



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Administration de l'enregistrement,
des domaines et de la TVA

GUIDE

PROFESSIONAL OBLIGATIONS WITH REGARD TO THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

- FOR THE REAL ESTATE SECTOR –

This guide is purely indicative

Preface.....	1
Acronyms.....	3
Introduction.....	3
PART 1: THE THREE MAIN PILLARS OF AML/CFT PROFESSIONAL OBLIGATIONS	4
1. Customer due diligence (articles 3, 3-1, 3-2 and 3-3 of the AML/CFT Law)	5
1.1. Identification of the customer/his representative	6
1.2. Identification of the beneficial owner	8
1.3. Procedure for entering into a business relationship	8
1.3.1. Assessment of a possible risk when entering into a business relationship	8
1.3.2. Identification of the purpose and the nature of the transaction (business relationship entry form).....	9
1.4. Record-keeping and ongoing monitoring.....	10
1.5. Types of due diligence.....	12
2. Adequate internal management requirements (articles 4, 4-1 and 2-2)	12
2.1. The implementation of an internal procedure by the professional.....	13
2.2. The implementation of a risk assessment by the professional.....	14
2. Cooperation requirements (article 5)	17
PART 2: SANCTIONS AND REMEDIES	22
1. AML/CFT administrative sanctions and measures	22
2. Administrative remedies (right to appeal to the Administrative Tribunal)	22
PART 3: GENERAL INFORMATION AND FORMS.....	23
Definitions	23
CHECK-LIST "IDENTIFICATION AND ENTERING INTO A BUSINESS RELATIONSHIP" (MINIMAS)	26
NON-EXHAUSTIVE LIST OF RISK FACTORS BY AML/CFT LAW	27
FORMS	30

Preface

In order to prevent and raise awareness among professionals subject to the AML/CFT Law, the AED, as the supervisory authority for real estate agents and real estate developers, has decided to provide them with a guide to help them comply with their AML/CFT obligations.

The guide is of an indicative nature, describing the minimum requirements to be complied with by real estate agents and real estate developers.

The purpose of this guide is, above all, to raise awareness among professionals about the risks of money laundering and terrorist financing in the real estate sector, but also to provide guidance to real estate agents and real estate developers to enable them to avoid transactions linked to a risk of money laundering and terrorist financing, which could engage their responsibility.

This risk can be avoided by respecting AML/CFT obligations and more particularly the IDENTIFICATION OF THE CUSTOMER AND THE BENEFICIAL OWNER (customer due diligence requirements).

As a supervisory authority, the AED carries out its mission at two levels:

- On a preventive level and,
- On a repressive level.

Through this guide, the AED wishes to strengthen its approach in its AML/CFT prevention and awareness-raising mission in order to rebalance the lack of information leading to the commission of money laundering and terrorist financing offences.

Professionals can draw inspiration from this guide, but still have to adapt their internal AML/CFT procedures according to the size, the activity of the company and the nature of its customers.

For more information, it is recommended to consult the AED website under the heading "Blanchiment".

Acronyms

AED	Registration, Duties, Estates and VAT Authority Administration de l'Enregistrement, des Domaines et de la TVA
BO	Beneficial owner Bénéficiaire effectif
CHIDA	Turnover/ Sales revenue Chiffre d'affaires
FIU	Financial Intelligence Unit Cellule de Renseignement Financier (CRF)
FATF	Financial Action Task Force Groupe d'Action Financière (GAFI)
KYC	Know Your Client
AML/CFT ¹	Anti-Money Laundering and Counter Terrorist Financing Lutte contre le blanchiment et le financement du terrorisme
OECD	Organisation for Economic Co-operation and Development Organisation de coopération et développement économique
PEP	Politically Exposed Person Personne politiquement exposée (PPE)
RCS	Trade and Companies Register Registre de Commerce et des Sociétés
SAF	Anti-Fraud Unit Service Anti-Fraude
STR	Suspicious Transaction Report Déclaration d'Opération Suspecte (DOS)

¹ The Law of 12 November 2004, as amended

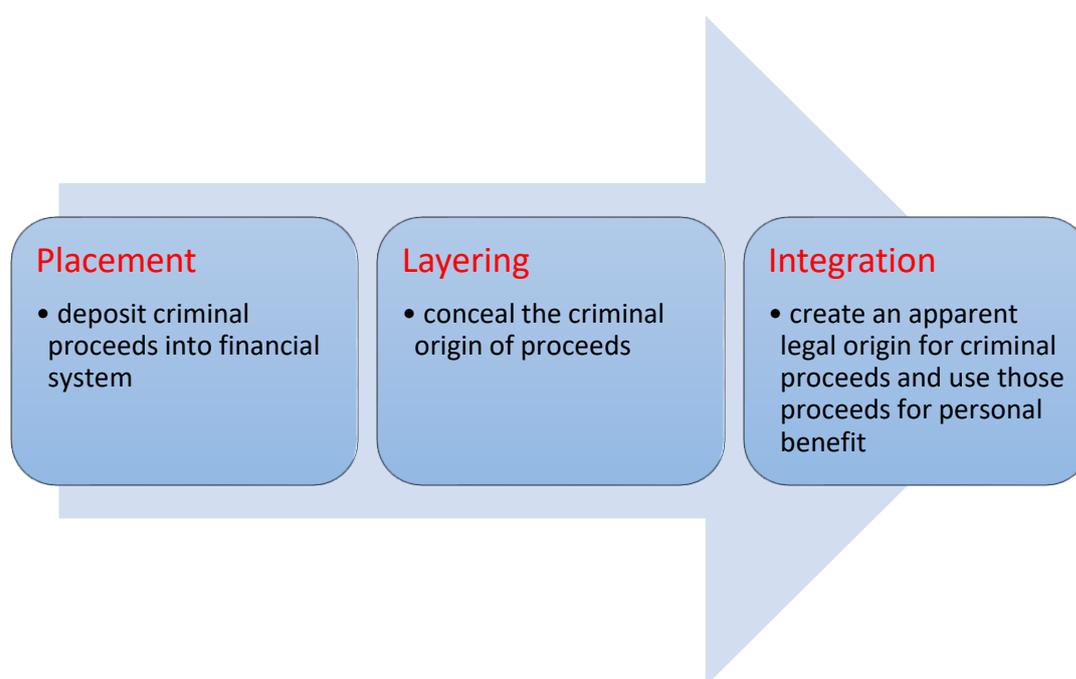
Introduction

In accordance with articles 2-1 (8) and 2 (1) (10), the AED is the supervisory authority for real estate agents **established or acting in Luxembourg**, including when **acting as intermediaries** in the letting of immovable property, but only in relation to transactions for which the **monthly rent amounts to EUR 10 000 or more**.

In accordance with article 2-1 (8) and 2(1) (10a), the AED is also the supervisory authority for real estate developers **established or acting in Luxembourg**, including when they are, **in their capacity as intermediary**, involved in **purchase and sale transactions** of immovable property.

What is money laundering² ?

Money laundering is the operation which consists in concealing, by any means, the origin of funds acquired illegally in criminal activities (sale of arms, prostitution, drug trafficking, corruption, extortion, etc.) in order to reinvest them in legal activities. In addition, it compromises the integrity of legitimate financial institutions and systems and provides organised crime with the funds necessary to undertake other criminal activities.



What is terrorist financing³ ?

