



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 TRUST AND COMPANY  
SERVICE PROVIDERS -

*This guide is purely indicative*

July 2024 edition

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## Preface

In order to prevent and raise awareness among professionals subject to the AML/CFT Law of 12 November 2004 as amended (hereinafter “**AML/CFT Law**”), the AED, as the supervisory authority for **trust and company service providers** (TCSPs), 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 trust and company service providers (TCSPs).

The purpose of this guide is, above all, to raise awareness among professionals about the risks of money laundering and terrorist financing they may encounter in their professional activity, but also to provide guidance to the concerned professionals 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 OF THE BENEFICIAL OWNER**.

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.**

**MAKING A COPY-PASTE OF THIS GUIDE WILL NOT BE ACCEPTED AS AN INTERNAL PROCEDURE OF THE PROFESSIONAL.**

For more information, it is recommended to consult the New AED website under the heading “**Blanchiment**”<sup>1</sup>.

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<sup>1</sup> <https://pfi.public.lu/fr/blanchiment.html>

## Acronyms

AED	Registration, Duties, Estates and VAT Authority Administration de l'Enregistrement, des Domaines et de la TVA
AML/CFT <sup>2</sup>	Anti-Money Laundering and Counter Terrorist Financing Lutte contre le blanchiment et le financement du terrorisme (LBC/FT)
BO	Beneficial owner Bénéficiaire effectif
CHIDA	Turnover/Sales revenue Chiffre d'affaires
FATF	Financial Action Task Force Groupe d'Action Financière (GAFI)
FIU	Financial Intelligence Unit Cellule de Renseignement Financier (CRF)
IFS <sup>3</sup>	International Financial Sanctions Sanctions financières internationales
KYC	Know Your Costumer
NRA	National risk assessment Evaluation nationale des risques
OECD	Organisation for Economic Co-operation and Development Organisation de coopération et développement économiques (OCDE)
PEP	Politically Exposed Person Personne politiquement exposée (PPE)

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<sup>2</sup> Law of 12 November 2004, as amended.

<sup>3</sup> Law of 19 December 2020, on the implementation of restrictive measures in financial matters.

RBA	Risk based approach Approche basée sur les risques
RBO	Register of Beneficial Owners Registre des bénéficiaires effectifs
RCS	Trade and Companies Register Registre de Commerce et des Sociétés
RFT	Register of Fiduciary Contracts and Trusts Registre des fiducies et des trusts
SCF	Financial Crime Department Service Criminalité Financière
SCB	On-site Inspection Unit Service Contrôle Blanchiment
STR	Suspicious Transaction Report Déclaration d'Opération Suspecte (DOS)

## Introduction

In accordance with articles 2-1 (8) and 2 (1) (13a[*bis*]<sup>4</sup>) AML/CFT Law, as amended, the AED is the supervisory authority for **professionals exercising the activity of trust and company service provider**, more specifically the **office** centers pursuant to the definitions provided in article 1 (8) c:

**1 (8)** “Trust and company service providers” shall, in accordance with this law, means any nature or legal person which by way of a business relationship provides any of the following services to third parties :

**c)** providing a registered office, business address, correspondence or administrative address or business premises and **where applicable other**<sup>5</sup> related services for a company, a partnership or any other legal person or arrangement.

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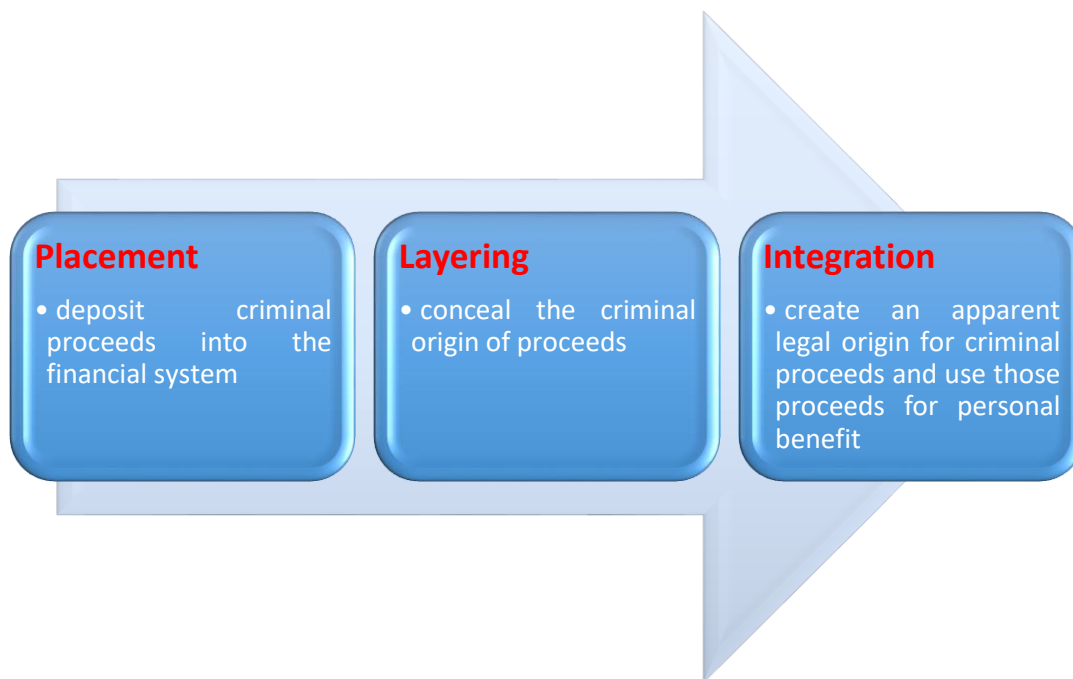
<sup>4</sup> <http://legilux.public.lu/eli/etat/leg/loi/2008/07/17/n1/jo>

<sup>5</sup> Law of 29 July 2022: <https://legilux.public.lu/eli/etat/leg/loi/2022/07/29/a429/jo>

## What is money laundering<sup>6</sup> ?

Money laundering is the operation which consists in concealing, by any means, the origin of funds acquired illegally in criminal activities (e.g.: 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 organized crime with the funds necessary to undertake other criminal activities.

### Process:



## What is terrorist financing<sup>7</sup> ?

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.

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<sup>6</sup> Article 1 (1) AML/CFT Law, as amended.

<sup>7</sup> See article 135-5 (1) and (3) (L. 26 December 2012) of the Penal Code.

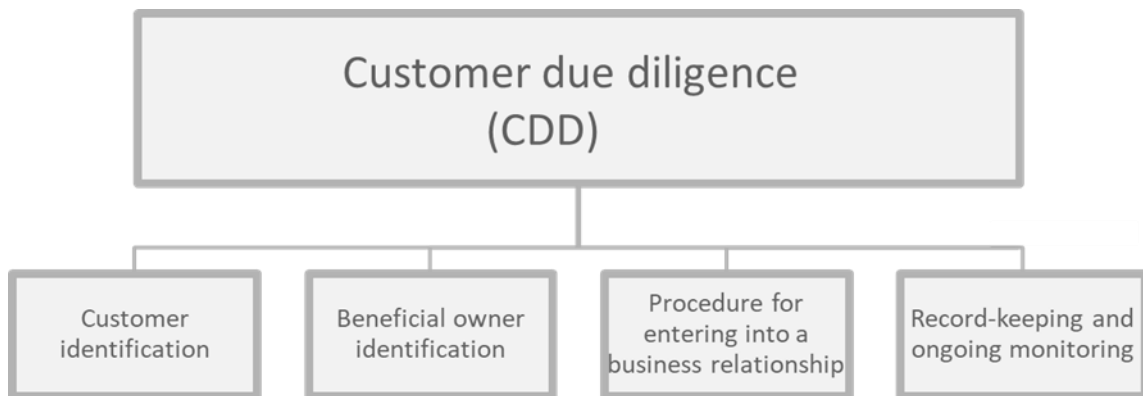
## Part 1: The three main pillars of professional AML/CFT obligations

