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**FMA Guideline 2005/1**

**Monitoring of business  
relationships**

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## **1. Purpose and significance of the Guideline**

Article 13, paragraph 1 of the Due Diligence Act (DDA) requires entities subject to due diligence to monitor their expected long-term business relationships. This monitoring is necessary to enable inquiries to be carried out in accordance with article 15 DDA.

According to article 28, paragraph 1, subparagraph a of the DDA, the Financial Market Authority (FMA) may, inter alia, issue guidelines. In addition, the FMA may, according to article 13, paragraph 2 DDA, issue certain binding risk criteria for the monitoring of business relationships in a guideline. Finally, the FMA issues, following consultation with the Financial Intelligence Unit (FIU), a guideline concerning indicators for money laundering, according to article 23 of the Due Diligence Ordinance (DDO).

## **2. Scope of application**

This Guideline applies to all entities subject to due diligence according to article 3, paragraphs 1 and 2 DDA.

Entities subject to due diligence may not misuse their foreign branches and foreign associated companies to circumvent this Guideline. They must ensure that the FATF recommendations which apply to them are adhered to by associated companies and branches in countries which are not members of the FATF, except insofar as local regulations prevent their doing so.

## **3. Risk criteria**

Risk criteria according to article 13 paragraph 2 DDA are in particular:

- a) Physical presentation of assets to the equivalent value of more than CHF 100,000 in one step or staged when the business relationship is established;
- b) Business relationships with politically exposed persons (article 1, subparagraph c of the DDO); or
- c) indicators for money laundering according to the Annex of this Guideline. In their internal instructions, entities subject to due diligence must specify the threshold amounts above which inquiries are obligatory, insofar as the indicators are measurable. They may specify different maximum values for differentiated risk categories;

## **4. Scope of the inquiries**

In cases where inquiries are required, entities subject to due diligence must obtain the information which enables them to evaluate the background adequately, and verify the plausibility of this information.

Entities subject to due diligence must record the results of their inquiries in a report and keep this report in the due diligence files (article 20 DDA).

Depending on the circumstances of the individual case, information must be obtained and documented in particular on the following points (insofar as these points are not already covered by the profile of the business relationship):

- a) the purpose and nature of a given transaction;
- b) the financial circumstances of the contracting party or beneficial owner, insofar as the entity subject to due diligence has knowledge of these circumstances;
- c) the professional or business activities of the contracting party, the beneficial owner, or the effective founder of a legal entity that does not operate commercially in the domiciliary State;
- d) the origin of the assets deposited or invested.

Obtaining of information from third parties and consultation of experts when conducting inquiries concerning the background is expressly permitted.

Declarations by the client concerning the background of such transactions must be verified with respect to plausibility. The essential point here is that not every declaration by the client can be accepted at face value.

## **5. Action once inquiries have been carried out**

### **5.1. Continuation of the business relationship where no doubts exist**

If the circumstances or transactions that are subject to inquiries according to article 15 DDA can be explained in a plausible manner, the business relationship may be continued unchanged.

### **5.2. Continuation of the business relationship subject to special monitoring**

If the entities subject to due diligence continue the business relationship despite having doubts, but without a suspicion within the meaning of article 16, paragraph 1 DDA, they must monitor the course of the business relationship in more detail.

### **5.3. Discontinuation of the business relationships**

If the entities subject to due diligence have doubts, but not a suspicion within the meaning of article 16, paragraph 1 DDA, and therefore discontinue the business relationship, they may only allow the assets to be withdrawn in a form which enables the prosecution authorities, if necessary, to continue to follow the paper trail; they may not pay out money in cash or physically release securities and precious metals, unless the contracting party has fulfilled its obligations in full.

The entities subject to due diligence should not discontinue the business relationship or allow the withdrawal of large amounts if there are concrete indications that action by the authorities is imminent.

## **6. Auditors and auditing offices**

Persons entrusted with carrying out audits as specified in articles 24 and 25 DDA shall review compliance with this Guideline.

