

**Advisory Guidelines by the Financial Supervision Authority**  
**“Additional Measures for Preventing Money Laundering and Terrorist**  
**Financing in Credit and Financial Institutions”**

Advisory Guidelines approved by 22 October 2008 decision No 1.1-7/64 of the Management Board  
of the Financial Supervision Authority

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## **1 Jurisdiction**

1.1. Further to § 3 of the Financial Supervision Authority Act (hereinafter FSAA), in order to protect the interests of customers and investors in the preservation of their funds and thereby support the stability of the Estonian monetary system, the Financial Supervision Authority shall carry out financial supervision in the financial sector for the purposes of increasing the stability, reliability and transparency and efficiency of functioning; reduction of systemic risks; and contributing to the prevention of the exploitation of the financial sector for criminal purposes

1.2. Further to Subsection 1, § 57, of the FSAA, the Financial Supervision Authority shall be entitled to issue Guidelines of an advisory nature to provide clarification on the legislation governing the activity of the financial sector and guidance to the subjects of financial supervision.

## **2 Objective and scope**

2.1. The purpose of the Guidelines shall be to provide credit and finance institutions with advisory clarifying guidance for the application of the requirements of the Money Laundering and Terrorist Financing Prevention Act, which is directed at the prevention of the exploitation of the financial sector for criminal purposes, avoidance of systemic risks and, in sum, increasing the stability, reliability and transparency of the sector.

2.2. The Guidelines shall be directed at those credit and finance institutions providing services in the Republic of Estonia, which are obligated subjects when it comes to compliance with the Money Laundering and Terrorist Financing Prevention Act (hereinafter MLTFPA) and are subject to supervision by the Financial Supervision Authority<sup>1</sup> – credit institutions, insurance providers providing in life insurance and insurance brokers intermediating life insurance services, fund managers and investment funds incorporated as public limited companies, investment companies and electronical money institutions, also branches recorded in the Estonian commercial register of the credit and finance institutions of the said foreign country (hereinafter obligated persons).

2.3. These advisory Guidelines hereby establish for obligated persons guiding and clarifying Guidelines for the application of the due diligence measures set out in the MLTFPA – first and foremost with respect to the establishment of a business relationship, assessment and management of the risk of money laundering and financing of terrorism, information collection and action required in case of suspicion of money laundering (compliance with the duty to notify), also the internal audit rules for the review of the application of due diligence measures.

2.4. The application of these Guidelines shall consider the applicable legislation and any other requirements resulting from advisory Guidelines of the Financial Supervision Authority. In case of imperative requirements resulting from legislation, provisions in the legislation shall be followed. In the event of problems in application and interpretation arising in the application of the Guidelines, the principle of reasonableness shall be followed in light of the purpose of these Guidelines and good faith upheld in accordance with duty of due diligence as expected of a obligated person.

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<sup>1</sup>Supervision subjects of the Financial Supervision Authority as at the time of the implementation of these Guidelines.

### **3 General requirements**

#### **3.1 Requirements for monitoring transactions; training requirements**

3.1.1. An obligated person shall continually review the content and purpose of the transactions and operations of a customer with the due diligence appropriate for a credit or finance institution in order to ascertain whether the transaction or the funds used might be connected to money laundering or terrorist financing. Continual review shall consist in the monitoring of the transactions executed in the course of the business relationship so that the obligated person may understand the purpose of the business relationship established, the content of the business activity of the customer, know the customer's degree of business and risk and, if needed, the sources of the funds used for transactions.

3.1.2. An obligated person shall provide information concerning the customer, that is, the continual updating and currency of any documents and information collected. In case of customers or business relationships in the high-risk category, the existing information shall be checked more often than in case of other customers / business relationships. Relevant information shall be preserved in writing or a format reproducible in writing and made available to all relevant staff (for example, management board members, customer managers, risk managers, internal auditors, etc).

3.1.3. An obligated person shall provide regular training<sup>2</sup> and notification<sup>3</sup> on the nature of the risks of money laundering and terrorist financing and any new trends in the area to contractual partners (in case of outsourcing) and all relevant staff, including staff whose duties include the establishment of business relationships and/or the execution of transactions, management of customer relationships, product development and marketing. First and foremost, staff shall be kept informed about the requirements governing the prevention of money laundering and terrorist financing with respect to the application of due diligence measures and notification about suspected money laundering.

#### **3.2 Requirements for rules of procedure**

3.2.1. The management board of an obligated person shall ensure compliance with the due diligence obligation in accordance with the recommendations in these Guidelines and taking into consideration that the measures applied be appropriate, match the profile of the operations of the service provider and be in compliance with the nature and scope of the transactions of the customers and their contractual partners and the risks involved in money laundering and terrorist financing.

3.2.2. The rules of procedure shall include instructions for their updating, the description of operating procedures and the application of relevant review mechanisms and the appropriate instruction of staff.

3.2.3. The rules of procedure shall include a procedure for the application of due diligence measures, the evaluation and management of the risk of money laundering and terrorist financing, including regular and *ad hoc* notification of the management, information collection and information preservation and the performance of the obligation to notify the Financial Intelligence Unit.

3.2.4. The rules of procedure shall include, amongst other things, a procedure for the identification of the customer and its business activity and the ultimate beneficiaries, the source of the funds

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<sup>2</sup> In case of new employees, before commencing work.

<sup>3</sup> At least once a year.

involved in the transactions, the preservation of the relevant information and the identification and notification about suspicious or unusual transactions.

3.2.5. The rules of procedure shall specify the procedure for training and notification described in Clause 3.1.3. The rules of procedure shall also specify the procedure ensuring, upon the recruitment of new employees, their notification by the obligated person about the regulations for the prevention of money laundering and terrorist financing and the use of assets acquired by criminal means.

3.2.6. The rules of procedure shall specify the review of compliance with them and the duties of the persons or divisions responsible for their review, in accordance with any other rules for internal audit. In addition to the implementation of review mechanisms attendant on the application of due diligence measures, there shall be ensured the regular review of the said processes by internal audit, to ensure the application of review mechanisms in proportion with any other internal regulations.

3.2.7. The rules of procedure of obligated persons shall be prepared in writing. The rules of procedure may be included in various documents and made available to staff in a format which can be reproduced in writing.

### **3.3 Appointment of a contact person**

3.3.1. The management board of an obligated person shall be obligated to appoint a person who is a contact person for the Financial Intelligence Unit (Subsection 3, § 29, MLTFPA). The duties of a contact person may be performed by one or several staff and/or a structural unit with the relevant duties. In the event that the duties of a contact person are performed by a structural unit, the manager of the relevant structural unit shall be responsible for the performance of the said duties.

3.3.1. The location of a contact person within the organisational structure of an obligated person shall be appropriate to the performance of the requirements for the prevention of money laundering and terrorist financing as resulting from legislation. The establishment of the institution of a contact person shall ensure that it be as independent of the other business functions and ensure its direct subordination to the supervision of the obligated person.

3.3.3. A contact person shall be provided with access to the information that is the basis or prerequisite for the establishment of a business relationship, including any information, data or documents reflecting the identity and business activity of the customer.

## **4 Business relationships**

### **4.1 Establishment of a business relationship**

4.1.1. The prerequisite for the establishment of a business relationship is an explicit and recorded certification by the customer that it shall perform the conditions required for the establishment of the business relationship and the execution of transactions as set by the obligated person.

