

Counter-terrorism Financing and Anti-money Laundering Policy

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1. Introduction

Terrorists require finances to undertake their activities. Disrupting and preventing terrorism-related financial flows and transactions is one of the most effective ways to fight terrorism. Countering terrorism financing is, therefore an essential part of the global fight against the terror threat. Money laundering if left to thrive will weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society.

The Financial Action Task Force (FATF)¹ requires countries to have policies and laws to combat the risk of terrorism financing and money laundering. FSD Kenya donor countries and Kenya are members of the FATF. Consequently, FSD Kenya is subjected to and must comply with the ensuing regulatory frameworks.

2. Policy statement

FSD Kenya is committed to complying with all relevant Kenyan legislation, and applicable global legislation on counter-terrorism financing (CTF) and anti-money laundering (AML) FSD Kenya has zero-tolerance of actions prohibited by such legislation.

FSD Kenya will not provide support or resources to any individual or entity that it knows, or has reason to believe advocates, plans, sponsors, engages or has engaged in terrorism, weapons proliferation, human rights violations or narcotics trafficking, any other prohibition instituted by a jurisdiction applicable to FSD Kenya's activities, or acts as an agent of any individual or entity involved in any such activities, or that has been so designated by the Government of Kenya, the United Nations (UN) or any other country that gives funds to FSD Kenya.

FSD Kenya will undertake reasonable efforts to ensure that none of its or its donor funds are used to provide support to individuals or entities associated with terror and money laundering. FSD Kenya is committed to ensuring that its funds and resources are used for the purpose for which they are intended.

3. Purpose

This policy outlines the principles and minimum internal controls which should be adhered to by the FSD Kenya to mitigate risks associated with CTF and AML.

This policy ensures that FSD Kenya's and its donor funds are not being used directly or indirectly to support terrorist activities or money laundering activities. It also guides what to do when one has a related concern.

4. Scope

This policy applies to all employees of FSD Kenya staff and all FSD Kenya's associated parties (both during and outside regular working hours) including members of the Programme Investment Committee (PIC), Trustees, implementing partners, vendors, contractors and any other third party. The term 'FSD Kenya staff' will be used throughout this policy to refer to those within scope.

¹ <https://www.fatf-gafi.org/about/whoweare/#d.en.11232>

5. Definitions²

Terrorist financing involves the solicitation, collection or provision of funds with the intention that they may be used to support terrorist acts or organisations. A person commits the crime of financing of terrorism “if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out acts of terrorism”.

Proscribed groups or persons are groups or persons that have been banned by a government or an inter-governmental organisation such as the UN. The purpose of such a ban could be due to the commission of terrorism offences. Designated terrorist groups are those that are set aside as terrorist groups.

Money laundering is the process by which proceeds from criminal activity are disguised to conceal their illicit origin, such as corruption, illegal drugs or illegal arms; (i) the conversion or transfer, knowing that such property is the proceeds of crime (ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership or rights with respect to the property, knowing that such property is the proceeds of crime; and (iii) the acquisition, possession or use of property, knowing, at the time of the receipt, that such property is the proceeds of crime.

Beneficial owner means the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Applicable laws and regulations mean the laws of Kenya, the laws of the countries of FSD Kenya's donors and regulations imposed by intergovernmental institutions which the countries of FSD Kenya and its donors subscribe to such as the UN and European Union (EU).

Financial reporting centre – an institution established under Section 21 of the Proceeds of Crime and Anti-Money Laundering Act 2009 (POCAMLA), and has the principal mandate of assisting in identification of the proceeds of crime and the combating of money laundering and the financing of terrorism.

6. Principles

FSD Kenya's approach to mitigating the risk of money laundering, terrorism financing and sanctions breaches is embedded in the following principles. FSD Kenya will:

- a) Embed robust procedures, including maintaining adequate financial records to support expenditure.
- b) Conduct risk assessments which will form part of programme planning and adopt appropriate mitigation measures escalating risks where necessary.
- c) Conduct due diligence and screening of persons to whom it engages.
- d) Report concerns accordingly in line with regulatory and donor requirements.

² Adapted from IMF: <https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm#moneylaundering>

7. Prohibitions

FSD Kenya shall not maintain a business relationship with third parties:

- a) Where such a relationship is prohibited under the CTF or AML law or regulation in Kenya, in their donor's countries or by an inter-governmental entity such as the UN.
- b) Where the third party's business activities are known or suspected to be illegal based on the applicable laws and regulations.
- c) Where the third party is designated or proscribed or believed to be engaged or associated in activities that support terrorism or in money laundering activities.

FSD Kenya reserves the right to terminate a relationship where a third-party refuses to provide necessary information to enable FSD Kenya to conduct appropriate due diligence or screening in line with the risk appetite.

8. Risk-based approach

FSD Kenya will adopt a risk-based approach in instituting controls that mitigate the risk of CTF and AML in its programmes. Risk assessment will be done at the design stage of all projects to assess and manage the risk of funds or materials being diverted.

Risks will be monitored, reviewed and reported quarterly and at trigger points to account for changes in operating circumstances (e.g. economic, political, security), and programmes adjusted accordingly.

Risk assessment results will inform the design and development of the controls and procedures that mitigate the risk of CTF and AML. The controls will be reviewed regularly to ensure that they are operating as intended.

9. Due diligence

Reasonable risk-based due diligence will be conducted before entering contractual relationships with third parties. FSD Kenya will complete due diligence checks on each downstream partner to establish their capacity and capability to effectively manage funds.

