Money Laundering
& Guideline for Auditors Certified Accountants
(Focusing on the Beneficial Ownership)

2020
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Technical Definitions

Money Laundering: Money laundering is the illegal process by which the origins of money obtained illegally is concealed after passing it through a complex series of banking transfers and commercial transactions.

Anti-money Laundering: Anti-money laundering (AML) refers to the laws, regulations and procedures intended to prevent launderers from disguising the real sources of illegally obtained funds.

Terrorism Financing: Terrorism financing is the provision of funds or providing financial support to terrorist individuals or non-state actors.

Certified Public Accountant: An accountant who has met certain standards, including experience, age, and licensing, and passed exams in a particular state.

Auditor: An auditor is a person, or a firm appointed by a company to execute an audit.

Beneficial Owner: A beneficial owner is every person, no matter where they live, that ultimately owns or dominates, directly or indirectly the activity practiced by any other natural or legal person/entity in the Lebanese territory.

Legal Entity: A company or organization that has legal rights and responsibilities.

Politically Exposed Person: In financial regulations, a politically exposed person is one who has been entrusted with a prominent public function.

Special Investigation Commission: is a multi-function financial intelligence unit (FIU) with judicial status at the Lebanese Central Bank. It is the centerpiece of Lebanon’s AML/CFT regime, a platform for international cooperation, and it plays a vital role in safeguarding concerned sectors from illicit proceeds.

The Financial Action Task Force: is an intergovernmental organization founded in 1989 on the initiative of the G7 to develop policies to combat money laundering.

Customer Due Diligence: Information that shows the facts about a customer and should enable an organization to evaluate the extent to which the customer exposes it to a range of risks. These risks include money laundering and terrorist financing.

Dirty money: Money obtained from illegal and immoral activities.
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I- Introduction

Definition of money-laundering

Money laundering has a major concern for governments and other stakeholders worldwide. This is due to the enormous amount of money and operations that have been disguised and legalized because of what is legally called money laundering.

The term money laundering was not used before the beginning of the 20th century, which makes it a relatively new term and was only used initially as part of advocate terminology. An old rumor says that the word money laundering originates from Al Capone, the infamous mafia leader. He was the most powerful in the city of Chicago during the prohibition era in the 1920’s and had laundromats all across the city which he used to disguise profits made from alcohol sales.

The UN defines money laundering as “a process which disguises illegal profits without compromising the criminals who wish to benefit from the proceeds. It is a dynamic three-stage process that requires: first, moving the funds from direct association with the crime; second, disguising the trail to foil pursuit; and third, making the money available to the criminal once again with the occupational and geographic origins hidden from view”.

According to the United Nations Office on Drugs and Crime (UNODC), “Money-laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence”.

On the national level, Article 1 of Law No. 2015/44 on Combating Money Laundering and Terrorism Financing in Lebanon provides a definition of illegitimate finances as “all tangible and intangible, movable and immovable assets including documents and official documents that prove property or shares of properties derived from the implementation, participation, or even an attempt in one of the following crimes… whether it took place inside Lebanon or abroad”.

This Article provides an exhaustive list of 21 crimes, some of them are Drug trafficking, terrorism, arms trafficking, corruption, theft and human trafficking.

Academically, money laundering is the act of disguising large amounts of cash earned through extortion, prostitution, gambling, and bootlegging and is a three steps process: placement, layering and integration. The act of money laundering can be accomplished whether by separating or combining these steps.

Process of money-laundering

As mentioned previously, money laundering is a process composed of three steps: Placemeny, Layering and Integration. William C. Gilmore, one of the most acknowledged writers on money laundering states in his book Dirty Money: The Evolution of International Measures to Counter Money Laundering and The Financing of Terrorism that: “It is important to bear in mind that money laundering is a process, often a highly complex one, rather than a single act.”

In his book Gilmore further elaborates on the three given steps of the money laundering process and defines them as follows:

1. “Placement stage: Where cash derived directly from criminal activity (for example, from sales of drugs) is first placed either in a financial institution or used to purchase an asset.”

2. “Layering stage: The stage at which there is the first attempt at concealment or disguise of the source of the ownership of the funds.”

3. “Integration stage: The stage at which the money is integrated into the legitimate economic and financial system and is assimilated with all other assets in the system.”

Ways of money-laundering

After explaining the stages of money laundering process, below are several examples of well-known ways used by launderers to by-pass the real sources of dirty money.

Cash-based Business:

Among the most common ways used internationally is the establishment of a cash-based business. The business would only accept cash payments in relatively small amounts that will constitute a significant sum at the end of the month. Launderers will then inflate their monthly receipts by a non-noticeable margin and will deposit the money with a bank after mixing it with illegal cash, an operation financially called “blending of funds”. Most common examples of cash-based businesses used in this field are hotels, nightclubs, retail shops, restaurants, camping sites, café, amusement parks…

Smurfing:

Smurfing is also a great refuge for launderers, it is the act of fracturing a huge amount of cash into small amounts which will usually be below the customer identification threshold. This amount will be deposited into different accounts in different banks, it might also be done by different people or in different countries, this way money as a whole will then be hard to spot or locate.

Shell Companies:

Another way used by money launderers to assimilate their dirty money into the system is through shell companies. These legal entities are registered companies that do not own any significant assets and have no registered operations of significant amounts of money, launderers use these for selling services that are usually paid in cash that will be deposited later in the company’s bank account.