In the rules of procedure governing the establishment of a business relationship by an obligated person, it is advisable to prescribe, in addition to the provisions of the law, also:

- the procedure for the presentation of the conditions required as a prerequisite for the establishment of a business relationship by an obligated person, the conclusion of long-term contracts and the execution of transactions, including the identification of the purpose of the business relationship and the transaction;

- the requirement for receiving confirmation from a customer that it is aware and has understood the obligations established by the relevant conditions, including the request and format for submitting information required for the establishment of a business relationship by it (confirmation need not be in writing).

4.1.2. The terms of a long-term contract underlying a business relationship shall also be included in the general terms and conditions of the provision of services by an obligated person and/or in the general and/or other standard terms and conditions of a settlement contract or other contracts.

4.1.3. As per § 89 of the Credit Institutions Act, the relationships of a credit institution with parties in a business relationship shall be governed by contracts concluded in writing or in a format which can be reproduced in writing or an electronic format.

4.1.4. For the establishment of a business relationship, the customer or its representatives and the representative of an obligated person shall be at the same place<sup>4</sup>. This means that a prospective customer or its representative shall have direct contact with the representative of the obligated person (contact not effected by means of communication, including the internet). Contact may occur outside the principal place of business of the obligated person if in the course of it at least the same due diligence duties are performed as in ordinary instances.

4.1.5. In instances accepted beforehand by the management board of the obligated person<sup>5</sup> and the circumstances of which have been clearly formulated in the rules of procedure of the obligated person, a business relationship may be established without direct contact or being present with the customer at the same place. As part of a business relationship established without direct contact, services may be provided on a full scale only after the requirements set out in the MLTFPA have been attended to completely. In case of a business relationship established without direct contact, the parties shall be identified and the due diligence measures applied in a reasonable period of time. In such instances, the party shall be identified and any information verified by means of communications or some other technology, and the business relationship may be established only if the party has the first amount deposited into its account from the account of the same party opened in credit institutions of another country party to the European Economic Area ("EEA" hereinafter) or a third equivalent country (country where requirements equivalent to the provisions of the MLTFPA are applied).

4.1.6. The instances and procedure for the establishment of business relationships without direct contact shall be specified separately by relevant rules of procedure<sup>6</sup>, including any measures for the subsequent application of due diligence measures and the management of concomitant risks. The rules of procedure for the establishment of a business relationship without direct contact shall establish the procedure by the application of which it shall be possible to ensure compliance with the conditions set out in Subsection 4, § 15 of the MLTFPA. The rules of procedure shall describe at least:

- a code of conduct for accepting payment instructions or a demand for payment from the customer prior to the application of all the due diligence measures;
- a code of conduct for the situation where the due diligence measures are not applied fully (identifying and other details effected by means of electronic means of identification);

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<sup>4</sup> As a general rule, a business relationship cannot be established via a means of communication; § 15 of the PMLTFA, however, provides exceptions to this rule.

<sup>5</sup> Management board or a person authorised by the management board.

<sup>6</sup> In the provision of services via new technological means and means of communication, obligated persons are advised to be guided by the document "Risk Management Principles for Electronic Banking" issued by the Basel Committee on Banking Supervision in July 2003.

- a code of conduct for the situation where the required due diligence measures cannot be observed (identifying a party not managed within the time period prescribed by the obligated person), as a result of which the customer's declarations of intention cannot be accepted;
- a code of conduct for terminating a business relationship established without direct contact.

4.1.7. For the establishment of a business relationship without direct contact, there may be used intelligibly legible information that has been transmitted in writing or electronically, on the basis of which it is possible to:

- verify the signature, based on a certified copy of an identity document or an electronic signature;
- verify the personal identification code, registry code, representatives of a company, address, credit card number, by means of information disclosed by the obligated subject itself and/or public databases;
- use electronic means of identification, for instance an ID card, mobile telephone ID.

An obligated person may use other intelligibly legible documents to identify a person, including certifications by other credit institutions, notaries, foreign missions, administrative agencies, foreign business partners, etc.

4.1.8. For the conclusion of a long-term contract with the obligated person, an appropriate attitude of the parties shall be assumed<sup>7</sup>, as a result of which obligated persons must set out constraints in their rules of procedure with the aim of avoiding the creation of unnecessary risks and ensuring the establishment of appropriate relationships at a time and place suited for it. For defining risk attending the establishment of business relationships without direct contact, there shall be taken into consideration not only the individual transaction but the risk of the service supplied, which may extend to the institutional level<sup>8</sup>.

4.1.9. Identifying the customer alone cannot be considered sufficient for the establishment of a business relationship or the effecting of a transaction. In the course of the application of due diligence measures, there shall be ascertained, amongst other things, the risk level of the customer. (The ascertainment of a customer's risk level is described in Clause 5.3.2). The obligated person must make sure that the service supplied meets the content of the customer's actual declarations of intention and its purposes and does not harm the interests of the obligated person.

4.1.10. In case of the extraordinary termination of a business relationship on grounds resulting from § 27 of the MLTFPA different time limits may be applied for the termination of providing services (first and foremost, constraints on the performance of transactions) and for the termination of a business relationship (long-term contract). In the event of an extraordinary termination of a business relationship, the internal procedures of the obligated person shall specify the procedure for the subsequent use of the customer's assets, for instance, the allowing of payment into the account

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<sup>7</sup> The Financial Supervision Authority concedes that the technological facilities for identifying are continually evolving. Nonetheless, the conclusion of long-term contracts ought to take into account whether this may be a need resulting from another transaction (loan contract) for the party to conclude an initial relationship (for example, a company or non-profit organisation commencing operations), whether this is a resident or not, etc. The relevant attitude of the obligated person presupposes the formation of behaviour consonant with the circumstances to ensure the appropriate application of due diligence measures.

<sup>8</sup> Risks on an institutional level arise primarily when there is exceeded the concentration of transactions of a certain type where a credit or financial institution is unable to assess the money laundering risks related to the transactions.

of a credit institution in another country party to the European Economic Area or a third equivalent country. No disbursements in cash shall be allowed.

## **4.2 Outsourcing<sup>9</sup>**

4.2.1. An obligated person shall be entitled, allowing for special requirements and constraints set out in legislation, to use the services of a third party on the basis of a contract the subject of which is the continuing performance of activities and operations required for the provision of a service(s) by the obligated persons to their customers and that normally would be performed by the obligated person itself. For the purposes of this clause, third parties shall include, for example, agents, subcontractors and other persons to whom the obligated person transfers the activity related to the provision of the services supplied as a rule by the obligated person in its business activity.

4.2.2. All the requirements for the prevention of money laundering and terrorist financing set out in legislation with respect to the activity (activities) transferred shall apply to the person referred to in Clause 4.2.1. Liability for the breach of the requirements shall be incurred by the obligated person that has transferred its activity.

4.2.3. To the transfer of the activity (activities) of the obligated person, there shall apply conditions limiting the freedom of contract, in accordance with which the obligated person shall ensure that the third party has the knowledge and skills required, first and foremost, for the identification of situations of a suspicious and unusual nature and is able to meet all the requirements for the prevention of money laundering and terrorist financing set out in legislation. To comply with the provisions in this Clause, the obligated person shall ensure the notification of the managers of the third party of the relevant requirements and the training of its staff in the prevention of money laundering and terrorist financing to the extent described in Clause 3.1.3.

4.2.4. When transferring an activity to third parties, the obligated person shall ensure that any documents and information collected for the performance of requirements resulting from legislation are preserved as per the procedure set out in the MLTFPA and any legislation provided on its basis. The contract shall ensure that relevant information is transferred to the obligated person and that the relevant information and documents are archived as per the procedure prescribed in its rules of procedure.

