



Suspicious Activity Reporting

Reporting with Safety

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What is Meant by 'Safety'

- Safety means that customers of reporting entities will never know that they are or were the subject of a suspicious transaction report submitted by the reporting entity.
 - Reporting entity and FIU staff are free from external pressure or intimidation
- Safety means that reporting entity and FIU employees will be free from all liability when a report has been submitted in good faith

Why is Safety Important?

- Because STRs will not be submitted when reporting entities do not feel safe
- Because the AML system can not work without these reports
- Because without an effective AML system Afghanistan will eventually find itself isolated from the international finance system
- Because Article 48 of the AML Law criminalizes failure to report suspicious transactions



Legal Guarantees of Safety

- Legal Guarantees in AML Law
 - Article 48 criminalizes illegal disclosure of information
 - Articles 42 and 43 exempt reporting entity and financial intelligence unit staff, respectively, from liability for good faith actions
 - Article 38 prohibits the FIU from disclosing to the prosecutor (or anyone else) identifying information about the reporting party
 - Article 38 also prohibits the FIU from sharing the STR with the prosecutor

Process Guarantees

- The law is, by itself, not enough to guarantee safety.
- Safety must be guaranteed through implementation of processes at all levels and through all interfaces
- Safety processes at Reporting Entities
 - Staff should have direct access to the compliance officer.
 - Compliance officer should have direct access to top reporting entity executives
 - Staff should never inform their customers that they have been or will be the subject of an STR
 - To do so is illegal and may result in criminal prosecution
 - To do so may endanger the well-being of others in the reporting entity and the FIU



Safety in transmission of reports

- The FIU has developed an electronic communications agreement and mechanism that guarantees safety in the transmission of electronic reports
- The FIU has developed a security code for all received reports that allows detection of tampering by either party after receipt of a report.
 - Security code is printed on receipts

Safety within the FIU

- The FIU is not a Law Enforcement Body
 - Deliberately placed in Da Afghanistan Bank in order to create a trusted buffer between reporting entities and law enforcement
- All FIU employees have been vetted
- Policies and procedures exist (and will be continuously developed) for protection of information whether electronic or paper-based
- All employees (will be) trained on safety policies and procedures
- Information is, to the greatest extent possible, held in electronic form
 - The computers holding the information are physically and electronically protected
 - The computers exist on an internal network that is physically isolated from other DAB networks and from the internet
- Only employees with a direct 'need-to-know' will have access to information
- All information access is logged and available for subsequent auditing.

Safety in Law Enforcement

- A memorandum of understanding (MOU) must exist between the FIU and Law Enforcement before any information is shared
 - All information released to law enforcement must be approved by the FIU Director General
 - MOU requires law enforcement to agree to information protection provisions
 - Information may be released only under certain conditions (for example the request must related to a specific case)
 - Information will not be shared with Law Enforcement bodies that do not honor in practice the terms of the MOU
- Law enforcement subject to same non-disclosure laws as everyone else (i.e. article 48)
- Law enforcement will not receive the STR
- Law enforcement will receive an analysis
- Information and analysis supplied by the FIU may not be used as evidence in a criminal proceeding
- Law enforcement must create evidence through their own investigation and powers of subpoena

Safety in International Information Exchange

- FINTRACA is in the process of joining the Egmont Group of Financial Intelligence Units
 - Provides secure mechanism for information exchange
 - Requires members to adhere to core principles for information protection
- FINTRACA is in the process of developing MOU for information exchange with 'competent authorities' of key countries
 - MOUs contain provisions for the protection of information



Conclusion

- Safety is the most important feature of an effective AML system
 - Legal provisions exist to guarantee safety
 - The FIU is developing and using policies, procedures, and technologies to implement legal requirements related to safety
 - Reporting entities also have a role in safety
- Without safety the AML system will not work. We each need to make it our highest priority.