



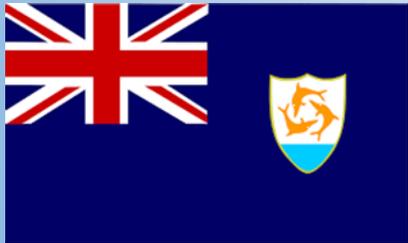
PLMCO

PRIVACY & LEGAL MANAGEMENT CONSULTANTS LIMITED.

KEEPING ONE STEP AHEAD – ‘NEW’ AML/CFT LANDSCAPE FOR LAWYERS:

***How to manage risks & handle the
reputational and ethical challenges***

Constituent Bar Members of the OECS Bar Association



Anguilla



Antigua & Barbuda



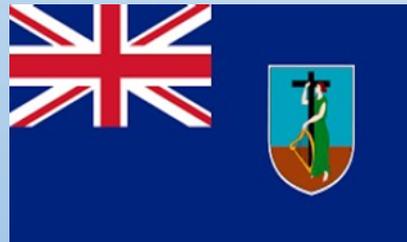
British Virgin Islands



Dominica



Grenada



Montserrat



St. Kitts & Nevis



St. Lucia



St. Vincent & the Grenadines

The Regulatory Framework

POCA/ ML
Legislation

AML/CFT
Regulations

AML/CFT
Guidelines

AML/CFT Code

The United Nations
Security Council
Resolutions

Activities that bring Attorneys under the AML/CFT Regime

Buying or selling real estate

Managing client monies, securities or other assets

Managing bank, savings accounts, or securities accounts

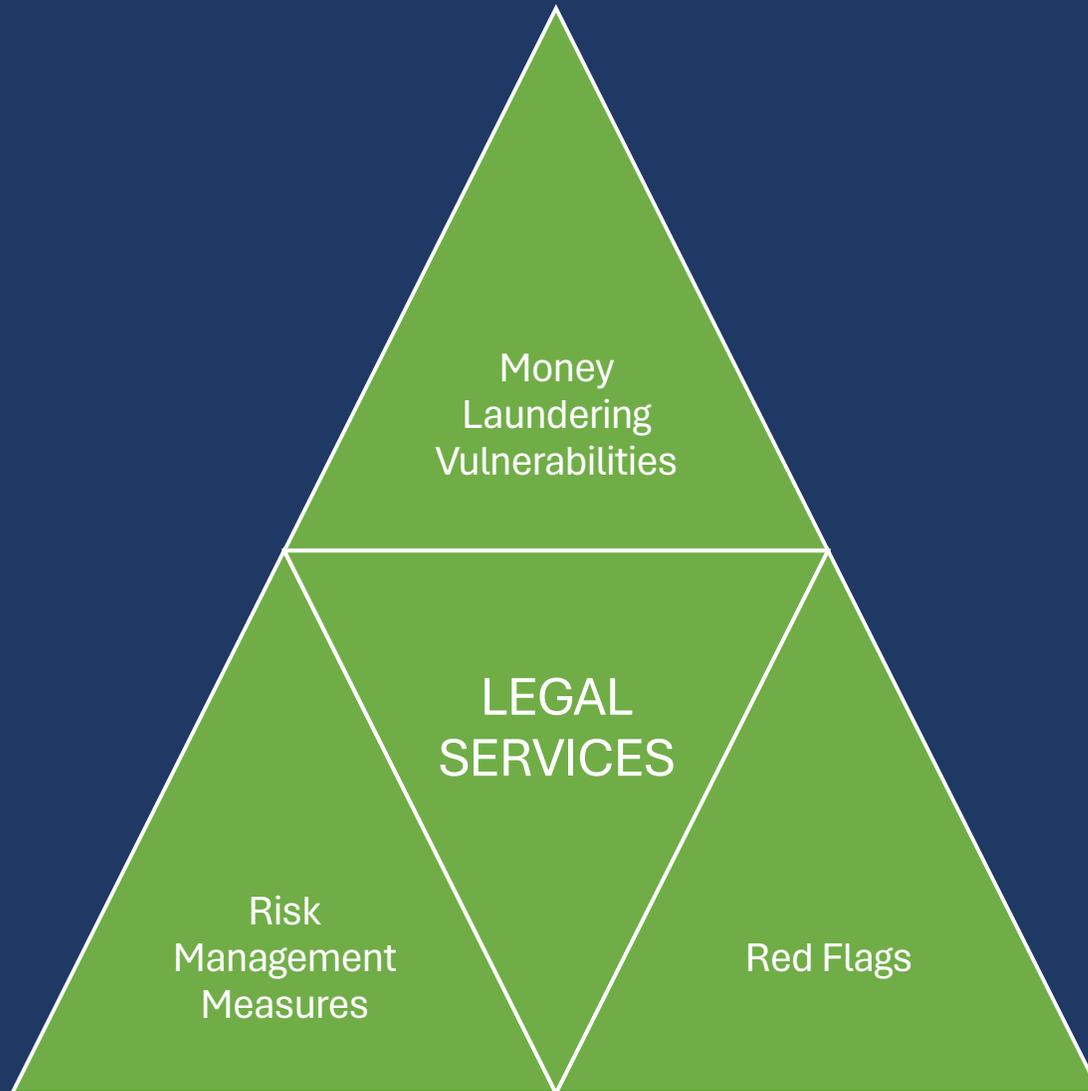
Organizing contributions for the creation, operation or management of companies

