

ANTI-MONEY LAUNDERING, COMBATING THE FINANCING OF TERRORISM,
THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION AND CORRUPTION



PRATICAL GUIDE #3

SUSPICIOUS TRANSACTION REPORTING

AMSTF



MONEGASQUE
FINANCIAL
SECURITY
AUTHORITY

TABLE OF CONTENTS

CONTEXT	01
SUBMITTING A SUSPICIOUS TRANSACTION REPORT	02
A. What to report?	02
B. When to report?	08
C. How to report?	09
YOUR OBLIGATIONS	10
A. Confidentiality obligation	10
B. Obligation to respond to requests for further information.....	11
C. Retention obligation	11
D. Right to postpone	12
IN SUMMARY	13
CASE STUDY	14
REMINDER OF LEGISLATION AND PENALTIES	16
GLOSSARY	18
APPENDIX I: INDICATORS	19
APPENDIX II: METHODOLOGICAL SUPPORT	20

The purpose of this guide is to make it easier for reporting entities to **understand their reporting obligations** to the Financial Intelligence Unit (FIU) of the Autorité Monégasque de Sécurité Financière (AMSF).

This practical guide is for information purposes only. Only the laws and regulations governing the fight against money laundering, the financing of terrorism, the proliferation of weapons of mass destruction and corruption (AML/CTF-P-C) in Monaco are authentic. Therefore, this practical guide does not cover all the obligations or the details of these obligations: simply applying the measures presented here does not guarantee that reporting entities will be in full compliance with the obligations in force.

The purpose of this guide is to help people understand the AML/CTF-P-C provisions set out in Law No. 1.362 as amended and its implementing Sovereign Ordinance No. 2.318 as amended by explaining the obligations in this area in a more pragmatic way. It is the responsibility of each reporting entity to comply with the legal and regulatory obligations in force, according to the risks specific to each entity.

This guide takes account of the regulations in force from 30 September 2023.

CONTEXT

All reporting entities listed in Articles 1 and 2 of Law No. 1.362 shall be subject to **reporting obligations**.

The suspicious transaction report (hereinafter “the report”) is the “raw material” on which the FIU works. It provides information on a given situation which, fol-

lowing analysis, can be used to improve knowledge of AML/CTF-P-C methods and, where appropriate, to initiate criminal proceedings. This information may also be used in the context of international cooperation.



POINTS TO WATCH

Reporting suspicions **is the purpose of the AML/CTF-P-C system**. The ultimate aim of the due diligence carried out by reporting entities is to identify situations that require a report to be filed.

SUBMITTING A SUSPICIOUS TRANSACTION REPORT

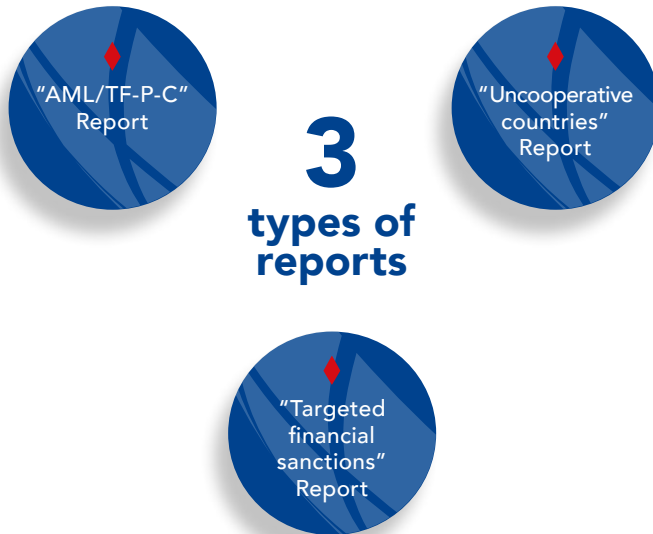
As a reporting entity, you need to be aware of the situations that require you to submit a report.

A. WHAT TO REPORT?

1. Report types

A distinction can be made between three types of reports:

- Report on an increased risk of money laundering, terrorism financing, proliferation of weapons of mass destruction or corruption;
- Report on "non-cooperative" countries;
- Report on targeted financial sanctions.