4.2.5. A contract for the transfer of an activity shall specify what the rights of the obligated person are when conducting a review of compliance by the third party with the requirements set out in legislation. The transfer of business activity to a third party shall not impede the exercising of state supervision of the obligated person.

4.2.6. Whilst services are provided by third parties, there shall be avoided situations where the application of due diligence measures to the required extent is possible to an insufficient degree or it is impossible. A third party must be able to apply the required due diligence measures to the full extent, including the ability to notify the contact person for an obligated person immediately and to decline a transaction. There shall be avoided situations that may be regarded as high-risk or suspicious or unusual, including the establishment of a business relationship under conditions inappropriate for it, for example, as a precondition for receiving some other service or good, or at night or under obviously unusual circumstances.

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<sup>9</sup> The guidelines published by the Financial Supervision Authority on "Requirements for outsourcing activity by a financial supervision subject" contain more detailed requirements for obligated parties on how to ensure the transfer of one's activity to third parties in accordance with the requirements of Subsection 2, § 28, of the MLTFPA.



4.2.7. An obligated person shall immediately notify the Financial Supervision Authority of the conclusion of a contract serving as the basis for the transfer of its activity (activities).

4.2.8. The provisions in this Clause (4.2) shall be ensured by the obligated person via a contractual stipulation of the transfer of the activities of the relevant obligation.

## **5 Due diligence compliance**

### **5.1 Due diligence measures**

5.1.1. Obligated persons shall pay heightened attention to situations or circumstances that may be related to money laundering or terrorist financing (Subsection 1, § 12 of the MLTFPA). Obligatory instances of the application of due diligence measures shall be provided by Subsection 2, § 12, of the MLTFPA.

5.1.2. Requirements provided in the MLTFPA shall be applied in the course of the pre-contractual negotiations when a business relationship is established and during the business relationship. The list of due diligence measures shall set out the minimum criteria and has an imperative content, restricting freedom of contract (§ 13 of the MLTFPA). The obligated person may apply due diligence measures in instances not provided by law, depending on the specific character of its area of activity and the risks entailed by it.

5.1.3. The principal purpose of the application of due diligence measures shall be to prevent the use of assets obtained by criminal means in services provided by credit and financial institutions. Due diligence measures shall be directed, first and foremost, at the application of the “know your customer” principle, under which, when transactions are effected, a customer must be identified and the appropriateness of the transactions assessed based on its principal business and prior pattern of payments.

5.1.4. Obligated persons shall, in addition to due diligence measures provided by law, evaluate comprehensively the content and purpose of the customer’s transactions and operations, applying professional skills at a universally recognised level appropriate for credit and financial institutions, to ascertain the possible link of a transaction, operation or assets used for money laundering or terrorist financing.

### **5.2 Identification of the customer**

5.2.1. Obligated persons shall identify a customer and the beneficial owner within a reasonable period of time prior to the commencement of the operations of the conclusion of a long-term contract or whilst it is being concluded. A person participating in the transaction shall be identified prior to the commencement of the operations of the conclusion of a long-term contract or whilst it is being concluded.

For the establishment of a business relationship for the first time, the identification and verification of identity shall be mandatory in case of the use of all financial services regardless of whether a settlement contract<sup>10</sup> is concluded with the party participating in the transaction or not, taking into account exceptions arising from the MLTFPA (Clause 8.1.1 of the Guidelines).

5.2.2. Upon identification, the obligated person shall ascertain who the beneficial owner of the customer or the party participating in the transaction is. To identify suspicious or unusual

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<sup>10</sup> Or another contract for the provision of financial services.

transactions, the obligated person shall pay heightened attention to knowing the party participating in the transaction and its normal business activity. In this regard, it shall be taken into account that circumstances that are suspicious or unusual in the case of one customer or party participating in a transaction completely belong with the normal (business) activity of another.

5.2.3. Any information and documents concerning identification shall be preserved in a manner making it possible to respond fully and without unreasonable delay to relevant queries from the Financial Intelligence Unit, investigating agency, court or supervision agency. For this, the obligated person shall set up a system allowing, in view of the specific nature of its activity, to retrieve promptly from databases and from amongst documents the necessary information or document concerning the identification of the customer or person participating in the transaction.

### 5.3 Risk-based approach

5.3.1. The obligated person shall apply all due diligence measures. The scale of the application of the measures shall depend on the nature of the specific business relationship or transaction or the risk level of the party or customer participating in the transaction or official operation (Subsection 3, § 14 of the MLTFPA). The MLTFPA specifies a limited number of exceptions concerning primarily the so-called amount-based duty to report of obligated persons, as per Subsection 3, § 32 of the MLTFPA.

5.3.2. When determining and substantiating the risk levels of a party or customer participating in a transaction<sup>11</sup>, the obligated subject shall take into account, for instance, the following risk factors:

*Customer risk*, whose risk factors result from the customer's person, including:

- the legal form, management structure, area of activity, including trust funds, partnerships or other such contractual legal entities, legal persons having bearer shares;
- whether this is a politically exposed person<sup>12</sup>;
- whether the party is represented by a legal person;
- the residency of the party, including whether this is a party registered in an region with a low tax rate;
- the possibility of classifying the customer as a typical customer in a certain customer category;
- circumstances (including suspicious transactions identified in the course of a prior business relationship) resulting from the experience of communicating with the customer, its business partners, owners, representatives and any other such persons;
- the duration of the activity, the nature of the business relations.

*Product or service risk*, whose risk factors result from the customer's business activity or the exposure of a specific product or service to potential money laundering risks. Examples of a higher product or service risk:

- private banking, personal banking
- currency exchange, conversion transactions
- mediation of alternative means of payment and electronic money;
- founding, sale, administration of companies;

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<sup>11</sup> When applying a risk-based approach and implementing their internal procedures, obligated persons are advised to be guided by the FATF Guidelines "Guidance on the Risk-Based Approach to combating money-laundering and terrorist financing," (<http://www.fatf-gafi.org/informationoecd/43/46/38960576.pdf>).

<sup>12</sup> The concept of a politically exposed person is provided by § 20 of the MLTFPA.

*Country risk*, whose risk factors arise from the differences in the legal environments (whether legal provisions meeting international standards are applied in the country to prevent money laundering and terrorist financing), crime levels, including drug crime and corruption levels, of countries, including also whether international sanctions have been applied against this country or persons in this country<sup>13</sup>.

Obligated persons may use also other means of classifying risk factors recognised in banking.

5.3.3. Due diligence measures are appropriate and of a suitable extent if by their means it is possible to identify transactions directed at money laundering and terrorist financing or at least contributing to the achievement of this objective.

5.3.4. There may occur situations where the application of the required due diligence measures results from other legislation, and the information about the customer and its beneficial owner are publicly available<sup>14</sup> or where the activity and transactions of the party are in keeping with its day to day business activity and does not differ from the payment and behaviour patterns of other similar customers, as a result of which the presumable money laundering or terrorist financing risk is lower.

5.3.5. If the risk resulting from the business relationship, from the person of the customer or party to the transaction or from the transaction is low due to risk factors established with respect to the contractual party or customer, the obligated person may apply simplified due diligence measures<sup>15</sup> yet may not omit the application of due diligence measures completely.

5.3.6. If the risk resulting from the business relationship, from the person of the customer or party to the transaction or from the transaction is high, there shall be applied enhanced due diligence measures in accordance with § 19, 21 or 22 of the MLTFPA.