Creating, operating or managing legal persons or legal arrangements

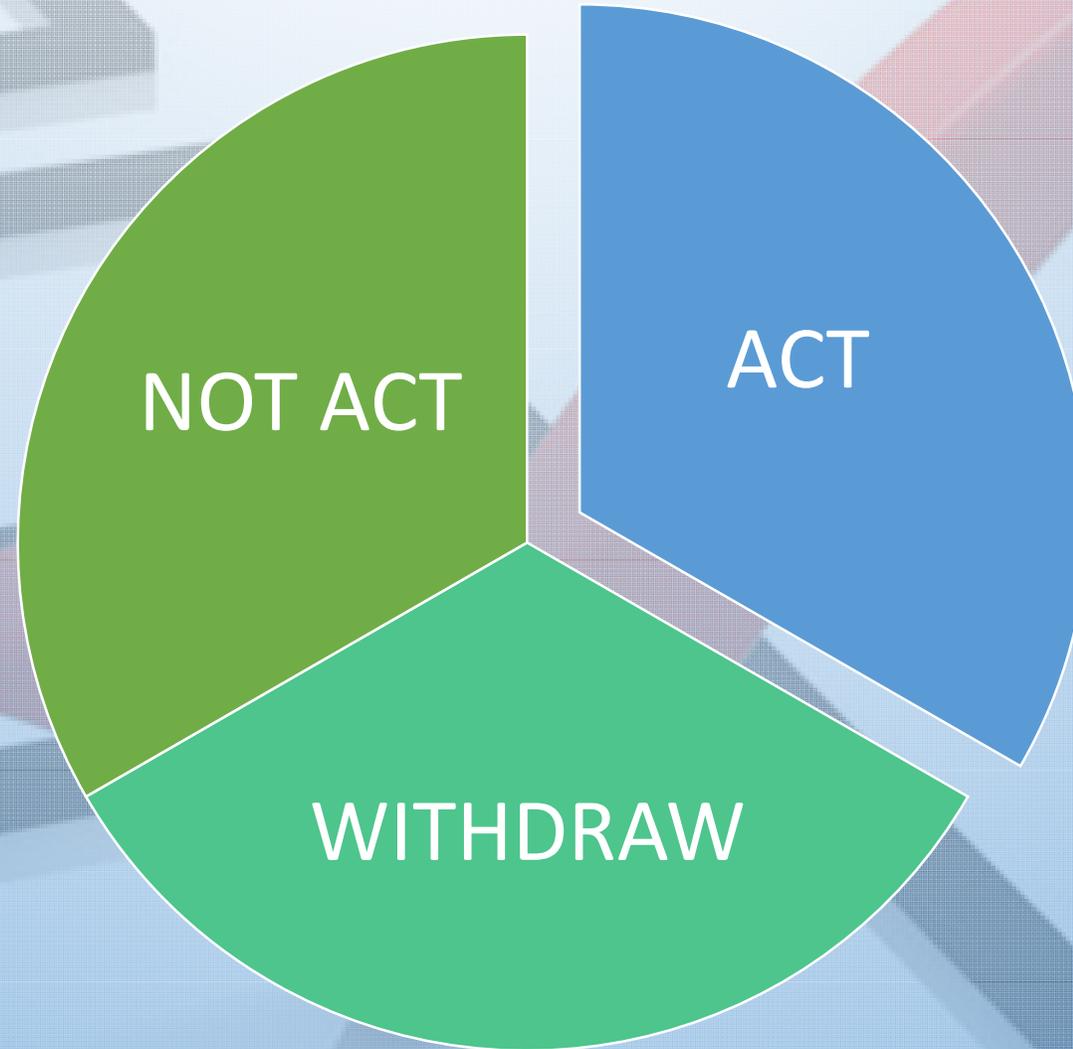
Creation, operation or management of trusts, companies or similar entities