"AML/CTF-P-C" Report

Reporting entities must make a report whenever they suspect, or have reasonable grounds to suspect, or know, that a transaction involves funds linked to an AML/CTF-P-C offence.

POINTS TO WATCH

The term "funds" should be understood in its broadest sense. Funds of illicit origin, for the offence of money laundering, are the proceeds from offences punishable in Monaco by more than one year's imprisonment, as well as other offences listed in accordance with Article 218-3 of the Criminal Code.

Attempted ML/TF-P-C must also be reported.

The refusal of a transaction, due to the customer's behaviour, which gives rise to a suspicion of ML/TF-P-C must be reported.

Example

Mr X is a well-known doctor and wishes to set up a société civile immobilière [non-trading real estate company] (SCI) in Monaco. In doing so, he seeks legal advice to help him with the administrative procedures. At the meeting with Mr X, the legal advisor carried out all the procedures prescribed by Law No. 1.362. Mr X was asked about the purpose of the transaction, as follows: "Why do you want to set up an SCI in Monaco?". The latter states that he wishes to create a SCI in order to incorporate a real estate property that he inherited from an old lady who gave it to him just before she died. The link between Mr X and this person is not very clear. The legal counsel only knows that she was seriously ill. The legal counsel wondered whether the doctor had breached the "Hippocratic oath" and therefore inherited it from his patient.

Solution: In view of the facts, it appears that Mr X may have committed the offence of abuse of a vulnerable person. It is not clear how the property was acquired. Because of his profession, he has close contact with sick patients. The legal adviser wonders whether the property that Mr X wants to transfer to his SCI is of an illicit origin. The latter decides to send a suspicious transaction report without delay to the AMSF's FIU.

In fact, the legal counsel is right, since the movement of an asset whose origin is illicit to another vehicle, such as a company, may constitute a money laundering offence. In this case, we are talking about laundering the proceeds from the abuse of a vulnerable person.

“Non-cooperative countries” Report

Reporting entities are automatically required to report any transactions involving natural or legal persons domiciled, registered or established in “a State or territory whose legislation is recognised as inadequate or whose practices are considered to be an obstacle to AML/CTF-P-C”.

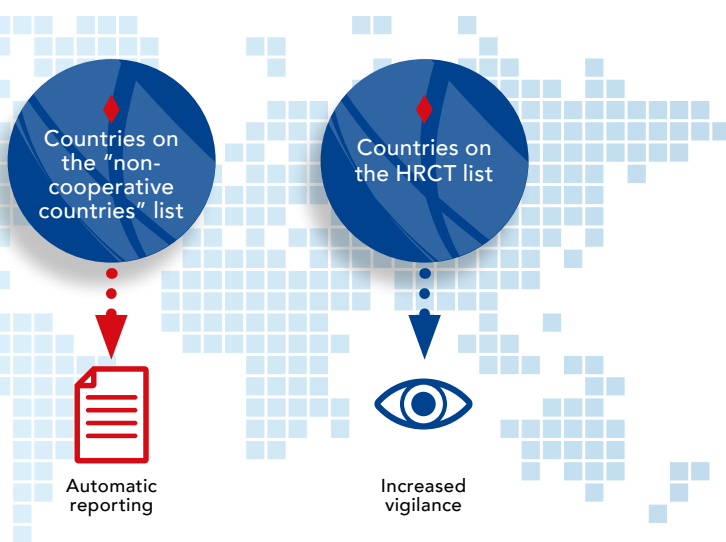
These states or territories are determined respectively by ministerial order.



POINTS TO WATCH

Any attempted transaction with a natural or legal person domiciled, registered or established in an “non-cooperative country” must be **automatically reported**.

It is important not to confuse the list of high-risk countries or territories (“HRCT”) with the list of non-cooperative countries or territories (“non-cooperative countries”). HRCTs do not need to be **automatically reported** but do require increased vigilance.



GOOD TO KNOW

You can find the latest list of “Non-Cooperative Countries” and HRCTs on the AMSF website.