## **6 Identification of a natural person on the establishment of a business relationship**

### **6.1 General requirements**

6.1.1. The identification and verification of the identity of a natural person shall be carried out, as a general rule, by way of one operation on the basis of an identity document.

6.1.2. A natural person shall be identified based on an identity document as per the provisions of § 23 of the MLTFPA. A document submitted to the obligated person for identifying shall be assessed as follows:

- validity of the document based on the date of expiry;
- outward likeness and age of the person match the appearance of the person represented on the document;
- match of the personal identity code with the gender and age of the submitter;

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<sup>13</sup> Relevant lists have been published on the webpage of the European Commission, [http://ec.europa.eu/external\\_relations/cfsp/sanctions/list/consol-list.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm).

<sup>14</sup> For instance, publicly traded companies, government and local government institutions, foundations, credit and financial institutions registered within countries party to the European Economic Area or a third country where equivalent rules for the prevention of money laundering and terrorist financing are applied.

<sup>15</sup> Simplified due diligence measures may be applied only on the conditions provided in § 18 of the MLTFPA, in accordance with the cited regulation of the Minister of Finance.

- with respect to the information contained in identity codes assigned to natural persons of a foreign country, in case of doubt as to the authenticity of the document or identity, foreign missions or other competent authorities shall be consulted.

6.1.3. A copy shall be made of the personal data and photograph pages in the document that is the basis of identifying and has been submitted for identification (Subsection 2, § 23 of the MLTFPA). The copy made of the document shall be of a quality allowing the details included on it to be read legibly. Any details specified by law shall be recorded.

6.1.4. An obligated person shall record, in the course of identification and verification of the identity, based on statements by the person, its residential address and profession or area of activity (Subsection, § 23, MLTFPA). In this relation, the address recorded in the register of inhabitants or any similar register shall not matter, but rather the person's actual place of residence, where the person is residing permanently or principally (§ 14, General Part of the Civil Code Act). If difficulties arise in identifying the person's place of residence (for instance, the person is unable to define his/her principal place of residence), it shall be ascertained where mail addressed to him/her is normally sent or where the person is using other services related to his/her place of residence. A post office box number or poste restante address cannot be accepted as a residential address.

6.1.5. Finding out the area of activity, job or profession shall provide the obligated person with the opportunity to assess whether the business relationship or transactions are consonant with the customer's normal participation in commerce and whether the business relationship or transactions have a clear business reason. For the purposes of preventing the movement of assets acquired by illegal means, when a business relationship is established, there shall be ascertained in addition to the identification, the activity profile of the customer, consisting in the recording of the customer's principal areas of activity and likely taxation patterns.

6.1.6. If a person participating in a transaction effected in the course of business or professional activity is a person from another country party to the European Economic Area or a third country, it shall be ascertained whether this person is a politically exposed person or not.

6.1.7. Any details and references required for identification shall be verified by means of reliable and independent sources of information, for instance, national registers, authorities, credit institutions, foreign missions of the Republic of Estonia and foreign missions in the Republic of Estonia or based on documents and other information certified by other relevant authorities.

In exceptional instances<sup>16</sup> (if the use of reliable and independent sources of information is impossible), copies of documents or information communicated by unofficial representatives or mediators or other dependable information may be relied on for the identification. The obligated person shall, prior to effecting transactions or operations with the person to be identified, first make sure that the information obtained in such a manner is sufficient. In such an instance, a note to this effect shall be made on the copies confirming the identification, and then immediately the legality of the details and documents shall be verified.

6.1.8. The introduction or recommendation of a person by the managers of the obligated person, other customers or business partners may aid in the identification the customer but shall not replace the requirements provided in the MLTFPA for the identification.

6.1.9. Knowing the customer personally or public knowledge of him/her shall be no basis for the non-performance of the procedure for identifying provided by law. Identity shall be verified also in case of persons known publicly and directly or indirectly connected with them, when contacting the obligated person for the performance of transactions or operations.

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<sup>16</sup> Such instances shall be governed by the internal rules of procedure of the obligated person. Relevant documents shall include separate information as to any exceptions made.

6.1.10. In case of persons (including minors) of restricted active legal capacity, the obligated person shall also be obligated to observe the procedure for the identification. For the identification of the personal details of minors, the obligated person shall, in addition to the Guidelines provided in this guide and the provisions in the MLTFPA, be guided by the standards stipulated in the General Part of the Civil Code Act (GPCCA) and Family Law Act. In addition to the personal details of a person of restricted active legal capacity, the personal details of the legal representative (parent(s) or custodian(s)) shall be verified.

6.1.11. In case of the representation of a natural person, requirements provided in Clause 7.2 shall be observed and applied to the natural person to the suitable extent.

6.1.12. Identifying a customer shall not be a single operation. The obligated person shall regularly monitor changes in the customer's personal details, ensuring that they are up to date, at an interval in accordance with the customer's risk level<sup>17</sup>.

## **6.2 Politically exposed persons**

6.2.1. The obligated person shall establish appropriate risk-based internal procedures to decide whether a prospective customer, customer or beneficial owner is a politically exposed person in another country party to the European Economic Area or third country (that is, someone carrying out significant duties of public authority or his/her family member or close associates).

6.2.2. Obligated persons shall identify the close associates or family members of natural persons carrying out significant public functions only if their link to the person carrying out significant duties of public authority is known to the public or if the obligated person has reason to believe that such a link exists<sup>18</sup>.

6.2.3. To identify politically exposed persons, obligated persons may apply the following measures:

- asking the customer for the required information;
- submitting a query or verifying information with a relevant for-fee database<sup>19</sup> or public databases<sup>20</sup>;
- submitting a query or verifying information on the web pages of the relevant supervision authorities or institutions in the country of location of the customer or person.

6.2.4. The establishment of a business relationship with a politically exposed person in another member country or third country shall be decided by the management board of the obligated person or person(s) authorised by the management board. If a business relationship with the customer has been established, and the customer or beneficial owner subsequently proves to be or becomes a politically exposed person, notification of the management board (or persons authorised by the management board) shall be required.

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<sup>17</sup> In case of higher-risk customers it is advisable to update any documents serving as the basis for identification at least once a year.

<sup>18</sup> The conduct of active checks, when a transaction is effected with each person from a member country or third country, shall not be presumed.

<sup>19</sup> Various databases, for instance, WorldCheck, etc, include information for the identification of politically exposed persons.

<sup>20</sup> Public databases are also intended to include any information about politicians and government members available online, search engines (for example, google.com, jandex.ru, rambler.ru etc).

6.2.5. The obligated person shall carry out continued enhanced review of the business relationship concluded with a politically exposed person in another member country or third country.

### **6.3 Partnerships and other contractual associations**

6.3.1. Identification in case of partnerships<sup>21</sup> shall aim to identify all the members in a partnership or their representatives on the same grounds as apply to customers that are natural persons. The actual beneficiaries of the partnership shall be identified.

6.3.2. In case of partnerships, the purpose of their activity and the origin of the funds employed shall be ascertained. The ascertainment may rely on, amongst other things, statements and certifications provided by a representative of the partnership. The obligated person shall make sure that the use of funds by the partnerships corresponds to the purposes of activities declared previously.