In his statement before the Senate Banking, Housing, and Urban Affairs Committee Washington, D.C. May 2014,21, the Acting Deputy Assistant Director, of the Criminal Investigation Division, Federal Bureau of Investigation, Steven M. D’Antuono claimed that “the significant spread of shell companies used by real beneficial owners as a mask to hide their link to dirty money is a huge crack in the US anti-money laundry regime”.

Trusts and Bearer Shares:

Other means used in money laundering is through using financial instruments such as trusts and bearer shares. A trust is a fiduciary arrangement by which the first party or beneficiary allows a third party, or trustee, to hold assets on their behalf.

Whereas a bearer share is an equity security that is completely owned by the entity or person who physically possesses the stock certificate. The company of issue does not have the name of the holder registered. The buyer will receive his dividends when the physical coupon is presented to the firm and the transfer of ownership of the stock is done physically through passing the document. Because of the vague ownership and the absence of registrations, these financial means are widely used in money laundering.

References:

6- Ibid
7- Ibid
8- Ibid
Cryptocurrencies:

The above-mentioned examples are traditional means of money laundering that have been used for decades, however, one of the most recent ways used in money laundering has emerged in the past 10 years is done through the use of cryptocurrencies.

The secret behind its wide success as a money laundering instrument is the fact that cryptocurrencies are traded. This feature is not available in other currencies that are governed by third-party organizations such as governments, and financial administrations that have strict rules and regulations governing them, in other words, it operates outside the international financial system.

Satoshi Nakamoto, the Bitcoin creator in his initiating report on bitcoin said: “A purely peer-to-peer version of electronic cash would allow online payments to be sent directly from one party to another without going through a financial institution.” These electronic instruments are secured by blockchain technology, which is made of blockchains linked through cryptography, one of the most secure and most sophisticated internet technologies ever created.

Beneficial Ownership

Beneficial Ownership is a term used internationally in commercial law which refers to the real person or group of people who ultimately own and/or control a legal entity or organization. The term beneficial ownership is used widely when dealing with money laundering and fraud; it is one of the ultimate goals that commercial laws and anti-money laundering legislations aim to regulate.

The term beneficial ownership has various definitions worldwide. According to the Law Library of Congress, a beneficial owner is a “Natural person who exercises substantial control of corporation or LLC through ownership interests, voting rights, or agreement, or has substantial interest in or receives substantial economic benefits from assets of corporation or LLC”.

Another definition is derived from Transparency International Organization providing that a “beneficial owner means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted”.

As previously mentioned, financial ownership is a major legal concern, it is a huge issue and an interest for large well-established organizations worldwide; one of the major communities working in the field is The Financial Action Task Force (FATF), one of the biggest global money laundering and terrorism financing watchdogs. It is an inter-governmental organization that sets up anti-money laundering standards.

The FATF has a significant approach to this issue, it provides that beneficial ownership of an entity should be well acknowledged by financial institutions, for these financial institutions to facilitate the governmental control and limitations of these actions, in their recommendations, FATF proposes that financial institutions should undertake Customer Due Diligence (CDD) measures when dealing with customers to identify beneficial owners and hence lower the risk of money laundering.

Lebanon has a law that shows the relationship between beneficial ownership and money laundering risks, similar to what is presented above. Reading Article 34 of Law No. 2015/44 on Combating Money Laundering and Terrorism Financing, it could be deduced that all financial firms and institutions must identify the ultimate beneficial owners (UBO) of entities, based on certified and official documents and data.

Having outlined the process of money laundering, in addition to providing the importance of identifying the beneficial owner when it comes to combating money laundering, Throughout this guide, we will go through the details of identifying beneficial owners in Part II, the role of auditors and UBO identification process in Part III, challenges encountered in the process identification of beneficial owners and their relative cures in Part IV, reporting mechanism in Part V, to sum up with conclusions and recommendations in Part VI.
II- Conducting and Detecting the Beneficial Ownership from a Legal Perspective

Legal and Institutional Framework – Lebanon in Comparison with other Countries

When it comes to money laundering, financial malpractice, taxation and other legal issues, identifying the beneficial owners is a must and is a legal obligation in many countries worldwide that has anti-money laundering rules and regulations.

In this part of the Guide, an overview of beneficial ownership is provided, it will preview the issue from a legal and institutional point of view, how to detect the beneficial ownership and how to deal with cases of non-declaration.

This overview will present an insight into Lebanon’s legal framework, in addition to other frameworks from France and the United Kingdom, as these countries are known for having good practices in the field.

Lebanon

According to Law No. 2018/106, Lebanon was subject in 2012 to the first stage of assessment done by the Global Forum on Transparency and Exchange of Information for Tax Purposes and was not found qualified to proceed to the second stage of the assessment. After accomplishing several procedures required by the forum in 2016, Lebanon temporarily proceeded to the second stage with a pending status until all recommendations are accomplished.\(^1\)

At this stage, it was required from the Lebanese government to include tax provisions regarding beneficial owners in its tax regime, regarding its identification and supervision, with the obligation of issuing laws on the matter in accordance with the Forum’s standards in order for Lebanon to avoid black-listing.\(^1\)

Law No. 106 includes a clear definition of the beneficial owner in Article 1)1)

“A beneficial owner is every person no matter where he/she lives, that ultimately owns or dominates, directly or indirectly the activity practiced by any other natural person or legal person/entity all over Lebanese territory. Indirect ownership is present when the act of ownership or dominance is through a series of ownerships or by other different domination means”.\(^6\)