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

- **Customer due diligence** (articles 3, 3-1, 3-2, 3-3 AML/CFT Law as amended)
- **Adequate internal management requirements** (articles 4, 4-1 and article 2-2 AML/CFT Law as amended)
- **Cooperation requirements** (article 5 AML/CFT Law as amended)

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

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

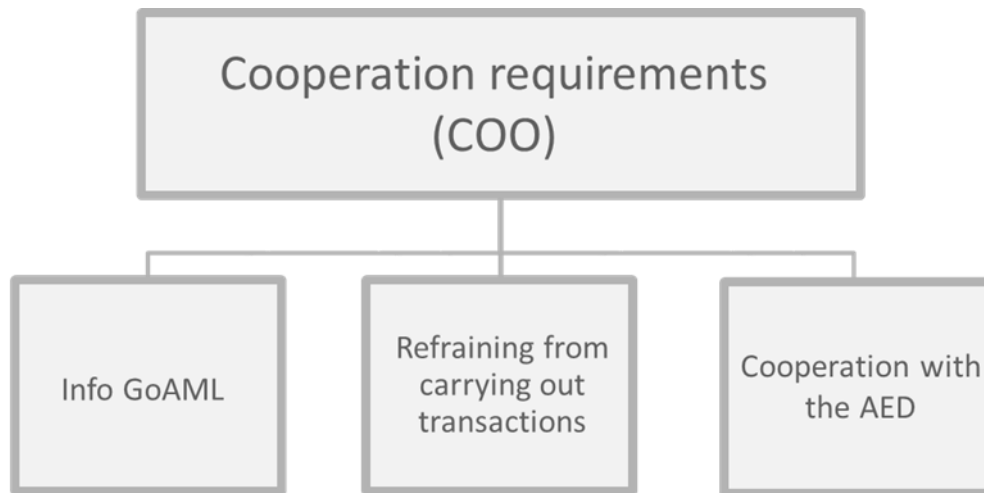


The **adequate internal management requirements** has **4 sub-pillars**:



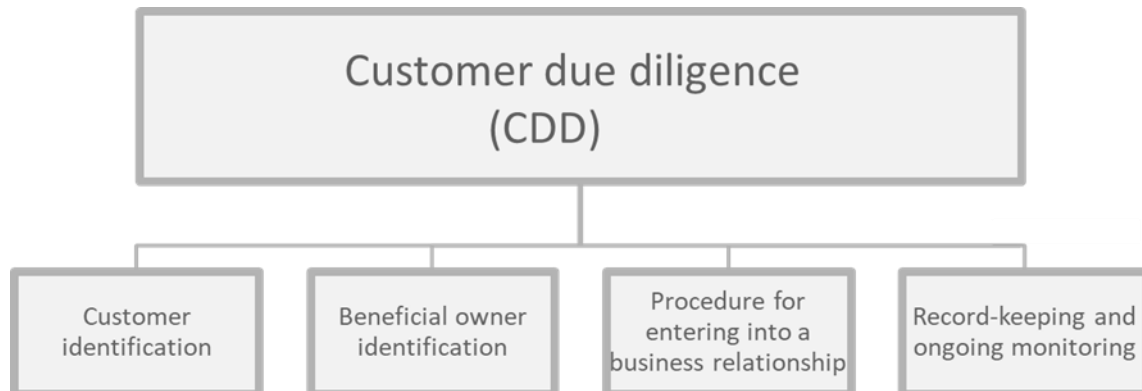


The **cooperation requirements** has **3 sub-pillars**:



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 2004 AML/CFT Law, as amended)



### 1.1. Identification of the customer / representative<sup>8</sup> (mandataire)

The identification and verification of the customer's identity is made on the basis of documents, data or information obtained from reliable and independent sources.

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

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*For the customers and beneficial owners - natural persons are to be provided:*

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Copy of a **valid** identity document:

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

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<sup>8</sup> For all customers, the obligation to verify that any person purporting to act on behalf of or for the customer is so authorized, and to identify and verify the identity of that person; article 3 (2) (d) a) AML/CFT Law as amended.

The professional must identify the customer by providing a **copy of a valid identity document**<sup>9</sup> that is **understandable, intelligible and readable** for the professional and the supervisory authorities, including the AED.

Accordingly, the **indications (surname(s), first name(s), gender, nationality, date of birth, identity card number, expiry date, issuing country)** on a foreign (non-Luxembourgish<sup>10</sup>) identity document shall **at least be in English language** together with the original language, in order to guarantee the understanding of the content of the identity document for the professional as well as for the supervisory authority, including the AED.

The purpose of the application of an **apostille** by the public authority that issued the identity document is to attest the authenticity of the document. However, this formality does not exempt the identity document from fulfilling the above mentioned language requirements.

For any identity document that does not meet these language requirements, a **translation of the identity document** must be provided, and a copy of which will have to be presented or even handed in during an AML/CFT check.

Only a translation from a **sworn translator is admitted**<sup>11</sup>, guaranteeing the veracity and authenticity of such a translation.

**Electronic identification** must comply with the provisions of Regulation (EU) 910/2014<sup>12</sup>.

➤ **The certification/verification of the identity by the professional :**

The **verification** of the identity of the customer and of the beneficial owner shall take place **before** the establishment of a business relationship **or before** the carrying-out of a transaction.

The verification of the identity is done either by the **professional himself** (*in case of a face-to-face business relationship*) or by a **competent authority** (*in case of a non-face-to-face business relationship*).

The verification of the identity of the customer by the professional is made by means of a **copy of the valid identity card**, which must be **certified** by the professional himself and which must **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.**

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<sup>9</sup> Valid identity card for European Union nationals, valid passport for non-European Union nationals, any other document from a reliable and independent source.

<sup>10</sup> More specifically, this concerns identity cards, which are not in one of the Grand Duchy of Luxembourg's official languages.

<sup>11</sup> The Ministry of Justice provides, by language, a list of translators sworn in the Grand Duchy of Luxembourg, available on the Ministry's website at the following link: <https://mj.gouvernement.lu/fr/professions-droit/expert-judiciaire/liste-experts-traducteurs.html>

<sup>12</sup> <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32014R0910&from=hr>

The **certification** of a valid identity document can be done by the **professional himself** (with signing authority) when he has met the person (his customer) and has verified his identity by obtaining a copy of the identity document.

### **Caution**

The **certification** by the professional is to be understood as the **material** and **effective demonstration** of the verification of the customer's identity, carried out by the professional.

The **professional** must not only demonstrate that he or she has **properly identified** the customer, but must also demonstrate that he or she has **verified** the **customer's identity**.

### **The burden of proof lies with the professional!**

The expression of certification by the professional is not to be confused with the term of authentication, which is made by a competent and independent authority.

### ➤ **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 the 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 provided<sup>13</sup> by the customer.

For **European Union nationals**, the verification shall be done by the certification of either a **valid identity card** or a **valid passport**.

For **third country nationals**, the **verification** shall be done by the **certification** of a **valid passport**.

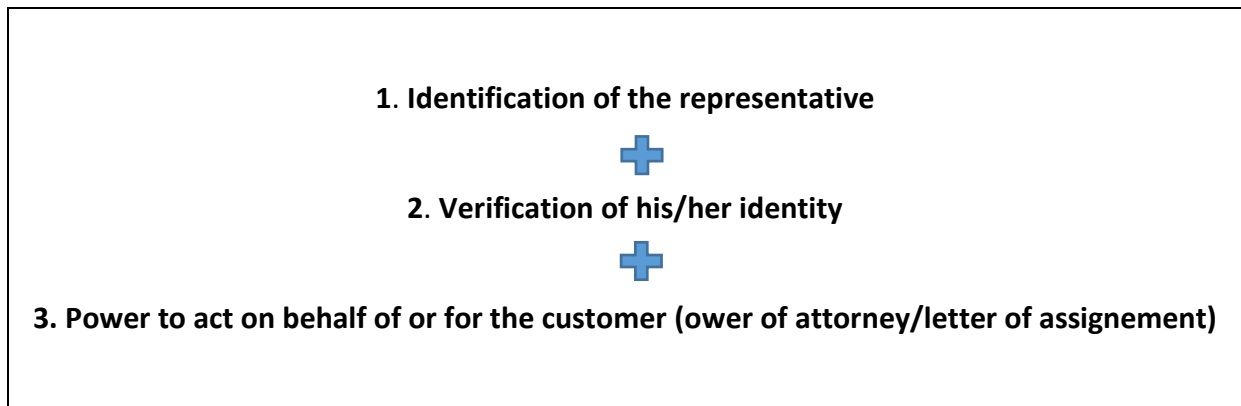
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<sup>13</sup> Provided documents: tax declaration, passport, driving license, birth certificate.

