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Anti-Money Laundering Bulletin

Welcome to the third edition of the Anti-Money Laundering Bulletin. The purpose of this bulletin is to provide guidance on Customer Due Diligence, in particular in relation to the discontinuance of a business relationship.

Background

The obligation to discontinue a business relationship, or not to carry out a transaction for a customer for failure to provide Customer Due Diligence (CDD) documentation or information, emanates from EU law and from the standards set out by the Financial Action Task Force (FATF), the international standard setting body for combating money laundering and terrorist financing. The reason for the requirement is to protect the financial system (and designated persons) from being used for money laundering or terrorist financing purposes.

The Central Bank is aware that while the requirement to discontinue business relationships appears straightforward in the legislation, in practice it can be problematic particularly in circumstances where monies are payable to a customer¹. The requirements of Section 33(8) (a) and (b) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (CJA 2010) apply to all financial and credit institutions and the Central Bank must secure compliance across the various industry sectors. Accordingly, firms in different industry sectors must demonstrate compliance with the requirements in a manner that is consistent with the legislation.



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Links to useful sources of information:

FATF clarifies risk-based approach: case-by-case, not wholesale de-risking:

[FATF](#)

Sectoral Reports on Anti-Money Laundering/Countering the Financing of Terrorism and Financial Sanctions Compliance:

[Funds Sectoral Report](#)

[Banking Sectoral Report](#)

¹ This guidance is primarily aimed at such instances and different approaches may need to be considered depending on the circumstances in question e.g., where a customer has debts outstanding to a firm.

Where a firm is unable to identify and verify its customers or where sufficient documentation or information is not on file to verify its customers, a firm must not allow the situation to perpetuate. The Central Bank expects that firms will have remediation plans in place in order to obtain the outstanding documentation and/or information.

The Central Bank has identified compliance deficiencies in the past where a firm acquires a book of business, is subsequently unable to verify the identity of these customers, and does not hold sufficient documentation or information to verify these customers. The anti-money laundering function within a firm acquiring/transferring such a book of business should be involved in the due diligence process in order to assess the magnitude of any compliance deficiencies. This involvement will allow firms to commence a remediation exercise should the acquisition/transfer proceed.

The Central Bank has outlined its expectations in relation to Section 33(8)(a) and (b) of the CJA 2010 in previous publications (links to these publications are provided in this bulletin). This bulletin aims to build on these publications by outlining the types of steps firms may take to comply with these measures.



Section 33(8)(a) and (b)

Section 33(8)(a) of the CJA 2010 prohibits a firm that is unable to identify and verify a customer due to the failure of that customer to provide the necessary documentation or information, from providing any service or carrying out any transactions sought by that customer while the documentation or information required remains outstanding. Section 33(8)(b) of the CJA 2010 provides that firms must separately and distinctly take action to discontinue the business relationship with the customer in such circumstances.

[Credit Union Sectoral Report](#)

[Life Insurance Sectoral Report](#)

Firms should consider the following steps when conducting CDD measures in relation to new and existing customers, products or services. This list is not exhaustive and it is for each firm to demonstrate compliance with the requirements of the CJA 2010.

New Customers

- 1) To effectively manage money laundering and terrorist financing (ML/TF) risk, firms should seek to carry out CDD prior to the establishment of the business relationship. Section 33(5) of the CJA 2010 allows a firm to identify and verify the identity of a customer during the establishment of a business relationship in circumstances where the firm believes there is no real risk of ML/TF (firms should be in a position to demonstrate this to the Central Bank). Where CDD is completed during the establishment of the business relationship, the policies and procedures should specify the defined timeframe in which CDD must be completed. The duration of this defined timeframe should minimise the risk of being unable to contact the customer or return the funds to the original source, should there be a requirement to discontinue the business relationship;
- 2) Ensure that contractual arrangements for new customers adhere to the statutory obligations as prescribed by Section 33 (8) (a) and (b) of the CJA 2010. In relation to the circumstances that would result in the discontinuance of the business relationship and the subsequent effect of such discontinuance, customer consent should be obtained by the firm in advance as part of the on-boarding process;
- 3) Implement processes that allow firms to return funds directly to the source from which they came. Firms should exercise caution when considering the means of doing this, so as not to appear to convert or legitimise such funds. Firms should also consider whether there is any cause for suspicion in circumstances where CDD is not forthcoming, and ensure suspicious transaction reporting obligations are fulfilled as required. It is important that at all times, firms act in the best interest of the customer (or prospective customer) and exhaust all possible avenues before

Existing Customers

- 1) Review all customer records to ascertain the extent of any deficiencies in CDD;
- 2) Create a comprehensive plan to address any failure of customers to provide the required CDD documentation and/or address circumstances in which there is insufficient information in respect of the customer for the firm to demonstrate that the CDD requirements are met. In circumstances where it will take a longer period of time to fully implement remediation plans, firms should consider prioritising remediating customers that would represent a higher risk of ML/TF before remediating other areas;
- 3) Explore all options to source CDD, to include other types of identification documents and information which may be acceptable given the ML/TF risk profile of the customer. In cases where customers appear to be non-contactable, firms should employ all available methods that could be utilised in order to locate such customers, for example engaging with the customer's intermediary. It is important that at all times, firms act in the best interest of the customer (or prospective customer), and exhaust all possible avenues before taking any actions;
- 4) Where CDD is not forthcoming from customers with whom the firm has been able to successfully correspond, firms must ensure that there are documented policies and procedures in place that outline the action required to discontinue the business relationship;
- 5) In circumstances where there remains a cohort of customers for whom it has not been possible to obtain CDD despite all efforts to

taking any actions that might disadvantage customers.

contact those customers, firms should design and document policies and procedures to be applied in order to ensure that the associated ML/TF risks are appropriately managed. This may include for example applying measures whereby these accounts are clearly identified as 'discontinued', ring fenced from normal accounts and flagged accordingly, subject to additional and more robust measures to be applied should the customer re-present;

- 6) Consider whether there is any cause for suspicion in circumstances where CDD is not forthcoming and ensure suspicious transaction reporting obligations are fulfilled as required.