Purchasing or selling a business entity

Navigating the AML/CFT Landscape



DUTY



Risk Based Approach

Due
Diligence

Risk
Assessment

Identifying
Red Flags

Responding

Reporting



Due Diligence

Customer Due Diligence

Establishing an appropriate record in respect of dealings with clients

- Identify the client, natural or legal, permanent or occasional
- Verify the identification through reliable, independent source documents, data or information

KNOW YOUR CUSTOMER! (CDD)

Who is the intended client?

Have I verified the client's identity?

Is the intended client a politically exposed person (PEP) or the relative/close associate of a PEP?

What is the purpose and intended nature of the business relationship?

What is the client's source of funds?

What is the client's source of wealth?

What is the size and volume of the client's business?

What is the nature and expected level of the transaction sought?

Is the transaction consistent with the circumstances and business of the client?

Is this person acting on behalf of a third party? Are they authorized? Identity verified?

Have I created a risk profile for this client/intended client?

CLIENT IDENTIFICATION AND VERIFICATION PROCEDURES



Client Identification and Verification Form

Identification and Verification Questionnaire for Individuals and Directors

In order to comply with the Proceeds of Crime Act and its Regulations, we are required to collect due diligence documentation and require 'Know-Your-Customer' information on clients who are engaged in your type of transactions. This is to ensure that we have clear knowledge and understanding as to the circumstances of our Clients and the operations of the Company under our control.

We reserve the right to request additional due diligence documentation and information once we have received and reviewed the details requested below.

Satisfaction of our immediate and ongoing requirements is of paramount concern to us as it is imperative that our mutual business interests are protected through the maintenance of the highest standards. All regulatory requirements, therefore, must be satisfied.

1. <u>General Information</u>	
Name:	.....
Alias Names (including Maiden names):	.....
Address:	..... .....
Postcode:	.....
Country:	.....
Telephone:	.....
Fax:	.....
E-mail:	.....
Occupation:	.....
Place of Employment and Address:	..... .....
Name of Spouse:	.....
Nationality:	.....
Date of Birth:	.....
Passport or DL or Tax Registration number:	.....
Date of Issue:	.....
Date of Expiry:	.....
Country of Issue:	.....
Place of Birth (City and Country):	.....

Client Identification and Verification Form

Gender:

2. Do you have any interest in any other company or partnership registered or formed in the Jamaica?

No Yes

If yes, please provide details:

3. Are you currently or have ever been a designated person or subjected to an asset freeze under any Sanctions regime?

No Yes

If yes, please provide details:

4. Are you a Politically Exposed Person?

A politically exposed person (PEP) is an individual who is or has been entrusted with a prominent public function, such as:

- a. a head of State;
- b. a head of Government;
- c. a member of any House of Parliament;
- d. a Minister of Government;
- e. a member of the judiciary;
- f. a military official above the rank of Captain;
- g. a member of the police of or above the rank of Assistant Commissioner;
- h. a Permanent Secretary, Chief Technical Director or chief, officer in the charge of the operations of a Ministry, department of Government, executive agency or statutory body, as the case may be;
- i. a director or chief executive of any company in which the Government owns a controlling interest;
- j. an official of any political party; or
- k. an individual who holds or has held a senior management position in an international organization

No Yes

If yes, please provide details:

Client Identification and Verification Form

5. Are you a relative or a close associate of a Politically Exposed Person?

A relative, in relation to the person concerned, means his/her spouse or child (including his/her stepchild or adopted child).

A close associate means an individual who is a business partner, or associated in any other form, in a common commercial enterprise with the person concerned;

No **Yes**

If yes, please provide details:

.....

