



IFSP

The Institute of Financial Services Practitioners

Prevention of Money Laundering
& Financing of Terrorism

IFSP Guidance Notes:

**Record Keeping, Training
and Reputable Jurisdictions**

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RECORD KEEPING

Record Keeping

- Record keeping is seen as an essential component of strategies to manage and mitigate identified money laundering and funding of terrorism risk which normally comprise:
 - Deterrence (appropriate CDD measures);
 - Detection (monitoring and suspicious transaction reporting)
 - Record keeping (for facilitation of investigation)
- Obligation on **subject person** to keep records Reg 4(1)(a)(ii) as part of its standard measures & procedures

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Record Keeping – Reg 13

- Reg 13 requires the retention of documents and information by subject persons for use in any *investigation into or analysis of possible money laundering or the funding of terrorism activities by FIAU or other relevant competent authorities.*



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Record Keeping - Reg 13

- What documents are to be kept?
- Record of CDD documents required & obtained providing sufficient information to enable details of such person's identity to be re-obtained;
- A record containing details relating to the business relationship and all transactions carried out;
- A record of the findings of the examination of background and purpose of relationship and transactions.



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Record Keeping - Reg 13

- The documents are to be kept for the *prescribed period* being a period of at least 5 years commencing from:
 - In the case of **CDD documents** – the date on which the relevant financial business or relevant activity was completed;
 - In relation to **background and details relating to business relationship and transactions** – the date on which all dealings taking place in the course of the transaction in question were completed

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Record Keeping -

- Relevant financial business or relevant activity is deemed to be completed on date of:
 - Case 1 (negotiations) – end of business relationship;
 - Case 2 (suspicion) – reporting of suspicious transaction (5 year period may be extended by FIAU);
 - Case 3 (single large transaction) – carrying out of transaction or last in series of large transaction;
 - Case 4 (series of transactions) – carrying out of last transaction in a series.

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Record Keeping – Practical guidance

- IFSP Guidance Notes:
 - Audit – from date of GM at which respective year's financial statements were approved;
 - Tax services – from end of calendar year in which the service has been provided
 - Any other service – from the date on which the subject matter of the service was delivered to the client

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Record Keeping - Reg 13

- Subject persons shall ensure that upon request all retained documentation and other relevant information be made available to the FIAU or competent authority on a timely basis for the purposes of prevention of money laundering and funding of terrorism.
- Subject persons carrying out relevant financial business shall in addition establish systems which enable them to respond efficiently to enquiries from FIAU or competent authority as to whether they maintain/have maintained during previous 5 years business relationship with specified natural or legal person/s & nature of relationship.

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Record Keeping – How?

- The law does not specify in what form the documentation should be kept. Retained documents may therefore be:
 - Originals;
 - Photocopies;
 - Scanned or electronic
- As best practice documents bearing signature or photograph should be in original hard copy. If authenticated copies of documents are obtained authentication must be retained in original hard copy.

When documents are being stored in electronic form ensure that they remain retrievable should there be subsequent changes to computer systems.

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Record Keeping – Where?

- Similarly the Regulations do not state where documentation must be kept.
- May be off-site, on-site, own premises, third party safe-keeping storage facilities.
- Bear in mind that in many cases disclosures to FIAU must be made within 5 working days.

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Wherever documents
are kept and in
whatever form it
should be possible to
retrieve them without
undue delay



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*IFSP Recommendations

- MLRO should:
 - ensure a system for retention and storage of documentation is organised and appoint a person responsible for record-keeping;
 - ensure that backups of documentation and/or information kept in soft copy are kept in a safe place off-site.

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Other records

- Whilst not mandatory in terms of Regs, the retention of other records is also important:
 - as evidence that SP has complied with all its obligations under the Regs; and
 - to justify decisions taken following a risk assessment.

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*IFSP Recommendations

- Members should consider keeping the following additional records:
 - Evidence of a Customer Acceptance Policy & any changes thereto;
 - The outcome and conclusions of any risk assessment;
 - Conclusions as to whether a jurisdiction is reputable or otherwise
 - Internal deliberations – matter brought to attention of MLRO but not reported to FIAU;
 - Records of STRs;
 - Approval of senior management for dealing with PEPs;
 - Records relating to ongoing monitoring;
 - Evidence of training programmes for staff;
 - Due diligence documentation iro new employees.

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TRAINING

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Training – Reg 4 (1)(d)

- Subject person must undertake measures to make **employees** aware of its:
 - CDD measures;
 - Record-keeping procedures;
 - Internal reporting procedures;
 - Internal control, risk assessment, risk management, compliance management and communications policies and procedures;
 - Provisions of PMLA, Acts of Terrorism provisions of the Criminal Code and PMLFT Regulations.

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Training – Reg 4(1)(e)



Provide employees with training from time to time in the recognition and handling of transactions carried out by or on behalf of any person who may have been, is or appears to be engaged in money laundering or the funding of terrorism.

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Training - Penalties

A subject person who fails to provide training to employees or fails to take steps to make employees aware of the necessary measures and procedures shall be guilty of an offence and shall on conviction be liable to a fine not exceeding €50,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

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*IFSP recommendations

- Appropriate to role and seniority within the firm;
- To give guidance on tipping off issues given personal liability;
- Where firms are too small to carry out in-house training they may seek external training;
- Retain documents in relation to training
 - Dates when training was given
 - Venue, speaker and amount of hours;
 - Nature of training;
 - Copy of material used for training;
 - Staff who attended training;
 - Results of tests (if any).



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Remember: your firm's
AML/FT strategy is only as
strong as its weakest link



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REPUTABLE JURISDICTION

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Reputable Jurisdiction

- Defined as “*any country having appropriate legislative measures for the prevention of money laundering and the funding of terrorism, taking into account that country’s membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism, and which supervises natural and legal persons subject to such legislative measures for compliance therewith*” Reg 2(1)

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Reputable Jurisdiction

- Various instances in the Regulations where it is necessary to classify a jurisdiction as reputable or otherwise:
 - In determining jurisdictions in which SPs carrying out relevant financial business may establish or acquire branches or majority owned subsidiaries – Reg 6(1);
 - Simplified Due Diligence – Reg 10;
 - Reliance provisions – Reg 12 (2);
 - Situation calling for special attention – Reg 15(2).

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Reputable Jurisdiction

- In terms of the Regulations where the FIAU determines that a jurisdiction does not meet the criteria of a reputable jurisdiction it shall:
 - Inform relevant authorities of other MS & EU Commission - Reg 2(4);
 - Prohibit SPs from applying simplified CDD procedures in relation to relationships & transactions from that jurisdiction – Reg 10(7);
 - Prohibit SPs from relying on persons & institutions from relying on persons/institutions from that particular jurisdiction for performance of CDD requirements

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Reputable Jurisdiction

- FIAU issued a Guidance Note to assist with the interpretation of this concept of reputable jurisdiction pursuant to issuance by the Committee on the Prevention of Money Laundering and Terrorist Financing of a Common Understanding on third party equivalence.
- EU & EEA MS automatically presumed to satisfy criteria of “reputable jurisdiction”.
- Other jurisdictions whether or not on the list considered as having equivalent AML/CFT systems to the EU must be assessed on a case by case basis.

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Reputable Jurisdiction

SPs must be able to justify to the FIAU their conclusion as to whether a jurisdiction is considered to be reputable and in terms of Guidance Note issued by the FIAU are expected to document that conclusion in writing at the time that it is reached.