Also according to the same Law Article 3)1)

“All authorized personnel mentioned in paragraphs 2 & 1 of this Article, must hold a special registry of beneficial owners that includes: full name, nationality, date of birth, residency address, mailing address, ID or passport number for foreigners, tax registered residence, tax number, distribution percentage of ownership. These authorized personnel must hold documents that authenticate the structure of the ownership of the legal person/entity and/or how it is being dominated, along with all information and documents related to the beneficial owners for ten years, even after a beneficial owner status is no longer active, or after a beneficial owner stopped operating”.\(^6\)

Law No. 2018/106 is one of the laws that best describe Lebanon’s definition and overview of beneficial ownership, it is direct and clear. In addition, it makes certified public accountants and auditors jobs more comprehensive and therefore, more efficient, by requiring the certainty of identifying the identity of their clients; identifying the real beneficial owners of any venture, and acquiring enough information and documents that prove the legal and beneficial owners even after the business relationship is terminated.

Accountants and auditors are recommended to keep in mind that money laundering is not a one-time act, but an ongoing process. They should not settle by getting this information only when initiating the relationship, instead, they should hold a periodically updated record that includes any changes and modifications of any part of the client’s business, for them to avoid suspicions in any future legal dispute.

In order for accountants and auditors to be working in correspondence with the law, the following steps are required:

- Keeping a record of all beneficial owners;
- Obtaining complete information of all beneficial owners and legal entities before the business relationship is initiated;
- This information is then kept in the accountants/auditors’ archive;
- An update of this information is done at least once a year with a receipt of the delivery signed by the client that will all be ready to be handed over in case it was legally required;
- These records are kept for at least ten years to avoid any future disputes.

Consent of all the information provided by the client with a clear explanation of all legal responsibilities that accompany this information must be signed by the client, which is important for accountants to avoid legal responsibility.

Trainings and lectures on this matter should be held especially in companies that have several accountants working as their representatives. Accountants should not engage in this kind of work if these conditions are not met, and should terminate their relationships with any clients that show evidence or suspicion of any non-preferable financial activity.

Law No. 2015/44 is another Lebanese law that is directed towards the issue of money laundering, Article 4 states that:

“Banks, financial institutions, financial leasing companies, institutions that issue and promote credit or debit cards, institutions that handle cash transfers electronically, exchange institutions, companies that engage in financial intermediation and collective investment organizations and any other institutions that are subject to licensing and censorship from the Central Bank of Lebanon must abide with the obligations listed below and the regulatory texts issued by the Central Bank of Lebanon for the purpose of implementing this law:

1- Applying Customer Due Diligence procedures on permanent clients (whether they are natural or legal persons/entities) for the purpose of verifying their identities based on documents, information, or trusted data.

2- Applying Customer Due Diligence procedures on temporary clients for the purpose of verifying their identities in case the value of an operation or series of operations is above the threshold determined by the Central Bank of Lebanon.

3- Determination of the identity of the beneficial owner and taking necessary steps to verify their identity based on documents, information, or trusted data.

4- Retention of copies of documents related to all operations and information or data or copies of documents related to the identity of clients for at least five years after finishing operations or the end relationship, whichever is longer.

5- Performing on-going monitoring and revision of clients’ relationships.

6- Application of procedures stated in paragraphs 1 to 5 above on permanent and temporary clients upon the emergence of any doubt regarding the truthfulness and relevance of their declared information, and information related to identifying clients, or upon the emergence of doubts of money laundering or terrorism financing, regardless...”

\(^{15}\) The assessment reports mentioned are not available, however they are mentioned in the Reasoning of Law No. 2018/106:Amending Law No. 2008/44 on Tax Procedures. Available at: http://www.legallaw.ul.edu.lb/Law.aspx?lawId=2012/09/09) 278983)

\(^{16}\) Ibid
of any ceilings or exceptions that limit the implementation of these procedures.

7- Take into consideration the indicators that flag on the prospects of the presence of money laundering and terrorism financing, along with principles of caution and carefulness in order to reveal suspicious operations”.

Article 3 of Law No. 2015/44 is addressed to institutions that are not subject to the Bank Secrecy Law such as insurance companies, gambling clubs, property brokers…it provides that these institutions must hold a registry of operations that have a value higher than the threshold determined by the Central Bank’s Special Investigation Commission (SIC), and that these parties are obliged to restrict to the text of Article 4 and the recommendations that come from the SIC for the provisions of this Law to be applied. It also provides that this Law is applied to certified public accountants and public notaries when dealing with the types of institutions mentioned above.

According to Article 4 and 18 of Law No. 2020/172 on “Fighting Corruption in the Public Sector and the Establishment of the National Anti-corruption Commission”, the NACC can request investigating and prosecuting corruption crimes without getting prior permission or permit from any external authority as long as the request is directly filed on its behalf. Additionally, the NACC can also receive corruption crimes related complaints and reviews them in order to transfer them to the specialized authorities.

This being said and given that the identification of the beneficial ownership is an integral part of fighting money laundering, two options are there to provide legal support: The Special Investigation Commission and the National Anti-Corruption Commission.

The former’s (SIC) broad scope deals with all types of crimes of which some might be related to the crime of money-laundering. Whereas the latter (NACC) deals with corruption crimes that might eventually revolve and be linked to the crime of money laundering. Having said that, Lebanon has legally tackled all types of crimes that can contribute to committing the crime of money laundering. Accountants do have the ability to reach out to the SIC and to the NACC once established and enforced to report on suspicious transactions or activity.