Terrorist financing is the deliberate and unlawful provision or collection by any means, directly or indirectly, unlawfully and intentionally, of funds, values or property of any kind for carrying out terrorist activities. This may involve the raising of funds from both legal sources, such as personal donations and profits from businesses or charities, and from criminal sources, such as drug trafficking, smuggling, fraud, etc.

² Article 1 (1) of the 2004 AML/CFT Law, as amended

³ See article 135-5 (1) and (3) (L. 26 December 2012) of the Penal Code.

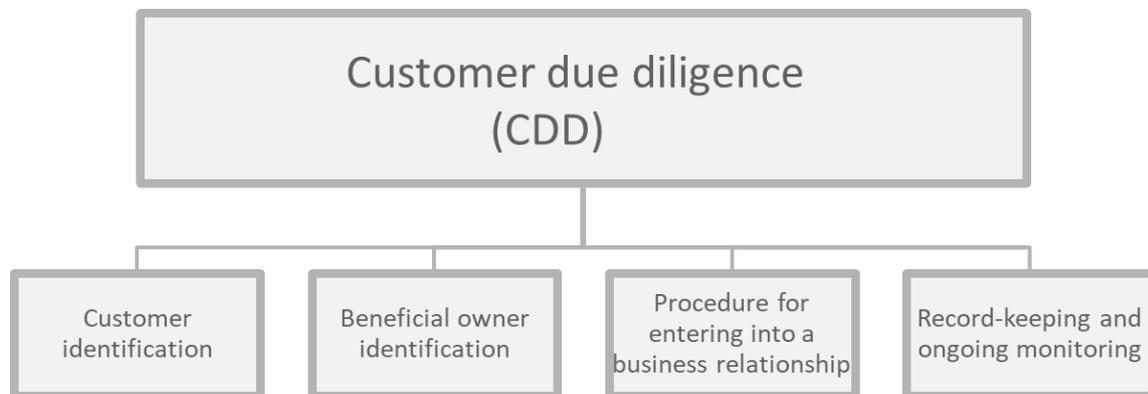
Part 1: The three main pillars of AML/CFT professional obligations

The inspection of money laundering revolves around the **3 main pillars**:

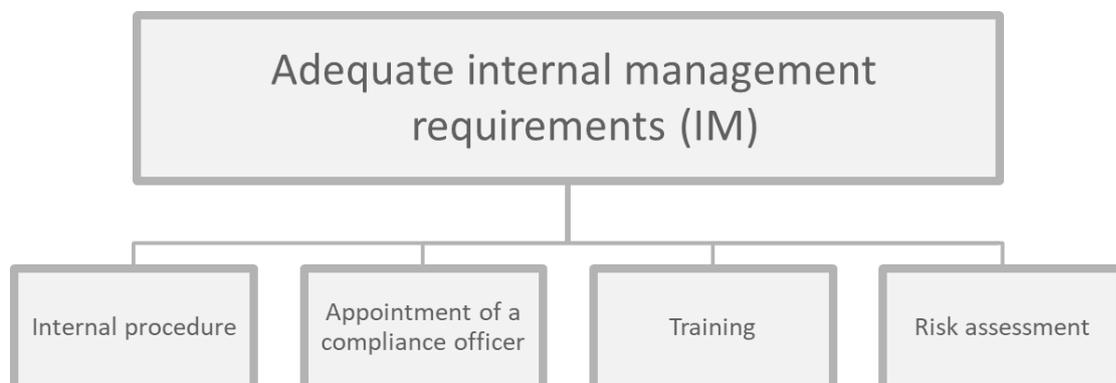
- Customer Due Diligence (articles 3, 3-1, 3-2, 3-3)
- Adequate internal management requirements (articles 4, 4-1 and article 2-2)
- Cooperation requirements (article 5)

These pillars are subdivided into several sub-pillars according to the diagrams below.

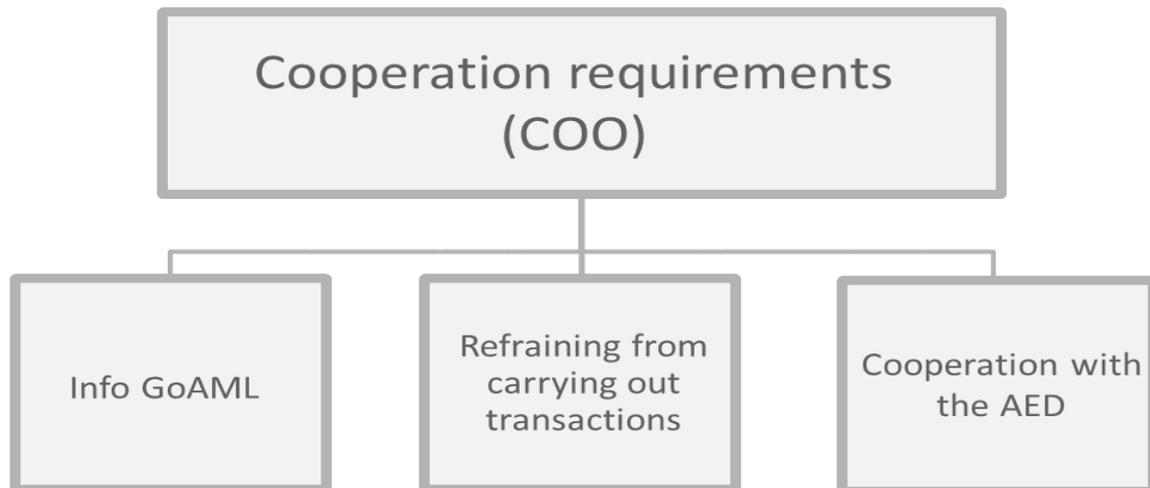
There are **4 sub-pillars** of the customer due diligence:



The adequate internal management requirements have **4 sub-pillars**:

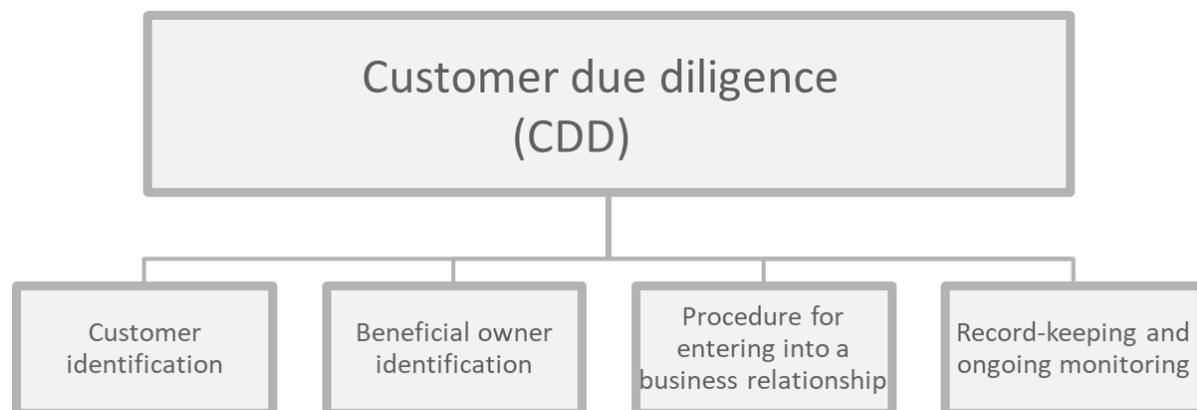


The cooperation requirements have **three sub-pillars**:



AML/CFT inspection is based on the 3 main pillars: the customer due diligence, the adequate internal management requirements and the cooperation requirements AND their respective sub-pillars.

