

INFORMATIVE NOTE ADDRESSED TO THE SECTORS OF ECONOMISTS, AUDITORS, TAX CONSULTANTS, ACCOUNTANTS, ADMINISTRATIVE SERVICES BUREAUS AND OTHER COMPANY SERVICES PROVIDERS

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Purpose: Based on the principal trends of action in the sector of economists, auditors, tax consultants, accountants, administrative services bureaus and other company services providers, a compilation of the main recommendations in matters of prevention of and the fight against the laundering of money or assets and terrorist financing is provided.

Rationale

In the course of the on-site inspections carried out by UIFAND on reporting entities belonging to the aforesaid sectors, this Unit has observed a series of areas which recurrently present deficiencies, in response to which it has developed a set of common recommendations which are being made applicable to the entire sector by means of this Informative Note.

Given the reiteration and the evidence observed in relation to the cases which are described in detail below, it may be thought that this is a question of deficiencies found in the sector on a widespread basis. For this reason, a series of recommended actions is presented for each of the areas subject to improvement which have been detected, in order to help reporting entities in the sectors of economists, auditors, tax consultants, accountants, administrative services bureaus and other company services providers to mitigate these risks.

Areas with observed deficiencies/risks and recommended improvement actions

1. Identification of risks

1.1. Knowledge of customers

Observed deficiencies/risks

- Generally speaking, reporting entities have a suitable knowledge of their customers but on most occasions this knowledge has gone about being developed in an informal way over the course of the business relations and it is not duly formalized or documented.
- The focus on the level of each of the transactions, contracted services or business relations makes it difficult to achieve an overall view of the customer and of his risk profile.

Recommended improvement actions

- A *Know Your Customer (KYC)* form should be prepared which covers all the knowledge which the members of the reporting entity may have of its customers. This form should have a standardized format and fields (information to be requested) and it should be ensured that they are all duly completed. The customer data to be collected should be relevant for the effects of prevention of ML/TF, such as nationality, country of residence, purpose and nature of the business relation, significant changes in risk profile, changes in shareholder structure and, in the event in which it occurs, reasons for termination of the business relation.
- A procedure should be established to ensure that this form is used in new contractual relations and to incorporate it progressively into the dossiers of old customers with a continued relation.
- It should be assessed that the customer knowledge form and any other documentation which the customer provides and are signed by him as well as by any other parties intervening in the transaction or service, in order to ensure a greater veracity of the information contained in these documents.
- A filing mechanism should be established which allows all the operations/transactions linked to one same customer to be analysed, for the purpose of achieving an overall view of the customer in order to determine more carefully the customer's risk profile.

1.2 Classification of customers by risk level

Observed deficiencies/risks

- Generally speaking, reporting entities do not classify their customers according to the ML/TF risk profile which they may potentially present, applying the same type of measures to them regardless of their characteristics.
- The information possessed by reporting entities in relation to their customers is usually that which is necessary and indispensable for the provision of their services (commonly accounting and/or tax consultancy), but the same importance is not given to the documentation relating to due diligence measures regarding knowledge of the customer within the framework of prevention of money laundering and terrorist financing.

Recommended improvement actions

- An effective classification of customers should be made according to risk, adopting appropriate due diligence measures for each of the defined categories (enhanced measures for the scenarios defined as "high risk"), the same degree of documentation not being required for all dossiers or only the strictly necessary documentation for the performance of a specific service being required.
- It should be taken into consideration that all business relations pose a risk, even if it may be low, and that for this reason the reporting entity should manage it appropriately, applying the respective diligence measures (simplified, enhanced or conventional).
- 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 under no circumstances may operations be classified as "low risk" if they bear a relationship to the use of complex structures or to risk jurisdictions.

1.3 Risk assessment in the incorporation of companies / financial vehicle corporations

Observed deficiencies/risks
<ul style="list-style-type: none"> 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
<ul style="list-style-type: none"> The functions which the members of the reporting entity may carry out in relation to customers' companies should be clearly delimited, whether or not such companies are incorporated by the reporting entity, especially with respect to the intervention of the members of the reporting entity in customers' 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 act in representation of the company by means of special powers of attorney of broad content, etc.) The economic purpose of the company which the customer wishes to incorporate should be documented and it should be ensured that such purpose is consistent with the profile and with the knowledge which is held of the customer, especially with respect to the professional activity of same in order to prevent companies from being used for illegal purposes. Additional verifications should be made to ensure that incorporated companies carry out a real activity in accordance with their corporate purpose. It should be recalled that companies which do not have any activity of their own (that is to say, companies which are used to carry out business transactions without their having, for their own part, any real assets, or without their performing any transactions of their own) cannot be considered to be of low risk.