Based on Articles 5 and 6 of Law No. 2015/44 and the Financial Action Task Force recommendations, the SIC issued the SIC Circular No. 24 which addresses the parties and individuals mentioned in Article 5 of Law No. 2015/44.

Article 1 of the SIC Circular 24 states that:

1- Customer: any natural or legal person, whether a company or a partnership of any type, or any legal arrangement (e.g. a trust), or any body, organization or non-profit organization (mutual funds, cooperatives, welfare centers, charities, clubs, etc.).

2- Beneficial Owner: any individual who ultimately owns or who exercises ultimate effective control, whether directly or indirectly, over the Customer and/or the natural person on whose behalf a transaction is carried out.

Indirect ownership and/or control include the situations where the ownership and/or control are exercised through a chain of ownership or by means of control other than direct control.

This expression shall also apply to the beneficial owner of the beneficiary of a life insurance policy or of any other Unit-Linked Investment and Capitalization insurance policies.”

From the content of Law No. 2015/44 and the SIC Circular 24, a clear definition of the beneficial owner is obtained out of which concerned persons can easily classify how and when someone will bear the status of a beneficial owner.

It facilitates a legal outline for certified accountants and auditors working in Lebanon on how to deal with organizations and clients and how to identify beneficial owners of the clients they are handling. These legal references lead to a well-structured guideline and policy/procedure, outlined below, regarding the issue of beneficial ownership of structures operating in Lebanon.

Policies:

1- Apply Customer Due Diligence on permanent and temporary clients.
2- Authenticate the identity of a beneficial owner and legal person/entity.
3- Hold copies of identity documentation.
4- Hold copies of proofs of operations.
5- On-going control and monitoring of client relationships.
6- Monitoring of any indicators that might link to money laundering.

Procedures:

1- Certified accountants must fill a “Personal Information Form” that contains all information that must be acquired from the beneficial owner and/or the legal person/entity

2- Certified accountants must fill a “Business Information Form” that contains all information that must be acquired regarding the business activity as well as the purpose and intended nature of the business relationship.

3- Both Personal and Business Information Forms are filled and signed by the client, and then it is attached with copies of the documents and data that verify this information and is archived for future needs.

4- Certified accountants should keep in mind that some alterations might take place at any time, periodic updates, at least once a year, of the client’s information and operations, must be conducted.

5- An Information Update Form must be issued, this form is filled by the customer in case of any given change and must be signed by the client whether there is any change or not as a proof of continuous control by the accountant.

6- The contract between the two parties should contain a brief on money laundering with a clause that the client must sign by which the client promises that there will be no future account for money laundering or terrorism financing. This detail is very important as a proof to the authorities of not being involved.

7- Auditors must look for any red-flag indicators such as:
   - Abnormal or remarkable transactions or business activity.
   - Large cash deposits or consistent large balances with no grounds.
   - Hesitation or avoidance of providing business information, such as hiding information of beneficial ownership.
   - Complicated financial transactions that are usually done to disguise funding sources.
   - Purchasing money orders and cashier checks using significant amounts of money.
   - Variable information such as more than one tax ID or unverified documents.

France

France is one of the European countries that have a great experience in combating money laundering and terrorism financing and have successful approaches that can be reciprocated in other countries.

According to the French Monetary and Financial Code, Article L2-2-561:

“The beneficial owner is the natural person(s):”

1- Who ultimately controls, directly or indirectly the customer;
2- Or for which an operation is carried out or an activity is exercised.”

Another important approach is a French policy titled "Beneficial Ownership” (ID: FR0009), published on the platform of the Open Government Partnership, which is a multilateral initiative that includes 78 countries and aims to fight corruption through boosting the idea of open government.

17- See footnote No. 3
18- See footnote No. 3
20- Special Investigation Commission Circular 24 on Defining and Identifying the “Beneficial Owner”. Available at: https://www.sic.gov.lb/sites/default/files/laws-regulations/24EN_0.pdf (2020/09/09)
21- French Monetary and Financial Code, Article L2-2-561. Available at: https://www.legifrance.gouv.fr/codes/id/LEGISLAT02018/09/09/LO-2018090916557571757.html
According to this policy, the increase of transparency on beneficial ownership is essential in combating money laundering because it will increase the transparency on shell companies. What underlies this belief is that shell companies are at the heart of money laundering and are among the top vehicles used in money laundering operations.

If shell companies are abolished, you can get rid of a high proportion of identity concealment. The French policy FR0009 also mentioned that in 2014 The European Commission reached an agreement, which was to create a central beneficial owner register with gradual access, and unrestricted for competent authorities and financial bodies.

The importance of this experience lies in the presence of a roadmap establishing a beneficial owners’ register, which is not the case in Lebanon. The Lebanese approach contains good rules and directions; however, it does not contain any direct guidance to the initiation of a register.

United Kingdom

According to Law No. 2157, Part 2007, a beneficial owner is defined as follows:

1. “In the case of a body corporate, “beneficial owner” means any individual who:
   a. As respects anybody other than a company whose securities are listed on a regulated market, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 5% of the shares or voting rights in the body; or
   b. As respects anybody corporate, otherwise exercises control over the management of the body.

2. In the case of a partnership (other than a limited liability partnership), “beneficial owner” means any individual who:
   a. Ultimately is entitled to or controls (whether the entitlement or control is direct or indirect) more than 5% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership; or
   b. Otherwise exercises control over the management of the partnership.