1. Customer due diligence (articles 3, 3-1, 3-2 and 3-3 of the AML/CFT Law)



Identification of the customer/his representative⁴

The identification shall always take place **BEFORE the business relationship is established and continue throughout the duration of this relationship.**

For **physical persons** are to be provided:

Copy of an identity document:

- ✓ Identity card
- ✓ Passport
- ✓ Any other document from a reliable and independent source

The certification (proof) of identification by the professional shall be made by means of a copy of the identity card, which shall be verified by the professional and shall indicate:

- ✓ The date of the meeting with the customer (in principle the date of entering into the business relationship)
- ✓ The name of the compliance officer or his or her delegate with signing authority on behalf of the professional

The certification of identification by a competent authority:

- ✓ Competent and independent authority : police, embassies, municipalities, notaries or any other public authority
- ✓ The date of issuance of the certificate shall be less than 3 months from the date of entering into a business relationship.

In case of a **non-face-to-face business relationship**, it is necessary to obtain a certification (from the police, embassies, municipalities, or any certification authority.) of the documents provided⁵ by the customer. In a face-to-face business relationship, the certification (proof of identification) of the valid identity document can also be made by the professional himself (with signing authority) when he has verified the identity of his or her customer by obtaining a copy of the identity document.

For European Union citizens, the identity certification shall be done by either identity card or passport.

For third country citizens, the certification shall be done by passport.

⁴ For all customers, the obligation to verify that any person purporting to act on behalf of or for the customer is so authorised, and to identify and verify the identity of that person; article 3 (2) (d) a)

⁵Documents provided: tax declaration, passport, driving licence, social security card, birth certificate, etc.

Customer representatives (person purporting to act on behalf of or for the customer)

It is about identifying the customer in the broadest sense.

Indeed, in cases where **representatives intervene on behalf of or for the customer**:

Cumulative conditions: identification of the representative + verification of his or her identity + power to act on behalf of or for the customer (power of attorney/letter of assignment).

Caution: Responsibility of the professional if there is no certification (proof) of identification.

For **legal persons** are to be provided:

For customers who are legal entities or legal arrangements, the obligation to **identify the customer and verify** his or her **identity** includes **the obligation** to:

- ✓ Verify that any person claiming to act on behalf of or for the customer is authorised to do so and,
- ✓ Identify that person and verify his/her identity,
 - This involves the identification of the natural person(s), who owns **more than 25% of the voting rights/shares** or who exercises control **over more than 25% of the customer's assets**.
- ✓ Verify the legal status of the legal person or legal construction, in particular by obtaining :
 - A proof of incorporation deeds or similar proof of establishment or existence;
 - Information concerning the name of the customer;
 - The names of fiduciaries and trustees;
 - The legal form ;
 - The address ;
 - Board members/directors/managers (for legal entities) ;
 - The provisions governing the power to bind the legal entity or legal construction (status) ;
 - RCS extracts.

If the identification of the customer (natural or legal person) **is impossible**, the professional **is in principle required to refuse the business relationship** or the execution of the transaction with his or her customer.

Identification of the beneficial owner

The obligation to identify the beneficial owner and to verify his or her identity includes the **obligation to take reasonable measures** to verify the identity of the beneficial owner by means of relevant information or data obtained from a reliable and independent source so that the professional has satisfactory knowledge of the identity of the beneficial owner.

Documents to support identification:

- ✓ Organisation chart
- ✓ Register of partners/shareholders
- ✓ Identifying the ultimate beneficial owner (a shareholding of **more than 25% of the shares or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership**)
- ✓ Attendance list of the last ordinary general meeting/ ordinary shareholders meeting

If the customer is a legal person (company) managed by representatives (directors), the identification obligation also includes:

- ✓ Any reasonable measure to determine which person(s) actually/effectively exercise(s) control over that legal person (company)
- ✓ Identification of the natural persons having an effective (significant) influence in the control and management of that legal person (company)

Document, data or information collected under the customer due diligence process is kept up-to-date and relevant. The professionals shall review existing records, particularly for higher-risk categories of customers.

Information on customers and beneficial owners shall be monitored, updated under a constant vigilance.

Procedure for entering into a business relationship

Assessment of a possible risk when entering into a business relationship

Under the Law of 25 March 2020 amending the Law of 12 November 2004, the customer due diligence includes "assessing and understanding the purpose and intended nature of the business relationship" and, as appropriate, "obtaining information on the purpose and intended nature of the business relationship"⁶.

⁶ Article 3, 2) c) of the Law of 12 November 2004, as amended

The professional shall avoid any business relationship with a customer who does not wish to play the transparency card (desire for anonymity, failure to obtain requested information, etc.).

This type of behaviour can be considered as risky behaviour.

Identification of the purpose⁷ and the nature⁸ of the transaction (business relationship entry form)

Real estate agents established or acting in Luxembourg and real estate developers established or acting in Luxembourg are bound by professional obligations in AML/CFT matters.

Real estate transactions include:

Real estate agent:

- Real estate agent transactions in his or her capacity as an intermediary
- The operations of the real estate agent in his or her capacity as owner (buyer-seller)
- Real estate letting transactions (including when acting as intermediary but only for transactions for which the monthly rent amounts to EUR 10 000 or more).

Real estate developer:

- Purchase or sale operations in which the real estate developer is involved.
- Carry out, for an agreed remuneration, all or part of the legal, administrative or financial operations contributing to the same object.

With regard to transactions carried out in the course of real estate activity, the real estate agent or the real estate developer is required:

- To exercise ongoing due diligence of the transactions carried out **throughout the duration of this business relationship**;
- To ensure that **particular attention is paid to all unusual transactions**, of an abnormally high amount (i.e., check whether the transaction carried out is compatible with the customer's profile) ;
- To ensure that **the documents, data or information collected are up to date and relevant**, allowing the identification and understanding of the purpose and nature of the transaction.

⁷ Purpose of the transaction: House, apartment, any property

⁸ Nature of the transaction includes the qualification of the type of contract: sale, lease, exchange, assignment etc.

Record-keeping and ongoing monitoring

Ensure **the retention** of documents, data or information collected for a period of 5 years after the end of the business relationship with the customer, in order:

- To be able to adjust its due diligence towards the customer during the business relationship and,
- To be able to make any useful AML/CFT information available to the competent authorities in the context of their supervisions.

Evidence, identification data and information related to the business relationship shall be kept in such a way that the business relationship is traceable and verifiable by the supervisory authorities.

How is this done?

For example: scanned or saved copies in the electronic customer file or copies/prints in the customer's paper record/record file.

The professional shall be able to explain the procedures for storage in his or her internal formalized procedure/internal policies.

The real estate agents and real estate developers shall identify any person involved in the transaction(s).

In the case of purchase and sale transactions, the required information to be provided for entering into the business relationship is as follows:

For any type of customer (seller and buyer):

- Last name ;
- First name ;
- Address ;
- Date and place of birth ;
- Marital status ;
- Correspondence ;
- Registration number ;
- Profession ;
- Certified copy (true copy) of identity card or passport for non-European Union citizens.

