minimum of 500 penalty units.

15.	Part A (1.1) (j) of SEC/FIC AML/CFT Guidelines.	Failure to communicate AML/CFT compliance program to staff.	<ul style="list-style-type: none"> • A minimum of 500 penalty units.
16.	Part A (1.23) (e) (ii) of SEC/FIC AML/CFT Guidelines.	Failure of MOs to screen and monitor Employees before and after employment.	<ul style="list-style-type: none"> • A minimum of 500 penalty units.
17.	Part A (1.24) of SEC/FIC AML/CFT Guidelines.	Failure to assess areas of additional AML/CFT risks.	A minimum of 500 penalty units.
18.	Part A (1.4) of SEC/FIC AML/CFT Guidelines.	Non documentation of Additional Procedures and Mitigants.	<ul style="list-style-type: none"> • A minimum of 500 penalty units.

<p>19.</p>	<p>Section 40 of Act 749 as amended by Section 19(2) (e) of AML Amendment Act, Act 874 Part A (1.20) of SEC/FIC AML/CFT Guidelines.</p>	<p>Failure to conduct an independent test on AML/CFT Compliance Program.</p>	<ul style="list-style-type: none"> • A minimum of 500 penalty units.
<p>20.</p>	<p>Part A (1.25) (b) of SEC/FIC AML/CFT Guidelines.</p>	<p>Failure to obtain Board Approval of AML/CFT documents and allocate adequate resources (e.g. Skilled staff and budgetary allocation) to the AML/CFT Compliance Function.</p>	<ul style="list-style-type: none"> • A minimum of 500 penalty units.

21.	Part A (1.25) (d) of SEC/FIC AML/CFT Guidelines.	Failure of the AMLRO to submit periodic reports on AML/CFT compliance to the Board. This includes training report, Currency Transaction report, etc.	<ul style="list-style-type: none"> • A minimum of 500 penalty units.
22.	Part A (1.14) of SEC/FIC AML/CFT 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 500 penalty units.
23.	For all reports to be submitted to	Matters on submission of required reports:	<ul style="list-style-type: none"> • A minimum of 500 penalty units.

	the Commission by MOs.	<p>a. non-submission of reports</p> <p>b. submission of incomplete or inaccurate reports,</p> <p>c. delayed submission.</p>	
24.	Part A(1.2)of SEC/FIC AML/CFT Guidelines	Failure to comply with interventions of SEC, FIC and other Competent Authorities.	<ul style="list-style-type: none"> • A minimum of 500 penalty units.
25.	Part A (1.1) (f) of SEC/FIC AML/CFT Guidelines.	Disclosing information on reports to FIC to third parties.	<ul style="list-style-type: none"> • A minimum of 500 penalty units.
26.	Part A (1.18) of SEC/FIC AML/CFT Guidelines.	Failure to put in place and implement policies to protect staff when they report STRs in good faith.	A minimum of 500 penalty units.

27.	<p>Section 23 of Act 749 as amended by Section 6 (1) of Act 874</p> <p>Part A (1.6.2) of SEC/FIC AML/CFT 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 500 penalty units.
28.	<p>Section 23 of Act 749 as amended by Section 6 (5) of Act 874</p> <p>Part A (1.13) (a) of SEC/FIC AML/CFT Guidelines.</p>	<p>Failure to put in mechanisms to identify PEPs and other high risk clients.</p>	<p>A minimum of 500 penalty units.</p>
29.	<p>Part A (1.16) (c) of SEC/FIC AML/CFT Guidelines.</p>	<p>Failure to submit and implement board approved end of year employee training program submitted to FIC and SEC.</p>	<p>A minimum of 500 penalty units.</p>
30.	<p>Section 23 of Act 749 as amended by Section 6 (14) (b) of Act 874</p> <p>Part A (1.13) b of SEC/FIC</p>	<p>Failure to obtain Senior Management approval to establish business relationships with PEPs.</p>	<ul style="list-style-type: none"> • A minimum of 500 penalty units.

31.	AML/CFT Guidelines. Part A (1.7) (c) (e) of SEC/FIC AML/CFT Guidelines.	Failure to obtain information on the beneficial owner of accounts where a customer is an intermediary or authorized representative of another party.	A minimum of 500 penalty units.
32.	Part B (2.0) of SEC/FIC AML/CFT Guidelines.	Failure to put in place written policies and procedures on CDD/KYC.	A minimum of 500 penalty units.
33.	Section 40(5-6) of Act 749 as amended by Section 19(5) and 6 Part A (1.23) of SEC/FIC AML/CFT Guidelines.	Failure to ensure Foreign Branches and Subsidiaries comply with AML/CFT provisions.	A minimum of 500 penalty units.

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. Blacklisting of AMLRO from working in any financial institution for one (1) or more years depending on severity of the offence
- ii. 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.
- iii. Naming and shaming in the media to act as deterrent for future breaches of the AML/CFT regime in Ghana.
- iv. Refusal to develop new products and/or branches or other restriction of license
- v. Suspension of license

- vi. Revocation of license.

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 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 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