3. In the case of a trust, “beneficial owner” means:
   a. Any individual who is entitled to a specified interest in at least 25% of the capital of the trust property;
   b. As respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within sub-paragraph (a), the class of persons in whose main interest the trust is set up or operates;
   c. Any individual who has control over the trust.

The United Kingdom started its beneficial owners’ public register in 2016; it was one of the first countries worldwide to do so. The UK register is called the register of Persons with Significant Control (PSC), it has both, the feasibility of public registers and a set of new standards, demonstrated through publishing the data as open data, allowing others to analyze the data in bulk.

There is a lot to learn from the experience of the United Kingdom about the formation of a register. This experience will constitute a background on which stakeholders can build on in the future to push towards the formation of a register in Lebanon.

III-Accountants, Auditors and UBO Identification Process

Money laundering is known for being the act of creating a formula, through which launderers who are mostly criminals can legalize the money earned from illegal or criminal activity/operations, this money is also known as dirty money. 25

Legalizing dirty money can take different forms and is usually a very complex series of operations and steps, which will lead to eventually depositing the money at a bank, buying an asset and controlling it, or starting a business or investment and controlling it indirectly or by proxy if not possible directly.

Simply put, some launderers might start any kind of cash business and then begin depositing money in small proportions with the bank after mixing it with their business revenues, this case is mostly used in small countries.

The Middle East is a good example, where well-established tax systems are nonexistent and the amount of cash used is not as much as in other regions and countries. The most common way used is through establishing trusts, charities, and mostly shell companies.

Shell companies are the most popular because of their high success rate, and their high success rate is due to their low expenditure and high level of concealment. Money launderers, in this case, have no real operations, employees, or even a real address, however, it eventually leads to concealment of the beneficial owner.

In their report "Sao Paulo: Does Corruption Live Next Door", Transparency International defines shell companies as follows: “A shell company or corporation is a limited liability entity that has no physical presence in the jurisdiction, no employees and no commercial activity. It is usually formed in a tax haven or secrecy jurisdiction, and its main or sole purpose is to insulate the real beneficial owner from taxes, disclosure or both. Shell companies are also referred to as international business companies, personal investment companies, front companies or ‘mailbox’/’letterbox’ companies. They can set up bank accounts which make them useful for transferring money”.

In the same report, Transparency International provides that a total of 3452 real estate units were bought by 236 shell companies, that were all connected to offshore jurisdictions and tax havens and with a total worth of USD 2.7 billion, these real estate units occupied a total area of 53 million square meters.

Shell companies are one of the vehicles used in the process of money laundering, but it is not enough on its own. Money laundering is a very complex phenomenon that requires a huge network of people, companies,

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22- Beneficial Ownership, Policy ID: FR0009, France. Available at: https://www.opengovpartnership.org/members/france/commitments/FR2020/09/09/0009
25- See footnote No. 2020/09/10/0009
27- Ibid
investments, bank accounts, and requires operating in different countries sometimes, to succeed in their purpose. This complexity is used to hide the trail and the initial source of the money.

Risk-assessment

Ultimate beneficial ownership is a major concern for accountants and auditors, for this reason, they are expected to know their customers and business partners and should be as certain of their identities as possible so that they can avoid being connected to any accusations of fraud, money laundering and/or terrorism financing.

This is why there is a need for risk assessment; risk assessment is the process by which an accountant and/or auditor can evaluate the risk that is affiliated to a person. It is an advanced Due Diligence exercise performed with a wider scope.

Risk Assessment must aim to identify, assess, understand and measure the potential risk of money laundering and/or terrorism financing that a person bears; it also aims at embracing the adequate measures that will reduce these risks. Risk approach to money laundering and/or terrorism financing must be adopted and followed by accountants and auditors when managing funds. Governments, on the other hand, must also adopt the proper regulations that serve this purpose.

The Financial Action Task Force in its 2019 Recommendations document states that "Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime and the implementation of risk based measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measures for some of the FATF Recommendations under certain conditions. Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks".

Risk Assessment is in this case based on some variables that should be taken into consideration. According to these variables or forms, an accountant and/or auditor will be able to classify the businesses, then based on this classification they can categorize subjects of the risk assessment. These categories are usually low, medium, high, and exempted. To apply this assessment, accountants and/or auditors must have great knowledge of the risk and the topic as a whole so that it will result in accurate outcomes.

Risk Assessment, in this case, is like any other known risk assessments; it is a kind of estimation, which can result in a number, percentage, or given category that is why this percentage is a sensitive and fragile practice, every last detail or variable, must be considered while conducting the assessment.

Below is a non-exhaustive list of these variables:

1. Nature of client: Beneficial owner, Legal person, Legal entity;
2. Nature of the structure of the company: Institution, Company, Corporation…;
3. Type of service provided to the client: advising, taxing, accounting, financial management;
4. The country of operation;
5. Type of transactions and financial operations performed by the client: cash, bank transfers, electronic payments…;
6. Types of currencies used: foreign currencies, payments in kind, electronic currencies…;
7. Types of clients: ordinary or Politically Exposed Person (PEP).

Identification

Studying the variables of a certain client can help classify it to a certain level of risk (low, high…), or can allow the creation of a scoring system with given scores to each variable then the final score is calculated from their average.

