



Anti-Money Laundering, FATCA and GDPR Compliance Obligations

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Agenda

- Financial Crime in perspective
- KYC and Screening Overview
- Your obligations
- Regulatory exam – How to prepare and what to expect

7 minutes

43,000 Staff

\$321B



What proportion of money laundering is detected and stopped?

a. 21.7%

b. <1%

c. 13.4%

Hypotheses:

- Financial crime is a global and growing problem
- Criminals are in it for the money and depend on (witting & unwitting) professional facilitators, including accountants, bankers and lawyers.
- One of the best ways to combat global crime is to disrupt financial crime – follow the money!
- Putting K back into KYC can make a difference.



A close-up, high-angle shot of a large pile of crumpled and torn banknotes. In the center, a US one-dollar bill is prominent, showing the portrait of George Washington and the text 'THE UNITED STATES OF AMERICA' and 'FEDERAL RESERVE NOTE'. To its right, a Euro banknote is partially visible, showing the number '50' and the European Union flag. The background is filled with other crumpled notes of various denominations and colors, including pink, green, and blue. The lighting is bright, highlighting the textures and colors of the paper money.

“Crime doesn’t pay”

Counterfeiting \$923 billion to \$1.13 trillion

Drug trafficking \$426 to \$652 billion

Human slavery & trafficking \$150.2 billion

Illegal logging \$52 – \$157 billion

Illegal fishing \$15.5 – \$36.4 billion

Illegal mining \$12 – \$48 billion

Crude oil theft \$5.2 – \$11.9 billion

Illegal wildlife trade \$5 – \$23 billion

\$1.6 to \$2.2 trillion

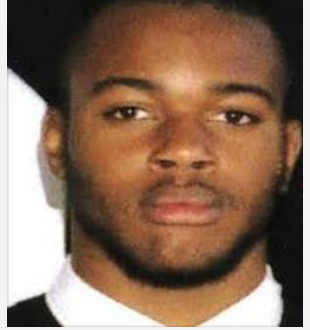






White Widow Case Study – South Africa, Kenya, UK

- Samantha Louise Lewthwaite (Natalie Faye Webb)
- The widow of 7/7 UK suicide bomber (2005) Germaine Lindsay
- Fugitive from justice in Kenya and member of Al-Shabaab
- 4 Jan 2012 Kenyan arrest warrant – WC profiled the same day on media reports with fraudulent South African passport number
- Nairobi Mall attacks - Interpol Red Notice – Sept 2013
- Client of SA Banks



Closer Home – Accountants in Kenya

News

150 State accountants moved in corruption fight

Thursday, November 08, 2018 — updated on June 28, 2020

 **REUTERS**

BANKS

JULY 5, 2018 / 4:02 PM / UPDATED 2 YEARS AGO

Kenya's anti-graft boss accuses lawyers and engineers of enabling graft

By Carlos Mureithi

NAIROBI (Reuters) - Kenyan lawyers, engineers and accountants have been involved in facilitating cases of corruption in the country, the chief executive of the anti-graft commission said on Thursday.

NAIROBI NEWS
NN

Former City Hall accountant stashed loot in wife, son bank accounts – Eacc

By **NYABOGA KIAGE**
November 9th, 2018 • 1 min read

Share this     





UNACCOUNTED FOR WEALTH

EACC on trail of accountant on Sh129k pay yet has Sh290m fortune

The suspect acquired a Toyota Prado, a Toyota Harrier and a Toyota saloon — all valued at Sh9.6 million

