

FINANCIAL CRIME GUIDE (AMENDMENT No 4) INSTRUMENT 2020

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000;
 - (2) regulation 120(1) (Guidance) of the Payment Services Regulations 2017; and
 - (3) regulation 60(1) (Guidance) of the Electronic Money Regulations 2011.

Commencement

- B. This instrument comes into force on 1 October 2020.

Amendments to material outside the Handbook

- C. The Financial Crime Guide: A firm’s guide to countering financial crime risks (FCG) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Financial Crime Guide (Amendment No 4) Instrument 2020.

By order of the Board
30 September 2020

Annex

Amendments to the Financial Crime Guide: A firm's guide to preventing crime (FCG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Money Laundering and terrorist financing

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3.2 Themes

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3.2.4 Customer due diligence (CDD) checks

Firms must **identify** their customers and, where applicable, their beneficial owners, and then **verify** their identities. Firms must also understand the **purpose** and **intended nature** of the customer's relationship with the firm and collect information about the customer and, where relevant, beneficial owner. This should be sufficient to obtain a complete picture of the risk associated with the business relationship and provide a meaningful basis for subsequent monitoring.

Firms should note that CDD measures also apply when contacting an existing customer as part of any legal duty in the course of a calendar year for the purpose of reviewing information which is relevant to the risk assessment of the customer, and relates to beneficial ownership of the customer.

Firms should also note that CDD measures must also be applied when the relevant person has to contact an existing customer in order to fulfil any duty under the International Tax Compliance Regulations 2015.

CDD measures must also include taking reasonable steps to understand the ownership and control structure of a customer where the customer is a legal person, trust, company, foundation or similar legal arrangement.

Firms are required to keep written records in circumstances where all possible means of identifying the beneficial owner of a *body corporate* have been taken and the beneficial cannot be identified satisfactorily or at all. In circumstances where the beneficial owner of a *body corporate* cannot be identified, reasonable measures must be taken to verify the identity of the senior person in the *body corporate* responsible for managing it. In doing so, firms should keep written records made of the actions taken and any difficulties encountered.

Firms are required to collect proof of company registration (or an excerpt from the register) before establishing a business relationship with certain legal entities including a company subject to the requirements of Part 21A of the Companies Act 2006, a limited liability partnership or an eligible Scottish partnership. Firms are required to report to Companies House discrepancies between this information and information which otherwise becomes available to them in the course of complying with the *Money Laundering Regulations*. Firms may wish to refer to further guidance from the Companies House.

In situations where the money laundering risk associated with the business relationship is increased, banks must carry out additional, enhanced due diligence (EDD). *FCG 3.2.8G* below considers enhanced due diligence.

Where a firm cannot apply customer due diligence measures, including where a firm cannot be satisfied that it knows who the beneficial owner is, it must not enter into, or continue, the business relationship.

Firms should note that an electronic identification process may be regarded as a reliable source for the purposes of CDD verification where that process is independent of the person whose identity is being verified, secure from fraud and misuse and capable of providing an appropriate level of assurance that the person claiming a particular identity is in fact that person with that identity.

Self-assessment questions:

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See regulations 5, 6, 27, 28, 30A, 31, 33, 34 and 35 of the *Money Laundering Regulations*.

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3.2.7 Handling higher risk situations

The law requires that firms' anti-money laundering policies and procedures are sensitive to risks. This means that in higher risk situations, firms must apply enhanced due diligence and ongoing monitoring. **Situations that present a higher money laundering risk** might include, but are not restricted to: customers linked to higher risk countries or business sectors; or who have unnecessarily complex or opaque beneficial ownership structures; and transactions which are unusual, lack an obvious economic or lawful purpose, are complex or large or might lend themselves to anonymity.

Firms must take account of risk factors set out under regulation 33(6) which relate to customer risk, product risk and geographical risk when assessing whether there is a high risk of money laundering or terrorist financing in a particular situation and the extent of measures which should be taken to manage and mitigate that risk.

The *Money Laundering Regulations* also set out some scenarios in which specific enhanced due diligence measures have to be applied:

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- **~~Business relationships or transactions with a person established in a high risk third countries~~ a 'relevant transaction' where either party is established in a high risk third country: the *Money Laundering Regulations* ~~define~~ defines:**
- (a) a high-risk third country as being one identified by the EU Commission by a delegated act. See EU Regulation 2016/1675 (as amended from time to time);

- (b) a relevant transaction as being a transaction in relation to which the relevant person is required to apply customer due diligence under Regulation 27;
- (c) established in a country in the case of a legal person as being the country of incorporation or principal place of business, or, in the case of a financial institution or credit institution, where its principal regulatory authority is.

In these scenarios, EDD must include specified measures which include obtaining additional information on the customer, the beneficial owner, the intended nature of the business relationship, source of funds and wealth, reasons for the transactions and senior management approval for the business relationship. Conducting enhanced monitoring is also a requirement.

- **Other transactions:** EDD must be performed:
 - (a) in any case where a transaction is complex ~~and~~ or unusually large, or there is an unusual pattern of transactions, ~~and~~ or the transaction or transactions have no apparent economic or legal purpose. In this scenario, there are specified EDD measures which must include, as far as reasonably possible, examining the background and purpose of the transaction and increasing the degree and nature of monitoring of the business relationship in which the transaction is made to determine whether that transaction or that relationship appears to be suspicious;
 - (b) in any other case which by its nature can present a higher risk of money laundering or terrorist financing.

Where the customer is the beneficiary of a life insurance policy, is a legal person or a legal arrangement, and presents a high risk of money laundering or terrorist financing for any other reason, credit and financial institutions must take reasonable measures to identify and verify the identity of the beneficial owners of that beneficiary before making a payment under the life insurance policy.

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