Client Identification and Verification Form

DECLARATION OF SOURCE OF WEALTH & SOURCE OF FUNDS

Source of Wealth – The history or origin of how wealth (net worth) was acquired. Please provide details of how your entire body of wealth was acquired and include monetary net worth or value)	
1	Loan/mortgage: i. Detail the amount ii. Provide the name and address of the loan provider
2	Savings from Employment i. Detail annual income and bonus this year and last year ii. Provide the name, contact details and nature of the employer's business
3	Maturing investment i. Detail amount received ii. Provide details of the investment
4	Insurance payout that an individual wants to invest in a financial product i. Detail amount received ii. Provide the name and contact details of the insurer
5	Share sale i. Detail the value of shares sold ii. Description of shares/funds
6	Property sale i. Detail the sale value of property sold ii. Detail full address of property sold iii. Detail how the property was initially acquired
7	Inheritance i. Detail the amount received ii. Provide the name of the benefactor iii. Detail how benefactor obtained these funds iv. Relationship of the Ultimate Beneficial Owner to the benefactor
8	Other Provide detail if the source of wealth is different to the above examples (for example a Gift)

Client Identification and Verification Form

<p>Source of Funds – The origin of the particular funds or assets (i.e., an immediate source from which funds or assets has derived e.g. from a bank account in the name of the client, shareholder or a third party) that will be used for the purposes of the proposed business relationship or transaction. If the source of funds is different from the source of wealth, please provide detailed information relating to the funds.</p>	
1.	<p>Savings Account (specify e.g. name of financial institution, jurisdiction and provide certified copy of bank statement.)</p>
2.	<p>Business Account (specify e.g. name of financial institution, jurisdiction and provide certified copy of bank statement.)</p>
3.	<p>Loan proceeds (specify e.g. name of financial institution, jurisdiction and provide certified copy of bank statement.)</p>
4.	<p>Property sale i. Detail the sale value of property sold ii. Detail full address of property sold iii. Detail how the property was initially acquired</p>
5.	<p>Other (provide a detailed description)</p>

DECLARATION

I declare that the information provided in this form is true, complete and accurate to the best of my information, knowledge, and belief. I agree to immediately notify XYZ Law of any material changes to the information contained in this Declaration Form and to XYZ Law with any further information or documentary evidence upon request.

Name: _____ **Date:** _____

Address: _____

.....
Signature

Client Identification and Verification Form

SUPPORTING DOCUMENTS

1. The following hard copy documents should be sent to us:
 - (a) A **certified** copy of your current passport or alternative official photo identification (e.g. national identity card). Please note that the photocopy of the picture within the photo identification must be clear and the individual identifiable, in order for the certification to meet our requirements; and
 - (b) A **certified** copy of a utility bill, credit card or bank statement, which was issued less than three (3) months ago and which evidences your primary residential address.

Please note that:

 - (i) the account to which the bill or statement relates should not be a dormant one, i.e., there should be transactions detailed; and
 - (ii) mobile telephone bills are not acceptable for this purpose, though landline telephone bills are.
2. Please provide details of any former names (such as a maiden name).
3. Please note that:
 - (a) certifications of copy documents should bear a date which is within 30 days of the date of presentation and should be made by either a lawyer, accountant, director or manager of a regulated credit or financial institution, a Justice of the Peace, a notary public, a member of the judiciary or a senior civil servant.
 - (b) in the case of copy photo identification made from the original, the certification should read:

"I certify that this is a true copy of the original document and I confirm that the photograph is a true likeness of [insert name]"
 - (c) in the case of copy photo identification not made from the original, the certification should read:

"I certify that this document is a true copy of an original certified copy of the original document and I confirm that the photograph is a true likeness of [insert name]"
 - (d) in the case of other copy documents made from the original, the certification should read:

"I certify that this copy is a true copy of the original document which I have seen"
 - (e) in the case of any other copy document not made from the original, the certification should read:

Client Identification and Verification Form

"I certify that this document is a true copy of an original certified copy of the original document"

- (f) the certifier should be independent (i.e. not employed by or related to you);
 - (g) the certifier must state below his signature the certifier's full name, profession, address and contact telephone number and the date of the certification;
 - (h) **certified documents sent to us must bear the original of the certifier's signature (i.e., not a copy of that signature).**
4. Whilst every effort is made to provide complete documentation requests, in some cases we may need to request further documentation because of matters arising from a response to our initial request, for example if you are a **"politically exposed person"**. Accordingly, kindly notify us as soon as possible if you are aware that that may be the case. For this purpose a "politically exposed person" is a person who is:
- (a) an individual who has been entrusted with a prominent public function in a country or territory or by an international organization;
 - (b) an immediate family of such a person; or
 - (c) a close associate of such a person.
5. All customer due diligence documents provided **must be in English** or translated into English by a certified translator or by a person who is fluent with the necessary knowledge of both the English language and the foreign language in order to provide an accurate translation in English. The original foreign language document must be certified and or apostilled before translation.

