



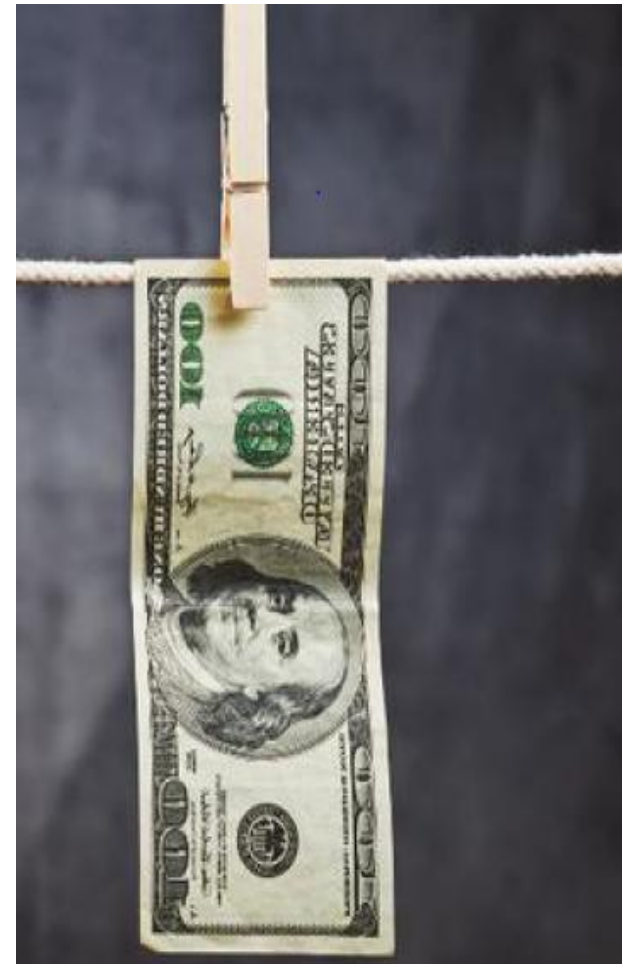
Insurance
Regulatory
Authority

Bima Bora kwa Taifa

Anti- Money Laundering & Combating Financing of Terrorism

Training for Insurance Agents

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Agenda

1. Introduction to ML & TF
2. ML & Terrorism Financing Risks in the Insurance Industry
3. Overview of POCAMLA/POTA- Obligations of Reporting Institutions
4. Overview of FATF Recommendations
5. Challenges to Compliance & Cost of Non- Compliance



1. Introduction to Money Laundering & Terrorism Financing

Money Laundering Definition

Is the process by which criminals attempt to **conceal** the true origin and ownership of proceeds of their criminal activities in order to maintain control over those proceeds and turn the proceeds of their criminal activities **“dirty money”** into money or assets with no obvious links to crime (**“clean money”**)

What is money laundering?