Non-cooperative countries



HRC

Example

A British Virgin Islands trustee approaches a management company with a view to investing in financial securities. The management company shall identify and verify the identity of the trustee and its beneficial owners, in accordance with current regulations. A beneficial owner of Monegasque nationality domiciled in Iran has been identified. The AML/CTF-P-C Officer is contacted by the beneficial owner’s domicile. He knows that Iran is on Monaco’s list of non-cooperative countries, in accordance with a ministerial order.

Solution: The AML/CTF-P-C officer has automatically sent a suspicious transaction report to the FIU regarding the trustee.

The management company was right to file a report because one of the beneficial owners is domiciled in Iran, i.e. in a non-cooperative country. In this situation a report must be submitted automatically regardless of the person’s nationality, even if that person is of Monegasque nationality.

“Targeted financial sanctions” report

Reporting entities must file a report automatically whenever transactions involve natural or legal persons subject to measures involving the freezing of funds and economic resources.



POINTS TO WATCH

All entries related to natural or legal persons must be filtered on the basis of the national list of measures to freeze funds and economic resources.





GOOD TO KNOW

The national list of measures to freeze funds and economic resources designated by decision of the Minister of State may be consulted on the website of the Department of Budget and Treasury.

Subscribe to the newsletter issued on this site to keep up to date with the list in real time..



Example

Mr C is a warm, smiling and well-dressed person. He wants to buy a watch costing €15,000 in cash from a prestigious jeweller in Monaco. He immediately puts the jeweller's employees at ease. Watches hold no secrets for him, and he is a true enthusiast. However, the jeweller's staff are rigorous and stick to internal procedures. Before selling the watch to Mr C, an employee checked Mr C's first and last names against the Monegasque funds freeze list. Mr C appears on the funds freeze list and is subject to an economic sanction.

Solution: The jeweller informed Mr C that it was unable to sell him the watch he was planning to buy. Subsequently, the AML/CTF-P-C manager immediately filed a suspicious transaction report on Mr C. The jeweller fulfilled its obligations perfectly.

On the one hand, it filtered its client's first and last names on the Monegasque freeze list before concluding the transaction. On the other hand, it refused to conclude the transaction and automatically sent a report.

2. Who are the entities concerned by the report?

The obligation to report applies broadly and covers, in particular:

- Potential and existing customers;
- The natural person and the legal person, as well as the beneficial owner;
- The authorised representative, if any;
- The co-contractor of the potential or existing customer.



POINTS TO WATCH

The potential customer (prospect) is concerned by the report. This must be reported, even if the reporting person refuses to enter into a business relationship.

3. What must the report contain?

The report must contain the following information:

- **The facts** that constitute the evidence on which reporting persons rely on;
- **The deadline** by which the transaction must be completed, if applicable.

4. What should be done with information collected after a report has been made?

If a report has already been submitted and the reporting person gathers new information in connection with it, a supplementary report must be submitted. This refers to any element that may invalidate, confirm or modify the content of the initial report. This information must be provided without delay.



POINTS TO WATCH

Failure to submit additional information is considered as a failure of declaration.

B. WHEN TO REPORT?

As a reporting person, you need to know when to submit a report on a given transaction.

Principle

Before the transaction

- The report must be submitted **before** the transaction is carried out.
- Reporting persons are obliged to refrain from carrying out the transaction until they have submitted the report.
- The report must be submitted **without delay**.

TRANSACTION

Exception

After the transaction

The report may be submitted after the transaction has been carried out in two cases listed exhaustively in Article 39 of Law No. 1.362, as amended.

- Either because the transaction cannot be postponed.
- Or because postponing the execution of the transaction may be likely to prevent the prosecution of the beneficiaries of the AML/CTF-P-C offences.
- If the report is submitted after the transaction has been carried out, the reporting person must **give the reason** why the report was not submitted before the transaction.
- The report must be submitted **without delay**.
- A report sent after the transaction is an **exceptional case**.

C. HOW TO REPORT?

As a reporting entity, you need to know how to submit a report.

