Revised Implementing Procedures Part 1 – Section 4.4 Purpose & Intended nature of the business relationship & Customer Business / Risk Profile

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Daniel Frendo
Overview of Session

- Why is the gathering of information and documentation in understanding and assessing the purpose and intended nature of the business relationship necessary?
- What to look for to properly understand and assess the purpose and intended nature of the business relationship?
- What is a Customer Risk Profile & What should it include?
- Gathering of information – necessary vs. disproportionate / irrelevant?
- What are the concepts of SoW & SoF?
- SoW & SoF in the context of a business relationship & occasional transaction?
Purpose & Intended Nature of a Business Relationship & Business & Risk Profile of Customer - Introduction

- Regulation 7(1)(c) – PMFLTR

One of the cornerstones of CDD obligations is that of assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship, and establishing the business and risk profile of the customer.

- **two limbs**: purpose & intended nature of the business relationship and customer’s business and risk profile
WHY is this assessment & gathering of information necessary?

✓ To determine whether a service/product provided makes sense in the customer's situation and profile

• economic and logical sense – knowing what are you going to do for and why

✓ To contribute to the customer risk assessment and ensure that the customer falls within your risk appetite

• Information/documentation used in conducting the customer risk assessment should shed light whether customer and what is being requested falls within your risk appetite
Cont. WHY is this assessment & gathering of information necessary?

✓ To determine the appropriate risk mitigating measures which need to be adopted commensurate to the threats and risks identified

• Information/documentation should give a clear picture of what is the level of risk, as well as the type of threats

✓ To carry out effective ongoing monitoring

• Understand clearly the expected behaviour, including the expected nature and level of activities and transactions
WHAT to look for when assessing the Purpose and Intended Nature of the Business Relationship

- **Purpose** - the *reason* for which the business relationship is being established

- **Intended Nature** – the *aim* or *plan* (intent) *how* that business relationship will take its course
  - There is a very *fine line* between the two

- **Example:**
  - A’s purpose to open a bank account is the *same* as B’s purpose – to deposit and hold monies in;
  - A intends to use that account for his self-employment related activities, *whereas* B plans to use that account as a salary account
Understanding the Purpose of the Business Relationship

- **Self-evident** purpose – given the nature & purpose of the service/product
  
  **Example:**
  
  - Opening an account with an online gaming licensee: the product/service offered can only be used by the client for gaming purposes. Hence, no reason to ask for information/documentation in this regard.

- **Multiple** purpose – the service/product can be used for different purposes
  
  **Example:**
  
  - Foreign BO setting up a Malta Co and asking for directorship services: the reasons why is this Co being set up in Malta may be numerous. Hence, one is expected to determine the purpose and reasons, including through:
    - Relevant background information – type of Co (holding/trading) and its structure (complex/simple);
    - Holding (what is it to hold) / Trading (objects of trade/line of business)
Understanding the Intended Nature of the Business Relationship

- **HOW is the business relationship expected to develop**

- One is expected to understand:
  - ✓ Type of transactions (e.g. Inward, outward)
  - ✓ Level of activity (e.g. Frequent, sporadic)
  - ✓ Amounts involved (e.g. Large transactions, smaller transactions)
  - ✓ Jurisdictional links
  - ✓ Other relevant information such as projected turnovers

- This information is beneficial to conduct a comprehensive Customer Risk Assessment and **equally important** to be in a position to carry out **proper** and **meaningful monitoring** of the business relationship
WHAT is a Customer Risk Profile & WHAT should it include

- 2\textsuperscript{nd} limb of Regulation 7(1)(c) of the PMLFTR – to establish the Business & Risk Profile of the Customer

- Customer Risk Profile – set of information and documentation relevant to the customer and which should be utilised to strengthen the Customer Risk Assessment

- One is expected to collect information (and where necessary, back it up with documentation) on:
  - Business, occupation, employment & other activity from which customer generates his/her wealth
  - Expected source and origin of funds to be used
  - Anticipated level and nature of transaction that is to be undertaken
Cont. WHAT is a Customer Risk Profile & WHAT should it include

- Kind and level of information and documentation requested needs to be varied depending on the outcome of the customer risk assessment and the type of product/service being requested

Examples:
1. Requesting information on the anticipated level and nature of activity in case of a long-term insurance policy with fixed monthly premia is unnecessary since that is a given.

2. Requesting information on the anticipated level and nature of activity in case of an investment account is crucial to understand the frequency and level of investment, particularly for monitoring purposes.
Necessary vs. Disproportionate & Irrelevant Information

- Necessary Information/documentation – **nothing more** and **nothing less** than what is **required** to understand the purpose and intended nature of business relationship / compile a Customer Risk Profile, i.e. in line with the RBA.

- When necessary information should be of **sufficient quality** and not merely generic – e.g. mere reference to “business” or “employment” is not sufficient. One is expected to obtain more information to have more insight (colour) on that particular “business” or “employment”.

- One should always seek to collect necessary information, refraining from requesting **disproportionate**, **excessive** or **irrelevant** information:
  - Disproportionate / Excessive: anything that is **too intrusive**, when other less intrusive information that fulfills same purpose can be requested
  - Irrelevant: anything that **does not add value** to the profile, **does not serve** to mitigate risks, or **does not provide** any reassurance relevant to ML/FT risks.
Source of Wealth & Source of Funds

- **Source of Wealth** - refers to the **economic activity** or activities which generate the customer’s **wealth** – not to be interpreted as having to conduct an audit of the customer’s wealth generated during his/her lifetime.

  ✓ **Aim of information obtained** – get an indication as to the **volume** (amount) of wealth of the customer + get a picture as to **how was it acquired** (generated)

- **Source of Funds** – refers to the activity which **generated** the funds of a **particular transaction** (which may be both inward / outward transaction)

  ✓ **Aim of information obtained** – establish the **fund’s origin** and how such were **acquired**
SoW & SoF vis-à-vis Business Relationships and Occasional Transactions

- Establishing the SoW is a requirement in the case of a business relationship.
- Establishing the SoF is a requirement in the case of a business relationship, when and where this is necessary.
  
  Example: a transaction which is not fully consistent with the customer’s business and risk profile.

- Establishing the SoW & SoF may also be required in the context of an occasional transaction.
  
  Example: an occasional transaction is assessed to pose a higher risk of ML/FT and hence entails the taking of an EDD measure/s.

  Most effective mitigating measures is likely to be that of querying on the SoW & SoF – obtaining information on how the funds have been acquired + concluding whether this makes sense considering the Customer’s SoW.
SoW & SoF vis-à-vis ongoing monitoring

- **SoW** is identified at the **beginning** of the Business Relationship – information thereon is to be **updated** as necessary during the course of the relationship.

- **SoF** is requested at the **beginning** of the Business Relationship (**expected** source of funds) + **if and when** during the relationship there is doubt that a transaction being undertaken is **not in line** with the customer’s business and risk profile.

- **Extent** and **level** of detail of information/documentation in establishing SoW and SoF depends on the **customer risk assessment** – in accordance with the RBA.

- **Ultimate aim** is that one is able to form a **reasonable conclusion** that:
  1. The customer’s wealth has been generated **legally**; and
  2. Funds used in carrying out transactions are **legitimate**.
Thank you for your attention