Reliance and Outsourcing

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PART I - RELIANCE
Reliance – The Basics (1)

• Reliance can take place where a customer comes in touch with a number of subject persons and/or third parties subject to equivalent AML/CFT obligations.

  **Example:** Maltese CSP on-boards a customer and agrees to incorporate a company for him in Malta. The same customer has also been on-boarded by a Jersey CSP to establish another company there.

  A real estate agent is servicing customers who have also engaged the services of a notary public to publish the deed of sale for an immovable property.

• All other things being equal, why should a customer have to provide identical information and documentation repeatedly to different subject persons?
Reliance – The Basics (2)

• In such scenarios, a subject person can refrain from carrying out specific Customer Due Diligence measures himself and rely on those already carried out by another subject person or entity subject to equivalent AML/CFT obligations.

• Reliance is limited to:
  
  ➢ The identification of the customer and of the beneficial owner(s);
  ➢ The verification of the identity of the above; and
  ➢ Collecting information on the nature and purpose of a business relationship and on the business and risk profile.

• All other Customer Due Diligence measures (especially on-going monitoring) have to be carried out by the subject person exercising reliance.
Reliance – Responsibility at Law

• The subject person who decides to exercise reliance remains responsible to ensure adherence and compliance with all his AML/CFT obligations at law.

  Reliance is no excuse for failure to comply with AML/CFT obligations

  ➢ Same obligations but it does not automatically mean that the party being relied upon is fulfilling them in full and as expected of him.

  ➢ The level of risk that a customer may present to the party being relied upon need not be the same as that presented to the party exercising reliance.

  ➢ The measures applied by the party being relied upon may not be equivalent to those applied by the party exercising reliance in the same circumstances.
Reliance – Third Parties (1)

- The PMLFTR 2017 allow reliance to be exercised on subject persons and third parties that meet specific conditions.

- The third party must be:
  - A person or institution undertaking activities equivalent to relevant activity or relevant financial business;
  - Member organisations or representative bodies of such persons;
  - Other institutions or persons in an EEA Member State or third country.

- The third party must also:
  - Apply customer due diligence and record keeping measures consistent with the PMLFTR; and
  - Be subject to supervision consistent with what is laid down in the 4 AMLD.
Reliance – Third Parties (2)

• Consistency of AML/CFT obligations should at least cover:

  ➢ Identification details of the customer and the beneficial owner;
  ➢ Instances when EDD measures become applicable;
  ➢ Timing of CDD measures;
  ➢ Record keeping and retention requirements;
  ➢ AML/CFT policies and procedures; and
  ➢ Supervision of all the above.

• Assess level of effective supervision
Reliance – Carrying out Reliance

• Subject person to obtain information on the customer immediately:
  
  ➢ Identification details for the customer;
  ➢ Identification details for the beneficial owner; and
  ➢ Information on the nature and intended purpose of the business relationship, and on his risk and business profile.

• Information to be obtained prior to entering into the business relationship or carrying out the occasional transaction.

• Documentation to be obtained once demanded by the subject person exercising reliance and not automatically in all instances.
Reliance – The Reliance Agreement

• The need for a reliance agreement to formalize the terms and conditions of the reliance arrangement, especially under what conditions, when and how information, documentation and data is to be made available.

• The reliance arrangement should be tested from time to time to see with what rapidity documentation and data is made available by the party being relied upon.

• In this context, one has to factor in the time allowed by the PMLFTR to respond to a request for information by the FIAU.
Reliance – Issues

• Reliance may not be exercised in cases of entities situated in non-reputable jurisdictions unless they form part of an EEA group that is bound by group wide policies and procedures.

• While on-going monitoring is excluded from the ambit of reliance, keeping documentation up-to-date requires that there actually be a degree of reliance on the party being relied upon.

• Have to cater for situations where the party relied upon terminates its relationship with the customer or the retention period expires prior to that of the party exercising reliance.
PART II – OUTSOURCING
Outsourcing – What is Outsourcing?

• Engaging a third party to carry out an activity, process or service that would normally be carried out by yourself

• Does not extend to the acquisition of software or licences to databases so as to meet regulatory requirements.

• Outsourcing is not reliance – the third party has no relationship with the customer and need not have any AML/CFT obligations at law.

• Outsourcing is not agency – the agent forms part of the subject person and is therefore applying its own policies and procedures.

Outsourcing does not limit the subject person’s responsibility at law
Outsourcing – Responsibilities of the Subject Person (1)

- Adoption and approval of controls, measures, policies and procedures remain the responsibility of the subject person.

- Monitor how the engaged third party is applying the implementation of the outsourced measures and procedures to ensure that:
  - They are being carried out in terms of law; and
  - In line with the subject person’s own controls and policies.

- Have in place contingency plans to ensure continuation in case of sudden termination of the outsourcing arrangement.
Outsourcing – Responsibilities of the Subject Person (2)

- Outsourcing is permissible only with respect to the implementation of:
  - Risk assessment procedures
  - Customer Due Diligence procedures
  - Record keeping obligations

- Outsourcing of the MLRO function is only possible in specific circumstances that are expressly provided for.

- Whether to on-board a customer and continue to pursue a business relationship remains the responsibility of the subject person.
Conditions for Outsourcing

• Consider whether outsourcing exposes the subject person to ML/FT risks or increases the risk to which it is already exposed.

• Any such assessment should be documented and any risks identified monitored.

• Assess the quality of the third party being engaged:
  - No negative impact on compliance with the law and supervision
  - Resources, skills, qualifications and authorisations
  - Proposed implementation is in line with legal and regulatory requirements
  - The third party is in good standing and there is no adverse information
  - The outsourcing can take place in full respect of any data protection, confidentiality and professional secrecy obligations to which the subject person is subject.

• Outsourcing to result from an agreement in writing.
Outsourcing Agreement (1)

• What is being outsourced and how is it to be carried out

• How is the performance of the service provider to be monitored and what actions can the subject person take to rectify any shortcomings

• Access to records, information and data in a manner that the subject person can comply with its obligations at law, especially with regards to filing STRs and responding to requests for information

**IMPORTANT** NO DISCLOSURE THAT THERE HAS BEEN A REQUEST FOR INFORMATION OR THAT ONE IS TO FILE A STR

• Segregation of data, information and documentation collected on behalf of the subject person
Outsourcing Agreement (2)

- The circumstances leading to termination and how termination is to be carried out

- Ownership of data, information and documentation

- Processing of data, information and documentation in line with data protection, confidentiality and professional secrecy obligations and requirements

- Sub-contracting has to be agreed to beforehand between the subject person and the third party

- Access by FIAU officials and its agents to premises of the service provider and to data, information and documentation collected on behalf of the subject person
THANK YOU
QUESTIONS?