TRANSLATION

Insurance companies engaged in life assurance
Fund management companies
Investment firms
Credit institutions 28.01.2009 nr 4.14-1.8/316
Branches of foreign credit institutions

Guidelines by Financial Supervision Authority for interpreting the term "(third) country where requirements equal to those provided in MLTFPA are in force" and for application of enhanced due diligence measures

Several provisions of the Money Laundering and Terrorist Financing Prevention Act (hereinafter: MLTFPA) include the term "third country where requirements equal to those provided in this Act are in force".

Accordingly, Art 14 (4) of the MLTFPA enacts: "Upon application of the due diligence measures specified in clauses 13 (1) 1)-3), an obligated person has the right to rely on the information received in a format which can be reproduced in writing from a credit institution registered in the Estonian commercial register or from a branch of a foreign credit institution or from a credit institution who has been registered or whose place of business is in a contracting state of the European Economic Area or a third country where requirements equal to those provided in this Act are in force." Also, Art 15 (4) of the MLTFPA states: "A credit and financial institution may exceptionally, at the request of the person participating in the transaction, open an account before full application of due diligence measures on the condition that the account is debited after full application of the due diligence measures specified in clauses 13 (1) 1)-4) and the first payment relating to the transaction is made through the same person's account which has been opened in a credit institution that operates in a contracting state of the European Economic Area or in a state where requirements equal to those provided for in this Act are in force."

The term "(third) country where requirements equal to those provided in this Act are in force" (hereinafter: "equivalent third country") can be found also in the following articles of MLTFPA: Art. 18 (1)((4,5)), Art. 18 (4)((2)); Art 19 (3)((1-3)); Art. 27 (4) and Art. 34 (3)((1,3)). Arising from the referred articles obligated persons need to specify, which countries can be considered as equivalent third countries.

MLTFPA does not include any references or provisions delegating authority, under which government or supervisory authorities have rights or obligations to lay down a list of equivalent third countries that obligated persons could rely on. Accordingly, obligated persons have to specify, if a third country can be considered equivalent. MLTFPA sets a criterion that requirements equal to those provided in MLTFPA are in force in the country.

FSA draws the attention of the obligated persons to the fact, that on 18th April 2008 countries attending the European Commission Committee on the prevention of money laundering and terrorist financing have approved a list[1] of countries considers equivalent in the meaning of 3rd AML Directive[2]. Approving the list is not a binding measure; however, it expresses the common understanding of Member States. The text of the agreement of Member States with a translation into Estonian is published on the webpage of FSA (http://www.fi.ee/?id=1726).

FSA is on the opinion that the referred agreement of Member States can be considered as assistance when deciding whether a country can be seen as an equivalent third country in the meaning of MLTFPA.

The contracting states of European Union and the European Economic Area can automatically be considered meeting the criteria of "equivalence" according to the principle of mutual recognition arising from the AML Directives. Accepting the transactions from third countries requires thorough evaluation of the persons involved with the transactions.

The list approved by the Member States can be considered as an assisting tool for helping obligated persons on giving that evaluation. However, the fact that a country does not appear in the list does not refer to low-level standards of AML/CFT laws and due diligence measures and does not demand qualifying the country as non-equivalent. Also, if a country appears in the list, it cannot be automatically considered equivalent by obligated persons.

FSA underlines that obligated persons have to give their own evaluation using available up-to-date information on a country. Besides relying on its knowledge and experience, an obligated person has to take into account the assessments of FATF, IMF and The World Bank, memberships in other organizations presuming meeting to the requirements on certain level, factors arising from the context of the situation, trade density with that country and other relevant circumstances.

Additional information on the AML/CFT measures in different countries can be found on the web pages of FATF[3] and MONEYVAL[4], including also published evaluation reports of countries.

Both FATF and MONEYVAL have also given opinions on countries whose AML/CFT laws do not meet the internationally recognized standards. References on those statements have been published on the webpage of FSA (http://www.fi.ee/?id=1726).

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[1] Common Understanding between Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC)

[2] 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

[3] Financial Action Task Force: http://www.fatf-gafi.org

[4] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism: http://www.coe.int/t/dghl/monitoring/moneyval/

FSA advises obligated persons to apply enhanced due diligence measures when making transactions with persons from countries mentioned in the abovementioned statements of FATF and MONEYVAL. According to Art. 14 (3) of MLTFPA an obligated person shall apply all due diligence measures specified in Art. 13 (1), but may choose the appropriate scope of application of the due diligence measures depending on the nature of the business relationship or transaction or the risk level of the person or customer participating in the transaction or official act. On specifying the risk level of the person or customer participating in the transaction we suggest seeking assistance from Art. 5.3 of advisory Guidelines by the FSA "Additional Measures for Preventing Money Laundering and Terrorist Financing in Credit and Financial Institutions". The requirements for applying enhanced due diligence measures are enacted in Art. 19 (1) of MLTFPA, stating that if a situation involves a high risk of money laundering or terrorist financing, an obligated person shall apply enhanced due diligence measures.

Considering previously the country as equivalent does not exclude applying enhanced due diligence measures when high risk of ML/TF occurs.

FSA draws the attention of obligated persons to the necessity of documenting every decision taken to consider a country to be equivalent or apply due diligence measures in relations with costumers/persons originating from a country.

Present circular will be published on the webpage of FSA in the section "AML/CFT Regulations".

Yours sincerely

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