1. Money Laundering & Terrorism Financing

Three Stages of Money Laundering

Placement

'Dirty' money introduced into the financial system

Layering

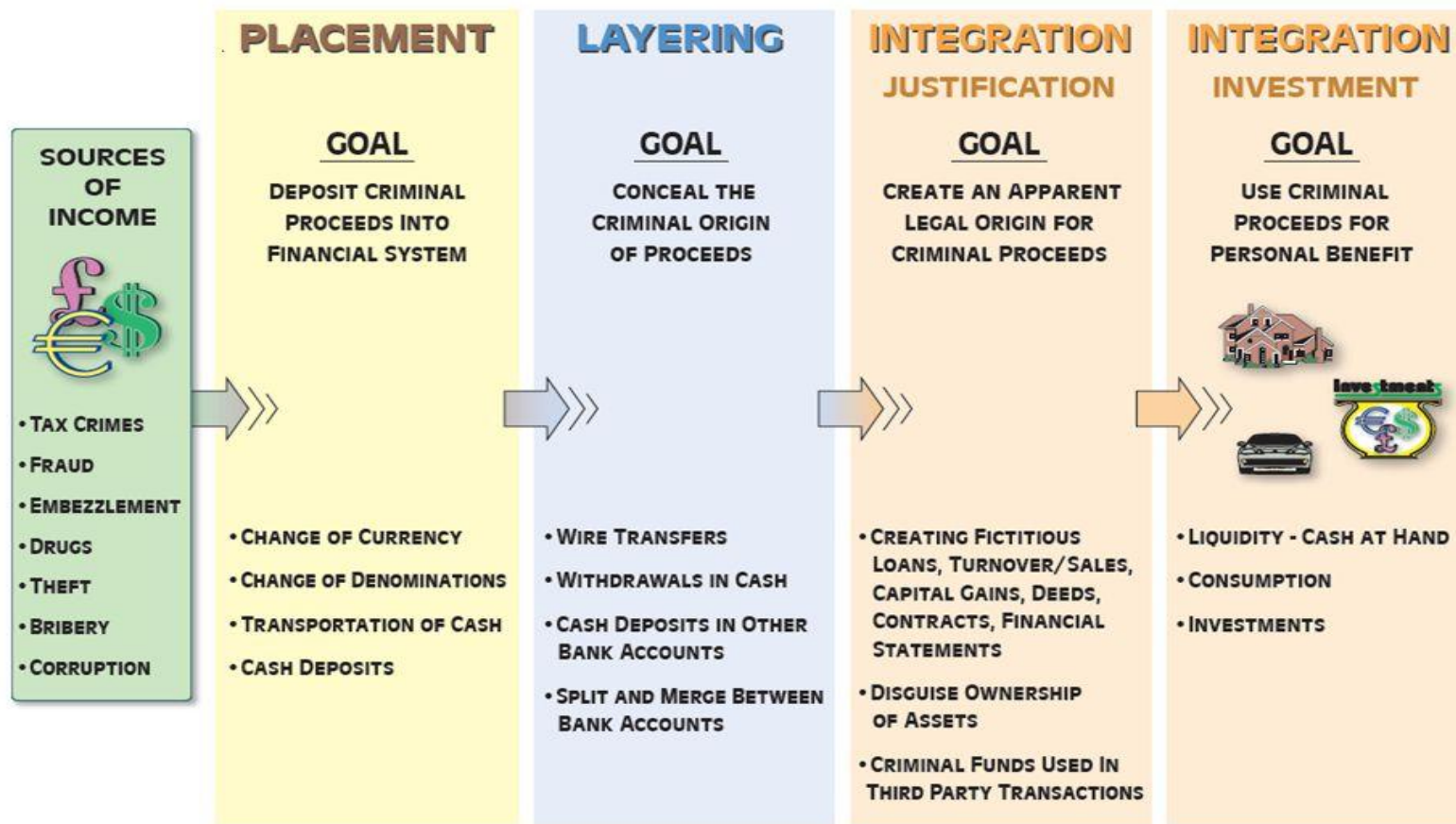
Complex / Layered financial transactions

Integration

Money is integrated into the legitimate financial system/ economy

1. Money Laundering & Terrorism Financing

OVERVIEW OF MONEY LAUNDERING PROCESS



1. Money Laundering & Terrorism Financing

Who is likely to Launder Money?