The Certified translator must state as follows:

"I [Name of person who translated the document(s)] being fluent in both the English Language and the [Foreign Language], hereby declare that the abovementioned translation is a true and correct translation of the document included above into the English language."

FOR OFFICE USE ONLY	DATE
Received by:	
Reviewed by Compliance Officer	

Creating a Client Risk Profile: Categories of Factors to be Considered

Client Risk

**Geographical
Risk**

**Transaction
Risk**

Creating a Client Risk Profile: Factors to be Considered

CLIENT RISK

Clients with complex structures where it is difficult to identify the actual beneficial owners or persons with controlling interests

Cash/equivalent intensive organization

Clients who conduct business relationships/transactions in unusual circumstances (significant distance between client and frequent movement of accounts/funds between entities in different jurisdictions)

Insufficient commercial rationale for the transaction or business relationship

Client requests to associate undue levels of secrecy with transaction/relationship

Source of funds/wealth cannot be easily verified; broken or unnecessarily layered audit trail

Creating a Client Risk Profile: Factors to be Considered (cont'd)

CLIENT RISK

Delegation of authority by client
(e.g., via Power of Attorney)

Client is a charity or
NPO not subject to
AML/CFT monitoring or
supervision, especially
those engaged in cross-
border activities

The use of
intermediaries not
subject to adequate
AML/CFT compliance
measures or
supervision

Client is a PEP

Source of funds/wealth
relates to a jurisdiction
on which there is an
embargo or sanctions

Creating a Client Risk Profile: Factors to be Considered

There is an embargo, sanction or other restriction imposed on a country by the UN or the EU, relating to persons and transactions –

Countries that are identified by credible institutions (FATF/CFATF/IMF/WB/Egmont) as lacking AML/CFT laws, policies and compliance measures

Countries providing funding or support for terrorist activities

Countries that have designated terrorist organisations operating within them

Countries with significant levels of corruption or other criminal activities (such as abductions or kidnappings for ransom)

Creating a Client Risk Profile: Factors to be Considered

The source of funds/wealth relates to a jurisdiction on which there is currently an embargo or sanction

Services that involve banknotes and precious metal trading and delivery

Services that seek to provide anonymity or layers of opacity

Services that can readily transcend international borders, including online banking facilities, stored value cards, international wire transfers, private investment companies and trust.

Risk Assessments

- If a client relationship or one-off transaction is determined to be high-risk by the Reporting/Compliance/Money Laundering Reporting Officer or Partners, then the firm must carry out **enhanced due diligence** procedures such as:

Obtaining senior management approval to commence or continue the client relationship

Verifying the source of funds or source of wealth held by client or prospective client

Enhanced monitoring throughout the course of the business relationship



Reg Flags

CATEGORIES OF RED FLAGS

Client

**Source
of Funds**

**Choice of
Lawyer**

**Nature of
Retainer**

Red Flags about the Client

The Client is overly secretive about:

- who the client is
- who the beneficial owner is
- where the money is coming from
- why they are doing the transaction this way
- what the big picture is

Red Flags about the Client

The Client:

- is using an agent or intermediary without good reason
- is actively avoiding personal contact without good reason
- is reluctant to provide or refuses to provide information/ documents usually required in order to enable the transaction's execution
- provides false or counterfeited documentation
- is known to have convictions for acquisitive crimes or currently under investigation for acquisitive crime or has known criminal connections

Red Flags about the Client

The Parties:

- the parties or their representative are native to, resident in or incorporated in a high-risk country
- the parties to the transaction are connected without an apparent business reason
- the ties between the parties of a family, employment, corporate or any other nature generate doubts as to the real nature or reason of the transaction
- there are multiple appearances of the same parties in transactions over a short period of time
- there are attempts to disguise the real owner or parties to the transaction
- the natural person acting as director/representative does not appear a suitable representative

Reg Flags in the Source of Funds

- The transaction involves a disproportionate amount of private funding, bearer cheques or cash, especially if it is inconsistent with the socio-economic profile of the individual or economic profile of the company.
- The source of funds is unusual:
 - third party funding either for the transaction or for fees involved with no apparent connection or legitimate explanation.
 - funds received from or sent to a foreign country when there is no apparent connection between the client and the country.
 - funds received from or sent to high-risk countries.
- The Client is using multiple bank accounts or foreign accounts without good reason.