In accordance with Article 36-2-1 of Sovereign Ordinance No. 2.318, as amended, the method of sending reports is specified on the AMSF website and established by the FIU.

Since 1 January 2024, the **goAML solution** has been the sole method of submitting reports.

An instruction manual and a goAML user manual are available on the AMSF website. The steps to be followed by the reporting entities in the registration process are detailed.



POINTS TO WATCH

Any report that is incomplete, does not comply with the required formalities or that is sent via another channel than the GoAML solution will be rejected, subject to the provisions of paragraph 1 of Article 37 of Law No. 1.362, as amended. The reporting entity will be informed of this rejection. If the report is rejected, it is deemed not to have been made. The reporting entity is then subject to the penalties for failure to report set out in Article 71-2 of Law No. 1.362, as amended.

Who must report?

The reporting party is the AML/CTF-P-C officer appointed by the reporting entity.

YOUR OBLIGATIONS

As a reporting entity, you should be aware of the obligations to which you are subject during and after a report.

A. CONFIDENTIALITY OBLIGATION

Reporting entities have an obligation of confidentiality with regard to reports. Therefore, the following must not be disclosed:

- The existence of a report;
- The content of a report;
- What action will be taken.

In the event of a breach of the confidentiality obligation, the reporting entity may be subject to criminal penalties.



POINTS TO WATCH

As a matter of principle, the exchange of information to reports between reporting persons shall not be permitted.

EXCEPTION

Article 45 of Law No. 1.362, as amended

The exchange of information shall only be permitted between reporting persons in the same professional category and under certain conditions. It applies only to the reporting entities listed below:

- By way of exception, credit institutions, insurance companies and insurance intermediaries belonging to the same group may, under certain conditions, inform each other of the existence and content of a report.
- By way of exception, auditors, tax advisers, legal advisers and chartered accountants, as long as they belong to the same professional structure, may inform each other of the existence and content of a report, subject to certain conditions.
- By way of exception, credit institutions, insurance companies, insurance intermediaries, auditors, tax advisers, legal advisers, chartered accountants, notaries, lawyers and bailiffs may inform each other of a report where they act on behalf of the same customer and in the same transaction, or when they have knowledge, on behalf of the same customer, of the same transaction.

B. OBLIGATION TO RESPOND TO REQUESTS FOR FURTHER INFORMATION

The reporting entity must respond to requests for additional information sent by the FIU without delay, even in the absence of a report.

C. RETENTION OBLIGATION

Reporting entities shall be obliged to keep all documentation regarding a report.



POINTS TO WATCH

This obligation also implies keeping a record of the results of all analyses carried out, which must be formalised.

The retention period is **5 years**.

By way of exception, this retention period may be extended to a further maximum period of 5 years:

- On the initiative of the reporting person;
- At the request of the AMSF;
- At the request of the Public Prosecutor, the investigating judge or judicial police officers acting on request of the Public Prosecutor or the investigating judge in the context of an ongoing investigation.

D. RIGHT TO POSTPONE

Due to the severity or urgency of the matter, the AMSF FIU has the right to oppose the execution of any transaction on behalf of the customer concerned by the report. This opposition enables the reporting party's suspicions to be analysed, confirmed or refuted and the results of the analysis to be forwarded to the competent authorities.

This right of postponement may be exercised during the period in which the transaction is to be carried out. For this reason, the report must be made before the transaction takes place, without delay, so as not to deprive the FIU of the right to oppose the planned transaction.



POINTS TO WATCH

The deadline by which the transaction must be completed must be entered in the report.

If the deadline changes, an additional suspicious transaction report must be filed.

The effect of the right to postpone is to prevent any transaction from being carried out for **a maximum of 5 working days** from the date of notification from the FIU.