**Customer representatives (person purporting to act on behalf of or for the customer)<sup>14</sup>**

It is about identifying the customer in the broadest sense.

Indeed, in cases where one or more **representative(s) intervene(s) on behalf of or for the customer**, the professional must respect the following **cumulative conditions**:



Indeed, pursuant to Article 3 (2) paragraph 5 a) AML/CFT Law as amended “***the obligation of identification and verification includes for all customers, the obligation to verify that any person purporting to act on behalf of or for the customer is so authorized and to identify and verify the identity of that person***”.

**Caution:** Commitment of the professional’s responsibility in case of lack of certification of the identification (see details under **point 1.1. Identification of the customer**).

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*For the customers and beneficial owners - legal persons or legal arrangements are to be provided :*

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In the case of customer that are legal persons or legal arrangements, the professional is required to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owners (see details under **point 1.2. Beneficial owner**).

**As for the legal entity**, the following information must be verified and retained :

- ❖ Verify the legal status **of the legal person or legal arrangements (fiducies or trusts)**, in particular by obtaining :

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<sup>14</sup> Représentation du client par un mandataire.

- a proof of incorporation deeds or a similar proof of establishment or existence ;
- information concerning the name of the customer ;
- the names of the administrators of fiducies (for fiducies) ;
- the legal form ;
- the address ;
- board members/directors/managers (for legal entities) ;
- the provisions governing the power to bind the legal person or legal arrangement (status) ;
- RCS extracts.

The obligation to **identify** and **verify** the identity of legal persons or legal arrangements (fiducies or trusts) **includes the following obligations:**

- ❖ to understand the nature of their business and their ownership and control structure ;
- ❖ to verify the name, the legal form and the actual existence of the legal person or legal arrangement (by a proof of incorporation or a similar proof of establishment or actual existence) ;
- ❖ to obtain informations concerning :
  - the name of the customer ;
  - the names of the administrators of fiducies ;
  - the legal form ;
  - the address of the head office (and, if different, a principal place of business) ;
  - the names of the relevant persons having a senior management position in the legal person or legal arrangement ;
  - the provisions governing the power to bind the legal entity or legal arrangement.

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.

## 1.2. 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 considering **voting rights/shares**);
- ✓ Attendance list of the last ordinary general meeting/ordinary shareholders meeting.

**If the customer is a legal person**, the obligation to verify the identity of the beneficial owners also includes<sup>15</sup> :

- ❖ any reasonable measure to determine which person(s) effectively exercise(s) control over that legal person (company) ;
- ❖ to verify that any person purporting to act on behalf of or for the customer is so authorised ;
- ❖ to identify and verify the identity of any natural person who ultimately holds a controlling ownership interest in the legal person → this implies the identification of any natural person holding, directly or indirectly through a or multiple corporate entity/ies, **more than 25% of the voting rights/shares** or has an **ownership interest of more than 25% in the customer**.

However, if **no person is identifiable**:

- ❖ If there is any doubt that the person identified as holding a controlling ownership interest is the beneficial owner, it is necessary to identify :
  - any natural person exercising control of the legal person through other means.
- ❖ If no natural person exercises control through a shareholding, it is necessary to identify :
  - any natural person exercising control of the legal person through other means.

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<sup>15</sup> Article 3 (2), first subparagraph, point b), paragraph 2 AML/CFT Law as amended.

- ❖ If no natural person could be identified, it is necessary to identify :
  - any relevant natural person who holds the position of senior managing official.

**Concerning costumers legal arrangements** (fiducies or trusts), it is necessary to identify :

- Identify the settlor(s) ;
- Identify the fiduciaire(s) or trustee(s) ;
- Identify the protector(s), if any ;
- Identify the class of persons in whose main interest the legal arrangement is set up or operates and any person exercising ultimate control over the said legal arrangement.

**Concerning other legal arrangements similar to fiducies or trusts**, it is necessary to identify:

- any person holding equivalent or similar positions to those referred to for fiducies or trusts.

TCSPs are required to conduct a **monitoring, an update and an ongoing due diligence** on customer and beneficial owner identification information.

**In all circumstances, the professionals proceed with the identification of the costumer and the beneficial owner as described above<sup>16</sup>.**

Concerning information about beneficial owners, it is highly recommended to ask:

- for **legal persons**, an extract on the beneficiary(ies) from the [register of beneficial owners](#);
- for **legal arrangements**, an extract on the beneficiary(ies) from the [register of fiduciary contracts and trusts](#).

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<sup>16</sup> Article 3 (2a) AML/CFT Law as amended.



### 1.3. Obligations to verify and consult international financial sanctions lists

Within the framework of his **customer due diligence** and his **adequate internal management requirements**, the professional must put in place the appropriate internal control procedures and measures to carry out all the necessary due diligence for the purpose of **identifying** and **verifying** the identity of the customer/representative and/or beneficial owner(s) on the basis of documents, data or information from reliable and independent sources.

After collecting data on the customer/representative and/or beneficial owner(s), the professional must carry out a rigorous control in terms of international financial sanctions<sup>17</sup>.

The monitoring of the **UNSC/EU international financial sanctions lists**<sup>18</sup> is an essential process to identify the risks of the customers/representative and/or beneficial owner(s) as early as possible.

Indeed, **before** entering into any business relationship or **before** carrying out any transaction, the professional must check whether the customer/representative and/or beneficial owner(s) is/are subject to restrictive financial measures, i.e. he must **verify** the identity of the customer/their representative and/or beneficial owner(s) among the natural persons and entities (legal entities) **listed on international financial sanctions lists**.

#### **Caution:**

During an AML/CFT inspection, the professional must **materially demonstrate** that he has **researched and verified** the identity of the customer/representative and/or beneficial owner(s) on the international financial sanctions lists.

#### **The burden of proof lies with the professional!**

The AED **recommends** that professionals keep track of the **checks performed** on international financial sanctions lists by printing the dated record of consultation and keeping it in the customer's electronic file or paper file/folder.

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<sup>17</sup> Law of 19 December 2020 on the implementation of restrictive measures in financial matters hereinafter "*IFS Law*".

<sup>18</sup> Article 3 (2) a) et b) AML/CFT Law as amended.

- **Where and how to search?**

The AED makes available to professionals :

- **research tools ;**
- **guidelines relating to the implementation of financial restrictive measures;**
- **a presentation on international financial sanctions ;**
- the **consolidated list of financial sanctions of the European Union under the following link : [Sanctions financières internationales - Blanchiment - Portail de la fiscalité indirecte - Luxembourg \(public.lu\)](https://pfi.public.lu/content/dam/pfi/pdf/blanchiment/prevention-et-sensibilisation/sanctions-financieres-internationales/pour-en-savoir-plus/telechargement/Fiche-explicative-relative-a-la-liste-consolidee-des-sanctions-financieres-de-l-Union-europeenne.pdf).**

An explanatory sheet on the European Union's consolidated list of financial sanctions can also be downloaded at the following link:

<https://pfi.public.lu/content/dam/pfi/pdf/blanchiment/prevention-et-sensibilisation/sanctions-financieres-internationales/pour-en-savoir-plus/telechargement/Fiche-explicative-relative-a-la-liste-consolidee-des-sanctions-financieres-de-l-Union-europeenne.pdf>

- **What should the professional do if he detects a customer/beneficial owner on an international financial sanction list ?**

The professional has:

- an **obligation to notify the Ministry of Finance at the following address: [sanctions@fi.etat.lu](mailto:sanctions@fi.etat.lu)**
- an **obligation to apply enhanced customer due diligence** in application of article **3-2 AML/CFT Law as amended;**
- an **obligation to refrain from executing any transaction** i.e. no transaction can be accepted. The professional must immediately **“freeze” the assets** of the customer/beneficial owner.