As part of the due diligence, FSD Kenya will also obtain necessary details from the contractors to ensure that they have adequate information on the identity of whom they are dealing with and where necessary, the beneficial owner. Such information will include registration certificates registered addresses, directors or owners.

The process to be followed will be in line with FSD Kenya's due diligence policy and framework. FSD Kenya will not enter contracts nor make any payments to parties who have not been subjected to the screening process or the due diligence process.

10. Politically exposed persons

Politically exposed persons (PEPS) are natural persons who are or have been entrusted with prominent political functions and immediate family members or persons known to be close associates of such persons³.

Politically exposed persons are likely to expose FSD Kenya to higher risks of money laundering. FSD Kenya will conduct enhanced due diligence procedures and adapt processes and systems to mitigate the risks posed by politically exposed persons.

11. Screening

FSD Kenya will screen its grantees, suppliers and contractors against sanctioned lists. The objective of this screening is to reduce the risk of dealing with a sanctioned or proscribed person or entity. A risk-based approach will be applied in determining the extent of the screening.

FSD Kenya will avoid engagements with contractors or third parties found in sanctioned lists.

12. Reporting a concern

All FSD Kenya staff must report suspicions and concerns of money laundering, terrorism financing or breach of sanctions immediately. Suspicions must be reasonably held but do not require any proof before making a report.

Suspicions **must** be reported to:

Transparency@fsdkenya.org

Or confidentially through the 24/7, anonymous whistleblowing channel:

Send an email to fsd.whistleblower@bdo-ea.com

FSD Kenya staff must not tip off involved parties concerning the suspicions they are aware of. Confidentiality must be maintained, and reporting be done using the channels provided. FSD Kenya considers tipping off and breach of confidentiality to be disciplinary matters.

An acknowledgement of the suspicion will be provided, and the reporter contacted should more information be necessary.

13. Onward reporting

FSD Kenya has designated the **Risk Officer** as the Money Laundering Reporting Officer (MLRO).

In line with regulatory requirements, the MLRO will report suspicious transactions of money laundering to the Financial Reporting Centre.

Suspicions will be promptly reported to donors as required by contractual obligations. Where criminal offences are suspected, reports will accordingly be made to the relevant authorities.

³ EU Third Anti-money laundering directive

14. Training and awareness

FSD Kenya will ensure that training is availed to its staff on the contents and implementation of this policy. Staff who join FSD Kenya will be required to go through an induction process that entails familiarisation with this policy.

FSD Kenya will ensure that the requirements of this policy forms part of the contractual agreement with its grantees, contractors and third parties.

15. Grantees or partners

FSD Kenya will hold regular discussions with grantees and partners about risks and incidents of aid diversion likely to affect its programmes. Grantees and partners must ensure their staff are trained and are aware of their responsibility to protect funds from the risk of diversion.

Grantees and partners of FSD Kenya must report suspicions of money laundering, terrorism financing and sanctions breaches within 48 hours using the emails provided above.

Grantees and partners must also conduct due diligence and screening processes like those instituted by FSD Kenya to mitigate the risk of dealing with proscribed persons, financing terrorism or money laundering.

Terrorism-financing and money laundering mitigation obligations will form part of the contract with all FSD Kenya's grantees and partners. FSD Kenya reserves the right to terminate agreements with grantees or partners who breach the policy.

16. Roles and responsibilities

All staff

All staff must:

- a) Read, understand and comply with the contents of this policy
- b) Report suspicions of money laundering and terrorism financing promptly
- c) Not tip involved parties regarding any suspicions.

All project leads and managers

FSD Kenya project leads and managers must

- a) Ensure staff and third parties they work with are aware of the contents of this policy
- b) Conduct risk assessments, vigilantly monitor and where necessary update controls and procedures to mitigate the risk of money laundering and terrorism financing to FSD Kenya

Chief Operating Officer/Chief Executive Officer

The Chief Operating Officer together with the Chief Executive Officer have a responsibility to ensure that this policy is communicated, updated, adhered to and implemented effectively.

Money Laundering Reporting Officer

The MLRO of FSD Kenya is responsible for:

- a) Monitoring the implementation and compliance with the requirements of this policy.
- b) Keeping records generated during the reporting process.
- c) Supporting FSD Kenya in making external reports.

The Trustees will ensure that there are adequate and effective systems and process in place to mitigate any environmental or social safeguards risks as well as mechanisms to obtain independent assurance over the effectiveness of the systems instituted to combat CTF and AML.

The PIC is responsible for ensuring governance and oversight of the FSD Kenya's risk management framework and controls regarding CTF and AML.

17. Independent assurance

All FSD Kenya's controls and procedures are subject to internal audit reviews, where necessary, FSD Kenya may call an external review to assure the integrity, adequacy and effectiveness of counter-terrorism financing and anti-money laundering procedures.

18. Data retention and protection

FSD Kenya will maintain a register of all reported suspicions including those reported externally. The money laundering reporting officer shall be responsible for ensuring that such records are adequately maintained in line with FSD Kenya data protection policy.

19. Review of this policy

The Chief operations officer is responsible for ensuring that this policy is reviewed on a timely basis. This policy will be reviewed after every two years and accordingly approved by the PIC and the Trustees.

20. Related policies

This policy should be read in conjunction with:

- a) Code of conduct
- b) Whistleblowing policy
- c) Anti-fraud and anti-corruption policy
- d) Data Protection policy
- e) misconduct, disciplinary and grievance policy
- f) Due Diligence policy