6.3.3. Details of the members of a partnership and their representatives shall be preserved and regularly updated.

## **7 Identification of a legal person on the establishment of a business relationship**

### **7.1 General requirements**

7.1.1. For the identification of legal persons, there shall be ascertained details of the name, register code, details of the legal form of the person, passive legal capacity, representatives (legal and those authorised as representatives to the obligated person), actual beneficiaries, purposes of activities and business profile.

7.1.2. The identification and verification of the identity and passive legal capacity of a legal person shall be carried out, as a general rule, on the basis of the information or the copy of a registration certificate or its equivalent document (for instance, notarised instruments of constitution) from a commercial register (in Estonia) or other equivalent register, submitted as per the procedure stipulated in legislation. Documents issued by a register or their equivalents may have been issued no earlier than 6 months prior to their submission to the obligated person.

7.1.3. Legal persons shall not be obligated, during the identification, to submit a transcript of their register record if the obligated person has, via a computer network, access to the required extent to the data in the commercial register, registers of non-profit associations and foundations, including access to data in respective registers in a foreign country.

7.1.4. When a legal person is identified, the obligated person shall be obligated to register the names of the director of the legal person or the members of its management board or other body substituting for it<sup>22</sup>, their powers in representing the legal person and the principal area of activity of the legal person. If the aforesaid details are not evident from the register transcript or other relevant document, the relevant information shall be obtained by using other documents and/or reliable sources of information.

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<sup>21</sup> § 580, Law of Obligations Act.

<sup>22</sup> In accordance with § 65 of the Commercial Code, management board members and their rights in representing the company shall be recorded on a B card; however, documents issued by the relevant registers in foreign countries and equivalent documents do not always indicate the details of the members of the management board of the legal person or the body replacing it.

7.1.5. The need, criteria and/or list for the use of reliable sources of information shall be specified by the obligated person, for example, there may be used information issued by national registers, government offices, credit institutions, foreign missions of the Republic of Estonia and foreign missions in Estonia.

7.1.6. The obligated person shall ascertain the existence of politically exposed persons in a country party to the European Economic Area or a third country. If no relevant links are evident from the information about a politically exposed person obtained from a representative of the obligated person, in the event of suspicion, a query shall be filed with the relevant databases (see Clause 6.2.3 of the Guidelines).

7.1.7. All natural persons acting on behalf of and funded by a legal person entitled to dispose of the funds of the legal person shall be identified as per the requirements in § 23 of the MLTFPA, and these Guidelines.

7.1.8. In the case of international organisations, the documents serving as the basis of their activity, including in Estonia, must be determined, and a request made for the submission of relevant documents. If needed, the information on the documents required for the establishment of a business relationship shall be verified.

## **7.2 Representation**

7.2.1. An obligated person shall ascertain if the person is acting on its or another (natural or legal) person's behalf. If the person is acting on another person's behalf, the obligated person shall also identify this person on behalf of whom transactions are being effected.

7.2.2. Documents for the identification of a legal person shall be submitted by the legal or authorised representative of the legal person. The obligated person shall make sure that the right to represent corresponds with the requirements specified in legislation. If the submitted documents do not indicate the right to represent of the person submitting them, and/or the authority is not compliant, the process of identification (consequently of the establishment of a business relationship or the execution of a transaction) may not be continued.

7.2.3. The obligated person shall ascertain the basis, scope and term of the representative's right to represent. The representative shall be required to submit a document proving the right to represent. Additional attention shall be paid to the verification of the identity and right to represent of such authorised representatives as may be active or residing in a jurisdiction different from the legal person's or whose rights to represent last longer than a year.

7.2.4. Clarification shall be sought on the scope of the right to represent granted to the authorised representative (for instance, whether a single transaction or recurring transactions over a certain period are involved). The obligated person shall take note of the terms of the right to represent granted to the authorised representative and supply services to the extent of the right to represent only.

7.2.5. In accordance with Subsection 5, § 23, MLTFPA, the obligated person shall be entitled to request the representative of a legal person from a foreign country to produce documents proving his/her right to represent, notarised or certified in an equivalent manner, legalised or certified with a certificate (apostille) replacing the legalisation, unless provided otherwise in the international agreement.

7.2.6. Consideration of the right to represent of authorised and legal representatives shall ascertain whether the representative knows his/her customer. To ascertain the true nature of the relations

between the representative and the party represented, the representative must know the substance and purpose of the declaration of intention by the party represented, also he/she must be able to answer other questions pertaining to the matter, about the location of the activity, areas of activity, turnover and transaction partners, other related persons and ultimate beneficiaries. In addition, the representative must be able to demonstrate convincingly that he/she is aware and convinced of the legal origin of the assets used in the transaction of the represented party.

### **7.3 Identification of the beneficial owner**

7.3.1. When identifying legal person, the obligated person shall register the beneficial owner of the legal person<sup>23</sup>.

7.3.2. In a situation where the holding of or the extent of control by no party exceeds 25%, the ascertainment of the range of beneficiaries shall be guided by the principle of proportionality, in accordance with which, information shall be requested regarding those partners, shareholders and other persons with control or other significant influence over the activity of the legal person.

7.3.3. If the documents for the identification of the legal person or other submitted documents do not indicate who is the beneficial owner of the legal person, the relevant information (including information about membership in the group of companies and the ownership and management structure of the group of companies) shall be registered on the basis of statements or a document hand written by the representative of the legal person.

7.3.4. For the verification of the information ascertained on the basis of statements or a hand written document, there shall be applied reasonable measures, for instance, the filing of a query with relevant registers, request for the annual report from the legal person or other such relevant document.

7.3.5. The obligated person may use a risk-based approach and by sufficient measures verify the identity of the beneficial owner with the purpose of making sure who is the beneficial owner in the business relationship or transaction. With respect to compliance with this requirement, the obligated persons have been left with several options for deciding:

- the extent to which information about shareholders, partners or members publicly available for this shall be used;
- the extent to which relevant information shall be requested orally or recorded in writing based on the information obtained or in a format which can be reproduced in writing;
- in which cases the customer shall be asked to complete an additional form;
- what other options may be used and are practicable in case of the relevant obligated person.

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<sup>23</sup> The term of the beneficial owner also includes the shareholders or partners in a company that are natural persons who own or exercise control over more than 25% of the shares or participating interests or voting rights by means of direct or indirect ownership, including in the form of bearer shares or participating interests, also the shareholders or partners in a company that are natural persons who exercise control over the management of the company in some other manner. The determination of voting rights and the interpretation of the term “control” shall be guided by the provisions in § 10 of the Securities Market Act. If this is a company whose securities have been admitted to trading on a regulated securities market, the identification of the actual beneficiaries of such a company shall not be required.



7.3.6. It shall be taken into account that the scope of the due diligence obligation with respect to the customer, that is, the identification of the beneficial owner, is related to the risk of money laundering and terrorist financing depending on the type of customer, its country of origin, business relationship, product, service or transaction.

7.3.7. Attention shall be paid to companies incorporated in regions with a low tax rate, whose actual beneficiaries are often difficult to ascertain.

#### **7.4 Requirements for the identification of non-resident legal persons**

7.4.1. In case of the identification of legal persons that are non-residents, the obligated person shall comply, to the greatest extent possible, with the same requirements as in the case of customers that are residents, taking into account the peculiarities resulting from the country of origin and legal form of the non-resident customer. Due to differences in legal regulations in different countries, the rules of procedure of the obligated person shall specify detailed requirements and Guidelines for the identification of the passive legal capacity of the legal person also by means of other documents and/or reliable information sources.