For the property:

- Description of the property ;
- Cadastral data ;
- Plans ;

- Photos of the property ;
- Compromise of the property ;
- Bank agreement ;
- Notarial deed concerning the property ;
- Professional contact details of the notary.

For rental transactions, the information required to provide for entering into a business relationship is as follows:

For any type of customer (owner and tenant):

- Last Name ;
- First name ;
- Address ;
- Date and place of birth ;
- Marital status ;
- Correspondence ;
- Registry number ;
- Profession (copy of the employment contract) ;
- Salary slips for the last three months (for the tenant⁹)
- Certified copy of identity card or passport for non-European Union citizens.

For the property

- Rental contract ;
- Description of the property ;
- Cadastral data ;
- Plans ;
- Photos of the property.

Each real estate transaction is based on a contract that the real estate agent or the real estate developer shall keep and make available to the inspectors of the Anti-fraud Unit at their request.

Information concerning the beneficial owners shall also be retained in the same way as for customers for a period of 5 years.

The above list of requested information is not exhaustive.

⁹ Assuming the tenant is an employee

1.5. Types of due diligence

In any case, the real estate agent or real estate developer is required to have a **simplified customer due diligence** when entering into a business relationship.

In certain circumstances, the professional shall exercise **enhanced due diligence**, in particular when:

- The customer (natural person) is not physically present at the time of the identification (non-face-to-face business relationship);
- It appears that the customer resides abroad and could be a PEP ;
- The customer is a legal person or any other legal construction whose beneficial owner could be a PEP, as it could be the case for patrimonial companies, trusts, or family businesses that belong directly or indirectly to a PEP.

At the same time as the type of due diligence the professional is bound to, he is required to exercise **ongoing due diligence**.

Indeed, depending on the risk profile of his or her customer, the professional is required to regularly update documents, data or information related to the business relationship, concerning the customer, the beneficial owner, the source and origin of funds. This is an ongoing process.

Updating the information and data goes hand in hand with the readjustment of the risk assessment and the internal procedure

2. Adequate internal management requirements (articles 4, 4-1 and 2-2)



2.1. The implementation of an internal procedure by the professional

The real estate agent and real estate developer is required to set up an internal procedure that is adequate and proportionate to the size of their business in the context of their professional activity.

- This requirement implies the implementation of a **personalised internal procedure** (instructions for use) which details the policies put in place to prevent the risks of money laundering and terrorist financing.

The purpose of this document is:

- The description of the internal procedure in place to prevent the risks of money laundering and terrorist financing;
- The conditions to appoint a AML/CFT compliance officer;
- The organisation and/or participation in AML/CFT training programs for employees;
- The description of the risk assessment proportionate to the real estate agent's or real estate developer's professional activity.

The internal procedure shall be available to all employees.

- In order to prevent the risks of money laundering and terrorist financing, the employees are required to participate in one or more/several AML/CFT **training sessions**. This training can be organised either internally by the professional himself or externally, for example by a professional chamber.
- The adequate internal management requirements imply the appointment of a person responsible for compliance regarding AML/CFT obligations also known as **compliance officer**.

In accordance with the 2004 AML/CFT Law "**senior management**" shall mean any director (*dirigeant*, member of the authorised management) or employee with sufficient knowledge of the professional's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not, in all cases, be a member of the board of directors (see article 1 (19) of the Law of 12 November 2004, as amended).

The **compliance officer** is the contact person for the competent AML/CFT authorities.

2.2. The implementation of a risk assessment by the professional

- The **real estate agent** or **real estate developer** is required to take appropriate measures to **identify, assess and understand** the risks of money laundering and terrorist financing.



The professional is required TO SET UP A RISK-BASED APPROACH

The progress of a risk-based approach:



However, there is **no single methodology for assigning a given level of money laundering risk to a customer**. Each professional has to provide in its internal procedure for classification and risk management mechanisms specific to each customer.

In accordance with the internal procedure, each customer will be classified as a customer according to its risk profile:

- Low-risk
- Medium-risk
- High-risk.

Circumstances that lead to a high-risk profile shall be **identified and documented**.

This process of determining the level of risk is an **ongoing process throughout the existence of the business relationship and will take place, in particular, at the following points in time:**

- a) When accepting the customer ;

- b) Whenever an event justifies a review, e.g.: change in ownership, change of business activities, relocation of head office, etc. ;
- c) On a regular basis, depending on the risk ranking: for a low-risk customer, this review will take place less frequently than for high-risk customers.

❖ **The classification of the customer may be based on :**

- a) **Risk criteria related to the country of residence** (customer's head office and operational headquarter(s), general headquarters or ultimate parent company);

The customer may come from:

- Third countries;
- Countries blacklisted by international organisations (FATF, UN, OECD) ;
- Countries subject to sanctions, embargos or similar measures issued for example by the United Nations. In certain circumstances, this includes countries subject to sanctions or measures similar to those issued by institutions such as the United Nations ;
- Countries identified by reliable sources as not having adopted legislation, regulations or other anti-money laundering measures ;
- Countries identified by reliable sources as having known high levels of corruption or other criminal activity.

The AED website under the heading "Blanchiment" provides professionals with circular letters (public statement) on FATF public disclosures concerning **non- or uncooperative countries** in the area of money laundering and terrorist financing.

It is therefore recommended to consult them regularly, particularly in the months of October, February and June, in order to keep up to date with the latest information.

b) **Customer risk criteria;**

Indeed, the risk may be related to:

- The reduced transparency/voluntary anonymity of the customer ;
- The customer's industry/activity sector ;
- The source and origin of the customer's funds¹⁰ ;
- The type of transaction/funding methods chosen by the customer (cash¹¹, bank transfer, cheque, bitcoin, etc.).

¹⁰When entering into a business relationship, the real estate agent or real estate developer will be required to have information about the origin of the funds (e.g. from which account the funds come) used to finance the property as well as information about the source of the funds that provides information about the customer's assets.

¹¹A lower cash payment threshold for persons dealing in goods

c) **The risk criteria related to the service or good** requested or used by the customer. Indeed, the risk may be related to the type of property (house(s), apartment(s), etc.) chosen by the customer.

❖ **The risk assessment shall be adapted :**

- To the professional's activity and remain proportionate to the nature and size of his or her business ;
- Adapted to the customer's profile and the importance of the transaction.

The criteria presented above are non-exhaustive and not fixed.

Indeed, other criteria than those presented may be taken into account.

These criteria may change according to:

- The customer profile;
- The importance of the transaction;
- The purpose of the transaction;
- The nature of the transaction.

The risk assessment shall enable the professional to adapt his or her level of due diligence in light of the identified risks. To guide the professionals in their assessment, the Law includes three annexes¹² that list risk factors inherent to the customer.

It is up to the professionals to assess the risk of transactions, identify those that present a low risk and apply the level of an appropriate due diligence that they deem appropriate. To this end, professionals shall base themselves especially on the risk criteria set out in the annexes to the law. Indeed, when they assess the money laundering and terrorist financing risks related to :

- Certain types of customers;
- Certain geographical areas;
- Certain types of products or services;
- Certain transactions;
- Certain specific distribution channels.

Persons dealing in goods are subject to the AML/CFT scheme when payments are made or received in cash in an amount of EUR 10 000 or more (previously the threshold was EUR 15 000), whether the transaction is executed in a single operation or in several operations which appear to be linked.

¹² See part 3, General information and forms

Professionals shall take into account, at a minimum, the risk factors set out in the annexes to the law.