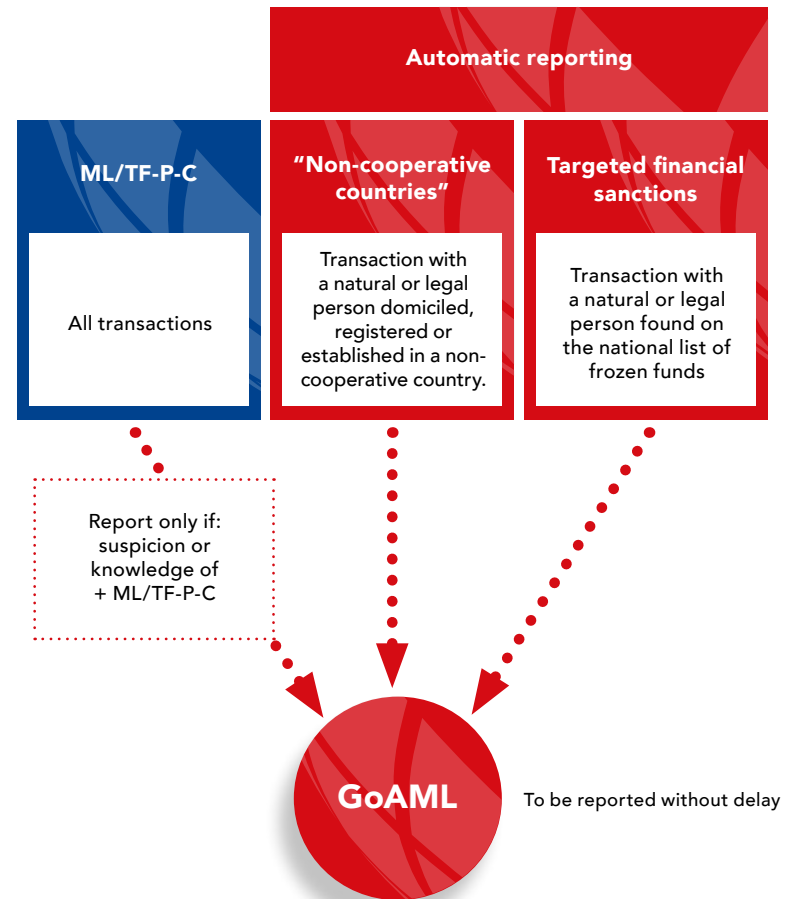
The duration of the opposition may be extended by the judicial authorities. If no objection is received, the reporting entity shall be free to carry out the transaction on the date indicated in the report.

The term "free" means that the reporting entity is authorised to carry out the transaction within the meaning of Law No. 1.362. Nevertheless, it remains responsible for the legality of the transaction.

It is essential that the reporting entity does not close the account when a report is submitted. This could paralyse the FIU's prerogatives with regard to the right to postpone.



IN SUMMARY



Obligations in all cases:

- supplementary report if the reporting entity gathers new information;
- confidentiality;
- respond to requests for further information;
- retention of reported elements.

NB : FIU's right to postpone

CASE STUDY

Mr X approaches the estate agency about buying a flat in Monaco for €2 million. A date has been set with the notary to complete the sale. The customer's socio-economic background was formalised in a summary document. The customer is a senior civil servant. He states that he has saved his money since he started working and, in addition, has received "gifts". The estate agency therefore gathers documents to corroborate the origin of the "gifts". It realises that it does not always understand the link between Mr X and the people who gave him gifts. He claims that he has always been kind and helpful to those around him, and that in return he gets some nice "gifts". The estate agency suspects Mr X of being the perpetrator of the offence of bribery and attempted money laundering. It prefers to err on the side of caution and waits to confirm the origin of the "gifts".

The sale of the flat was concluded at the notary's office in favour of Mr X. Following Mr X's departure from the notary's office, the estate agency shares its suspicions with the notary, since it knew that he too is subject to Law No. 1.362, as amended. The notary informs the estate agency that he has sent a suspicious transaction report to the FIU by registered letter. The notary did not use the goAML tool because he is not yet used to using this new method.

Following this discussion with the notary, the estate agency decided to immediately submit a suspicious transaction report to the FIU using the goAML tool.

What do you think?



On the suspicious transaction report of the estate agency:

The AML/CTF-P-C due diligence carried out by the estate agency led it to suspect that its client was attempting to launder illicitly received "gifts". The suspicious transaction report was submitted after the transaction had taken place, whereas it should have been submitted before the transaction, as soon as the suspicion arose.



