

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 22 December 2011

To all professionals other than credit institutions subject to the supervision of the CSSF and to whom the law of 12 November 2004 on the fight against money laundering and terrorist financing applies

CIRCULAR CSSF 11/529

Re: Risk analysis regarding the fight against money laundering and terrorist financing (AML/CFT)

Ladies and Gentlemen,

The purpose of this circular is to specify the CSSF's requirements relating to the application of Article 3(3) of the law of 12 November 2004 on the fight against money laundering and terrorist financing (the "Law"), as amended by the law of 27 October 2010.

I) Article 3(3) of the Law

Article 3(3) of the Law sets out: *"Professionals are required to perform an analysis of the risks inherent to their business activities. They must set down in writing the findings of this analysis"*.

In order to specify the scope and application of these provisions, particularly in relation to the risk analysis that the professionals shall carry out, two stages shall be distinguished. Thus, the management of the professional shall first identify the risks of money laundering or terrorist financing ("ML/FT risks") to which the professional is exposed. Then, the management shall set up a methodology in order to categorise these risks (1) and afterwards define and implement measures to mitigate the identified risks (2).

1. Identification of ML/FT risks

There is no set list of ML/FT risks. The types of risks which are generally identified concern country risk or geographical risk, customer risk and product or service risk.

The importance given to each type of risk (individually or in combination) will be different for every professional. Each professional shall carry out the identification and categorisation of ML/FT risks to which he considers to be exposed according to its own methodology. Nevertheless, the professional shall observe the parameters provided by the legal and regulatory texts and may not thwart the cases automatically considered as high risk situations by these texts (Article 3-2 of the Law, Article 3 of Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the Law).

Thus, the following characteristics may reveal important information for the identification and assessment of the ML/FT risks linked to the nature of customers:

- geographical origin of the customers (residential/non-residential customers, customers coming from countries which do not or insufficiently apply AML/CFT measures; customers coming from countries subject to international sanctions);
- customers' activity sector/profession;
- means of entering into business relationship with the customer (business providers, non face-to-face entry into business relationship, execution of customer due diligence by third parties, etc.);
- degree of complexity and transparency of the structure implemented for the benefit of a customer (use of shell companies, trusts, etc.);
- customers who require the application of enhanced due diligence measures, notably in case of politically exposed persons;
- customers who may be subject to limited due diligence measures.

As far as the identification and assessment of ML/FT risks according to the nature of offered products and provided services is concerned, the following elements shall be taken into account:

- volume and frequency of transactions, application or non application of relevant limits;
- possibility to open payable-through accounts;
- possibility to execute transactions for the collection and/or making available of funds for group clients who are not in a business relationship with the professional;
- relationships with the correspondent banks (notably located in the countries which do not apply AML/CFT measures considered as equivalent);
- transfers from or to countries which do not or insufficiently apply AML/CFT measures and/or which are subject to international financial sanctions;
- provision of services to occasional customers (securities and coupons given to the bearer/given for physical cashing, precious metals physically delivered or given, cash, etc.);
- product/service offers facilitating anonymity (holding numbered accounts);
- holding accounts with hold-mail;
- offer of new products or services or products or services which are not part of the regular activity of the professional;

- arrangements for marketing services or products (marketing by the professional or by canvassing, electronic marketing platform, etc.).

2. Measures for the mitigation of ML/FT risks

The risk analysis according to Article 3(3) of the Law shall be completed with a clear and precise description of the different measures implemented by the professional in order to mitigate the previously identified risks.

The analysis shall show the number of customers to whom enhanced, respectively limited, due diligence measures are applied and the manner in which these measures are concretely executed.

The implemented AML/CFT measures shall be described at different levels and particularly in the framework of:

- the acceptance procedure to enter into a business relationship;
- the regularisation system of incomplete files;
- the account blocking system;
- the procedure to terminate a business relationship;
- the procedure for the systematic review of business relationships at a regular rate;
- the system for detecting complex, unusual and suspicious transactions;
- the "name matching" and "name missing" systems;
- the "country matching" system;
- the maintenance of the customer database (notably insofar as controls are based on these data);
- the procedure for training and informing employees;
- the cooperation with the FIU and the CSSF;
- the corporate governance (involvement of the management, reporting guidelines of the Compliance Officer, application of the rules set by the group to which the professional belongs, review by the internal audit, etc.).

Please refer to the FATF report on the application of the risk-based approach for AML/CFT called "Guidance on the risk-based approach to combating money laundering and terrorist financing - High level principles and procedures". The report is available at:

<https://www.fatf-gafi.org/media/fatf/documents/reports/High%20Level%20Principles%20and%20Procedures.pdf>

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

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