

IFSP

The Institute of Financial Services Practitioners

Prevention of Money Laundering & Funding of Terrorism

IFSP Guidance Notes: *Customer Due Diligence – the position taken by the IFSP*

Angela Fleri Soler
Deloitte

7 May 2010



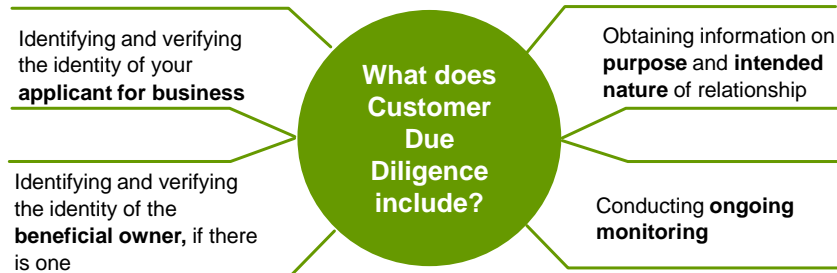
Agenda

- What is Customer Due Diligence?
- When are CDD measures to be carried out?
- Risk determination & assessment
- Ongoing monitoring
- Reliance on third parties
- Freezing orders



What is Customer Due Diligence?

Customer Due Diligence measures are a fundamental requirement of the PMLFT Regulations



3



When should CDD be undertaken?

Regulations state that CDD measures are to be carried out **when contact with applicant for business is first made** in instances:



4

Timing of verification

- CDD measures **include verification of identity**
 - However notwithstanding this, it is unlikely that in practice one would be able to go much beyond identification when contact is first made.
 - IFSP Members are likely to enter into a contract or letter of engagement with a client – generally, by that point in time identification and verification should be carried out.
- The general rule is for verification of identity to take place **before** a business relationship is established or an occasional transaction is carried out, however the Regulations allow for verification to take place **during** establishment of a business relationship if:
 - ✓ it is **necessary** not to interrupt **normal conduct of business**; **and**
 - ✓ there is a **low risk** of money laundering and terrorism financing; **and**
 - ✓ provided that **verification is completed** as soon as is **reasonably practicable** after initial contact.

5

Timing of verification

“necessary” ?	• would delay caused by the verification process render it impossible to provide service requested ?
“normal conduct of business” ?	• IFSP members are guided to look at prevailing practice within sector they operate in.
“reasonably practicable” ?	• no definition in Regs – there is no one point in time at which verification of identity is required to be completed – giving discretion to IFSP members (given that all other conditions apply!)

IFSP members are advised to have procedures in place to ensure follow-up to verification process !

6

Risk determination

Rules based approach



Risk based approach

- ✓ Promotes a common sense/intelligent approach vs a tick-the-box approach.
- ✓ Allows for resources to be focused on areas and clients that warrant increased attention.
- ✓ Allows for CDD measures to be applied on the basis of perceived risk – depending on type of customer, business relationship, transaction

- However in order to be able to implement CDD measures on a risk sensitive basis, **IFSP members are to have appropriate policies and procedures in place** for such risk assessments to be carried out.
- Regulations in fact **require** that policies & procedures on risk assessment are established by subject persons.

7

Risk assessment

- Risk assessment model may be **simple or sophisticated** – depending on nature of IFSP Member's activities, range of service lines offered, their customer base and geographical area of operation.
- Fully fledged risk based approach is a complicated exercise which requires necessary know-how, senior management involvement, resources, training → advice to IFSP members to refer to guidance issued by FATF.

It is however essential that risk is assessed on the basis of a set of objective criteria !

8



Risk assessment

The idea behind assessing risk is not to grant an exemption from carrying out CDD procedures – even in situations where risk is low !

- There are certain components of CDD that must be completed regardless of risk assessment.
- It is **how much** and **what** documentation and information is required to meet these minimum standards that may be varied depending on risk assessment.
- IFSP members are expected to have **standard set of procedures** which would apply when, following risk assessment, client is considered to fall within the “**norm**”.