Whatever the method used to categorize the client, the next step is to come up with different approaches for each level of risk. For each category of Ultimate Beneficial Owner’s risk, there should be a different approach. All this will serve the purpose of the identification of the beneficial owner.

Low Risk:

- A standard visual check of the client’s ID is sufficient together with an authentication check.
- Ask the client to confirm their identity.
- Ask the client to sign a statement that mentions all their details.

Mid to High Risk:

In case a person is a PEP or if there are doubts or signs that relate to terrorism or money laundering, further investigation is required due to the high risk of getting involved in criminal activity. In this case and according to the Financial Action Task Force (FATF) recommendations, enhanced due diligence measures may include the following:

- Gathering more information to identify the person through performing additional searches from a wider collection of sources. Look for factors as political exposure, adverse media reports and legal enforcement measures.
- Studying the source of funds or wealth that are related to the person or business, look for any discrepancies between the total income, overall wealth and source of wealth.
- Requesting advanced information from Customers about the nature of the business, and the purpose behind it.
- Requiring information updates, at least once a year.

It is worth noting that risks can differ from one firm to another or between different clients and cases. It is kept to accountants themselves, depending on the degree of their experience and to the nature of the service they provide to judge and conduct the needed measures.

In ideal situations, the information needed on beneficial ownership is held in a registry. This registry should be central and held for the country as a whole, such a registry is usually provided and managed by Central Banks or other authorities. Central registries are preferable due to the ease of access, however, any registry should be available on public automated platforms that give users the ability to search through it.

In case registries are unavailable for beneficial owners in a given country, or the registry cannot be accessed, then the accountant should acquire the needed equivalent information by requesting documents that will serve the validation purposes.

Documents proving the following information is required:

- Name of the entity;
IV- Challenges Encountered in the Process Identification of BO and their Relative Cures

Culture of Secrecy

The OECD Global forum in a 2012 report mentioned that the Lebanese Authorities are not able to identify the financial information from banks or institutions. Any information available in the Lebanese Competent Authorities should be shared, however; it is not obvious if the information could be shared even if it was not required for tax purposes.

The Ministry of Finance does not have access to any information about the bank's customers or other entities within the financial sector due to the strict laws of the banks concerning secrecy under specific contracts. Furthermore, the professional secrecy is widely protected than that under International Standards.

There are no mechanisms within the Lebanese legal framework to identify the information about settlors, trustees, and/or beneficiaries, especially when they are not operating within the financial sector since they are not subjected to any obligations concerning the anti-money laundering mechanism.

Not all companies and banks are forced to apply the International Financial Reporting Standards (IFRS). However, this is considered an essential step to bring forward better financial reports for Lebanese companies, but the lack of mechanisms including the execution, control, and absence of necessary requirements is causing a huge gap in applying such step.

In addition, there are no sanctions imposed on those not responding to the accounting and auditing standards. The quality of financial statements was affected by the absence of enough knowledge and guidelines about the implementation of the standards.

In 2015 and 2016, the Banking Secrecy Law was challenged by the application of foreign laws; one of the main foreign laws was the American Tax Compliance Law. This Law requires banks and financial institutions to provide the Internal Revenue Service Agency with information about their clients, which directly challenges Lebanon’s Banking Secrecy Law.

Another law was the law of Exchange of Information for Tax Purposes, which gives the Minister of Finance the access to make agreements with any foreign country and share the information for tax purposes in cases of tax evasion or tax fraud and other tax malpractices.

Nonetheless, the Banking Secrecy Law is still enforced; this makes transparency and integrity of the Banking System in Lebanon in doubt. The Banking Secrecy Law is an obstacle for auditing financial statements of an individual or a company; one of the main reasons for the spread of corruption in Lebanon.
False Declaration of a UBO

In some cases, false information provided by the client about the UBO cannot be asserted by auditors. To give auditors the ability to detect and avoid the risk of receiving this false information, legal obligations were drafted to declare the right beneficial ownership information.

Law No. 2018/106 amending law No. 2008/44 as well as decision No. 2018/1/1472, provided standards to assert the beneficial owner information. The Heads of the Registry of the Civil Court of First Instance in Beirut and Baabda have required a written letter signed by the Chairman of the Board of Directions or by the General Director to be submitted declaring the right beneficial owner of capital shares whatever the percentage of their legal ownership was. The signature of shareholders and the association’s office members on an attendance sheet was another requirement to be submitted, including the name of the beneficial owner.15

Wherefore, under the penalty of fines, all designated personnel must keep and update a beneficial owner specialized register including the information required in the 10th paragraph of Article 29 of Law No. 2008/44.

According to form M18, the statement of the beneficial owner must also be submitted by the legal person electronically or by a post office such as Liban Post. Then the Tax Administration should be informed in case of any changes that may occur concerning the names of shareholders, partners, or beneficial owners, or any amends to their contribution and participation percentages.16

UBO in Public Domains

In the past years, several countries around the world created registers of complete information regarding beneficial owners, made for the purpose of exchanging information. Exchange of information is important in the process of verifying Ultimate Beneficial Owners; an essential duty on certified accountants and auditors.

In Lebanon, there is only a commercial registry dedicated to records of legal ownership only and not for beneficial ownership. This is not helpful in the process of verifying the identity of beneficial owners and it does not give the ultimate support in attempting to reduce the risk of beneficial ownership concealment.

UK, Germany, France, Italy, and Spain had published an initiative for the automatic exchange of information regarding beneficial ownership of companies and trusts. The initiative was in accordance with the Common Reporting Standards (CRS).