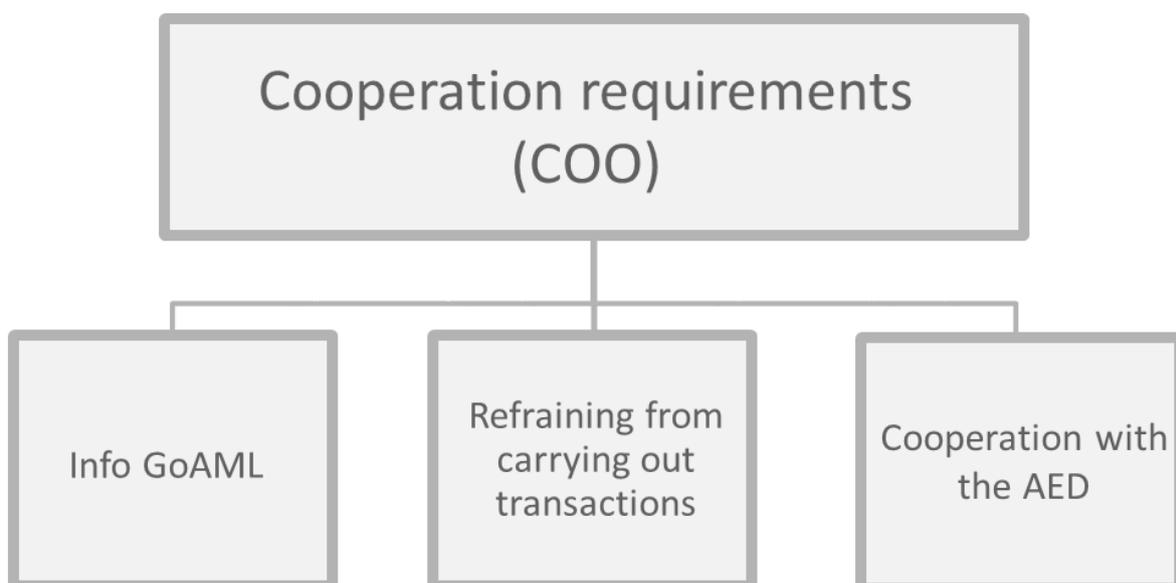
Article 3-2 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, identifies a certain number of higher risk situations in which professionals shall in any event implement enhanced due diligence measures. These include situations in which professionals maintain business relationships with customers who are established in third countries identified as high-risk or costumers who are PEP's (politically exposed person(s)), as well as cross-border banking and financial relationships.

Beyond these situations expressly set out in the Law, professionals are required to assess the risk of all their transactions and apply enhanced due diligence measures when they identify a situation posing a higher risk.

In the presence of a high-risk customer, particular attention shall be paid to the following operations:

- Significant banking transactions with foreign countries that do not correspond to the knowledge of the customer's activities;
- Customer, supplier, bank or other third party accounts that are unpaid or without movement for a long period.

3. Cooperation requirements (article 5)



The 2004 AML/CFT Law requires that **any transaction or fact considered as suspected to be linked or related to money laundering** and/or terrorist financing be examined because :

- Of the nature or unusual nature of the transaction/fact in relation to the customer's activities;
- Of the circumstances surrounding the transaction;
- Of the quality of the persons involved in the operation.

What is an unusual transaction?

When entering into a business relationship with a customer certain signals lead to suspect the possible existence of money laundering and/or terrorist financing.

These signals may consist, for example, of:

- The provision of a service or the supply of a good that has no connection with the customer or his or her professional activity ;
- The economic purpose does not appear from the transaction and is therefore not definable;
- The invoices presented are not based on any services provided;
- The intervention of a professional or a customer from a third country appearing on a black list (lists defined by the competent international organisations, notably the FATF, UN, OECD);
- The contribution in kind;
- The acquisition of important fixed assets;
- Unusual sales or transactions (unusual by their nature or amount);
- Very high margins transactions that may lead to the payment of commissions or compensation;
- Large and unusual compensation payments, commissions or fees;
-

Which procedure should be followed when one of the above signals is detected?

- 1) Inform the AML/CFT (Compliance Officer)
- 2) Obtain more information on the motivation of the operation and the origin of the funds and assets involved in the operation
- 3) Document all information obtained
- 4) Provide a description of the research conducted
- 5) Write a report/summary that:
 - Traces the history of the research carried out ;
 - Provides the professional's analysis of the operation or fact that may be linked to money laundering and/or terrorist financing;
 - Describes the procedure initiated by the professional.

If the research carried out by the professional concludes that:

- **The fact or the operation** is linked to money laundering and/or terrorist financing;
- or
- There is a **suspicion** that the fact or the operation is linked to money laundering and/or terrorist financing.

It is necessary to:

FILE A SUSPICIOUS TRANSACTION REPORT (STR) TO THE FIU (CRF)

Indeed, the assessment of the cooperation requirements is done at three levels by the inspectors of the Anti-fraud Unit:

- The professional **is required to inform the FIU without delay and on his or her own initiative** of any fact or operation that could be indicative of money laundering and/or terrorist financing.

A mere suspicion is enough!



The professional is required to make a STR!

Who is required to make a STR (suspicious transaction report)?

In principle, the person responsible for the implementation of the 2004 AML/CFT Law (compliance officer) within the company is required to make a STR.

If this person is not available, his or her substitute will be required to do so.

If no AML/CFT compliance officer has been appointed within the company, the professional responsible for the customer's file concerned will, if necessary, make the report to the FIU.

The professional who has continued to execute a transaction suspected of money laundering or terrorist financing shall be held responsible for AML/CFT matters.

The only way to avoid such responsibility and therefore avoid a sanction is to make a suspicious transaction report to the FIU on GoAML portal¹³.

¹³ <https://justice.public.lu/fr/organisation-justice/crf.html>

In order to use GoAML, registration with a **LuxTrust certificate** is required.

Confidentiality of the STR: Any person in the company who may have knowledge of a STR is not authorised to disclose this information to the customer or any other person.

The customer who is the subject of a STR shall be assigned a high level of risk of money laundering leading to increased vigilance which requires enhanced due diligence.

- **At the request of the FIU**, the professional is required to provide any required information without delay.

The professional is in principle¹⁴ required **to refrain from executing the transaction** he knows or suspects to be linked to money laundering or terrorist financing before informing the FIU.

Where refraining from carrying out transactions is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected operation, the professionals concerned shall inform the Financial Intelligence Unit immediately afterwards (immediately after the transaction).

- The professional is obliged to cooperate fully with the Luxembourg authorities responsible for the fight against money laundering and terrorist financing and self-regulatory bodies, in particular, in the framework of their respective supervisory powers.

Indeed the professional is required:

- **For desk-based inspections**, to communicate the information requested by the AED;
- **For on-site-inspections**, to provide the requested documents¹⁵ and to cooperate in such a way as not to hinder the proper conduct of the inspection by the Anti-fraud Unit.

THE PROFESSIONAL WILL BE SUBJECT TO AN INJUNCTION inviting him or her to transmit all the documents useful for the AML/CFT inspection or inviting him or her to cease any behaviour contrary to his or her professional obligations.

In accordance with **article 8-2 (1) (e)**, the AED, as supervisory authority, has the means to enjoin from the professional to cease any practice contrary to his or her professional AML/CFT obligations or to their implementing measures and to desist from repetition of that practice, within the time limit set by the AED.