7.4.2. When identifying the passive legal capacity of a non-resident legal person and considering documents certifying the powers of representatives, it shall be verified whether the documents meet the requirements set in Estonian legislation with respect to legalisation or certification<sup>24</sup>.

7.4.3. Due to differences in legal regulation in different countries, an obligated person shall pay attention first and foremost to companies incorporated in countries or regions with a low tax rate<sup>25</sup> the existence of whose passive legal capacity is not always unambiguous. In many countries, standards for the establishment of a customer's identity, the registration and preservation of documents are lower than in Estonia, as a result of which particular attention shall be paid to the content of the documents of the companies registered in such countries and to the manner of their submission<sup>26</sup>.

7.4.4. Provided below are the principal features of documentation of persons registered in regions with a low tax rate:

- Information on the management, activity profile and share capital may be obtained from its articles of association or other memorandum of association, for example, Memorandum and Articles of Association, By-law, Operating Agreement, Articles of Organization or the like. In principle, the above decisions ought to reveal whether the ownership and management functions are held by diverging persons and how the transfer of the relevant rights is carried out.

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<sup>24</sup> On 1 October 2001, there took effect with respect to Estonia the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, [http://hcch.e-vision.nl/index\\_en.php?act=conventions.text&cid=41](http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=41), the purpose of which is to simplify international document exchange. In accordance with the terms of the Convention, documents issued in Estonia and certified with a certificate (apostille) may be used within a country party to the Convention without additional formalities. The same applies to the use in Estonia of documents from respective countries. The Ministry of Foreign Affairs will continue to legalise documents whose country of origin or destination is not party to the Convention. Also, public documents issued within a country party to the Convention prior to 1 October 2001 shall be legalised. The list of the countries party to the Convention is available from the consular division of the Ministry of Foreign Affairs.

<sup>25</sup> Tax free territories and territories with a low tax rate: <http://www.emta.ee/?id=1950>.

<sup>26</sup> Work with documents from non-resident customers shall be guided by Regulation No 97 of the Minister of Justice of 14 December 2001, enacted by virtue of the Notarisation Act listing foreign officials whose notarised power of attorney is equivalent to a power of attorney certified by an Estonian notary (Appendix to the State Gazette, 2001, 132, 1921).

- Regardless of the country of origin, upon the initial identification of the person, there shall be submitted documents including information about its passive legal capacity, for example, Certificate of Incorporation, Certificate of Organization. The continued effect of the passive legal capacity of a person shall be confirmed by a transcript of the relevant registrar<sup>27</sup> which may not be more than six months old.
- Information about the founders, partners or shareholders of a legal person is generally provided in its articles of association or some other memorandum of association. In some jurisdictions, companies may incorporate without information on the range of owners being available from the registrar. In such an instance, memoranda of association shall indicate to whom and under what circumstances these shares were first issued. If the owners of the shares or participating interests are other legal persons, the documents shall indicate the names of these persons and their representatives. In general, such an ownership structure<sup>28</sup> indicates that the beneficial owner (for the purposes of the MLTFPA) cannot be identified on the basis of such documents, as a result of which in such an instance other measures shall be applied for the identification of the beneficial owner or the establishment of a business relationship shall be refrained from.
- If the submitted information is insufficient for the due identification of the person or its representative, the relevant information shall be verified against reliable sources<sup>29</sup> prior to the establishment of a business relationship. For the verification of the information, other companies in the same group as the obligated person shall be consulted, who may have additional information on the activity of the customer or its transaction partners. Only after the person has been identified fully may services be supplied. The verification of the information shall comply with the requirements of the Personal Data Protection Act.
- The subsequent assessment of the passive legal capacity of a legal person shall apply a Certificate of Good Standing or Certificate of Incumbency (BVI, Belize) issued by the registrar or an agent upon the payment of the relevant fee.
- Upon the granting of the right to represent a legal person to the legal representative of a company (management board member, director), the term of the right to represent shall be normally appended to the memoranda of association as a decision from the first meeting of the management board members, for example, Minutes of the First Meeting of the Directors, Initial Resolution of Members, Shareholders Declaration or the like.
- When the right to represent a legal person is granted a third party, a power of attorney shall be drawn up, for example a (General) Power of Attorney. As a general rule, the name of the party represented shall be recorded on the power of attorney when the power of attorney is drawn up, as a result of which a rendering differing from the principal text (differently shaped writing, hand writing), an inauthentic origin of the documents may be assumed. At the end of the power of attorney, there shall be noted the term of the right to represent, normally up to one year from the date of the preparation of the power of attorney. In case of powers of attorney of longer duration, the authenticity of such powers of attorney shall be assessed on the basis of prior experience with other companies of the same type incorporated

<sup>27</sup> In many jurisdictions, there is no national register, as a result of which companies are only registered with the relevant agent or registrar.

<sup>28</sup> A situation where the actual beneficiaries cannot be unambiguously and directly identified shall be considered a significant risk factor, which ought to be reflected in the determination of the customer's risk level and the due diligence measures applied with respect to it.

<sup>29</sup> For instance, national registers, supervision authorities, foreign missions of the Republic of Estonia, foreign missions in Estonia.

in the same region. In case of a power of attorney, the rights of its issuer (in general, the director or secretary of the legal person) to draw up the document concerned shall be evaluated.

- Of any documents the subject of which is the granting of a right to represent, it shall be assumed that the full name (first and last names) of the person and the personal code (date of birth) confirming it are provided. The consideration of a document containing the right to represent shall evaluate the right and conditions of the party represented to delegate authority and the scope of the powers, both in terms of the type of transactions, scope and allowed jurisdictions and duration.
- Documents containing a power of attorney shall be notarised or certified by a notary<sup>30</sup>. Certification by a person that prepared the apostille (including a notary) shall not replace notarisation or certification by notary.

7.4.5. Particular attention shall be paid to the submitted information and documents in case of persons whose country of origin has been included on the list, prepared by FATF, of countries that do not contribute sufficiently to the prevention of money laundering<sup>31</sup>.

7.4.6. In case of foreign-language documents, the obligated person shall be entitled to request a translation of the documents into a language understood by it. The use of translations ought to be avoided in a situation where the original documents have been prepared in a language understood by the obligated person, for instance, the translation of English-language original documents into Russian.

A translation shall be prepared by a sworn translator, or the translator's signature shall be certified by a notary.

7.4.7. A list and examples of documents of the country of origin of more common non-resident customers are provided in Annex 1 to these Guidelines.

## **8 Application of due diligence measures to the execution of transactions**

### **8.1 General requirements**

8.1.1. If the amount of an individual transaction or the total of consecutive transactions exceeds the limit set in legislation (or the internal rules of procedure of the obligated person), there shall be applied the due diligence measures stipulated by law, both in case of a transaction effected in a business relationship and also in case of occasional transactions effected<sup>32</sup> by a non-customer.

8.1.2. If the limit specified by law or rules of procedure is reached in case of several consecutive transactions, rather than the execution of the first transaction, due diligence measures shall be applied immediately upon the achievement of the limit becoming apparent.

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<sup>30</sup> Work with documents from non-resident customers shall be guided by Regulation No 97 of the Minister of Justice of 14 December 2001 enacted by virtue of the Notarisation Act listing foreign officials whose notarised power of attorney is equivalent to a power of attorney certified by an Estonian notary (Appendix to the State Gazette, 2001, 132, 1921).

<sup>31</sup> Non-Cooperative Countries and Territories, FATF. The list of the relevant countries is available on the website: <http://www.fatf-gafi.org>.