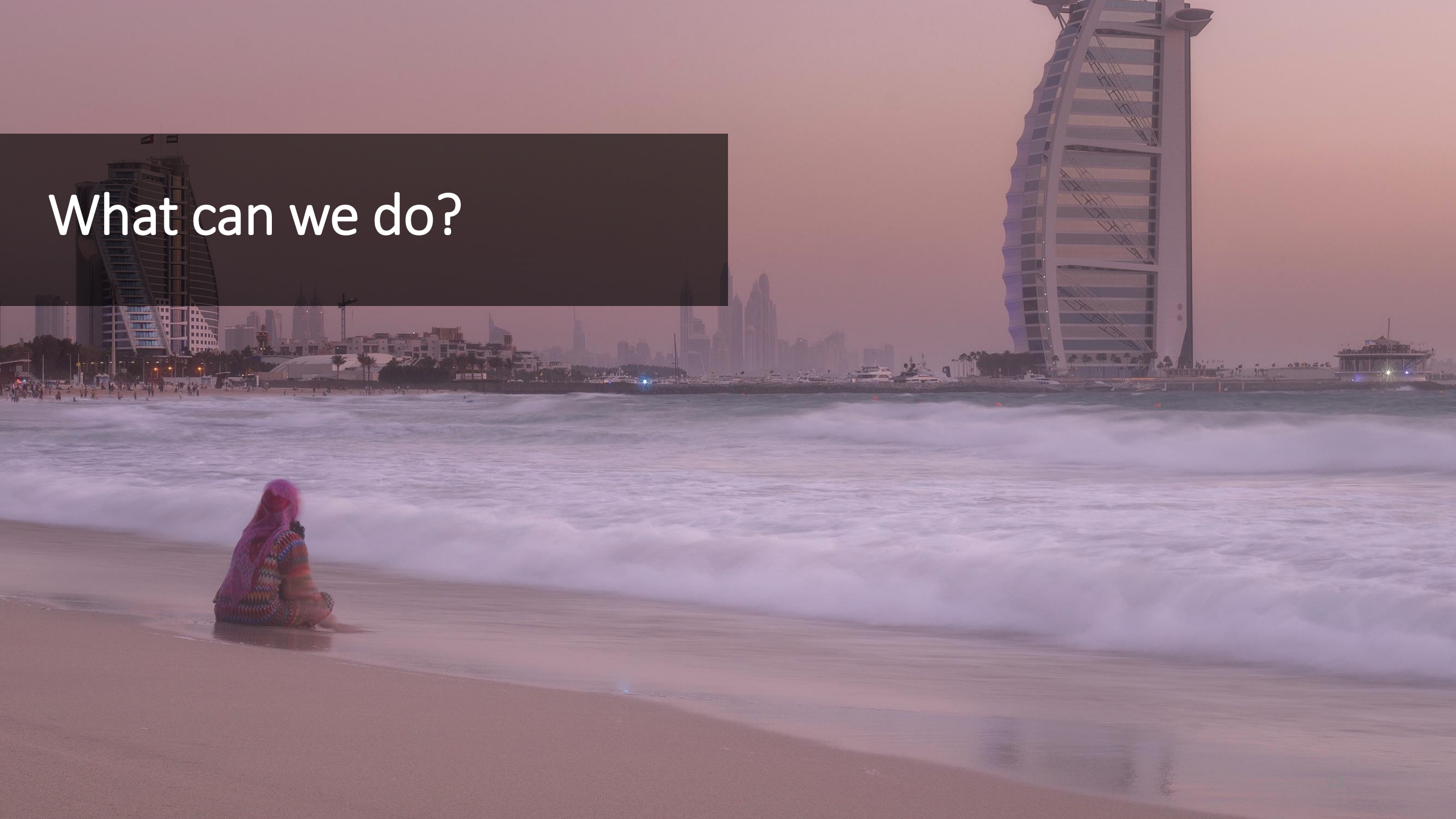


Accountant fined Sh16.5 million for Sh3.8 million theft

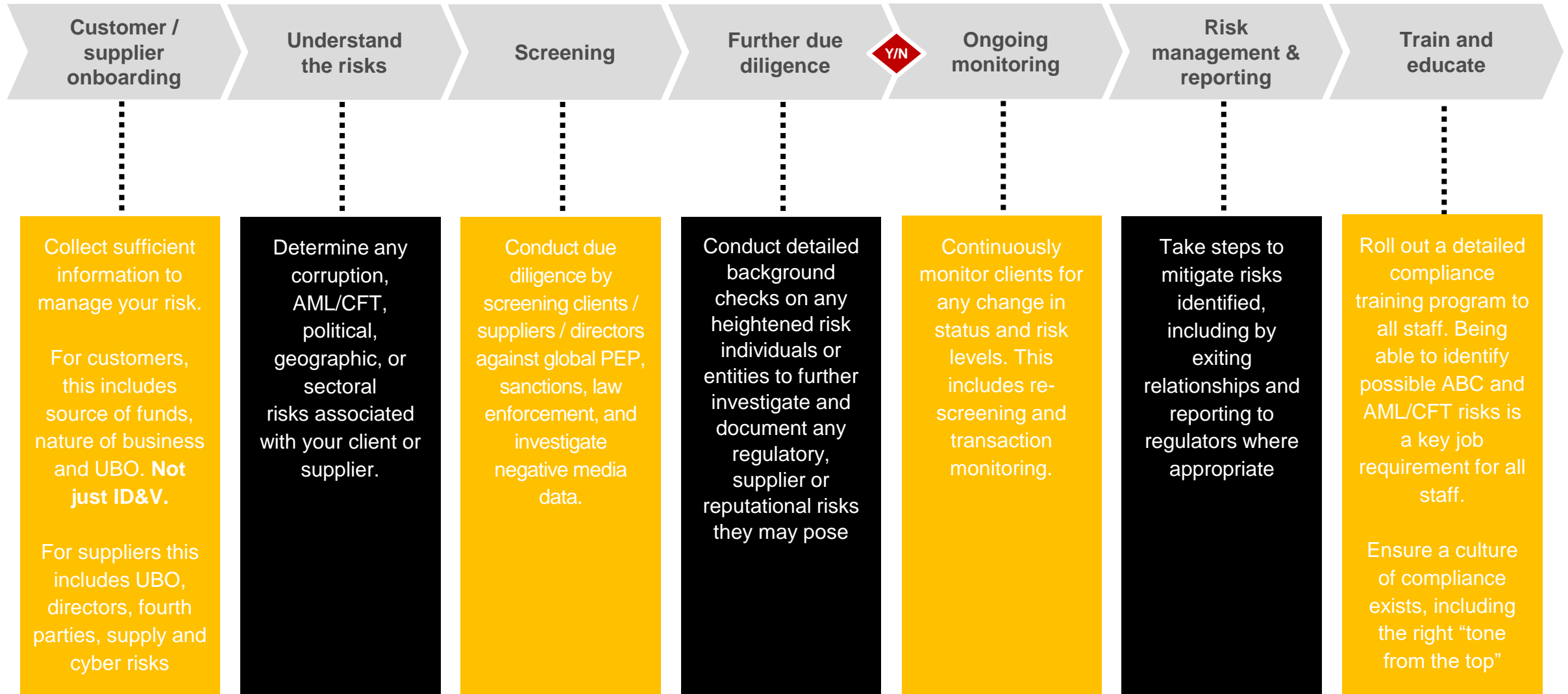
by Annette Wambulwa @WambulwaAnnette

News
14 May 2018 – 15:00

What can we do?



A Risk-Based Approach to Managing Customer & 3rd Party Risk



AML Guide for Accountants in Kenya

- The guideline is designed to reduce the possibility of the accountancy profession being knowingly or unknowingly used for purposes connected with an offence involving proceeds of crime, fraud, theft or money laundering as defined under POCAMLA.



**Anti-Money
Laundering Guide
for Accountants in
Kenya**

AML Guide for Accountants in Kenya

- Triggering activities.
- Definitions and Regulatory references.
- Obligations.
- Customer Due Diligence.
- Suspicious Transaction Reporting.
- Record Keeping.
- Training.
- Regulatory Examination.
- Risk Based Approach.



**Anti-Money
Laundering Guide
for Accountants in
Kenya**



Screening – Putting the “K” back into KYC

Screening - KYC

...Use global **Structured Risk-related intelligence** with **secondary IDs & de-duplicated profiles** that use **Public domain** data and comply with **Data Protection Act 2019, UK Data Protection Act & European Union Data Use Regulations including GDPR.**

Used in customer due diligence (CDD) programs to comply with Know Your Customer (KYC) legislation for:

- anti-money laundering (AML)
- countering the financing of terrorism (CFT)
- anti-corruption, organized crime
- 3rd party risk
- other financial crimes control.

