

DIRECTIVE 5

RELATING TO THE RISK-BASED APPROACH, AND THE CLARIFICATION AND VIGILANCE MEASURES

Principle

- 1 The financial intermediary puts into practice a risk-based approach, taking into account inherent risks, risk indicia and consistent risks that persist after clarification and increased-vigilance measures have been taken, from the outset and throughout the business relationship.

Business relationships involving increased risks ¹

- 2 A financial intermediary who has more than 20 lasting business relationships draws up criteria and puts in place effective surveillance of the business relationships involving inherent increased risks.
- 3 The following criteria generally come into consideration, depending on the business sector of the financial intermediary:
 - a. the registered office or the domicile of the contracting party, the controlling owner or the beneficial owner of the assets, in particular if it is established in a country deemed by the Financial Action Task Force (FATF) to be high risk or uncooperative, as well as the nationality of the contracting party or the beneficial owner of the assets;
 - b. the nature and place of business of the contracting party or the beneficial owner of the assets, in particular when a business activity is carried out in a country which the FATF deems to be high risk or uncooperative;
 - c. the lack of any meeting with the contracting party and the beneficial owner;
 - d. the type of services or products requested;
 - e. the amount of the assets remitted;
 - f. the amount of the incoming and outgoing assets;
 - g. the country of origin or destination of frequent payments, in particular for payments made to or from a country that the FATF deems high risk or uncooperative;
 - h. the complexity of the structures, in particular if several domiciliary companies are used or a domiciliary company with fiduciary shareholders is used in a non-transparent jurisdiction, without any clearly-understandable reason or for the purpose of investing assets on a short-term basis;
 - i. frequent transactions involving increased risks.

Based on its risk analysis, the financial intermediary determines for each of these criteria whether it is relevant to its business activity. It specifically defines the relevant criteria in internal directives and takes them into account to identify its business relationships involving increased risks.

Business relationships involving persons established in a country which the FATF deems to be high risk or uncooperative and for which it calls for increased diligence to be exercised, in particular if they are acting in the capacity of a contracting party or controlling owner or beneficial owner of assets, or as an agent, body, representative or holder of power of attorney, must be deemed in all cases to be business relationships involving increased risks.

Politically exposed persons

- 4 Business relationships involving politically exposed persons abroad within the meaning of Article 2a subsection 1 letter a MLA or persons related to them within the meaning of Article 2a subsection 2 MLA must always be deemed to be business relationships involving inherent increased risks and be subject to increased vigilance.
- 5 When they comprise one or more additional risk criteria, the following business relationships must also be considered to involve increased risks: those involving:
 - a) politically exposed persons in Switzerland;
 - b) persons who are politically exposed due to the fact that they hold senior executive positions in international or inter-governmental organisations;
 - c) persons who are politically exposed due to the fact that they hold senior executive positions in international sports federations;
 - d) related persons, within the meaning of Article 2a subsection 2 MLA, persons according to letters a to c above.
- 6 Business relationships involving increased risks according to Articles 4 and 5 above, whatever the capacity in which politically exposed persons or related persons are involved, in particular if they have the status of contracting party, or controlling owner, or beneficial owner of the assets, or of an agent, organ, representative or holder of a power of attorney.

Transactions involving increased risks

- 7 The financial intermediary sets criteria and establishes means of detecting transactions involving inherent increased risks.
- 8 The following criteria generally come into consideration, depending on the business sector of the financial intermediary:
 - a. the amount of the incoming and outgoing assets;
 - b. the country of origin or destination of payments, in particular for payments made to or from a country which the FATF deems to be high risk or uncooperative¹;
 - c. the existence of significant divergences in relation to the nature, volume or frequency of the transactions usually conducted in the context of the business relationship;

- d. the existence of significant divergences in respect of the nature, volume or frequency of the transactions usually conducted in the context of the business relationship or comparable business relationships.
- 9 The following transactions are in all cases deemed to involve increased risks:
- a) those that are initiated by politically exposed persons;
 - b) in the context of which, at the beginning of a business relationship, assets with an equivalent value of more than CHF 100,000 are contributed physically in a single transaction or staggered over time ¹;
 - c) those that involve domiciliary companies or complex structures.
 - d) those that involve payments made to or from a country which the FATF deems to be high risk or uncooperative and for which it calls for increased diligence to be exercised ¹.

Transfer of funds and assets

- 10 Transfers of funds and assets are in all cases deemed to be transactions involving increased risks when one or more apparently interconnected transactions reach or exceed the amount of CHF 5,000.

Indicia of money laundering or terrorism financing

- 11 The financial intermediary shall draw up an internal list concerning detection of business relationships, whether lasting or not, and of transactions presenting indicia of a felony, money laundering, terrorism financing or belonging to a criminal organization.
- 12 This list will be drawn up by the financial intermediary on the basis of his experience and will be continually adapted to take account of the changes in circumstances, the special characteristics of the company and the new money laundering and terrorism financing methods. Its use must not lead to routine behaviour patterns. The financial intermediary may also base himself on the list of indicia annexed to the FINMA Anti Money Laundering Ordinance, and on the reports of the Money Laundering Reporting Office (MROS) and the Financial Action Task Force on Money Laundering (FATF).