POINTS TO WATCH

The estate agency should never have waited until it was certain that the "gifts" were illegal, as this is the job of the FIU's analysts.



On the notary's suspicious transaction report

1. Failure to report

The notary submitted the suspicious transaction report before carrying out the transaction with his client. However, he sent his report by registered letter instead of using the goAML tool. His declaration of suspicion is therefore deemed not to have been communicated to the FIU.



POINTS TO WATCH

If the report is not transmitted by goAML, this is deemed to be an absence of a suspicious transaction report, within the meaning of Article 36-2-1 of SO No. 2.318, as amended.

2. Breach of the obligation of confidentiality

The notary informed the estate agency that he had filed a suspicious transaction report on Mr X. In doing so, he breached his obligation of confidentiality by disclosing the existence of his report.



POINTS TO WATCH

The existence, content and follow-up of a suspicious transaction report must not be disclosed under any circumstances, even between reporting entities, under penalty of criminal sanctions (with certain exceptions - see above A. Confidentiality obligation).

REMINDER OF LEGISLATION AND PENALTIES

The main laws concerning reporting and information obligations:

- Law No. 1.362 of 3 August 2009, as amended.
- Its implementing Sovereign Ordinance, SO No. 2.318, as amended;
- Sovereign Ordinance No. 8.664 of 26 May 2021 on procedures for freezing funds and economic resources in application of international economic sanctions, as amended;
- Ministerial Order No. 2018-926 of 28 September 2018 repealing Ministerial Order No. 2011-237 of 15 April 2011 and implementing Articles 14 and 41 of Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorism financing and corruption, as amended, concerning the Democratic People's Republic of Korea.
- Ministerial Order No. 2018-927 of 28 September 2018 repealing Ministerial Order No. 2009-432 of 14 August 2009 and implementing Articles 14 and 41 of Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorism financing and corruption, as amended, concerning the Islamic Republic of Iran.

Penalties for failure to report:

In accordance with Article 71-2 of Law No. 1.362, as amended, any natural or legal person who:

- Knowingly fails to file the suspicious transaction report referred to in Article 36 of Law No. 1.362, as amended (pre-transaction reporting);
- Does not file the suspicious transaction report referred to in Article 39 of Law No. 1.362, as amended (post-transaction reporting);
- Does not file the suspicious transaction report referred to in paragraph 1 of Article 41 of Law No. 1.362, as amended ("non-cooperative countries" report);
- Does not file the suspicious transaction report referred to in Article 42 of Law No. 1.362, as amended ("targeted financial sanctions" report);
- Knowingly fails to file the suspicious transaction report referred to in paragraph 1 of Article 40 of Law No. 1.362, as amended (lawyers-defenders, and trainee lawyers are required to inform the Bar Association without delay).

Penalties for failure to maintain confidentiality:

In accordance with Article 73 of Law No. 1.362, as amended, natural or legal persons who fail to comply with the prohibition on disclosing the content and consequences of a suspicious transaction report shall be liable for criminal prosecution.

Penalties for non-retention:

In accordance with Article 71-1 of Law No. 1.362, as amended, natural and legal persons who fail to comply with their obligation to keep records are liable to a fine.

With regard to the nature of the penalties: reporting entities who commit any of the above-mentioned offences shall incur criminal liability.

Protection of reporting entities:

No criminal liability: in accordance with Article 44, paragraph 1, of Law No. 1.362, as amended, a reporting entity who files a report in good faith may not be prosecuted for false accusation (Article 307 of the Criminal Code) or breach of professional secrecy (Article 308 of the Criminal Code).

No liability under civil and disciplinary law: in accordance with Article 44, paragraph 2, of Law No. 1.362, as amended, a reporting entity who files a report in good faith may not be subject to:

- A civil liability action;
- A professional sanction or measure that is prejudicial or discriminatory with regard to employment, against itself, its directors or its authorised agents.

The provisions of Article 44 of Law No. 1.362, as amended, shall apply even:

- When the originator of the report was not fully aware of the facts that were the subject of the report;
- If the activity or transaction that is the subject of the suspicious transaction report has not been carried out; as well as
- When proof of the criminal nature of the facts giving rise to the report is not reported or when these facts were the subject of a decision that there is no case to answer, discharge or acquittal.