KYC systems – Inclusion Criteria

Most KYC / Screening system employ strict inclusion criteria.

Has to relate to the prevention of financial crime

- Aircraft Hijacking / Aviation Crimes
- Arson
- Arms Trafficking
- Bribery & Corruption
- Counterfeiting and Piracy of Products
- Currency counterfeiting
- Cybercrime / Hacking / Phishing
- Environmental Crimes
- Extortion
- Falsifying information on official documents
- Forgery
- Fraud / Embezzlement / Theft / Cheating
- Tax evasion / Tax fraud
- Hostage Taking / Kidnapping (Political or Terror related)
- Human Trafficking
- Illicit trafficking in stolen and other goods
- Insider Trading & Market Manipulation
- Migrant Smuggling / Slave Labour
- Money Laundering
- Narcotics Trafficking (production and distribution)
- Organised Crime
- Pharmaceutical Product trafficking / Illegal distribution / Illegal production / Banned / Fake medicines
- Piracy (sea)
- Price fixing / Illegal cartel formation / Anti-trust violations
- Racketeering
- Robbery (only high value)
- Securities Fraud
- Sexual Exploitation of Children (for financial benefit)
- Smuggling (incl. in relation to customs and excise duties and taxes)
- Terrorism / Terror Financing
- War Crimes

Sample - World Check – General Inclusion Criteria

World-Check is regulated under the UK Data Protection Act (DPA) and Swiss data protection laws and we are obliged to take reasonable steps to ensure that the data we hold on individuals and entities is accurate, relevant up to date and fair and not kept for longer than is necessary.