1. Money Laundering & Terrorism Financing

Terrorism Financing Definition



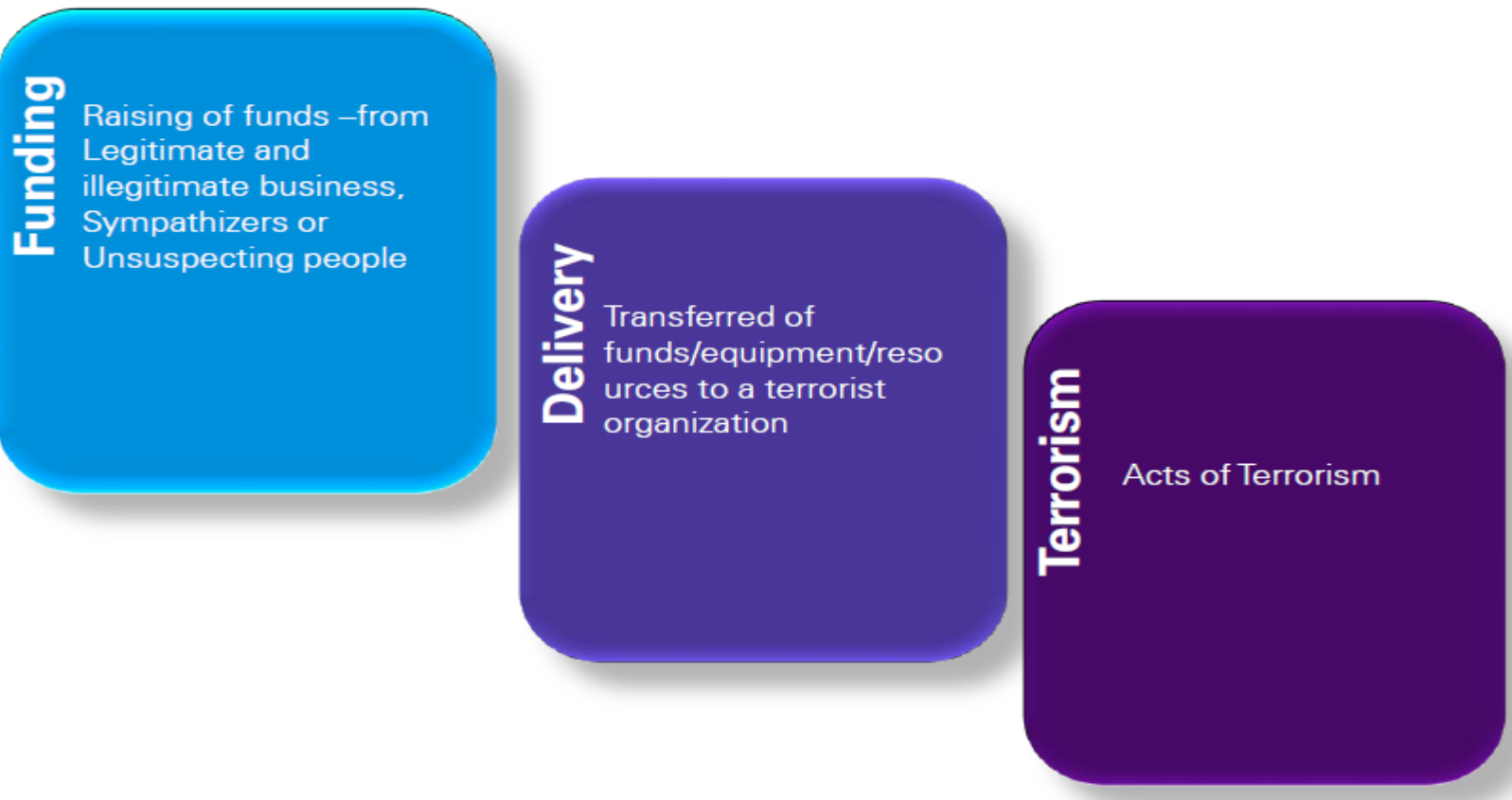
What is terrorism financing?

Terrorism Financing occurs when a person by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the **intention** that these funds will be used in full or in part to carry out a terrorist act by a terrorist organization or be linked to specific terrorist acts.



1. Money Laundering & Terrorism Financing

The Three stages of Terrorism Financing



2. ML & Terrorism Financing Risks in the Insurance Industry



A few years ago, a global US Customs Service investigation exposed the widespread use of insurance products for laundering by international drug traffickers. The investigation revealed that some **US\$80 million** in drug money was laundered through **life insurance policies** issued in the Isle of Man and other locations. The traffickers often cashed out policies **prematurely**, despite penalties for the early withdrawals. The drug traffickers allegedly purchased more than **200 life insurance policies through brokers**, naming cartel members and family members as beneficiaries.