## 1.4. Procedure for entering into a business relationship

### 1.4.1. Assessment of a possible risk when entering into a business relationship

Under the Law of 25 March 2020 amending the AML/CFT Law, 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"*<sup>19</sup>.

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

This type of behavior is considered as risky behavior → **business relationship to be avoided.**

The AED recommends that professionals define in the **"customer/representative and/or beneficial owners acceptance policy"** the basic principles that must be respected when entering into a business relationship and that they **integrate** the **IFS Law** into their anti-money laundering and terrorist financing policies and processes.

This implies in particular that a verification is carried out to ensure that the customer/their representative and/or beneficial owner(s) are not persons included in the international financial sanctions lists that are directly applicable in Luxembourg.

Indeed, the professional must **refrain** from entering into a business relationship with a person or entity designated in an international financial sanctions list.

When the professional detects that a customer and/or a beneficial owner is a person listed on an international financial sanctions list, he must **imperatively inform** the **Ministry of Finance** at the following address: [sanctions@fi.etat.lu](mailto:sanctions@fi.etat.lu)

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<sup>19</sup> Article 3 (2), c) AML/CFT Law as amended.

#### 1.4.2. Identification of the purpose<sup>20</sup> and the nature<sup>21</sup> of the transaction (business relationship entry form)

TCSPs are required not only to identify the parties involved in financial transactions but also to identify the **purpose** and the **nature** of these transactions.

This implies, pursuant to article 3 (2), c) AML/CFT Law as amended, *“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”*.

The operations include :

- the operation of creating a company ;
- the operation of providing a registered office, business address, administrative or correspondence address and any other related service for the company ;
- the operation to provide an equipped office ;
- the operation of providing a virtual office ;
- the operation of accounting services ;
- the operation of secretarial service ;
- any other company or trust service providing ;
- any operation of the professional generating financial transactions due to a service provided within the framework of its professional activity.

Regarding the transactions carried out in the course of the TCSPs activity, the professional is required:

- to exercise **ongoing due diligence** of the business relationship, notably by examining the transactions carried out **throughout the duration of this business relationship** ;
- to examine the **source of the funds** in order to **verify the consistency of the transactions in relation to the professional's knowledge of his costumer, his business activities and his risk profile** ;
- to ensure that **particular attention is given 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 in exercising the customer due diligence **are up to date and relevant**, allowing the identification of the purpose and nature of the transaction ;
- to examine **existing elements**, especially for higher risk costumers;

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<sup>20</sup> Purpose of the transaction: Company creation, management services, accounting services, secretarial services, etc. and that in addition to the renting of private offices.

<sup>21</sup> Nature of the transaction includes the contract detailing the service.

- to conduct data reviews of their customers/representative and/or beneficial owner(s) when new individuals or entities are placed on **international financial sanctions lists**.

## 1.5. Record-keeping and ongoing monitoring

The TCSPs has to ensure **the retention** of documents, data or information collected for a period of **at least 5 years** after the **end of the business relationship** with the customer, in order:

- on the one hand, to **be able to adapt** the **customer due diligence** during the business relationship and ;
- on the other hand, to be able to make **any useful AML/CFT information** available to the competent authorities in the context of their supervision.

Evidentiary documents, 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 as well as for the professional himself.

The professionals shall be able to **demonstrate** to the supervisory authorities, including the AED, that the **measures** they apply in accordance with the customer due diligence are **appropriate** in view of the risks of money laundering and terrorist financing<sup>22</sup>.

### 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 his or her storage procedures provided in the internal formalised procedure/internal policies.

For any purpose or nature of the transaction, the TCSPs shall **identify any person involved in the transaction**.

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<sup>22</sup> Article 3 (2a), 3<sup>rd</sup> subparagraph AML/CFT Law as amended.

**For any operation carried out under the professional activity, the required information to be provided for entering into a business relationship is as follows:**

➤ **For any type of customer and beneficial owner :**

- Last name ;
- First name ;
- Address ;
- Date and place of birth ;
- Marital status ;
- Correspondence ;
- Profession ;
- Certified copy (true copy) of identity card or passport for non-European Union nationals<sup>23</sup>;
- RBO/RFT extract.

➤ **For the operation :**

- Description of the purpose of the operation (**e.g.** the providing of creating a company, the providing of an equipped or virtual office, the providing of a secretarial service, the providing of acting as a director (*dirigeant*, member of the authorized management)/partner/secretary in relation to other legal persons) ;
- Description of the nature of the operation: the service contract, the letter of assignment which informs about the purpose of the operation and determines its details ;
- Information on the financing method used by the customer (cash, transfer, check, bitcoin, others).

Each **operation** based on a contract needs to be **kept** by the professional and be **available to the inspectors** of the SCB at their request.

Information concerning the beneficial owners shall also be retained in the same way as those concerning the customers for a **period of 5 years** after the end of the business relationship.

The above-mentioned **list** of requested information is **not exhaustive**.

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<sup>23</sup> <https://pfi.public.lu/content/dam/pfi/pdf/blanchiment/cirulaire/cirulaire-ID-PP-traduction.pdf>

## 1.6. Types of due diligence

In any case, the professional is required to have a **customer due diligence** when entering into a business relationship.

When the professional identifies a lower risk of money laundering and terrorist financing, he may apply **simplified customer due diligence**.

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

- the customer (natural person) is not physically present for identification;
- the business relationship or transaction involves a high-risk country or is conducted in an unusual pattern ;
- the customer is a PEP ;
- the customer is a legal person or any other legal arrangement 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;
- the customer is listed on international financial sanctions lists.

Simultaneously with the type of due diligence, the professional 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** the documents, data or information related to the business relationship, concerning the customer/representative, the beneficial owner, the source and origin of the funds. This is an ongoing process.

**The type of due diligence exercised by the professional must be consistent with the internal procedure formalizing the risk assessment and determining the risk profile of the customer.**

## 2. Adequate internal management requirements (articles 4, 4-1 and article 2-2 of the 2004 AML/CFT Law, as amended)



Considering the updated information, the risk assessment and the internal procedure must be **readapted**.

### 2.1. The implementation of an internal procedure<sup>24</sup> by the professional

The professional is required to set up an adequate internal management that is **adequate** and **proportionate** to the size of his or her business in the context of his or her professional activity.

This requirement implies the implementation of an **internal procedure manual regardless of the size of the company and its activity** (instructions for use) which details the procedure 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 person responsible for AML/CFT obligations (Compliance officer) ;
- the organisation and/or participation in AML/CFT training programs for employees ;
- the description of the risk assessment adapted to the activity of the TCSP and taking into account the results of the NRA and the SNRA.

<sup>24</sup> The AED provides a sheet on the implementation of an internal procedure that can be downloaded at the following link:

<https://pfi.public.lu/content/dam/pfi/pdf/blanchiment/prevention-et-sensibilisation/guides/telechargement/fiche-technique-relative-a-la-mise-en-place-dune-procedure-interne.pdf>



**The internal procedure manual 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**.

The training of the professional's employees includes *"the members of the management bodies and the effective direction"*<sup>25</sup>.

This training can be organised either **internally** by the professional him or herself or **externally**, for example by a professional chamber.

The purpose of participating in such training is to keep employees informed about new legal developments, new techniques, methods and trends regarding AML/CFT obligations.