The following is a sample of the criteria we use:

- Named on an international or national sanctions or embargo list (generally referred to as sanctions lists)
- Listed on a law or regulatory enforcement list or other government or financial regulatory authority or wanted list (sometimes also referred to as enforcement lists)

Sample - World Check – General Inclusion Criteria

- Politically Exposed Person (PEP) and direct family members or close associates of a PEP
- State Owned Enterprises (SOEs) and their senior executives
- Individuals reported in the reputable media as being accused, questioned/ investigated/ arrested/ charged/ convicted of a crime that World-Check monitors
- Maritime vessels and their corporate managers directly or indirectly connected to or associated with an embargoed / sanctioned country or entity

When allegations are media based more than one credible source reporting the same story is resourced if available. We do not rely on blogs, chat rooms, social networks or similar sites for risk information although these can be useful for biographical information.

Sample - World Check – General Deletion Criteria

- Profiles on official sources –
 - Deleted after **5 years** of delisting from official source (Sanctions, Regulatory Enforcement, Law Enforcement)
- Post Conviction Data
 - Civil penalties and convictions less than 30 months – deleted **10 years** after conviction date.
 - Convictions over 30 months – deleted **20 years** after conviction date.
- Pre-Conviction Data
 - Deleted **10 years** after creation if no movement in the case over previous 2 years (Western Europe, North America, Australia, Asia)
 - Deleted **15 years** after creation if no movement in the case over previous 2 years (all other regions)
- PEP Data –
 - Deleted after **12 - 15 years** (3 election terms) of vacating last PEP position (except high-level PEP positions)



Obligations

Obligations – For Institutions

..to implement AML systems and controls that meet the requirements of the Kenya AML regime. Institutions must ensure that employees are aware of these systems and controls and are trained to apply them properly. In addition:

- Undertake money laundering risk assessments
- Develop and implement board approved policies to manage identified risks.
- Implement mechanisms to monitor the D&I and OE of controls.
- Update risk assessment policies and programs regularly (at least once every 2 years)
- Take reasonable measures to prevent the use of new technologies for money laundering purposes e.g. conduct a money laundering risk assessment before introducing a new product, new business practice, new technology, a new delivery mechanism for both new and existing products and services.

Obligations – For Institutions (additional obligations)

The POCAMLA Act places the following additional obligations for Institutions :

- Monitoring and Reporting.
- Verification of customer identity.
- Enhanced Customer Due Diligence (EDD) and counter-measures.
- Appropriate record keeping.
- Internal reporting procedures.

Obligations – For Board and Senior Management

The POCAMLA Act places the following requirements for the Board and Senior Management:

- Approval for policies, controls and procedures adopted by the business.
- Approval before entering or continuing a business relationship with a Politically Exposed Person (PEP), Prominent Influential Person (PIP) and their family and close associates.
- Appointment of a Money Laundering Reporting Officer (MLRO).
- Undertake appropriate continuous professional development (CPD) on financial crime risk.

Where appropriate to the size and nature of business, a board member or member of senior management should be appointed to be responsible for compliance with AML/FATCA/GDPR regulations.

Obligations – For Auditors report on financial statements

Where it is suspected that money laundering has occurred, the auditor need to apply the concept of materiality when considering whether the audit report needs to be modified, taking into account whether:

- The crime itself has a material impact on the financial statements (FS);
- The consequences of the crime have a material effect on the FS; or
- The outcome of any subsequent investigation may have a material effect on the FS.

Materiality should also consider materiality for Terrorist Financing (TF) risk where the sums may be low value but have a high impact.

- Be aware of the risk of tip-off where directors or senior management are knowingly involved.
- Timing is critical – Delay in issuing audit reports may alert a money launderer of your suspicion.

Regulatory Examinations



Examinations – How to prepare

To prepare for an FRC / ICPAK AML examination:

- Assemble all your documentation – provide ALL documents and interactions requested.
- Review past FRC / ICPAK interactions.
- Ensure all relevant staff are available.
- Observe deadlines noted in the information requests.
- Answer all questions honestly and have resources available at hand during examination.

Cooperate. Cooperate. Cooperate.

Examinations – What happens after an examination?

- A letter summarizing deficiencies noted.
- Details of further actions being considered by FRC / ICPAK (administrative / civil actions).
- You should develop and implement an action plan to address the deficiencies.
- FRC / ICPAK may send additional correspondence with their final decision.
- Beware : FRC / ICPAK may conduct further follow up examination to confirm that you have addressed the deficiencies per your action plan.

Document. Document. Document

Questions?

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