GLOSSARY

Given the specific nature of the subject, certain terms require clarification, which is provided below.


Their aim is to standardise practices within the various professions.

Terms	Practical Guidelines	Non-exhaustive examples
Automatic reporting	<p>The terms “immediate report” means that the report must be sent systematically to the FIU. The report is made regardless of whether the reporting entity suspects, has reasonable grounds to suspect or knows that a transaction involves funds linked to an ML/TF-C-P offence. The report must be sent immediately in two situations:</p> <ul style="list-style-type: none"> • In the event of “non-cooperative” countries • In the event of a customer who is the subject of financial sanction 	<ul style="list-style-type: none"> ✓ A natural person a targeted or legal person whose name is found on the national list of frozen funds.
The reporting party	<p>The term reporting entity refers to the person filing the report.</p>	
Reporting obligations	<p>The term “reporting obligations” refers to all the obligations set out in Articles 36 et seq. of Law No. 1.362, as amended.</p>	

APPENDIX I: INDICATORS

Indicators are points of attention that arouse suspicion or allow the reporting entity to detail its suspicions about a given transaction. The AMSF proposes a non-exhaustive list of indicators, which can be consulted on its website.



 **POINTS TO WATCH**

- Reporting entities must adopt their own indicators in the light of their activity and risk profile.
- The mere presence of an indicator is not necessarily grounds for suspicion of ML/TF-P-C, but may prompt surveillance and closer examination. Conversely, a number of indicators may be grounds for suspecting ML/TF-P-C.
- Indicators must always be considered in context.

APPENDIX II: METHODOLOGICAL SUPPORT

STRUCTURE OF A SUSPICIOUS ACTIVITY REPORT

The points mentioned below constitute a non-exhaustive list and should be considered by the reporting entity as an aid to drafting a quality report.

Reports must be **precise, detailed and clear**. Superfluous details should be avoided.

A. OVERVIEW OF THE RELATIONSHIP

- **Relationship with the target person or entity:** is it a business relationship or an occasional customer? What is the nature of the relationship? What is its purpose?
- **Start of relationship:** mention the date on which the agreement is signed (e.g. management contract, engagement letter) or the first contact is made with the customer. In the specific case of financial institutions, mention the date the account(s) was opened, **the nature, origin and amount of the initial deposit**, and the intended operation of the account.
- **Context of the relationship:** is the person concerned a politically exposed person (PEP) and, if so, what is the function that gives him or her this status? Where do the assets of the person concerned come from? What sector does he or she operate in? If the customer is a legal person, what is its ownership structure and who are its beneficial owners? Has the natural or legal person in question already been the subject of a report? If so, please give dates and references.

B. HOW THE RELATIONSHIP WORKS

- **Main operations carried out**
- **For financial institutions:** brief description of the operation of all accounts linked to the person who is the subject of the report (main credit and debt movements). Does the account operate in the same way as agreed when the business relationship was entered into? Other relevant information may be detailed in this context, such as the nature of links with any principals.

C. PRESENTATION AND ANALYSIS OF THE SUSPICION

- **Origin of the alert:** periodic review, permanent control, detection by a manual or automated system, etc.
- **Detailed description of the facts giving rise to the suspicion,** accompanied by a precise identification of the natural and/or legal persons involved, as well as the links between them.
- **Factors leading to the report:** what clues lead to consider a fact as atypical, inconsistent or suspicious. Is there any negative information?
What steps were taken to establish the existence of reasonable doubt?

A **suspicious transaction report** requires a precise description and detailed analysis of the transactions in question:

- If the transaction has not been carried out, when will it be?
- Dates in chronological order, number of transactions, unit and total amount of transactions, origin and/or destination of funds.
- Who are the counterparties (provide identity, IBAN or account number, links with your customer)?
- Is the transaction an isolated transaction, or is it part of a wider pattern of atypical transactions?
- If there is more than one transaction, over what period will they take place?

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