
INFORMATIVE NOTE ADDRESSED TO THE SECTOR OF LAWYERS AND OTHER LEGAL PROFESSIONS

Date: 11 June 2018

Purpose: On the basis of the principal trends of action in the sector of lawyers and other legal professions, we are providing a compilation of recommendations on the prevention of and the fight against the laundering of money and assets, and terrorist financing.

Rationale

In the course of the on-site inspections carried out by UIFAND on reporting entities belonging to the legal sector, this Unit has detected a series of areas which recurrently present deficiencies, in response to which we have issued a set of common recommendations which are made applicable to the sector as a whole by means of this informative note.

The reiteration and the evidence found in relation to the cases which are presented in detail below, lead us to think that these are widespread deficiencies in the sector. For this reason, a series of recommended actions are provided for each of the areas found to be susceptible to improvement with the aim of helping the reporting entities of the legal sector to mitigate these risks.

Areas with detected deficiencies/risks, and recommended improvement actions

1. *Identification of risks*

Knowledge of customers

Detected deficiencies/risks

- Generally speaking, reporting entities possess an appropriate knowledge of their customers but in most cases this knowledge has been developed gradually in an informal way over the course of the business relation and it is not duly formalized or documented.
- The fact that the focus is placed on each particular transaction, contracted service or business relation makes it hard to obtain an overall view of the customer and of his risk profile.

Recommended improvement actions

- A *Know Your Customer (KYC)* form should be prepared that collects all the knowledge which the members of the reporting entity may have on their customers. This form should have both a standardized format and standardized fields (information to be requested). The data to be collected on the customer should be relevant to AML/CFT, such as nationality, country of residence, purpose and nature of the business relation, significant changes in risk profile, changes in shareholding structure, and in the event in which they arise, the reasons for terminating the business relation.
- The form should be used for any new contractual relation and also for old customers with whom a continued relation is maintained.

- Value should be placed on the fact that the customer knowledge form as well as any other documentation provided by the customer is signed by the customer, in order to lend greater veracity to the information which they contain.
- A filing mechanism should be established that allows all the operations/transactions linked to a customer to be analysed, in order to achieve an overall view of the customer with the aim of determining more carefully the customer's risk profile.

1.2 Classification of customers according to their risk level

Detected deficiencies/risks

- Generally speaking, reporting entities do not classify their customers according to their potential ML/TF risk, applying the same type of measures to all, regardless of their particular characteristics.

Recommended improvement actions

- An effective classification of customers should be made according to their risk, adopting the appropriate due diligence measures for each of the defined categories (enhanced measures for the scenarios defined as "high risk") without requiring the same degree of documentation for all files.
- The defined classification criteria and the measures to be adopted in each case should be stated in the internal rules.
- The classification of each customer should be reasoned/documentated in writing.
- It should be recalled that operations that are related to the use of complex structures or that are carried out with risk jurisdictions should not be classified as "low risk" under any circumstances".

1.3 Assessment of the risks in the incorporation of companies / financial vehicle corporations (FVCs)

Detected deficiencies / risks

- The provision of the service of incorporating companies entails high risks of money laundering inasmuch as these structures may be used as financial vehicle corporations or front companies.

Recommended improvement actions

- The functions that the members of the reporting entity may carry out in relation to the companies of customers, whether or not such companies are incorporated by the reporting entity, should be clearly defined, especially with respect to the intervention of such members in such companies (for example, it should be specified whether the members of the reporting entity may form part of the administration body of the company, whether they may be representatives of the company, etc.)
- The financial purpose of the company that the customer wishes to incorporate should be documented, and it should be ensured that this purpose is consistent with the customer's profile and with the knowledge possessed of the customer, especially with respect to his professional activity.
- Additional verifications should be carried out to ensure that the incorporated companies carry out a real activity and that such activity is in accordance with their corporate purpose.

1.4 Individual risk assessment (IRA)

| Detected deficiencies / risks |
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| <ul style="list-style-type: none">• Generally speaking, reporting entities have not yet begun to develop their Individual Risk Assessment (IRA), despite the fact that the Law 14/2017 establishes a maximum time of two years counting from the entry into force of the Law (20 July 2017). |
| Recommended improvement actions |
| <ul style="list-style-type: none">• The individual risk assessment should be developed, bearing in mind the risk factors established by Article 5 of the Law 14/2017. Further details are given on these risk factors in Article 3 of the Regulations for application of the Law 14/2017. These factors include, as a minimum, risk factors relating to customers, countries or geographical areas, products, services, and distribution channel or operations. The consideration of these factors should allow determination of the overall risk level of the reporting entity and the appropriate mitigation measures. <p>UIFAND plans to issue additional guides that will deal in greater depth with the established regulatory provisions in order to help reporting entities to draft their IRA.</p> |

2. Due diligence measures

2.1 Identification of the parties intervening in the transaction

| Detected deficiencies / risks |
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| <ul style="list-style-type: none">• Sometimes identifying information is not available on parties intervening in a specific transaction or business relation. |
| Recommended improvement actions |
| <ul style="list-style-type: none">• Customers should be asked to provide identifying documents on all the parties intervening in all current business relations and in all new business relations to be started. This information is indispensable for the correct and necessary understanding of transactions. |