1.4 Individual risk assessment (IRA)

Observed deficiencies/risks
<ul style="list-style-type: none"> In general, reporting entities have not yet begun to develop their own Individual Risk Assessment (IRA) despite the fact that 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, taking into account the risk factors established by Article 5 of Law 14/2017, which factors are dealt with in greater detail in Article 3 of the Regulation for Application of Law 14/2017. These factors include, as a minimum, significant risk factors relating to customers, countries or geographical areas, products, services, transactions or distribution channels. The consideration of these factors should allow determination of the overall risk level of the reporting entity and the appropriate mitigation measures. UIFAND plans to issue additional guides developing the established regulatory provisions in order to help reporting entities to draft their respective IRAs.

2. Due diligence measures

2.1 Identification of all intervening parties in the transaction

Observed deficiencies/risks
<ul style="list-style-type: none"> On some occasions identification documentation on some intervening party in a specific transaction or business relation is not possessed.
Recommended improvement actions
<ul style="list-style-type: none"> For all current business relations and for all new business relations which are to be started, customers should be asked for identification documents of all parties intervening in the transaction. This information is indispensable for the correct and necessary understanding of the transaction.

2.2 Politically exposed persons (PEPs)

Observed deficiencies/risks
<ul style="list-style-type: none"> On some occasions the status of the customer as a politically exposed person (PEP), according to the definition contained in the laws in force, is not identified.
Recommended improvement actions
<ul style="list-style-type: none"> Systems for identifying and verifying the status of customers as politically exposed persons (PEPs) should be established, applying the respective enhanced due diligence measures.

2.3 Identification of the beneficial owner

Observed deficiencies/risks
<ul style="list-style-type: none"> On some occasions the identification and verification of identity is limited to that of the customer with whom the reporting entity deals, but it is not extended to the beneficial owner of the transaction or contracted service in question, in the case in which such persons are distinct.
Recommended improvement actions
<ul style="list-style-type: none"> All appropriate measures should be taken to identify and to verify the identity of the beneficial owner, especially in cases of customers who are legal entities, according to the definition established in Article 3.3 of Law 14/2017, achieving in this way a complete knowledge of the business relation. In the case of customers who are legal entities, it is also necessary to determine their shareholder and control structure. These necessary verifications may include searches in public registers, such as the Register of Companies. As measures supplementary to the foregoing, it should be assessed as to whether to include, in each business relation, a section in the KYC form that makes explicit reference to the beneficial owner (and not only to the representatives of the company), as well as a statement signed by the customer recognising that same is the beneficial owner of the respective transaction or service.

2.4 Professional activity

Observed deficiencies/risks
<ul style="list-style-type: none"> • Generally speaking, the knowledge of the professional activity of customers is limited only to the verbal confirmation of same by customers.
Recommended improvement actions
<ul style="list-style-type: none"> • The professional activity stated by customers should be documentarily proven, and it should be verified that such activity is consistent with the requested service or with the proposed business relation. This documentation should come from reliable independent sources and it may be supplemented by information provided by the customer himself (f.ex. curriculum vitae).

2.5 Source of funds provided by customers

Observed deficiencies/risks
<ul style="list-style-type: none"> • Generally speaking, the source 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 requested documentation in relation to the proof of the source of provided funds should be increased and it should be ensured, for all business relations, that such documentation is sufficient and that it is consistent with each customer's risk level. • The documentation obtained and the analysis conducted should be stated in the dossier. • As a measure supplementary to the foregoing, it should be assessed as to whether to implement, for each business relation, a sworn statement to be signed by the customer, confirming the legality of the respective funds.

2.6 Additional research on customers

Observed deficiencies/risks
<ul style="list-style-type: none"> • Generally speaking, verifications by means of searches in databases and verifications of customers' statements in open sources with the aim to verify their veracity are not carried out.
Recommended improvement actions
<ul style="list-style-type: none"> • All customers should be checked in the available sources of information (open sources, commercial databases, etc.), both at the start of the business relation and subsequently, establishing periodic reviews for non-sporadic customers in order to detect possible changes which could in some way alter the customer's risk classification. All verifications of this type should be stated in customers' dossiers.