“Cross border” risk

- 13 A financial intermediary who controls business establishments or companies abroad, or who is engaged in a foreign-oriented business activity, must determine, limit and control on a global basis the risks relating to money laundering and terrorism financing to which he is exposed.

Clarifications in the event of increased risks or indicia of money laundering ²

- 14 In the case of business relationships or transactions involving increased risks or indicia of illicit activities, money laundering or terrorism financing, the financial intermediary shall be obligated to undertake additional clarifications to the extent necessary to judge the legal-

ty of the economic background and the purpose of the business relationship or the transaction and the origin of the assets involved. It shall check or verify again in particular:

- a. whether the contracting party is indeed the beneficial owner of the assets remitted;
- b. the origin and source of the assets remitted;
- c. in the case of transfers of funds or assets: the identity of the recipient of the transfer;
- d. the purpose for which the assets withdrawn are used;
- e. the economic background of the transactions;
- f. the origin of the wealth of the contracting party and the beneficial owner of the assets;
- g. the professional or commercial activity engaged in by the contracting party and the beneficial owner of the assets;
- h. whether the contracting party, the controlling owner or the beneficial owner of the assets are politically exposed persons.

Means of clarification

15 Depending on the circumstances, the clarifications are based in particular on:

- a. the information about the client gathered since the initiation of the business relationship;
- b. collecting written or oral information from the contracting parties, their controlling owners or the beneficial owners of the assets that are the subject of the business relationship;
- c. visits to the places where the contracting parties, controlling owners or beneficial owners of the assets conduct their business;
- d. consultation of the sources and databases accessible to the public;
- e. information obtained from trustworthy persons.

16 The financial intermediary checks whether the results of the clarifications are plausible and documents them. If the financial intermediary does not submit a report because he was able to rule out suspicions after additional clarifications pursuant to Art. 6 AMLA, he must document the reasons.³

The financial intermediary who carries out transfers of funds and assets must use an effective computer system to detect and monitor transactions involving increased risks. The transactions detected by the computerized monitoring system must be examined and processed within a reasonable period.

Time of the clarifications²

17 A financial intermediary who observes indicia of illicit acts, money laundering or terrorism financing or the presence of increased risks in a business relationship or transaction shall conduct the additional clarifications as quickly as possible.

Failure of clarification ²

- 18 When the financial intermediary does not exercise its right to report even though, in spite of the clarification, it still has doubts about the business relationship, it shall document the reasons for its doubts so as to be able to justify the lack of a report.

Increased vigilance

- 19 Increased vigilance shall be exercised through closer monitoring and more frequent controls of the business relationship, for a renewable determined period of time, by the MLA Officer and every member of the financial intermediary's staff participating in the business relationship.

Organizational measures

- 20 The internal directives that set the criteria for increased risks and the indicia for money laundering must be circulated to all the persons participating in the business relationships subject to the MLA. The knowledge of the persons concerned must be updated regularly.

In order to be able to determine whether a transaction or a business relationship requires clarification or increased vigilance, it is essential that the financial intermediary's staff have a good knowledge of the clients and their activities from the start of the business relationship, and carefully monitor the transactions conducted throughout it.

Procedure

- 21 If a member of the financial intermediary's staff detects a business relationship or a transaction involving an increased risk, or has doubts about an illicit activity, money laundering, terrorism financing or the truthfulness of the information obtained concerning the identity of the contracting party or the identification of the controlling owner or the beneficial owner, he must immediately inform the MLA Officer thereof.
- 22 The MLA Officer shall decide whether it is necessary to carry out clarification and/or to exercise increased vigilance.
- 23 In case of clarification, his reasons, modalities, results and conclusions, particularly as to the existence of a founded suspicion or as to the appropriateness of entering into or continuing the business relationship, shall be the subject of a written report from the MLA Officer to the management, a dated and signed copy of which shall be placed in the file concerning the business relationship.
- 24 If it is necessary to subject the business relationship to increased vigilance, its processing shall be the subject of distinctive signs which will allow its systematic location by the staff concerned, and an adequate note shall be recorded in the MLA Register. During the MLA audit the MLA Officer shall spontaneously inform the Auditor on the cases which are the subject of clarifications and those which are subject to increased vigilance and transmit to him copies of the reports drawn up in the course of the financial year.

- 25 All the cases that required clarification are recorded, together with the documents that they comprise, and are subject to the periodical MLA audit.²

Classification of consistent risks

- 26 The intermediary shall draw up a classification of the consistent risks of all his business relationships, taking into account the inherent normal and increased risks, the money laundering indicia and the result of the clarifications and vigilance measures. It involves at least two degrees.

This classification is applied to each business relationship from its initiation and throughout its existence and is updated periodically by the MLA Officer. The financial intermediary shall take the organizational, vigilance and follow-up measures specific to each degree of the classification.

¹ In accordance with Committee resolution of 04 March 2019 and a FINMA ratification of 20 February 2019

² In accordance with Committee resolution of 02 December 2019 and FINMA ratification of 23 January 2020

³ In accordance with Committee resolution of 20 March 2023 and FINMA ratification of 25 April 2023

Annex: list of money laundering indicia