**As a reminder, AML/CFT training must take into account the legal developments of the 2004 AML/CFT Law, as amended.**

- The adequate internal management requirements imply the appointment of a **person responsible** for compliance regarding AML/CFT obligations, also known as **"compliance officer"**, who is an independent person at an appropriate hierarchical level (e.g. at the level of the governing body).

He is adequately resourced to monitor compliance and must act independently.

Pursuant to the 2004 AML/CFT Law<sup>26</sup>, as amended, the **compliance officer** shall be a member of the Senior management, i.e. 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.

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

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<sup>25</sup> Article 4 (2) AML/CFT Law as amended.

<sup>26</sup> Article 1 (19) AML/CFT Law as amended.

## 2.2. The implementation of a risk assessment<sup>27</sup> by the professional

- The TCSPs as defined in article 1 (8) of the 2004 AML/CFT Law, as amended, are 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** (risk assessment)

### The progress of a risk-based approach:



However, there is no “single methodology”<sup>28</sup> for assigning a given level of money laundering and terrorist financing risk to a customer. Each professional has to provide in its internal management the **risk qualification, management and mitigation** mechanisms specific to each customer.

Each professional must determine his customer's risk level based on his risk assessment.

**Caution:** the determination of the customer's risk level is based on the risk assessment formalised in the internal procedure.

<sup>27</sup> The AED provides a sheet on the implementation of an risk assessment that can be downloaded at the following link: <https://pfi.public.lu/content/dam/pfi/pdf/blanchiment/prevention-et-sensibilisation/guides/telechargement/fiche-technique-relative-a-la-mise-en-place-dune-analyse-risque.pdf>

<sup>28</sup> Obligation to adapt the risk assessment according to the professional activity, the size of the company, the type of customers, etc.

**Before** classifying a customer into a risk category, the professional must consider **all relevant risk factors**<sup>29</sup>.

Each customer will be classified as a customer according to its risk profile:

- Either **low-risk** ;
- Either **medium-risk** ;
- Either **high-risk**.

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

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, designation of persons or entities on international financial sanctions lists etc. ;
- c) on a **regular basis**, depending on the risk ranking → for a low-risk customer, this review will take place less frequently (e.g. all 2 years) than for high-risk customers (e.g. all 6 months).

❖ **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) **of the customer**, general headquarters or parent company) ;

Indeed, the customer may come from:

- Third countries ;
- Countries blacklisted by international organisations with competence in the field (FATF, UN, OECD) ;
- Countries subject to financial sanctions, embargos or similar measures issued for example by the UN or by the UE ;

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<sup>29</sup> The AED provides a fact sheet on risk factor that can be downloaded at the following link: <https://pfi.public.lu/content/dam/pfi/pdf/blanchiment/prevention-et-sensibilisation/guides/telechargement/fiche-technique-relative-aux-facteurs-de-risques.pdf>

- Countries identified by reliable sources (FATF, OECD, UN, UE) as not having adopted legislation, regulation or other anti-money laundering and counter terrorist financing measures ;
- Countries identified by reliable sources as having known high levels of corruption or of any other criminal activity.

The AED website under the heading "**Blanchiment**" sub-heading "[Prévention et sensibilisation](#)" provides professionals with [circular letters](#) on FATF public disclosures concerning **non or uncooperative countries** in the field of money laundering and terrorist financing.

It is therefore recommended to consult them regularly, particularly when they are updated during the months of February, June and October, in order to keep up to date with the latest information. These lists must imperatively be taken into account when carrying out the risk assessment and determining the customer's risk level.

**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 funds<sup>30</sup> ;
- the type of transaction chosen by the customer (cash<sup>31</sup>, bank transfer, check, bitcoin, etc.)

**c) The risk criteria related to the service/product or good, requested or used by the customer.**

Indeed, the risk may be related to the type of service (company creation, the providing of a registered office, of an equipped/virtual office, accountant/secretarial services, the providing of acting as a director (*dirigeant*, member of the authorized management)/partner/secretary in relation to other legal persons etc.) chosen by the customer.

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<sup>30</sup> When entering into a business relationship, as well as during all its duration, the professional will be required to have information about the origin of the funds (e.g. from which account the funds come) used to finance the service, as well as information concerning the origin of the funds which provides information on the customer's assets.

<sup>31</sup> **A lower cash payment threshold for persons dealing in goods**

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 transactions or series of transactions are executed in a single operation or in several operations which appear to be linked.

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

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

**The above presented criteria 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 professional must ensure that he/she incorporates into his/her risk assessment all risk information identified and communicated by:**

- **the national (NRA) and supranational (SNRA) risk assessment; AND**
- **the national AML/CFT authorities; AND**
- **the international authorities in matter of financial sanctions.**

The risk assessment shall enable the professional to adapt his or her level of due diligence in light of the identified risks. In order to guide the professionals in their assessment, the AML/CFT Law, as amended, includes **three annexes**<sup>32</sup> that list risk factors inherent to the customer, respectively risk factors indicative of a potentially lower or higher risk of money laundering or terrorist financing.

Based on these examples of situations and transactions which are likely to influence the risk degree, professionals must target, on the basis of an **individual assessment**, the **appropriate** level of **due diligence** to be implemented with regard to their customers.

**It is up to the professionals to assess the risk of transactions, identify** those presenting a low risk and apply the appropriate level of due diligence.

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<sup>32</sup> See part 4, General information and forms.

For this purpose, professionals shall operate based on the **risk criteria** set out in **the annexes to the AML/CFT Law, as amended**. Indeed, when they assess the money laundering and terrorist financing risks to :

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

Professionals shall take into account, at a minimum, the risk factors set out in the annexes to the AML/CFT Law, as amended.

Article 3-2 AML/CFT Law, 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 or carry out transactions implying countries identified as high-risk ;
- maintain business relationships with customers or beneficial owner(s) that have been placed on an international financial sanction list;
- in cross-border banking and financial relationships and other similar relationships ;
- as well in the event of a business relationship or transactions with politically exposed persons, including nationals.

Beyond these situations expressly set out in the AML/CFT Law, as amended, professionals are required to assess the risk of all their transactions and apply enhanced due diligence measures when they identify a situation presenting a higher risk of money laundering and terrorist financing.

#### ❖ **Conduct of the risk-based approach :**

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

- Significant banking operations 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.

❖ **International financial sanctions:**

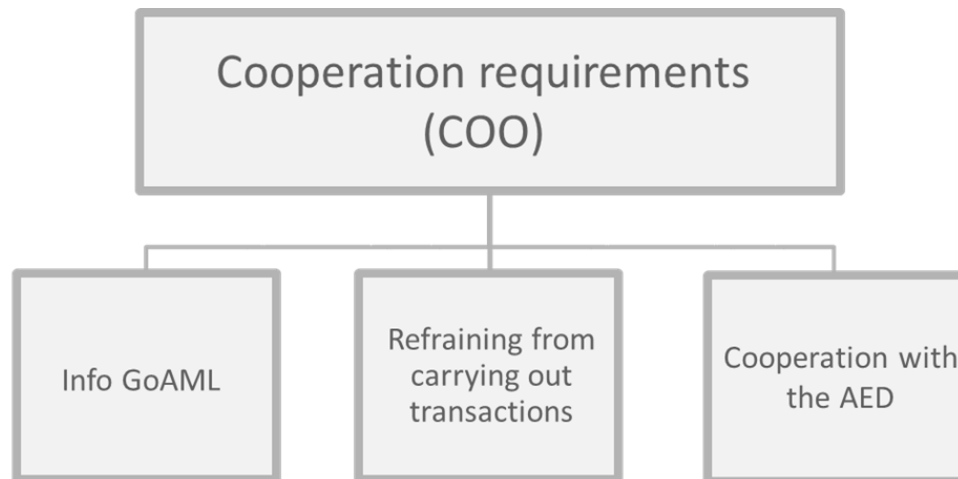
When a professional notes that a customer, representative, and/or beneficial owner(s) has been placed on an international financial sanctions list, he/she must consider that this information affects the risk profile of the customer.