¹⁴ Article 5 (3) of the Law of 12 November 2004, as amended

¹⁵ See check-list in annex

The injunction is provided in the following legal provisions:

- **Article 8-2(1), (e):** This article is used to put an end to the violation of one or more of the three main pillar/s;
- **Article 8-2(2):** This article provides the possibility to impose a coercive fine. The amount of this coercive fine, on the grounds of an observed failure to perform, may not be greater than EUR 1 250 per day, with the understanding that the total amount imposed due to an observed failure to perform may not exceed EUR 25 000.
- **Article 8-4(4):** possibility of an administrative sanction if the professional:
 - Fails to act in response to injunctions issued in accordance with **article 8-2(1) (e)** ;
 - Or purposefully provides documents or information that are incomplete, incorrect or false following a request based on **article 8-2, (1)**;
 - Fails to comply with the provisions of **article 5 (4) subparagraph 3** and **article 8-3 (3) subparagraph 1**

For ease of understanding, **article 8-2(1)(e) and article 8-2 (2)** will be referred to as ***injunction-means***.

On the other hand, **for article 8-4 (4)** we will speak of ***injunction-sanction***.

The AED will pronounce the injunction only in the event of non-compliance with the cooperation requirements in accordance with **article 5 of the 2004 AML/CFT Law**.

Part 2: SANCTIONS AND REMEDIES

1. Administrative sanctions/measures in the event of non-compliance with AML/CFT obligations

The professional is informed that, in accordance with **article 8-4 of the Law of 12 November 2004, as amended**, sanctions may be imposed for failure to comply with AML/CFT obligations.

As a supervisory authority, the AED has the power to impose the following **administrative sanctions** on professionals falling under its scope:

- A warning
- A reprimand
- A public statement
- Administrative fines
- A final or temporary withdrawal of the authorisation of establishment (business licence) based on the reasoned opinion of the director of the AED but by final decision of the Minister of Economy.

In order to comply with the proportionality principle, those sanctions, will be imposed in a gradual manner, with the warning being the least severe sanction and the fine being, according to its amount, the most severe sanction.

When imposing the sanction, the AED will also take into account the professional's recidivist behaviour, taking the previous offence into account, which will result in a heavier sanction.

Administrative remedies (right to appeal to the Administrative Tribunal)

In accordance with **article 8-7 of the Law of 12 November 2004, as amended**, the professional has the right to appeal to the Administrative Tribunal against administrative decisions of the AED in AML/CFT matters.

Indeed, the article provides that "*The Administrative Tribunal ("Tribunal Administratif") can undertake a full review of the merits of the decision taken by the supervisory authorities in connection with this chapter. The case must be filed within one month from the date of notification of the contested decision, or otherwise shall be time-barred*".

Part 3: General information and forms

Definitions

Reasonable measures

The following is an indicative and non-exhaustive list of what might be considered as being reasonable measures:

- Residency certificate ;
- Criminal record ;
- Invoices showing the customer's address ;
- Documented Internet researches (Google, Yahoo, Facebook, twitter, etc.);
- BIC (Bank Identifier Code);
- Description of the customer's business activity ;
- In case of a corporate group/affiliated company, presentation of the organisation chart;
- Extracts from the RCS (even foreign) ;
- Identification by KYC software (CDDS, Worldcheck, Dow Jones, others).

The implementation of reasonable measures by the professional shall be demonstrable. It is advisable to provide for the drafting of an inventory of the research and information collected by the professional.

Outsourcing factors

When the professional delegates the implementation of his or her AML/CFT procedure to a third party, this refers to an outsourcing.

Outsourcing or agency relationships are based on contractual arrangement. The outsourcing service provider or agent is to be regarded as part of the professionals covered by this law.

Article 3-3(5) provides for a shared responsibility of the professional and the third party in dealing with KYC matters.

The contract must specify the terms of the implementation of the AML/CFT obligations by defining clearly and precisely the tasks to be performed in accordance with the AML/CFT policies.

On the other hand, article 3-3 provides for the professional the tool to rely on third parties to meet the requirements to perform customer due diligence:

→ Article 3-3 (2) engages the **sole** responsibility of the professional

The inspectors of the Anti-fraud Unit shall have access to the outsourcing contracts concluded by the professional.

PEP

Politically exposed persons (PEPs) shall, in accordance with this law, mean natural persons who are or have been entrusted with prominent public functions and family members or persons known to be close associates, of such persons.

In accordance with article 3-2 (4), politically-exposed persons are subject to **enhanced due diligence measures**.

In addition to the customer due diligence measures laid down in Article 3 the professional has to :

- (a) have “appropriate risk management systems, including risk-based procedures,” to determine “if the customer or beneficial owner is a politically exposed person”
- (b) obtain senior management approval for establishing “or continuing”, for existing customers,” business relationships with “such persons”;
- (c) take reasonable measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction “with such persons”;
- (d) conduct enhanced ongoing monitoring of the business relationship.

Customer profile

The customer profile can be defined according to several criteria:

- Customer coming from a third country;
- Customer from a State on a black list established by the international organisations such as the FATF, UN, OECD;
- Professional customer of a SME or large company (capital and turnover /sales revenue) ;
- PEP customer ;
- Unusual, punctual or regular customer;
- Professional activity or sector of activity of the customer;
- **Turnover /sales revenue.**

The turnover/sales revenue (**CHIDA**) of the real estate agents or real estate developers shall inform:

- On the one hand, the services provided by the real estate agent (purchase/sale commission, intermediary commission for the rental of the property and other services such as management, insurance...) or by the real estate developer (purchase/sale commission, commission for the realisation of construction programs...) ;

- On the other hand, the number of transactions according to the services provided as a real estate agent or a real estate developer.

This list is purely indicative and non-exhaustive.

Non-face-to-face business relationship

In this case, the customer is a natural person who is not physically present at the time of the identification.

Check-list "Identification and entering into a business relationship" (minimas)

ANNEX I

- Customer identification (valid)
- Identification of the beneficial owner
- Enhanced due diligence for politically exposed persons
- Copy of the identity document certified by the professional :
 - ✓ Certify that you have seen the customer
 - ✓ Responsibility of the professional if no demonstration of effective identification (certification by the professional) of the customer
- The business relationship and its purpose (identify the nature and the purpose of the business relationship)
- Identification of the customer company
- Statutes of the legal person/company statutes
- Extract from the RCS
- Organisational chart of the company
- Identification of the representative/mandatary engaging the customer company
- Signing authority on behalf of the customer company
- Record-keeping for a minimum of 5 years
- Origin of the funds (the origin of the future customer's assets and the origin of the funds used to finance the purpose of the business relationship ex, which account?)
- Cash payment from EUR 10 000 upwards
- Existence of fractioned payments
- Financing statement/ financing of fractioned payments
-non-exhaustive list

NON-EXHAUSTIVE LIST OF RISK FACTORS BY AML/CFT LAW¹⁶

ANNEX II

The following is a non-exhaustive list of risk variables that the professionals shall consider when determining to what extent to apply customer due diligence measures in accordance with **article 3(2a)**:

- (i) the purpose of an account or relationship;
- (ii) the level of assets to be deposited by a customer or the size of transactions undertaken;
- (iii) the regularity or duration of the business relationship.