2.7 Updating of documentation

Observed deficiencies/risks
<ul style="list-style-type: none"> • The documentation relating to the due diligence measures which are adopted is not always duly updated, since it is only requested when the business relation is begun and no follow-up is carried out.

Recommended improvement actions

- A field should be implemented in the database or in the control system of customers which is used by the reporting entity, in order to alert to deficiencies or to the need for the updating of the documentary support.
- In the case of long-term business relations, a risk-based periodicity for the review of customer dossiers should be established in order to detect possible deficiencies and necessary updating of the documentation which they contain.

3. Other relevant aspects

Internal control policies and procedures

Observed deficiencies/risks

- Generally speaking, reporting entities do not possess written internal control policies and procedures in matters of ML/TF, or else they show incidents with respect to their content or effectiveness.
- In some cases the internal rules are established on the basis of models provided by professional associations, which on some occasions do not reflect the latest regulatory changes or are not duly adapted to the characteristics of each reporting entity.

Recommended improvement actions

- The internal policies and procedures should be reviewed in order to ensure that they cover the minimum requirements which they should contain in accordance with the provisions of Article 17.1 of the Regulation for Application of Law 14/2017.
- The internal rules in matters of ML/TF should be updated in accordance with the laws in force, at the briefest possible delay. Moreover, a continued updating on the basis of new legislative changes or regulatory developments should be foreseen.
- It should be ensured that the internal rules accurately reflect the reality of the business and the control measures and procedures which are carried out in practice.

Delegation to third persons

Observed deficiencies/risks

- There is a high degree of reliance on the control measures and procedures applied by other reporting entities of other sectors, mainly banking entities, to the detriment of control measures and procedures of their own.

Recommended improvement actions

- In the case in which, in effect, the degree of reliance on the controls of another reporting entity is high, this situation should be formalized by means of a delegation agreement with the entity in question, specifying which subjects and which measures are delegated in which cases, as long as such agreement complies with the necessary requirements for the delegation of due diligence measures to third persons as established in Article 18 of Law 14/2017.

In this respect, it should be recalled that the Law only allows the delegation of the identification and verification of the identity of the customer and of the beneficial owner, in addition to the procurement of information on the purpose and the nature of the business relation, but not the application of continuous follow-up measures. In all cases, the delegating reporting entity continues to be the party responsible for compliance with these obligations. .

Suspicious transaction reports

Observed deficiencies/risks
<ul style="list-style-type: none"> • In general, the number of suspicious transaction reports submitted by the reporting entities of the sector is low. • On some occasions, when it is suspected that a potential customer, the funds which he provides, or the product or service which he requests, or that the project or business which he proposes may be related to the laundering of money or assets or to terrorist financing, it is only chosen not to begin the business relation with such customer, but consideration is not given to submitting the requisite suspicious transaction report to UIFAND.
Recommended improvement actions
<ul style="list-style-type: none"> • The analysis made of potentially suspicious transactions should be documented in writing, even if it is finally decided not to submit the respective report. • Suspicious transaction reports should be submitted if suspicions exist, if there are reasonable grounds for suspicion, or if there is a certainty that the funds are proceeds from criminal activity, even if the business relation with the potential customer has not come to be formalized since, just as is established in Article 20.1 of Law 14/2017, <i>“all suspicious transactions, including those that were to remain in the phase of attempt”</i>, should be reported.

Restrictive measures and terrorist financing

Observed deficiencies/risks
<ul style="list-style-type: none"> • There is a generalized lack of knowledge of the existence of the list of persons and entities designated by the United Nations for their links with terrorism or its financing, and also of the obligations in relation to the consultation of the list and to the restrictive measures to be applied in the event that a customer were to appear on said list.
Recommended improvement actions
<ul style="list-style-type: none"> • At the start of the business relation and subsequently on a periodic basis, a review should be made to verify that the customers of the entity do not appear on the list of persons to whom restrictive measures are to be applied (the consolidated list of sanctions of the United Nations Security Council, which covers the persons and entities designated by the United Nations for links with terrorism or its financing). The link to this list is available on the UIFAND website. In this respect, the website should be consulted periodically in order to learn about the changes which arise in the list, since these changes are not reported in technical communiqués. • With respect to the application of restrictive measures in the case in which any customer of the reporting entities appears on this list, we refer the reporting entities to the <i>“Guide to the Application of Restrictive Measures”</i> issued in February 2017 to this end, which is also available on the UIFAND website.

Supervision Area