Therefore, the professional must update the assessment of the risks associated to this customer and **re-examine** all the operations he has performed → **enhanced customer due diligence**.

The professional is also required to notify the Ministry of Finances **without delay** at the following address: [sanctions@fi.etat.lu](mailto:sanctions@fi.etat.lu)

### 3. Cooperation requirements (article 5 of the 2004 AML/CFT Law, as amended)

#### 3.1. Cooperation requirements in matter of AML/CFT



The AML/CFT Law, as amended, requires that that special attention must be paid to **any operation or any fact considered as particularly susceptible to be linked to money laundering and/or terrorist financing**, due to:

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

#### **What is an unusual operation (transaction/activity)?**

When entering into a business relationship with a customer, certain signals lead to the fact that the operation or the event may be considered as particularly likely to be linked to money laundering and/or terrorist financing.

These **signals** may consist, for example, of:

- the provision of a service 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 presented invoices are not based on any provided services ;



- 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 operations by their nature or amount ;
- very high margin operations that may lead to the payment of commissions or compensation ;
- large and unusual compensation payments, commissions or fees ;
- the intervention of a professional or a customer/beneficial owner listed up on an international financial sanctions list (see point 3.2.);
- .....

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

- 1) Inform the responsible regarding AML/CFT obligations (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 susceptible to be linked to money laundering and/or terrorist financing ;
  - describes the procedure initiated by the professional.

### 3.1.1. Cooperation requirements with the FIU<sup>33</sup>

When the professional **knows, suspects, or has reasonable grounds to suspect** that the operation is linked to a money laundering and/or terrorist financing offence, he or she is required to:

**TRANSMIT A SUSPICIOUS TRANSACTION REPORT (STR) TO THE FIU (CRF)**

The professional is required to inform **without delay**<sup>34</sup>, on his or her own initiative, the FIU of any fact or operation that could be indicative of money laundering and/or terrorist financing.

All suspicious transactions, including **attempted** suspicious transactions, shall be reported<sup>35</sup>.

**A simple suspicion is enough!**



**The professional is required to make a STR!**

#### ➤ Who is required to make a STR?

In principle, the person responsible for the implementation of the AML/CFT Law, as amended, (**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** will, if necessary, make the STR to the FIU.

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<sup>33</sup> CRF.

<sup>34</sup> Requires prior registration by the professional in the goAML portal.

<sup>35</sup> Article 5 (1), a) AML/CFT Law, as amended.

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

The only way to avoid such responsibility and consequently to avoid a sanction is to make a **suspicious transaction report** to the FIU on the **goAML portal**<sup>36</sup>.

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 to any other person.

The customer who is the subject of a STR shall be assigned a **high risk level** of money laundering and/or terrorist financing which requires **enhanced due diligence**.

- **At the request of the FIU**, the professional is required to provide **without delay** any required information.
- The professional is in principle<sup>37</sup> required **to refrain from executing the transaction** that he/she 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 concerned professionals shall inform the FIU immediately afterwards (immediately after the transaction).

### 3.1.2. Cooperation requirements with the AED

The professional is **obliged to cooperate fully with the Luxembourg authorities, including the AED, responsible for the fight against money laundering and terrorist financing**.

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 documents<sup>38</sup> and to cooperate in such a way as not to hinder the proper conduct of the inspection by the SCB.

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<sup>36</sup> <https://justice.public.lu/fr/organisation-justice/crf.html>

<sup>37</sup> Article 5 (3) AML/CFT Law, as amended.

<sup>38</sup> See Check-list in the annex.

In the context of the cooperation requirements, **THE PROFESSIONAL WILL BE SUBJECT TO AN INJUNCTION** inviting him/her to transmit all the documents useful for the inspection and/or inviting him/her to cease any behavior contrary to his or her professional obligations.

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

The injunction is provided in the following legal provisions:

- **Article 8-2 (1) e)** : used to put an end to the violation of one or more of the three main pillar/s ;
- **Article 8-2 (2)** : 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 :
  - is obstructing the exercise of the supervisory and investigatory powers of the supervisory authorities (AED, CAA, CSSF) ;
  - fails to act in response to injunctions issued in accordance with **article 8-2 (1) e)** ;
  - purposefully provides documents or information that are incomplete, incorrect or false following a request based on **article 8-2 (1)** ;
  - does not comply with the protective provisions for persons having reported a suspicion of money laundering or terrorist financing to the FIU (**article 5 (4) subparagraph 3**) and for persons who have internally reported a suspected ML/FT (whistleblower) to the AED (**article 8-3 (3) subparagraph 1**).

For ease of understanding, **article 8-2 (1) e) and article 8-2 (2) AML/CFT Law as amended**, we will speak of ***injunction-means***.

On the other hand, **for article 8-4 (4) AML/CFT Law as amended**, 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, as amended**.

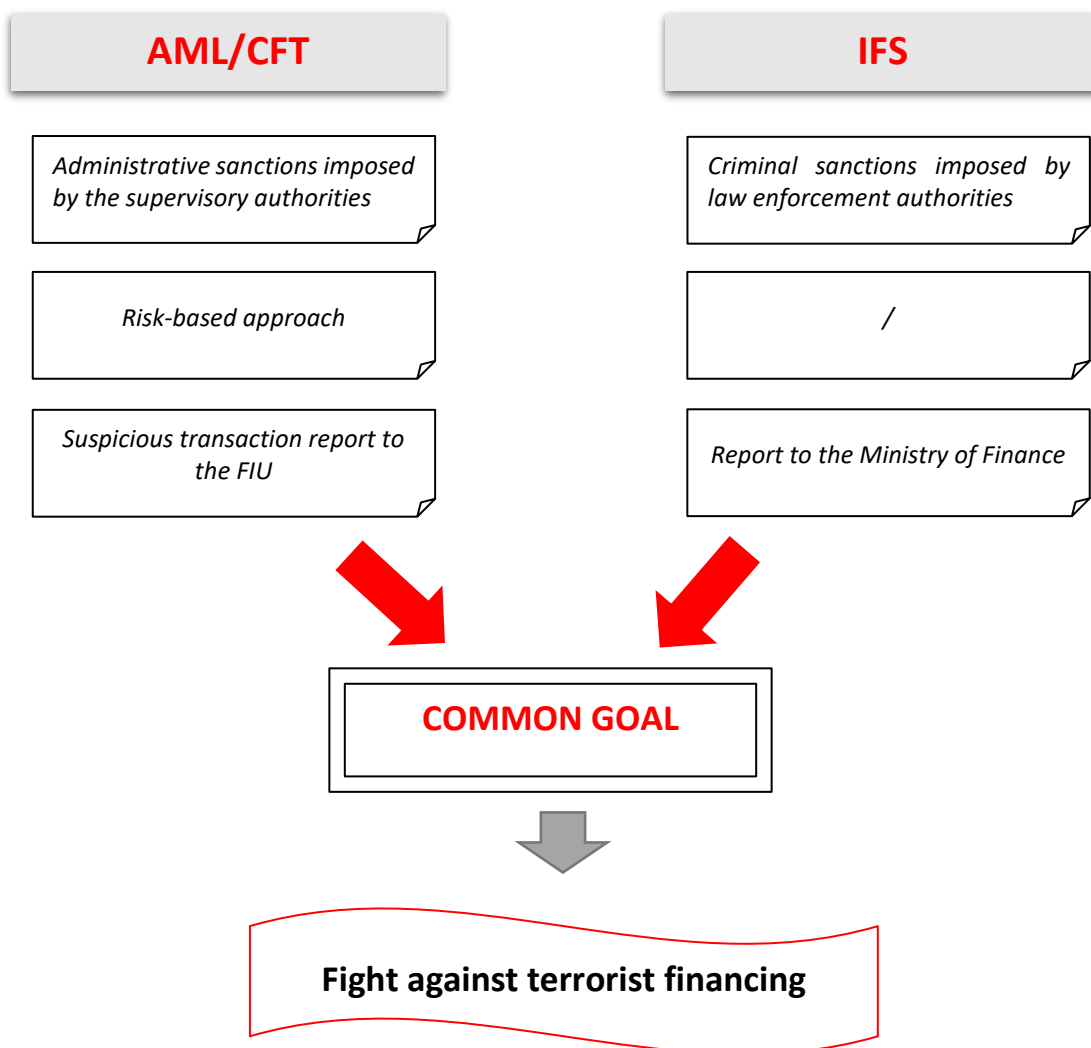
### 3.2. Cooperation requirements in matter of International financial sanctions

In matters of international financial sanctions, the professional is required to **cooperate** with the **Ministry of Finance**.

