



A Comprehensive Analysis of Material Breaches issued in 2021 and 2022

Part I

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Enforcement Section



Agenda

- Introduction
- Purpose and Intended Nature of the Business Relationship
- Enhanced Due Diligence
- Ongoing Monitoring – Transaction Monitoring
- Reporting
- Committee Considerations



Purpose and Intended Nature of the Business Relationship

- Regulation 7(1)(c) of the PMLFTR:

Customer Due Diligence measures shall consist in assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship, and establishing the business and risk profile of the customer





The Customer's Business and Risk Profile

A subject person must collect information on and where necessary, verify it with documentation such as:

- Information on the nature of and details concerning the customer's business/occupation/employment
- Any other activity in addition to the above from which the customer derives his/her wealth
- The expected source and origin of the funds to be used throughout the business relationship; and
- The anticipated level and nature that is to be undertaken throughout the relationship



- Understanding the purpose and intended nature of the business relationship is crucial
- Subject persons are to ensure to collect information/documentation on the business operations, the source of wealth and source of funds, the expected level of activity and the purpose of the relationship
- The degree of information and documentation collected will vary depending on the perceived level of risk, also ensuring that the customer's profile is well understood

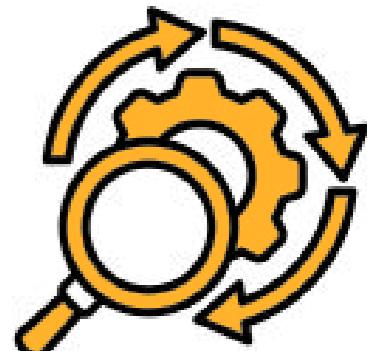


Enhanced Due Diligence

- Regulation 11 of the PMLFTR:

Subject persons shall apply enhanced customer due diligence measures in the following situations:

- (a) In relation to activities or services that are determined by the FIAU to represent a high risk of money laundering or funding of terrorism, having taken into consideration the findings of any national risk assessment and any other relevant factors as may be deemed appropriate.
- (b) Where, on the basis of the risk assessments carried out, the subject person determines that an occasional transaction, a business relationship or any transaction represents a high risk of money laundering or funding of terrorism.
- (c) In the cases referred to in Regulation 11 sub-regulations 3 to 10





Examples of when EDD measures are to be applied:

- When servicing PEPs
- When entering into correspondent business relationships
- When there are complex and unusually large transactions involved





Examples of EDD documents that may be collected:

- Financial statements
- Bank statements
- Invoices
- Loan Agreements
- Employment contracts
- Supporting documentation supporting transactions





- The carrying out of EDD measures is indispensable where the risk presented cannot be mitigated and managed through the implementation of normal CDD measures.
- If a business relationship represents a greater level of ML/FT risk, subject persons are expected to undertake EDD measures.
- Subject persons are legally obliged to carry out EDD measures when their customers have links with non-reputable jurisdictions, irrespective if other risk factors within the relationship do not contribute to the heightened risk.



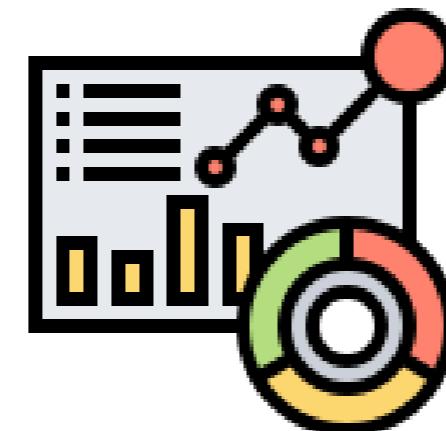
- High-net worth individuals present elements of higher risk.
- Not all persons who hold a prominent public function role are PEPs.
- Gaming sector specific - Allocating a high-risk rating immediately upon reaching the EUR2,000 threshold within a 180-day rolling period goes against the concept of having a risk-based approach.



Ongoing Monitoring – Transaction Monitoring

- Regulation 7(1)(d) of the PMLFTR:

Customer due diligence measures shall consist in conducting ongoing monitoring of the business relationship.





Ongoing Monitoring – Transaction Monitoring

- Regulation 7(2) of the PMLFTR:



The ongoing monitoring of a business relationship shall consist in:

- (a) The scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being undertaken are consistent with the subject person's knowledge of the customer and of his business and risk profile, including, where necessary, the source of funds; and
- (b) Ensuring that the documents, data or information held by the subject person are reviewed and kept up-to-date.



- Transaction monitoring is particularly important for subject persons to identify behaviour or transactions that diverge from the usual pattern of transactions carried out by a particular customer or that do not fit within the customer's profile.
- Transaction monitoring is also essential to determine whether the initial risk assessment requires updating, and whether, in view of the updated risk assessment or other considerations, the business relationship remains within the subject **person's** risk appetite.



Reporting

- Regulation 15(3) of the PMLFTR:

Where a subject person knows, suspects or has reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to funding of terrorism, or that a person may have been, is or may be connected with money laundering or the funding of terrorism, or that an attempt has been made to carry out a transaction or activity related to such proceeds or funding of terrorism, that subject person shall, promptly disclose that information, supported by the relevant identification and other documentation to the FIAU.





Internal Reporting



- Subject persons are to have clear policies highlighting the steps that their officers or employees are to take when they become aware of any information that may give rise to knowledge or suspicion that a person or a transaction is linked to ML/FT.
- Officials of the subject person are to treat any suspicion with urgency and report the matter to the MLRO without any delay by the next working day.



External Reporting

→ Upon considering the contents of an internal report, as well as any documentation attached with the report, if the MLRO concludes that there is knowledge, suspicion, or has reasonable grounds to suspect that:

- (a) A transaction may be linked to ML/FT,
- (a) A person may have been, is or may be linked with ML/FT, or
- (a) ML/FT has been, is being, or may be committed or attempted

The MLRO is to file an STR with the FIAU on the same day when he becomes aware of such knowledge or suspicion of ML/FT.



- The internal reporting procedures of a subject person have to clearly set out the steps to be followed when an employee of the subject person becomes aware of any information or matter that in his opinion gives rise to knowledge or suspicion that a person or a transaction is connected to money laundering or the funding of terrorism.
- Subject persons are reminded that the threshold for filing a suspicious activity report or suspicious transaction report is based on “**reasonable suspicion**” meaning that subject persons need not have definite evidence of a crime, rather if subject persons have reasonable belief or suspicion that a transaction or activity is connected to illegal or suspicious potential ML/FT activity, they are obligated to report it.



- When risk of ML/FT is evidenced from transactional or customer behaviour, subject persons are required not only to have systems in place to monitor those transactions but should also have procedures and processes in place for reviewing alerts generated with a view to determining whether there is the need to submit a suspicious report to the FIAU.
- Subject persons are required to support and evidence the considerations taken to submit a suspicious report whenever determining that there is knowledge or suspicion that funds, regardless of the amount involved, are the proceeds of criminal activity, or are related to funding of terrorism or that a person may have been, is or may be connected with money laundering or the funding of terrorism.



Committee Considerations

Customer Risk
Understanding



Enhanced Due Diligence



Committee Considerations

Customer Profile



Ongoing Monitoring



Thank you!