ANNEX III

The following is a non-exhaustive list of factors and types of evidence of potentially lower risk referred to in the **second subparagraph of article 3-1 (2)**:

1) Customer risk factors :

- (a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;
- (b) public administrations or enterprises from countries or territories having a low level of corruption;
- (c) customers that are resident in geographical areas of lower risk as set out in point (3).

2) Product, service, transaction or delivery channel risk factors :

- (a) life insurance policies for which the premium is low;
- (b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;
- (c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;
- (d) financial products or services that provide appropriately defined and limited services to certain types of customers, so to increase access for financial inclusion purposes;
- (e) products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership (particularly, certain types of electronic money);

3) Geographical risk factors « registration, establishment, residence in » :

- (a) Member States;
- (b) third countries having effective anti-money laundering and counter terrorist financing systems;

¹⁶ Law of 12 November 2004, as amended

- (c) third countries identified by credible sources as having a low level of corruption or other criminal activity;
- (d) third countries which, on the basis of credible sources such as mutual evaluations , detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations and effectively implement those requirements.

ANNEX IV

The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in **the second subparagraph of article 3-2 (1)**:

1) Customer risk factors:

- (a) the business relationship is conducted in unusual circumstances;
- (b) customers that are resident in geographical areas of higher risk as set out in point (3);
- (c) legal persons or legal arrangements that are personal asset-holding vehicles;
- (d) companies that have nominee shareholders or shares in bearer form;
- (e) businesses that are cash-intensive;
- (f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business.
- “(g) customer is a third-country national who applies for residence rights or citizenship in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities.”

2) Product, service, transaction or delivery channel risk factors:

- (a) private banking ;
- (b) products or transactions that might favour anonymity;
- (c) non-face-to-face business relationships or transactions, without certain safeguards, such as “electronic identification means, relevant trust services as defined in Regulation (EU) No 910/2014 or any other secure, remote or electronic, identification process regulated, recognized, approved or accepted by the relevant national authorities”;
- (d) payment received from unknown or unassociated third parties;
- (e) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products;
- “(f) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species.”

3) Geographical risk factors:

- (a) without prejudice to **article 3-2(2)**, countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective anti-money laundering and counter terrorist financing systems;
- (b) countries identified by credible sources as having significant levels of corruption or other criminal activity;

- (c) countries subject to sanctions, embargos or similar measures issued by, for example, the European Union or the United Nations;
- (d) countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.”

FORMS

IDENTIFICATION FORM – NATURAL PERSON – CUSTOMER

Customer due diligence (article 3 and seq. of the Law of 12 November 2004, as amended)

Reference/Folder No.	
Name of the customer	
Person in charge of the file	

1. Estimating the risk of money laundering

Purpose and nature of the mission/operation/business relationship¹⁷:

Risk of money laundering¹⁸ : YES NO

If YES, level of risk assessed:

Low

Medium

High

Justification of the level of risk¹⁹ :

2. Personal data

First name		Last name			
Place of birth		Date of birth			
Street		No.			
Postal code		City			
Tel		Mobile No.		E-mail	

¹⁷ Brief description of the purpose and nature of the mission/operation/business relationship

¹⁸ Provisional estimate of the risks of money laundering (low / medium / high)

¹⁹ List the elements justifying the level of risk

3. Verification of the personal data ²⁰			
<input type="checkbox"/> “Face to Face”, the customer is physically present			
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.	
Passport ²¹	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.	
Validity date			
<input type="checkbox"/> “Non-face-to-face business relationship”, the customer is not physically present			
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.	
Passport ²²	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.	
Certification	<input type="checkbox"/> Yes <input type="checkbox"/> Non	Issued by ²³	
Date of certification			

4. “PEP” control²⁴	
Is the individual a “PEP”	<input type="checkbox"/> Yes ²⁵ <input type="checkbox"/> No

5. Nature and purpose of the business relationship
Description of the nature of the mission/operation/business relationship :

6. Identification of the beneficial owners (BO)²⁶	
Are the BO’s identified ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the BO’s declaration completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Established in	Signature
Last name and first name of the professional, responsible for the application of the AML/CFT Law ²⁷	

Mission for the customer completed at the date of	
Data compilation/verification on	
First name, last name and signature of the professional	

²⁰ Take a copy (paper or electronic) of the document on the basis of which the identity was verified

²¹ Mandatory for all natural persons residing outside the European Union

²² Mandatory for all natural persons residing outside the European Union

²³ Inform the public authority that issued the certification

²⁴ **PEP** : Politically Exposed Person or **PPE**: personne politiquement exposé

²⁵ If so, enhanced due diligence shall be applied!

²⁶ BO : Beneficial owner, Please use the BO declaration form.

²⁷ Law of 12 November 2004, as amended

IDENTIFICATION FORM – NATURAL PERSON – REPRESENTATIVE

Customer due diligence (article 3 and seq. of the Law of 12 November 2004, as amended)

Reference/Folder No.	
Name of the customer	
Person in charge of the file	

1. Estimating the risk of money laundering

Purpose and nature of the mission/operation/business relationship²⁸:

Risk of money laundering²⁹ : YES NO

If YES, level of risk assessed :

- Low
 Medium
 High

Justification of the level of risk³⁰ :

2. Personal data

First name		Last name			
Place of birth		Date of birth			
Street			No.		
Postal code		City			
Tel		Mobile No.		E-mail	

3. Verification of the personal data³¹

“Face to Face”, the representative is physically present

ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.	
Passport ³²	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.	

²⁸ Brief description of the purpose and nature of the mission/operation/business relationship

²⁹ Provisional estimate of the risks of money laundering (low / medium / high)

³⁰ List the elements justifying the level of risk

³¹ Take a copy (paper or electronic) of the document on the basis of which the identity was verified.

³² Mandatory for all natural persons residing outside the European Union.

Validity date			
<input type="checkbox"/> "Non-face-to-face business relationship" the representative is not physically present			
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.	
Passport ³³	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.	
Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No	Issued by ³⁴	
Date of certification			

4. "PEP" Control³⁵	
Is the individual a "PEP"?	<input type="checkbox"/> Yes ³⁶ <input type="checkbox"/> No

5. Powers of representation
Description and documentation of the power of representation (mandate or other evidentiary and relevant documents)

Established in		Signature
Last name and first name of the professional, responsible for the application of the AML/CFT Law ³⁷		

Mission for the customer/representative completed at the date of	
Data compilation/verification on	
First name, last name and signature of the professional	

IDENTIFICATION FORM – LEGAL PERSON – LEGAL STRUCTURE – CUSTOMER Customer due diligence (article 3 and seq. of the Law of 12 November 2004, as amended)
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Reference/Folder No.	
Name of the customer	

³³ Mandatory for all natural persons residing outside the European Union.

³⁴ Inform the public authority that issued the certification

³⁵ **PEP** : Politically Exposed Person or **PPE**: personne politiquement exposé

³⁶ If so, enhanced due diligence shall be applied!