Source:

https://www.world-check.com/media/d/content_pressarticle_reference/aisaninsurance_08.pdf

2. ML & Terrorism Financing Risks in the Insurance Industry

Risks of ML & TF in the insurance Industry

- Life insurance, annuities, investments, top-ups or overpaid premiums funded using proceeds of crime,
- Insurance companies or brokerage firms may be owned and controlled by criminals
- Third parties holding and investing criminal funds through pooled accounts
- Insurance cover over illegally/fraudulently obtained property
- Insurance cover for suspected terrorist or terrorist organisations
- Proceeds of fraud laundered through other FIs and vice versa
- New technologies and products providing more avenues and ease for commission of financial crimes

2. ML & Terrorism Financing Risks in the Insurance Industry

RED FLAGS !

- Lump sum top-ups to an existing life insurance contract
- Early surrender of the policy or cashing out so soon!
- Payment from third parties e.g. by a wire transfer from foreign territories
- Premiums being paid into one policy from different sources
- Overpayment then asking for a refund
- Use of cash for payment of large single premiums
- “Structuring” i.e. – purchasing several policies
- Curiosity over terms of cancellation
- Timing of purchase of annuities – age of customer

2. ML & Terrorism Financing Legal Framework

Kenya's AML/CFT legal and institutional framework

- The Proceeds of Crime and Anti-Money Laundering Act 2009 (POCAMLA) and POCAMLA Regulations
- The Prevention of Terrorism Act 2012 (POTA and POTA Regulations
- IRA AML/CFT Guidelines 2011 revised 2017 and other guidelines issued by other regulators

International AML/CFT Standard Setting Bodies

- The FATF 40 Recommendations
- FATF-Style Regional Bodies (FSRBs) – ESAAMLG,

3. Overview of POCAMLA- Obligations of Reporting Institutions

Section 44. Monitoring and Reporting suspicious activity

Section 45. Verify customer identity.

Section 46. Establish and maintain customer records.

Section 47. Establish and maintain internal reporting procedures.

Section 47A. Register with the Centre.

4. Overview of FATF Recommendations

FATF – FINANCIAL ACTION TASKFORCE

- An inter-governmental body established in 1989 by the Ministers of its Member jurisdictions – currently comprises 35 member jurisdictions and 2 regional organisations (EC & GCC), representing most major financial centres in all parts of the globe
- Objective- set standards and promote effective implementation of legal, regulatory and operational measures for combating ML & TF as well as the financing of proliferation of WMDs
- Has issued 40 recommendations on ML and 9 special recommendations on TF
- Recommendations adopted by over 180 countries in the world

2. ML & Terrorism Financing Legal Framework

Definition of Financial Institution under FATF standards

Financial institutions means any natural or legal person who conducts as a business one or more of the following activities or operations for or on behalf of a customer:

1. Acceptance of deposits and other repayable funds from the public
2. Lending
3. Financial leasing
4. Underwriting and placement of life insurance and other investment related insurance (**This applies both to insurance undertakings and to insurance intermediaries i.e. agents and brokers**).

AMONG OTHERS!!!

4. Overview of FATF Recommendations

REC 10: CUSTOMER DUE DILIGENCE

Customer Acceptance & Due Diligence – Beyond KYC

This involves the process of verifying the identify of clients...



- **Risk profile** based on product, origin, nature of business, corporate structure, payment type, source of fund...
- **Basic documentation requirements** depending on legal status e.g. Individual, corporate, trust etc.
- **High Risk clients** subjected to due diligence

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4. Overview of FATF Recommendations

Customer Due Diligence (CDD)

Simplified Due Diligence



- Simplified due diligence is the lowest level of due diligence that can be completed on a customer.
- Appropriate where there is little opportunity or risk of services or customer becoming involved in ML or TF

Standard/ Regular Due Diligence



- ID &V, UBO, Source of Funds info should be obtained as a standard requirement for all customers unless exceptional circumstances deem them low or high risk

Enhanced Due Diligence



- Enhanced Due Diligence (“EDD”) is additional information collected for higher-risk customers to provide a deeper understanding of customer activity to mitigate associated risks

4. Overview of FATF Recommendations

RECOMMENDATION 11: RECORD KEEPING

Financial institutions should:

- Maintain all necessary records on transactions
- Both domestic and international
- to enable to comply swiftly with information requests from the competent authorities.



Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal activity.

4. Overview of FATF Recommendations

RECOM 12: POLITICALLY EXPOSED PERSONS

A Politically Exposed Person means a person who has been entrusted with a prominent public function in (i) Locally and (ii) a foreign country, and include;

- a) Members of the Cabinet;
- b) Senior executives of a state owned corporation;
- c) An important political party official;
- d) Senior military officials and other members of the disciplined forces;
- e) Members of the Judiciary;
- f) Senior State Officers,
- g) Persons who have been entrusted with a prominent function by an international organization who serve as members of senior management i.e. directors, deputy directors or board members.
- h) Senior Public Offices; and

Any immediate family member or close business associate of a person referred to under the categories a) to h).

4. Overview of FATF Recommendations

Politically Exposed Persons (PEPs)

Recommendation 12 – PEP requirements for financial institutions

Foreign PEPs

In addition to performing normal CDD FI's should:

- have appropriate risk-management systems to determine whether the customer or the beneficial owner is a PEP
- obtain senior management approval for establishing or continuing business relationships;
- take reasonable measures to establish the source of wealth and source of funds; and
- conduct enhanced ongoing monitoring of the business relationship

Domestic PEPs

Take reasonable measures to determine whether a customer or beneficial owner is a **domestic PEP** or a person who is or has been entrusted with a prominent function by an international organisation.

In cases of a higher risk business relationship with such persons, financial institutions should be required to apply the measures referred to in paragraphs (b), (c) and (d).

*The requirements for all types of PEP should also apply to family members or close associates of such PEPs.

4. Overview of FATF Recommendations

Recommendation 20

Recommendation 20 Reporting of suspicious transactions

If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report **promptly** its suspicions to the **financial intelligence unit (FIU)**.

All suspicious transactions, including **attempted** transactions, should be reported regardless of the amount of the transaction.



4. Overview of FATF Recommendations

REPORTING OBLIGATIONS OF FINANCIAL INSTITUTIONS

This involves the process of detecting and reporting transactions to the FRC...



- **Cash Transaction Reporting** involves reporting on any cash transaction above the pre-determined threshold.
- **Suspicious Activity and Transaction Reporting** involves documents and reporting the above to the authority.
- **Regulatory reports** to the FRC and the IRA.

4. Overview of FATF Recommendations

Recommendation 21 Confidentiality

Financial institutions should be:

- protected by law from criminal and civil liability
- for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision,
- if they report their suspicions in good faith to the FIU,
- even if they did not know precisely what the underlying criminal activity was, and
- regardless of whether illegal activity actually occurred.

4. Overview of FATF Recommendations

Recommendation 21 Tipping-off

Financial institutions should be prohibited by law from disclosing (“tipping-off”) the fact that a suspicious transaction report (STR) or related information is being filed with the FIU.

5. Challenges to Compliance

Embedding a compliance culture into the overall institutional culture is key to an effective AML program.

However, there lies some **limiting factors** in combating ML and TF:

1

- Inadequate funding for AML/CTF Programs - Businesses unwilling to spend on compliance

2

- Staff in the business lines (first line of defense) sometimes feel that they are overwhelmed by other priorities;

3

- Culture of immediate, short-term profit taking precedence over long term compliance plans

4

- Low capacity in law enforcement agencies to cope

5

- Ever-changing compliance landscape due to complexities and new typologies of ML and TF

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- Ignorance on part of the custodians of AML/CTF programs on the extend of risk exposure

Challenges to compliance

5. Cost of Non- Compliance

Failure to comply with AML laws and regulations and breaches of ML/CTF regulations may result to:

Punitive fines

Civil and /or Criminal proceedings

Damaged reputations and sanctioning.

Withdrawal of trading license

Cost of non- compliance

Thank you

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