2.2 Identification of the beneficial owner

| Detected deficiencies / risks |
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| <ul style="list-style-type: none">• Sometimes identification and verification of identity is limited to that of the customer with whom the reporting entity deals, but it does not include that of the beneficial owner of the respective transaction or contracted service in the cases in which they are different persons. |
| Recommended improvement actions |
| <ul style="list-style-type: none">• The definition of beneficial owner provided in Article 3.3. of the Law 14/2017 should be reviewed in order to take all the appropriate measures addressed to duly identifying and verifying the beneficial owner, especially in the case of customers who are legal entities, and with respect to the latter-mentioned customers it is also necessary to determine their shareholding and control structure. These verifications may include searches in public registers, such as the Register of Companies.• As a measure supplementing the foregoing, consideration should be given to including in each business relation a statement signed by the customer, attesting that the customer is the true beneficiary of the respective transaction or service. |

2.3 Professional activity of customers

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| Detected deficiencies / risks |
| <ul style="list-style-type: none">• Generally speaking, the knowledge of the professional activity of customers is limited only to verbal confirmation of such activity by the customers themselves. |
| Recommended improvement actions |
| <ul style="list-style-type: none">• The professional activity stated by customers should be proven by means of documents and it should be verified that the stated activity is consistent with the requested service or with the proposed business relation. The documents should come from reliable independent sources and they may be supplemented by information provided by the customer himself (curriculum vitae, for example). The documents should moreover be suited to the risk level of each customer. |

2.4 Origin of funds provided by customers

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| Detected deficiencies / risks |
| <ul style="list-style-type: none">• Generally speaking, the origin of the funds which are provided by customers and which are the object of the business relation is not duly proven. |
| Recommended improvement actions |
| <ul style="list-style-type: none">• The volume of documentation requested in relation to the origin of the provided funds should be increased and it should be ensured that this documentation is sufficient and that it is suited to the risk level of each customer.• The documentation obtained and the analysis carried out should be stated in the file.• As a measure supplementing the foregoing, consideration should be given to implementing, for each business relation, a statement to be signed by the customer attesting the legality of the respective funds. |

2.5 Additional searches relating to customers

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| Detected deficiencies / risks |
| <ul style="list-style-type: none">• Generally speaking, verifications are not made by means of searches in databases or verifications of customers' statements in open sources with the aim of corroborating their truthfulness. |
| Recommended improvement actions |
| <ul style="list-style-type: none">• Inasmuch as it is a tool that the Andorran Bar Association makes available to its members, it would be recommendable to increase the use of WorldCheck as an additional measure of prudence, especially in the cases of greater risk. The reporting entity should keep a copy of such searches and establish a periodicity with which they should be updated.• In accordance with each customer's risk profile, files should be supplemented by searches relating to each customer in open sources of information, and duly dated copies should be kept of such searches. |

2.6 Updating of the documentation obtained within the framework of the application of due diligence measures

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| Detected deficiencies / risks |
| <ul style="list-style-type: none">• The documentation relating to due diligence measures is not always duly updated since such documentation is only requested at the time of beginning a |

business relation and no follow-up is carried out on it.

Recommended improvement actions

- A field should be implemented in the database or in the customer control system used by the reporting entity, that provides warning of deficiencies of the documentary support or of the need to update it.
- In the case of long-term business relations, a periodicity should be established for reviewing customer files on the basis of risk, with the aim of detecting possible deficiencies and the necessary updating of the documents contained in the files.

3. Other pertinent aspects

3.1 Internal control policies and procedures

Detected deficiencies / risks

- Generally speaking, the documents setting out policies and procedures in matters of AML/CFT show issues with respect to their content or their current validity.
- In some cases, the internal rules have been drafted on the basis of models provided by the Andorran Bar Association which sometimes do not include the latest changes in the regulations.

Recommended improvement actions

- Internal policies and procedures should be reviewed in order ensure that they include the necessary minimum requirements according to the provisions of Article 17.1 of the Regulations for application of the Law 14/2017.
- The internal rules on matters of AML/CFT should be updated as soon as possible to remain in accordance with the laws in force. Likewise, a continued updating process should be established to include new changes in the law and regulatory developments.

3.2 Suspicious transaction reports

Detected deficiencies / risks

- The number of suspicious transaction reports submitted by the reporting entities is, generally speaking, low.
- Third parties may sometimes take part in the process of deciding whether a suspicious transaction report is to be submitted or advice may sometimes be provided to third parties on such matters.

Recommended improvement actions

- The analysis made of potentially suspicious transactions should be documented in writing, even if the reporting of such transactions is finally ruled out.
- Suspicious transaction reports should be submitted in the cases in which there are suspicions, reasonable grounds for suspicion, or the certainty that the respective funds are the proceeds of a criminal activity, even if the business relation with the potential customer has not come to be formalized, since just as is provided by Article 20.1 of the Law 14/2017, "all suspicious transactions, including those which have remained in the attempt phase" should be reported.
- No third parties should intervene in, nor should any advice be given to third parties in connection with, the decision as to whether or not to submit a suspicious

transaction report to UIFAND. In this respect, Article 26 of the Law 14/2017 expressly forbids it to be disclosed, to the respective customer or to third parties, that information is being conveyed, will be conveyed or has been conveyed to UIFAND or that an analysis or investigation is being carried out or may be carried out on money or assets laundering or on terrorist financing.

Supervision Area