Reg Flags in the Choice of Lawyer

- Instruction of a legal professional at a distance from the Client or transaction without legitimate or economic reason.
- The Client is prepared to pay substantially higher fees than usual, without legitimate reason.
- The Client has changed counsel a number of times in a short space of time or engaged multiple legal advisors without legitimate reason.**
- The required service was refused by another lawyer or the relationship with another lawyer was terminated.**

Reg Flags in the Nature of the Retainer

The transaction is unusual, for example:

- inconsistent with the size, age, or activity of the legal person or natural person acting
- the transactions are unusual because of their size, nature, frequency or manner of execution
- there are remarkable and highly significant differences between the declared price and the actual values in accordance with any reference which could give an approximate idea of this value or in the judgment of the legal professional
- a non-profit organization requests services for purposes or transactions not compatible with those declared or not typical for that body

Reg Flags in the Nature of the Retainer

The Client:

- is involved in transactions which do not correspond to his/her normal professional or business activities
- shows he/she does not have a suitable knowledge of the nature, object or the purpose of the professional performance required
- wishes to establish or take over a legal person or entity with **dubious** description of the aim, or a description which is not related to the Client's normal professional or commercial activities, or with a description for which a licence is required while Client does not have the intention to obtain such licence
- asks for short-cuts or unexplained speed in completing a transaction
- Appears very disinterested in the outcome of the retainer

Reg Flags in the Nature of the Retainer

- Creation of complicated ownership structure where there is no legitimate or economic reason
- There is an absence of documentation to support the Client's story/previous transactions/company activities
- There is the lack of sensible commercial/financial/tax/legal reason for the transaction
- Requests for payments to third parties without substantiating reason or corresponding transaction

Suspicious Transaction Reporting

KYC policies and procedures should set out guidance in relation to what is usual in a client relationship as well as the bases/red flags to determine whether or not a transaction is suspicious. Some bases include:

- an excessively obstructive or secretive client;
- buying and selling property with no discernible reason or in circumstances which appear unusual;
- if the client or funds are from a "high risk" category such as a jurisdiction where the production of drugs, drug trafficking, terrorism or corruption is prevalent

When is reporting required?

Reasonable Suspicion Test

You will be required to make an STR/SAR where you:

1. know or suspect, or have reasonable grounds for knowing or suspecting that another person is engaged in money laundering; and
2. the information on which your knowledge or suspicion is based, or the reasonable grounds for such knowledge or suspicion, came to you in the course of business.

When is reporting required?

Reasonable Suspicion Test



You will be required to make an STR/SAR:



Upon reasonable suspicion that the transaction could constitute or be related to money laundering.



Reasonable grounds to suspect that a transaction or an attempted transaction involves the proceeds of criminal conduct.

Ongoing Monitoring and Testing

- An AML Compliance Programme should be monitored and tested on an ongoing basis. Monitoring must include:
- ensuring that record keeping and due diligence requirements are in keeping with AML/CFT laws;
- conducting periodic reviews where a STR has been filed and making recommendations to the partners/relevant persons within the firm regarding the termination of client or other business relationships and for the refusal to undertake new business from clients/other persons;
- ensuring periodic checks in respect of new clients/client databases against relevant listings of sanctioned persons/entities and other terrorist watch lists;
- escalating matters of concern to the partners/other relevant persons within the firm; and
- ensuring that enhanced monitoring is undertaken as required by the law,, including but not limited to enhanced monitoring for high risk persons.

COUNTRY	Suspicious Transaction Reporting	Identification & Transaction Verification Procedure (Know your Client)	Record Keeping Procedure	Internal Communication and Controls Procedure	Risk management system & procedure to identify Politically Exposed Persons	Employee Training and Awareness	Employee Screening
Anguilla	✓	✓	✓	✓	✓	✓	✓
Antigua	✓	✓	✓	✓	✓	✓	✓
British Virgin Islands	✓	✓	✓	✓	✓	✓	✓
Dominica	✓	✓	✓	✓	✓	✓	✓
Montserrat	✓	✓	✓	✓	✓	✓	✓
St. Kitts & Nevis	✓	✓	✓	✓	✓	✓	✓
St. Lucia	✓	✓	✓	✓	✓	✓	✓
St. Vincent & the Grenadines	✓	✓	✓	✓	✓	✓	✓

Thank you for your time and participation!

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