The five European countries then wrote to the countries of the G20 to encourage them to adopt a new single global standard to govern this exchange of information, they suggested the development of a global system of beneficial ownership information made of interlinked registries. At the end of 2016, a political promise was made by 54 jurisdictions supporting the development of a new global system.17

V- Reporting mechanism

Certified accountants and auditors who are on the front line of the financial system and who were granted special trust and delegations by the power of Law are by default part of the anti-money laundering approach.

After special education and training accountants must be well aware of the reporting mechanism in their country or any country in which they operate. Accountants are legally and ethically obliged to report any detection of money laundering, or at least any case of suspicious transactions.

Reporting consists of two different levels, which are both done for different purposes. Internal reporting mechanisms; are approaches internal to the firm and have the aim of managing operations and money laundering risks inside the accounting firm; External reporting mechanisms; are approaches dedicated to legal purposes and it consists of information that can be dispensed to external parties.

Internal Reporting

Financial firms are required to have an internal reporting mechanism, primarily for the management and control of their clients, implemented by certified accountants and auditors. To manage the risk of money laundering and terrorism financing, or any other financially suspicious activity, accountants and auditors should design a Suspicious Activity Reporting System (SAR).18

According to the Guidance Note issued by the National Crime Agency, workers in the regulated sector are obliged to submit a SAR to communicate information gathered in the course of their business whether they know, or in case they have reasonable causes for knowing or suspecting that a person is a participant or attempting to participate in money laundering or terrorism financing acts.19

Certified accountants should in any suspicious case start by internal reporting, they should fill a SAR immediately before proceeding to external reporting. Certified accountants and auditors are advised to stay alert to any red flags and ready to file a report, they should not hesitate to report for no given reason, they should be worthy of their duty.

Also, accountants are encouraged to stay up to date with their firms’ policies regarding anti-money laundering, and to any update by the authorities responsible for this issue to avoid future legal prosecution. Finally, accountants are encouraged to launch initiatives and contribute to this ongoing case.

Sized companies should establish a compliance unit to their internal system, this unit has the duty of establishing standards, policies, and procedures that are circulated company wide. This is to ensure compliance with applicable laws, regulations and standards, and to identify, detect, prevent and correct issues of noncompliance.

External Reporting

External reporting is the second level of reporting that should be done after the internal reporting process. This mechanism is done through communicating information to external parties, who are usually authorized to deal with such cases and are the people responsible for the overall process of combating money laundering and terrorism financing.
VI- Conclusions and Recommendations

Money laundering and terrorism financing became one of the biggest concerns for governments and stakeholders worldwide because of their direct link to corruption and crime; two elements that stand in the face of any country’s progress.

As we outlined throughout this guide, money laundering is a process of three layers: Placement, Layering, and Integration, these layers include several methods and activities. In order for accountants to contribute to the fight against money laundering, it is necessary to be aware of all the details of such forms of crime.

Accountants and auditors are thus required to know how it is done and through which ways or vehicles, the crime of money laundering is committed.

It is equally important for concerned stakeholders to understand laws and regulations that govern such default, the matter is not purely a financial issue, it is legal as well. Accountants and auditors should be aware of the regulatory framework including; laws, decrees, and/or circulars, next to policies.

In addition, they should familiarize themselves with the mechanisms to detect, report acts of money laundering, and the actions or possible decisions that a court and/or a relevant authority might take in a given case.

Accountants and auditors must understand what legal responsibilities lie upon them when faced with money laundering cases or even suspicious cases, next to knowing what is expected from them in line with the trust that was vested in them by the law.

Beneficial ownership is one of the titles that accountants must be well aware of as they operate their duties, this is due to the essential role beneficial ownership plays in committing money laundering acts.

Money laundering as a concept is based on the concealment of the real owners or controllers of the money used in the operations, in other words, “dirty money”. Relying on this fact, regulations around the world have a clear definition of a beneficial owner and have direct prosecutions mechanisms regarding identity masking or false declarations.

Some countries have effective means to reveal the real owners, verifying and authenticating identities, some other countries even have a beneficial owner register which is very useful in combating money laundering.

In Lebanon, this issue is quite complicated, there are Laws that are comprehensive and elaborative, but we do not have high standards in the verification process. This is due to the rooted culture of secrecy, which has become a basic standard in our business world and stands in the face of real application of rules and regulations.

Concealing the beneficial owner, together with secrecy is the basis of Mutual Interests, a complex cultural phenomenon on which our community is based; these interests are of a very wide range: individual, territorial, political, sectarian, religious, ethnic, tribal bases. This a non-exhaustive list, that empowers the culture of secrecy standing in the face of positive change.

Although the work of certified public accountants and auditors is complex, however, with the proper capacity building, their job would be easier to perform. Also, the core of the accountants and auditors’ duty is built on their ethical obligation to fighting financial crimes, as they are the hand that laws, regulating society, depend on for their implementation.

The role of financial experts is to keep the potential risk of malpractices and false identity in mind. Risk assessment of new and old clients on a timely basis is beneficial for the sake of evaluating the volume of risk and the prospect of false identification, which is the core of the anti-money laundering business.

There is a lot that can be done in Lebanon in the fight against money laundering and terrorism financing, that stands between us, and the possibility of having a transparent society built on respect of the law and integrity principles.