³⁷ Law of 12 November 2004, as amended

Person in charge of the file	
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1. Estimating of the risk of money laundering	
Purpose and nature of the mission/operation/business relationship ³⁸ :	
Risk of money laundering ³⁹ : <input type="checkbox"/> YES <input type="checkbox"/> NO	
If YES, level of risk assessed : <input type="checkbox"/> Low <input type="checkbox"/> Medium <input type="checkbox"/> High	
Justification of the level of risk ⁴⁰ :	

2. Is the legal person ?⁴¹	
A credit or financial institution in Luxembourg or in the EU?	<input type="checkbox"/> Yes <input type="checkbox"/> No
A company listed on the stock exchange in Luxembourg or in the EU?	<input type="checkbox"/> Yes <input type="checkbox"/> No
A BO of grouped accounts kept by notaries or members of another independent legal profession?	<input type="checkbox"/> Yes <input type="checkbox"/> No
A Luxembourg public authority ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

3. Legal person			
Name		Legal form	
Coordinated statutes	<input type="checkbox"/> Yes <input type="checkbox"/> No	RCS No. or other ⁴²	
Head Office			
Street		No.	
Postal code		City	
Tel		Mobile No.	E-mail
Seat of operations⁴³			

³⁸ Brief description of the purpose and nature of the mission/operation/business relationship

³⁹ Provisional estimate of the risks of money laundering (low / medium / high)

⁴⁰ List the elements justifying the level of risk

⁴¹If the legal person does not fall into one of these categories, continue the questionnaire. If yes, the following items are optional, unless there is a different acceptance procedure (internal procedure specific to the professional)

⁴² e.g. foreign company number

⁴³ Only if the address is different from the head office address

Street		No.	
Postal code		City	
Tel		Mobile No.	
		E-mail	

4. Management of the legal person

First name + Last name/ Legal form and company name ⁴⁴	Quality ⁴⁵	Publication : designation/powers of representation ⁴⁶

5. Nature and purpose of the business relationship

Description of the nature of the mission/operation/business relationship :

6. Identification of the beneficial owners (BO)⁴⁷

Are the BOs identified ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the BO's declaration completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Established in	
Last name and first name of the professional, responsible for the application of the 2004 AML/CFT Law ⁴⁸	

⁴⁴ Individual directors, who are responsible for the day-to-day management and signing the contract or letter of assignment , shall be identified as natural persons

⁴⁵ Manager, director, member of the management committee or other capacity as permanent representative of the legal person

⁴⁶ Recent extract from the RCS or equivalent if it is a legal person not established in Luxembourg

⁴⁷ BO : beneficial owner, Please use the BO declaration form.

⁴⁸ Law of 12 November 2004, as amended

	Signature
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Mission for the customer completed at the date of	
Data compilation/verification on	
First name, last name and signature of the professional	

IDENTIFICATION FORM – LEGAL PERSON – LEGAL STRUCTURE – REPRESENTATIVE

Customer due diligence (article 3 and seq. of the Law of 12 November 2004, as amended)

Reference/Folder No.	
Name of the customer	
Person in charge of the file	

1. Estimating the risk of money laundering

Purpose and nature of the mission/operation/business relationship ⁴⁹:

Risk of money laundering ⁵⁰ : YES NO

If YES, level of risk assessed :

- Low
 Medium
 High

Justification of the level of risk ⁵¹ :

2. Is the authorised legal person?⁵²

A credit or financial institution in Luxembourg or in the EU? Yes No

A company listed on the stock exchange in Luxembourg or in the EU? Yes No

A BO of grouped accounts kept by notaries or members of another independent legal profession? Yes No

A Luxembourg public authority ? Yes No

3. Legal person acting as representative

Name		Legal form	
Coordinated statutes	<input type="checkbox"/> Yes <input type="checkbox"/> No	RCS No. or other⁵³	
Head Office			

⁴⁹ Brief description of the purpose and nature of the mission/operation/business relationship

⁵⁰ Provisional estimate of the risks of money laundering (low / medium / high)

⁵¹ List the elements justifying the level of risk

⁵² If the legal person does not fall into one of these categories, continue the questionnaire. If yes, the following items are optional, unless there is a different acceptance procedure (internal procedure specific to the professional)

⁵³ e.g. foreign company number

Street				No.	
Postal code		City			
Tel		Mobile No.		E-mail	
Seat of operation⁵⁴					
Street				No.	
Postal code		City			
Tel		Mobile No.		E-mail	

4. Management of the representative legal person		
First name + Last name/ Legal form + company name ⁵⁵	Quality ⁵⁶	Publication : designation/powers of representation ⁵⁷

5. Powers of representation
Description and documentation of the power of representation (mandate or other evidentiary and relevant documents)

Established in	
-----------------------	--

⁵⁴ Only if the address is different from the head office address

⁵⁵ Individual directors, who are responsible for the day-to-day management and signing the contract or letter of assignment, shall be identified as natural persons

⁵⁶ Manager, director, member of the management committee or other capacity as permanent representative of the legal person

⁵⁷ Recent extract from the RCS or equivalent if it is a legal person not established in Luxembourg

Last name and first name of the professional, responsible for the application of the AML/CFT Law⁵⁸

Signature

Mission for the customer/representative completed at the date of

Data compilation/verification on

First name, last name and signature of the professional

⁵⁸ Law of 12 November 2004, as amended

DECLARATION OF BENEFICIAL OWNER(S) FORM

Reference/Folder No.	
Name of the customer	
Person in charge of the file	

The customer declares that on the date of __/__/____, the following natural persons are its beneficial owners and attaches the documents (e.g. a copy of the identity card or passport) on the basis of which the identity of the persons concerned is established.

Mr/Mrs, declares to be the beneficial owner of the company up to% of shareholding.

Data of the beneficial owner 1					
First name		Last name			
Place of birth		Date of birth			
Street					No.
Postal code		City			
Tel		Mobile No.		E-mail	
Verification of the identity documents of the beneficial owner ⁵⁹ 1					
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.			
Passport ⁶⁰	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.			
Validity date					
Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No	Issued by ⁶¹			
Date of certification					

⁵⁹ Collect or take a copy (paper or electronic) of the document on the basis of which the identity was verified

⁶⁰ Mandatory for all natural persons residing outside the European Union.

⁶¹ Inform the public authority that issued the certification

Mr/Mrs, declares to be the beneficial owner of the company up to% of shareholding.

Data of the beneficial owner 2					
First name		Last name			
Place of birth		Date of birth			
Street					No.
Postal code		City			
Tel		Mobile No.		E-mail	
Verification of the identity documents of the beneficial owner 2					
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.			
Passport ⁶²	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.			
Validity date					
Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No	Issued by ⁶³			
Date of certification					

Mr/Mrs, declares to be the beneficial owner of the company up to% of shareholding.

Data of the beneficial owner 3					
First name		Last name			
Place of birth		Date of birth			
Street					No.
Postal code		City			
Tel		Mobile No.		E-mail	
Verification of the identity documents of the beneficial owner 3					
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.			
Passport ⁶⁴	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.			
Validity date					
Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No	Issued by ⁶⁵			
Date of certification					

⁶² Mandatory for all natural persons residing outside the European Union.

⁶³ Inform the public authority that issued the certification

⁶⁴ Mandatory for all natural persons residing outside the European Union.

⁶⁵ Inform the public authority that issued the certification

The professional reserves the right to terminate his or her relationship with the customer if it appears that the information provided is inaccurate or incomplete. The data will be treated confidentially.

I/we declare on my/our honour that the data given/provided in this declaration is true and correct and make the commitment to notify any changes as soon as possible.

Established at		
Last name(s) and first name(s) and signature(s) of the manager(s), director(s), beneficial owner(s) or other authorised representative(s) who drew up this declaration		Signature



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Administration de l'enregistrement,
des domaines et de la TVA