9



Levels of due diligence

Regulations provide for situations where **Simplified** and **Enhanced** Due Diligence procedures are to be carried out.



Enhanced Due Diligence – including **high risk clients, non face-to-face situations, Politically Exposed Persons**

IFSP members to apply additional measures as laid out in Regulation 11.

Standard Due Diligence measures



Simplified Due Diligence – including **listed companies, client undertakes relevant financial business, domestic public authorities**

IFSP members to gather sufficient information to establish that applicant for business qualifies accordingly.

10

Risk assessment

- Should, **on the basis of a set of objective criteria**, overall risk be assessed as **low**, there may be situations where IFSP members may vary the documentation requested.

Whatever type of risk assessment model IFSP members may choose to implement – be it simplified or complex – **they are advised to keep a written record of such risk assessment exercise, conclusions drawn therefrom and the reason behind any decision to deviate from standard procedures!**

REMEMBER: *During compliance visits, you may be asked to justify your decisions !*

11

Ongoing monitoring

Ongoing monitoring includes

- Scrutiny of transactions undertaken throughout course of business relationship to ensure that transactions are consistent with IFSP member's knowledge of client
- Ensuring that documents/information held are kept up to date

- ✓ Monitoring client activity helps identify unusual transactions.
- ✓ Ongoing monitoring forms part of Customer Due Diligence procedures in terms of the Regulations.
- ✓ On the basis of risk assessment carried out, the extent of ongoing monitoring measures would be determined with reference to level of risk posed by that client to IFSP member's organisation.

12



Ongoing monitoring

- IFSP members are guided to have **procedures** in place which should include training of staff on how to monitor a client's business and also on how to act when a situation does not make sense to them.
- Procedures need not warrant a sophisticated system - complexity of the process will be influenced by the IFSP Member's firm's size and business activities.
- Monitoring may be either in real time or may take place after the event/transactions through independent reviews of the clients' activities.
- Remember that situations and circumstances may change and CDD procedures may need to be changed to adapt to the new circumstances – for example, a client who becomes a Politically Exposed Person (PEP) throughout the business relationship.

IFSP Members are advised to keep records of their ongoing monitoring to prove compliance with their legal obligations !

13



Reliance on third parties

- Different firms asking same client for same documents/information can be very frustrating to the client
- Regulation 12 grants the ability to IFSP members to rely on certain third parties to carry out some CDD procedures
- However it doesn't mean that IFSP members do not need to do anything in relation to CDD. When placing reliance on third parties, IFSP members are still required to:
 - ✓ Obtain information on the client/beneficial owner/purpose & nature of business from the third party being relied upon; and
 - ✓ **Ensure that copies of identification/verification documentation are available and will be immediately forwarded by the third party upon request**

It is being recommended to IFSP members to obtain written assurance to this effect from the party being relied upon !

14



Reliance on third parties

- Regulation 12 is rather complex and there are restrictions as to who can be relied upon and by whom.
- Guidance Notes include a diagrammatic illustration which should facilitate understanding of who can be relied upon in terms of Regulation 12.

➤ **You may NOT rely on anyone for ongoing monitoring !**

Regulation 12 is very onerous and IFSP members who place reliance on third parties still remain liable for any failure to comply with the same CDD measures in terms of the Regulations !

REMEMBER: You may rely on others but you remain responsible!

15



Freezing Orders

- Article 5 of the PML Act calls for the observation by subject persons of freezing orders issued by the Courts in relation to clients' assets under their control.
- Publication of such notices in the **Government Gazette** and on the **FIAU website**.
- Operative **as soon as they are issued by the Court**.
- This means that **there may be a delay** between time of issue and publication!
- Article 6 of the PML Act imposes heavy penalties for contravening such freezing orders.

IFSP members are guided to refer to the Government Gazette and the FIAU website on an ongoing basis to keep themselves informed of any freezing orders issued !

16



IFSP

The Institute of Financial Services Practitioners

Thank You

Angela Fleri Soler

PMLFT Sub-Committee

info@ifsp.org.mt