Indeed, under article 6 of the IFS Law, the Ministry of Finance is competent:

- to deal with all matters relating to IFS;
- to issue authorisations derogating from the prohibitions and restrictive measures imposed ;
- to deal with challenges to the enforcement of prohibitions and restrictive measures.

**Caution to not be confused:**



## Part 2 : SANCTIONS AND REMEDIES

### 1. Administrative sanction in the event of non-compliance with AML/CFT obligations

In accordance with **article 8-4 AML/CFT Law 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
- administrative fines of up to EUR 1,000,000 at the most
- a public statement
- a final or temporary withdrawal of the authorization of establishment (business license) based on the reasoned opinion of the director of the AED but taken by final decision of the Minister of Economy.

In order to comply with the proportionality principle of the sanctions, these 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 behavior, which will result in a heavier sanction (which can **double** the initial penalty).

Indeed, in order to guarantee the respect of the proportionality principle, article 8-5 AML/CFT Law as amended, provides criteria to be taken into account regarding the administrative sanctions pronounced, including :

- the gravity and the duration of the breach ;
- the turnover ;
- the level of cooperation ;
- the existence of previous breaches ;
- the benefit derived from the breach ;
- ....

## 2. Administrative remedies (right to appeal to the Administrative Tribunal)

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

Indeed, the article provides that "*The Administrative Tribunal 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: The Registration obligation of the TCSPs

Since the entry into force of the Law of 25 March 2020, the AML/CFT Law provides that **TCSPs shall register** with the supervisory authority, or with the self-regulatory body which supervises them in AML/CFT matters.

Under **article 7-2** AML/CFT Law as amended, the **AED** has the following prerogatives:

- **For natural persons** subject to the supervision of the AED pursuant to article 2-1 (8) AML/CFT LAW, as amended, and carrying on the activity of trust and company service provider, the **registration** shall be subject to the **condition** that these **natural persons** have the **adequate professional standing and provide the AED with the necessary information to justify it.**
- **For legal persons** subject to the supervision of the AED pursuant to article 2-1(8) AML/CFT Law, as amended, and carrying on the activity of trust and company service provider, the **registration** shall be subject to the **condition** that **the persons who perform a management function** within these legal persons and the **beneficial owners** of these legal persons have the **adequate professional standing and provide the AED with the necessary information to justify it.**

**Professional standing** shall be assessed on the basis of **criminal records** and of any evidence demonstrating that the persons referred to in the first and second subparagraphs are of **good repute** and offer every **guarantee of irreproachable business conduct**<sup>39</sup>.

Any **change** in the persons as referred to in the second subparagraph shall be **notified** to the AED<sup>40</sup>.

The AED may request all the information as may be necessary regarding the persons who may be required to fulfil the legal requirements with respect to professional standing.

Any trust and company service provider, subject to the supervision of the AED pursuant to article 2-1(8) AML/CFT Law, as amended, which **ceases its activities** shall **notify the AED** thereof<sup>41</sup>.

The objective is to ensure coordination between the competent authorities with regard to the supervision of their respective TCSPs in AML/CFT matters.

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<sup>39</sup> <http://data.legilux.public.lu/file/eli-etat-leg-loi-2021-02-25-a158-jo-fr-pdf.pdf>

<sup>40</sup> Idem.

<sup>41</sup> Idem.



## Part 4: 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, Bing, 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 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**.

The professional must ensure that the outsourcing contract is established with his supplier, defining a **clear and precise execution of the tasks** in accordance with the internal AML/CFT procedure.

Article 3-3 AML/CFT Law, as amended, provides for the performance of customer due diligence by third parties:

- ✚ Article 3-3 (2) engages the **sole responsibility of the professional**;
- ✚ Article 3-3 (5) provides for a **shared responsibility** of the professional and the third party committed by the professional to handle KYC matters.

The inspectors of the SCB shall have access to the outsourcing contracts concluded by the professional.

- **PEP**

In accordance with article 3-2 (4) AML/CFT Law as amended, politically exposed persons are subject to **enhanced due diligence measures** and the notion of **PEP** is defined more broadly: this notion includes *“any 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, regardless of whether these prominent functions are performed or have been performed abroad or on national territory”*.

- **Customer profile**

The customer can be defined according to several criteria:

- Customer from a third country ;
  - Customer from a State on a black list established by the international organizations with competencies in the matter (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 (CHIDA)**.
- **The turnover/sales revenue (CHIDA) of the TCSPs** shall inform :
    - on the one hand, about the services provided by the professional (renting of private offices including the details of the services provided by the professional including, for example, secretarial services, « *à la carte* » services, mail receiving on behalf of the customer, management consulting, accounting services, others...) **and**;
    - on the other hand, about the number of transactions according to the provided services.

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)

- Customer identification (valid)
- Identification of the beneficial owner and take reasonable measures to verify his or her identity
- 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 certification of the customer
- The business relationship entry and its purpose (identify the nature and the purpose of the business relationship)
- Consultation and verification of international financial sanctions lists UNSC/EU
- 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, e.g. which account?)
- Cash payment from EUR 10,000 upwards
- Existence of fractioned payments
- Financing statement
- ...non-exhaustive list

## **NON-EXHAUSTIVE LIST OF RISK FACTORS PROVIDED BY 2004 AML/CFT LAW<sup>42</sup>**

### **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 ;

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<sup>42</sup> Law of 12 November 2004, as amended.

- (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 ;
- (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 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 favor 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 organizations operating within their country.

## EXAMPLES OF 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 relationship<sup>43</sup>:

Assessment of the risk of money laundering<sup>44</sup> :  YES  NO

If YES, level of risk assessed :

- Low  
 Medium  
 High

Justification of the level of risk<sup>45</sup> :

#### 2. Personal data

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

<sup>43</sup> Brief description of the purpose and nature of the mission/operation/business relationship.

<sup>44</sup> Provisional estimate of the risks of money laundering (low/medium/high).

<sup>45</sup> List the elements justifying the level of risk.

<b>3. Verification of the personal data<sup>46</sup></b>			
<input type="checkbox"/> <b>“Face to Face”, the customer is physically present</b>			
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.	
Passport <sup>47</sup>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.	
<b>Validity date</b>			
<input type="checkbox"/> <b>“Non-face-to-face business relationship”, the customer is not physically present</b>			
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.	
Passport <sup>48</sup>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.	
Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No	Issued by <sup>49</sup>	
<b>Date of certification</b>			

<b>4. Control</b>	
Is the individual a “PEP <sup>50</sup> ”	<input type="checkbox"/> Yes <sup>51</sup> <input type="checkbox"/> No
Is the individual identified on an international financial sanctions list?	<input type="checkbox"/> Yes <sup>52</sup> <input type="checkbox"/> No

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

<b>6. Identification of the beneficial owners (BO)<sup>53</sup></b>	
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
<b>Established in</b>	<b>Signature</b>
Last name and first name of the professional, responsible for the application of the 2004 AML/CFT Law <sup>54</sup>	

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

<sup>46</sup> Take a copy (paper or electronic) of the document on the basis of which the identity was verified.

<sup>47</sup> Mandatory for all natural persons residing outside the European Union.