<sup>32</sup> Occasional transactions shall be taken to mean transactions not establishing a business relationship for the purposes of the law, yet there participate in the transaction the same parties, repeatedly performing the same operations, for instance, currency exchange, single (foreign) payments, transactions with foreign institutions involving travellers cheques, tax free and bonus cheques and the like.

8.1.3. Due diligence measures shall be applied in case of all types of transactions, including in case of an offer made in the course of a consultation service the cost of which exceeds EEK 200 000. In this respect, it is unimportant whether the pecuniary obligation is performed by means of cash or non-cash settlements.

8.1.4. The application of due diligence measures also presupposes the existence of relevant monitoring systems<sup>33</sup>, the purpose of which shall be the discovery and notification of the transaction limit.

8.1.5. Obligated persons shall apply measures to regularly verify and update the personal information of customers consuming electronic services to avoid the consumption of the services by parties who have not been identified. An obligated person is advised to find an opportunity to meet with the customer at least once a year and/or update its personal information and activity profile.

## **8.2 Complex and unusual high-value transactions**

8.2.1. Even if the obligated person has no suspicion in terms of money laundering or terrorist financing for the purposes of Subsection 1, § 32 of the MLTFPA, and there is no duty to report for the purposes of Subsection 2, § 32, attention shall be paid nonetheless to complex and unusually high-value transactions or unusual transaction schemes without an obvious or apparent economic or legal purpose.

8.2.2. Based on their work experience to date, obligated persons shall analyse the descriptions of suspicious or unusual transactions and prepare a sample list of relevant transactions. If the sample list includes any descriptions missing from the Guidelines of the Financial Intelligence Unit on the features of suspicious transactions, the said differences shall be communicated to the Financial Intelligence Unit.

8.2.3. Attention shall be paid to the investigation of such transactions as are related to natural or legal persons whose country of origin is a country where it is difficult or impossible to obtain information about the customer or to transactions with persons from countries not contributing sufficiently to the prevention of money laundering<sup>34</sup>.

8.2.4. Regardless of the amount, nature or other party to the transaction, the person or their representative shall be identified, applying enhanced due diligence measures<sup>35</sup> to that end if the activity of the persons connected to the transaction is unusual or the circumstances of the transaction arouse suspicion, for example, the activity of the person attending the transaction differs, in view of normal behaviour or behaviour presumed in a similar situation.

8.2.5. The processing of payment directions received electronically<sup>36</sup> shall apply verification systems allowing the analysis of the content of payments and their correspondence to the customer's principal business and to identify the occurrence of any unusual and/or suspicious circumstances.

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<sup>33</sup> Monitoring systems may consist of both the monitoring of transactions by staff and relevant electronic applications.

<sup>34</sup> Non-Cooperative Countries and Territories, FATF. The list of the relevant countries is available on the website: <http://www.fatf-gafi.org>.

<sup>35</sup> The extent of the application of enhanced due diligence measures shall depend on the circumstances of the specific transaction.

<sup>36</sup> In case of retail payments, verification systems may be applied subsequent to the processing of payment instructions.

8.2.6. If in the course of the monitoring of transactions there arises suspicion of money laundering amongst obligated persons, this shall be communicated to the Financial Intelligence Unit.

## **9 Action in case of suspicion of money laundering**

9.1. The most general duty in the event of suspicion of money laundering and terrorist financing is imposed on an obligated person by § 12 of the MLTFPA, in accordance with Subsection 1 of which an obligated person shall pay increased attention to the activity and circumstances of the party participating in a transaction or official activity or of the customer that suggest money laundering or terrorist financing. Clause 2, Subsection 2, of the same Section requires obligated persons to apply due diligence measures in case of, amongst other things, the suspicion of money laundering or terrorist financing, regardless of any allowances, exceptions or limit amounts whatsoever referred to in the law.

9.2. No application of simplified due diligence measures shall be allowed in an instance where suspicion of money laundering or terrorist financing has arisen at any stage whatsoever of communications with the customer.

9.3. If in relations with the customer there arise circumstances that are unusual or in case of which an employee of the obligated person becomes suspicious of money laundering or terrorist financing, this shall be reported immediately to the contact person at the Financial Intelligence Unit designated by the director / management board of the obligated person, who shall decide on the forwarding of the information to the Financial Intelligence Unit<sup>37</sup> and the postponement of the transaction.

9.4. If the postponement of a transaction may cause significant losses for the parties, its omission is impossible or may prevent the interception of the potential perpetrator of money laundering or terrorist financing, the transaction or official operation shall be performed and then the notification forwarded to the Financial Intelligence Unit.

9.5. The rules of procedure of an obligated person shall set out a code of conduct for the staff of the obligated person on the postponement of a transaction or official operation.

9.6. If a person's activity is not completely qualifiable as such an activity as should be reported to the Financial Intelligence Unit in accordance with the internal rules of procedure of an obligated person, intensified attention shall be paid to the customer's subsequent activity.

9.7. The background of each individual suspicious or unusual instance shall be investigated as much as shall be required for, amongst other things, the recording of the details of the transaction, and the circumstances detected to be analysed with the purpose of ascertaining the more typical features of the more common transactions.

9.8. The principal circumstances to which attention should be paid when suspicious and unusual transactions are analysed, shall be as follows:

- What is the suspicious circumstance about the operations, transactions or other circumstances?

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<sup>37</sup> In accordance with Clause 2, Subsection 3, § 31 of the MLTFPA, one of the duties of the contact person shall be the communication of information to the Financial Intelligence Unit in case of suspicion of money laundering or terrorist financing.

The Financial Intelligence Unit is within the area of administration of the Ministry of the Interior and is an independent structural unit of the Central Criminal Police. Detailed information is available on the webpage of the Financial Intelligence Unit: <http://www.politsei.ee/?id=814>.

- Is the obligated person convinced that it knows its customer to a sufficient extent or is it necessary to collect additional information about it?
- An obligated person shall make sure when identifying a customer or its representative that it has complied with the specified procedure. Was all the required information submitted for this or did additional information need to be requested or clarified otherwise?
- Ascertain if there have been repeated instances of suspicious operations and activities.

9.9. Information shall be forwarded to the Financial Intelligence Unit of the country that is party to the European Economic Area on whose territory the obligated person is operating. The internal rules of procedure may specify the conditions for the forwarding of relevant notices to the contact person at the parent company of the group company in accordance with legislative requirements governing data protection.

9.10. The rules of procedure of an obligated person shall specify both the conditions for the forwarding of information to the Financial Intelligence Unit as well as for the preservation of the forwarded information.

9.11. An obligated person shall preserve in a format which can be reproduced in writing all the information received from staff about suspicious or unusual transactions, also any information collected for analysing these reports and other related documents and any reports forwarded to the Financial Intelligence Unit along with information about the time of the forwarding of the report and the employee that forwarded it.

9.12. No customer or party participating in a transaction (including its representative or other related parties), with respect to whom suspicion is being communicated to the Financial Intelligence Unit, shall be notified of this.

## **10 Correspondent relationships**

10.1. When correspondent relationships are established by obligated persons with credit institutions in a third country, there shall be applied increased due diligence measures, the purpose of which shall be to:

- collect sufficient information about the correspondent institutions in order to fully understand the nature and reputation of the business activity of the institution, also obtain certification as to the quality of its supervision. In public sources, any possible connection of the correspondent institution with a suspicion of money laundering or terrorist financing, relevant investigation files or sanctions shall be checked;
- evaluate the mechanisms for the prevention of money laundering and terrorist financing of the institution and make sure these are adequate and effective;
- document the obligation/responsibility of both parties to the correspondent relationship in the area of the prevention of money laundering and terrorist financing, including the exchange of relevant information (conclusion of a relevant contract<sup>38</sup>).
- obtain from the management board of the obligated person consent to the establishment of a correspondent relationship.