Stakeholders should be aware of their role and of what they can do to ignite change. Beneficial owners’ registry is a clear example of an instrument that can be used to increase transparency, and eliminate barriers in the fight against money laundering and terrorism financing.

This being said, it is important to further delve into the different approaches of advocacy within the Lebanese context, to navigate possible challenges standing in the way of eliminating financial crimes in Lebanon.
Recommendations

To ensure a better practice combatting financial crimes on the level of certified accountants and auditors, next recommendations directed at the national and international stakeholders, the Lebanese Transparency Association, Transparency International’s National Branch, recommends the following:

For Certified Accountants and Auditors:

1. Extensive courses on money laundering and beneficial ownership are recommended to certified accountants, with the inclusion of legal education;
2. Elaborating further on the red flags that alert to money laundering and identity concealment. And guide stakeholders towards acquiring an enhanced understanding of money laundering with a focus on beneficial ownership;
3. Building the capacities on identifying and mitigating risks of both money laundering and identity false declaration;
4. Education and trainings on the reporting system when a case is detected is by the receiving authorities;
5. Academic contribution to the context of this material is encouraged and recommended;
6. Preventive measures to be adopted by accountants to control the risk of having beneficial ownership associated with a money laundering case.

For National and International Stakeholders:

1. Prohibit Accountants/Auditors from holding an Executive Position;
2. Develop a comprehensive and efficient verification mechanism for accountants and auditors to follow;
3. Develop policies mitigating the risks of accountants to uncover beneficial owners;
4. Adopt effective measures to protect accountants and auditors from retaliation after uncovering fraudulent information;
5. Access to information through registries;
6. Public information and periodic validation of the data;
7. Adopt a framework for high coordination between the NACC and the SIC;
8. Push for bilateral/multilateral agreements/treaties between states to facilitate exchanging information among different jurisdictions;
9. Each country should establish a partnership between the Designated non-financial businesses and professions and the national authorities.
The Law No. 106 of 30/11/2018 defines a Beneficial Owner as: “any natural person, who actually and ultimately owns or controls, directly or indirectly, an activity implemented by any natural person or legal entity on the Lebanese territory, regardless of his place of residence.”

Article 5 of Law No. 318 /2001 on fighting money laundering requires Financial institutions to identify their permanent clients and the beneficial owners of the accounts, in addition to conducting an identity verification process of transient clients when the value of the operation exceeds a certain threshold.

The three steps of the money laundering process:

1. Placement stage: Where cash derived directly from criminal activity (for example, from sales of drugs) is first placed either in a financial institution or used to purchase an asset.

2. Layering stage: The stage at which there is the first attempt at concealment or disguise of the source of the ownership of the funds.

3. Integration stage: The stage at which the money is integrated into the legitimate economic and financial system and is assimilated with all other assets in the system.
Accountants and auditors should perform a Risk Assessment on their clients to identify any financial crimes.

Risk Assessment is affected by several variables; the provided list is a non-exhaustive list of these variables:

2. Nature of the structure of the company: Institution, Firm, Corporation, ...
3. Type of service provided to the client: advising, taxing, accounting, financial management.
4. The country of operation.
5. Type of transactions and financial operations performed by the client: cash, bank transfer, electronic payments, ...
6. Types of currencies used: foreign currencies, in kind payment, electronic currencies, ...
7. Types of clients: ordinary or Politically Exposed Person (PEP).
Money Laundering Examples

There are several ways to launder money, the list below provides examples of the most encountered ways.

1. Cash-based Business:
   Among the most common ways used internationally is the establishment of a Cash-based Business.
   The business would only accept cash payments in relatively small amounts that will constitute a significant sum at the end of the month.
   Launderers will then inflate their monthly receipts by a non-noticeable margin and will deposit the money with a bank after mixing it with illegal cash, an operation financially called “blending of funds”.
   Most common examples of cash-based businesses used in this field are hotels, nightclubs, retail shops, restaurants, camping sites, cafés, amusement parks...

2. Smurfing:
   Smurfing is also a great refuge for launderers, it is the act of fracturing a huge amount of cash into small amounts which will usually be below the customer identification threshold.
   This amount is deposited into different accounts in different banks, it might also be done by different people or in different countries, this way money will be hard to spot or locate.

3. Shell Companies:
   Using Shell Companies, money launderers assimilate their dirty money into the system.
   These legal entities are registered companies that do not own any significant assets and have no registered operations of significant amounts of money.
   Launderers use Shell Companies for selling services that are usually paid in cash that will be deposited later in the company’s bank account.

4. Trusts and Bearer Shares:
   Launderers use financial instruments such as Trusts and Bearer Shares to launder money.
   A trust is a fiduciary arrangement by which the first party or beneficiary allows a third party, or trustee, to hold assets on their behalf.
   A Bearer Share is an equity security that is completely owned by the entity or person who physically possesses the stock certificate. The company of issue does not have the name of the holder registered; the bearer will receive their dividends when the physical coupon is presented to the firm and the transfer of ownership of the stock is done physically through passing the document.
   Because of the vague ownership and the absence of registrations, these financial means are widely used in money laundering.

5. Cryptocurrencies:
   One of the most recent ways used in money laundering has emerged in the past 10 years, through the use of Cryptocurrencies.
   The secret behind its wide success as a money laundering instrument is the fact that cryptocurrencies are traded peer to peer.
   This feature is not available in other currencies that are governed by third-party organizations such as governments, and financial administrations that have strict rules and regulations governing them, in other words, it operates outside the international financial system.