<sup>48</sup> Mandatory for all natural persons residing outside the European Union.

<sup>49</sup> Inform the public authority that issued the certification.

<sup>50</sup> **PEP**: Politically Exposed Person or **PPE**: personne politiquement exposée.

<sup>51</sup> If so, enhanced due diligence shall be applied!

<sup>52</sup> If so, enhanced due diligence shall be applied!

<sup>53</sup> BO: Beneficial owner, please use the BO declaration form.

<sup>54</sup> 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 relationship<sup>55</sup>:

Assessment of the risk of money laundering<sup>56</sup> :  YES  NO

If YES, level of risk assessed :

- Low  
 Medium  
 High

Justification of the level of risk<sup>57</sup> :

### 2. Personal data

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

<sup>55</sup> Brief description of the purpose and nature of the mission/operation/business relationship.

<sup>56</sup> Provisional estimate of the risks of money laundering (low/medium/high).

<sup>57</sup> List the elements justifying the level of risk.

<b>3. Verification of the personal data<sup>58</sup></b>			
<input type="checkbox"/> <b>“Face to Face”, the representative is physically present</b>			
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.	
Passport <sup>59</sup>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.	
<b>Validity date</b>			
<input type="checkbox"/> <b>“Non-face-to-face-business relationship”, the representative is not physically present</b>			
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.	
Passport <sup>60</sup>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.	
Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No	Issued by <sup>61</sup>	
<b>Date of certification</b>			

<b>4. Control</b>	
Is the individual a “PEP” <sup>62</sup> ?	<input type="checkbox"/> Yes <sup>63</sup> <input type="checkbox"/> No
Is the individual identified on an international financial sanctions list?	<input type="checkbox"/> Yes <sup>64</sup> <input type="checkbox"/> No

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

<b>Established in</b>		<b>Signature</b>
Last name and first name of the professional, responsible for the application of the 2004 AML/CFT Law <sup>65</sup>		

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

<sup>58</sup> Take a copy (paper or electronic) of the document on the basis of which the identity was verified.

<sup>59</sup> Mandatory for all natural persons residing outside the European Union.

<sup>60</sup> Mandatory for all natural persons residing outside the European Union.

<sup>61</sup> Inform the public authority that issued the certification.

<sup>62</sup> **PEP**: Politically Exposed Person or **PPE**: personne politiquement exposée.

<sup>63</sup> If so, enhanced due diligence shall be applied!

<sup>64</sup> If so, enhanced due diligence shall be applied!

<sup>65</sup> Law of 12 November 2004, as amended.

## IDENTIFICATION FORM – LEGAL PERSON – LEGAL STRUCTURE – CUSTOMER

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

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

### 1. Estimating the risk of money laundering

Purpose and nature of the mission/operation/business relationship<sup>66</sup>:

Assessment of the risk of money laundering<sup>67</sup> :  YES  NO

**If YES**, level of risk assessed :

- Low
- Medium
- High

Justification of the level of risk<sup>68</sup> :

### 2. Is the legal person?<sup>69</sup>

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

<sup>66</sup> Brief description of the purpose and nature of the mission/operation/business relationship.

<sup>67</sup> Provisional estimate of the risks of money laundering (low/medium/high).

<sup>68</sup> List the elements justifying the level of risk.

<sup>69</sup> 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).

3. Legal person					
Name				Legal form	
Coordinated statutes	<input type="checkbox"/> Yes <input type="checkbox"/> No		RCS No. or other <sup>70</sup>		
Head Office					
Street				No.	
Postal code		City			
Tel		Mobile No.		E-mail	
Seat of operations <sup>71</sup>					
Street				No.	
Postal code		City			
Tel		Mobile No.		E-mail	

4. Management of the legal person		
First name + Last name / Legal form + company name <sup>72</sup>	Quality <sup>73</sup>	Publication : designation/powers of representation <sup>74</sup>

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

<sup>70</sup> e.g. foreign company number.

<sup>71</sup> Only if the address is different from the head office address.

<sup>72</sup> 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.

<sup>73</sup> Manager, director, member of the management committee or other capacity as permanent representative of the legal person.

<sup>74</sup> Recent extract from the RCS or equivalent if it is a legal person not established in Luxembourg.

**6. Identification of the beneficial owners (BO)<sup>75</sup>**

Are the BOs identified ?

 Yes  No

Is the BO's declaration completed?

 Yes  No**7. Control**

Is the individual identified on an international financial sanctions list?

 Yes<sup>76</sup>  No**Established in**Last name and first name of the professional, responsible for the application of the 2004 AML/CFT Law <sup>77</sup>**Signature****Mission for the customer completed at the date of****Data compilation / verification on****First name, last name and signature of the professional**

<sup>75</sup> BO: beneficial owner, Please use the BO declaration form.

<sup>76</sup> If so, enhanced due diligence shall be applied!

<sup>77</sup> Law of 12 November 2004, as amended.

## IDENTIFICATION FORM – LEGAL PERSON – LEGAL STRUCTURE – REPRESENTATIVE

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

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

### 1. Estimating the risk of money laundering

Purpose and nature of the mission/operation/business relationship<sup>78</sup>:

Assessment of the risk of money laundering<sup>79</sup> :  YES  NO

**If YES**, level of risk assessed :

- Low  
 Medium  
 High

Justification of the level of risk<sup>80</sup> :

### 2. Is the authorised legal person?<sup>81</sup>

A credit or financial institution in Luxembourg or in the EU?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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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
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A Luxembourg public authority ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---------------------------------	--

<sup>78</sup> Brief description of the purpose and nature of the mission/operation/business relationship.

<sup>79</sup> Provisional estimate of the risks of money laundering (low/medium/high).

<sup>80</sup> List the elements justifying the level of risk.

<sup>81</sup> 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).

3. Legal person acting as representative					
Name				Legal form	
Coordinated statutes	<input type="checkbox"/> Yes <input type="checkbox"/> No		RCS No. or other <sup>82</sup>		
Head Office					
Street				No.	
Postal code		City			
Tel		Mobile No.		E-mail	
Seat of operations <sup>83</sup>					
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 <sup>84</sup>	Quality <sup>85</sup>	Publication : designation / powers of representation <sup>86</sup>

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

<sup>82</sup> e.g. foreign company number.

<sup>83</sup> Only if the address is different from the head office address.

<sup>84</sup> 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.

<sup>85</sup> Manager, director, member of the management committee or other capacity as permanent representative of the legal person.

<sup>86</sup> Recent extract from the RCS or equivalent if it is a legal person not established in Luxembourg.

**7. Control**

Is the individual identified on an international financial sanctions list?

 Yes<sup>87</sup>  No**Established in**Last name and first name of the professional, responsible for the application of the 2004 AML/CFT Law<sup>88</sup>

Signature

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

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<sup>87</sup> If so, enhanced due diligence shall be applied!<sup>88</sup> Law of 12 November 2004, as amended.



## DECLARATION OF BENEFICIAL OWNER(S) FORM

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

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 1 <sup>89</sup>					
ID Card	<input type="checkbox"/> Yes <input type="checkbox"/> No	ID Card No.			
Passport <sup>90</sup>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.			
Validity date					
Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No	Issued by <sup>91</sup>			
Date of certification					

<sup>89</sup> Collect or take a copy (paper or electronic) of the document on the basis of which the identity was verified.

<sup>90</sup> Mandatory for all natural persons residing outside the European Union.

<sup>91</sup> 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 <sup>92</sup>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.			
Validity date					
Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No	Issued by <sup>93</sup>			
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 <sup>94</sup>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Passport No.			
Validity date					
Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No	Issued by <sup>95</sup>			
Date of certification					

<sup>92</sup> Mandatory for all natural persons residing outside the European Union.

<sup>93</sup> Inform the public authority that issued the certification.

<sup>94</sup> Mandatory for all natural persons residing outside the European Union.

<sup>95</sup> 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 honor that the data given/provides 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 authorized representative(s) who drew up this declaration		<b>Signature</b>



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