10.2. The contract for a correspondent relationship concluded with a credit and financial institution from a third country or the rules of procedure of the relevant obligated person shall specify the

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<sup>38</sup> If a relevant provision is not included in the terms and conditions of the institution (correspondent bank) providing the service, the relevant obligations shall be governed by a separate agreement.

obligations of the parties, including the conditions for the application of due diligence measures to payable through accounts, that is, correspondent accounts to which a third party has direct access to effect transactions in its name, with respect to the customers with access<sup>39</sup>.

10.3. An obligated person shall not be allowed to open a correspondent account in a so-called shell bank or a bank where a shell bank has accounts<sup>40</sup>. Neither shall the opening of correspondent accounts be allowed in a bank where evaluation of the reliability of managers and of measures to prevent money laundering and terrorist financing uncovers deficiencies in view of relevant international standards or the circumstances assumed as the basis for the evaluation.

10.4. An obligated person shall be forbidden from establishing a correspondent relationship with an institution or company in any other third country that is not a credit or financial institution in accordance with Estonian law, yet whose principal and sustained business activity is similar to banking: an institution or company provides customers with the execution of transactions similar to the transactions referred to in Subsection 1, § 6, of the Credit Institutions Act, with no state supervision of the institution or the company.

## **11 Branches and subsidiary companies abroad**

11.1. Obligated persons registered in Estonia shall apply in all companies of the consolidation group, including offices, a branch and a subsidiary with a majority shareholding in a third country, due diligence measures and the requirements for information collection and preservation at least equivalent to the provisions of the MLTFPA.

11.2. If the legislation of a third country does not permit the application of equivalent measures, the credit and financial institutions shall notify the Financial Supervision Authority of this immediately and shall apply supplementary measures to prevent money laundering or terrorist financing.

11.3. Obligated persons operating in several different countries, including in a third country, shall avoid in their activity the application of standards differing by country. Standards approved in the European Union should be followed.

## **12 Business relationships and transactions with persons in whose country of residence or seat FATF recommendations are not applied**

12.1. In case of countries (including regions and countries with a low tax rate) where standards for the identification of a customer, document registration and preservation are lower than in Estonia, particular attention shall be paid to the content of documents of companies (including credit and financial institutions) registered in such countries, the manner of their presentation and quality.

12.2. Enhanced due diligence measures shall be applied in the case of persons whose country of origin has been included on the list by FATF of countries not contributing enough to the prevention

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<sup>39</sup> Such an obligation results from the circumstance that many credit institutions offering payable through accounts are unable in actual practice to identify or forward to competent law enforcement authorities any information on the parties using such accounts.

<sup>40</sup> A shell bank is a bank without a principal place of business or real management of operations in the country (mostly a country with a low tax rate) where it is located and where its operating license has been issued. The term “shell bank” refers to credit institutions or another company or institution in the area of activity of the credit institution engaging in activities of a similar nature that has no actual physical place of business with a purposeful concept and management at its location (that is, at the location of its management board or a body replacing it) and that is linked to no financial group of companies subject to public law regulation (is not in a consolidated group or conglomerate subject to consolidated supervision).

of money laundering<sup>41</sup> or in case of countries considered a tax-free territory or territory with a low tax rate<sup>42</sup>. The positions of other organisations (Moneyval<sup>43</sup>, European Commission<sup>44</sup>, OFAC<sup>45</sup> and others) regarding these countries shall be taken into account also.

12.3. The rules of procedure of an obligated person shall provide guidance on how to ascertain effectively and quickly whether this is a person whose place of residence or location is in a country not contributing enough to the prevention of money laundering.

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<sup>41</sup> Non-Cooperative Countries and Territories, FATF. The list of the relevant countries is available on the website: <http://www.fatf-gafi.org>.

<sup>42</sup> <http://www.emta.ee/?id=1950>.

<sup>43</sup> [http://www.coe.int/t/dghl/monitoring/moneyval/default\\_EN.asp](http://www.coe.int/t/dghl/monitoring/moneyval/default_EN.asp).

<sup>44</sup> [http://ec.europa.eu/external\\_relations/cfsp/sanctions/index.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/index.htm).

<sup>45</sup> <http://www.ustreas.gov/offices/enforcement/ofac/>.



Annex 1 to: “Further Measures at Credit and Finance Institutions for the Prevention of Money Laundering and terrorist financing”, advisory guidelines by the Financial Supervision Authority

**List and examples of customers registered in more common countries or regions with low tax rates<sup>46</sup>**

- **BELIZE:**
  - Certificate of Incorporation
  - Certificate of Good Standing issued by the Registrar
  - Certificate of Incumbency issued by the Registered Agent
  - Notarial Certificate
  - Apostille
- **CYPRUS**
  - Certificate of Incorporation
  - Certificate of Directors & Secretary
  - Certificate of Shareholders
  - Certificate of Registered office
  - Certificate of Good Standing issued by the Registrar
  - Certificate of Tax Residence
  - Certificate of Incumbency issued by the Registered Agent
  - Apostille
- **DELAWARE CORP.**
  - Certificate of Incorporation
  - Certificate of Good Standing issued by the Secretary of State
  - Status Letter issued by the Registered Agent
  - Apostille
- **DELAWARE LLC**
  - Certificate of Formation
  - Certificate of Good Standing issued by the State Secretary
  - Status Letter issued by the Registered Agent
  - Notarial Certificate
  - Apostille
- **GIBRALTAR**
  - Certificate of Incorporation
  - Certificate of Good Standing issued by the Registrar
  - Notarial Certificate
  - Apostille
- **LONDON LLP**
  - Certificate of Incorporation
  - Apostille
  - Notarial Certificate
- **LONDON LTD.**
  - Certificate of Incorporation
  - Certificate of Good Standing issued by the Companies House

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<sup>46</sup> The sources of the sample documents include various webpages. The Financial Supervision Authority assumes no liability for changes in the currency and applicability of the samples provided herein. Samples are available electronically in Annex 1 to these Guidelines: [www.fi.ee/.....](http://www.fi.ee/.....).

- Notarial Certificate
- Apostille
- **NIUE**
  - Certificate of Incorporation
  - Certificate of Good Standing issued by the Registrar
  - Certificate of Incumbency issued by the Registered Agent
  - Notarial Certificate
  - Apostille
- **SEYCHELLES**
  - Certificate of Incorporation
  - Certificate of Good Standing issued by the Registrar
  - Certificate of Incumbency issued by the Registered Agent
  - Notarial Certificate
  - Apostille
- **THE BAHAMAS**
  - Certificate of Incorporation
  - Certificate of Good Standing issued by the Registrar
  - Certificate of Incumbency issued by the Registered Agent
  - Notarial Certificate
  - Apostille
- **THE BRITISH VIRGIN ISLANDS**
  - Certificate of Incorporation
  - Certificate of Good Standing issued by the Registrar
  - Certificate of Incumbency issued by the Registered Agent
  - Notarial Certificate
  - Apostille
- **WASHINGTON DC LLC**
  - Certificate of Organization
  - Certificate of Good Standing issued by the Government of the District of Columbia
  - Status Letter issued by the Organizer
  - Apostille