## **7. Entry into force**

This Guideline was approved by the Board of the FMA and enters into force on 1 February 2005. Guideline 2002/1 issued by the Due Diligence Unit was repealed by resolution of the Government of 11 January 2005.

Annex: Indicators of money laundering

## **Annex: Indicators of money laundering**

### **I. Significance of the indicators**

The purpose of the indicators of possible money laundering listed below is to raise awareness among entities subject to due diligence. They apply to expected long-term business relationships as well as to expected short-term business relationships. In themselves, however, the individual indicators do not constitute sufficient grounds for suspicion to trigger the reporting obligation; they are, however, grounds for conducting background inquiries as specified in article 15 DDA.

Above all, however, the list of indicators is not in any way exhaustive and also needs to be continually adapted to changed circumstances and new methods of money laundering. It should be used as an aid and not become the basis of routine actions to the exclusion of basic common sense.

### **II. General indicators**

Particular risks with regard to money laundering attach to transactions

- A1 the design of which indicates an illegal purpose, the financial purpose of which is not apparent, or which even appear financially counterproductive;
- A2 where assets are withdrawn again shortly after being received by the financial intermediary (throughput accounts), unless the nature of the client's business activity provides a plausible reason for this immediate withdrawal;
- A3 which lie outside the usual business activity or the usual client group of a given financial intermediary or a given branch of a financial intermediary and where it cannot be ascertained why the client has chosen this particular financial intermediary or branch for its business;
- A4 which lead to a previously largely inactive account becoming very active, without a plausible reason for this being apparent;
- A5 which cannot be reconciled with the financial intermediary's knowledge and experience of the client and of the purpose of the business relationship.
- A6 In principle, suspicion attaches to any client who provides the financial intermediary with false or misleading information or refuses, without any plausible reason, to provide information and records required for the business relationship and usual for the activity concerned.

### **III. Specific indicators**

#### **1. Spot transactions**

- A7 Changing a large amount of low-denomination bank notes (foreign or CHF) into high-denomination bank notes;
- A8 Changing money in substantial quantities without this being recorded on a client's account;

- A9 Encashment of large amounts by means of checks, including traveler's checks;
- A10 Purchase or sale of large quantities of precious metals by chance customers (a chance customer is a client who does not maintain any ongoing business relationship with the relevant bank branch (e.g., holding an account or deposit, safe, etc.));
- A11 Purchase of bank checks to a substantial value by chance customers;
- A12 Transfers abroad by chance customers without a legitimate reason being apparent;
- A13 Carrying out of multiple cash transactions just below the identification threshold.

## **2. Bank accounts and deposits**

- A14 Recourse to means of financing which may be usual in international commerce, but the use of which is not in accordance with the client's known activities;
- A15 Financially counterproductive structure of a client's business relationships with the bank (large number of accounts with the same institution, frequent movements between different accounts, excessive liquidities, etc.);
- A16 Provision of security (collateral, sureties) by third parties unknown to the bank which are not in any discernibly close relationship with the client and for the provision of which no plausible reason is apparent;
- A17 Transfers to another bank without the recipient being identified;
- A18 Acceptance of money transfers from other banks without the name or account number of the beneficiary being stated;
- A19 Repeated transfers abroad with the instruction that the amount be paid to the recipient in cash;
- A20 Large and/or frequent transfers to or from drug-producing countries or to or from countries named on the FATF list of non-cooperative States and territories;
- A21 Provision of sureties or bank guarantees to secure loans among third parties not on market terms;
- A22 Unexpected repayment of a loan in default, without a credible explanation;
- A23 Use of pseudonym or numbered accounts for the conduct of commercial transactions of commercial, trade, or industrial enterprises.

### **3. Trustee transactions**

- A24 Back-to-back loans without a discernible, legally permissible purpose;
- A25 Holding in trust of stakes in non-listed companies the activities of which are not discernible to the financial intermediary.

### **4. Others**

- A26 Attempt by the client to avoid the personal contact sought by the financial intermediary;
- A27 Closing of accounts and opening of new accounts in the name of the same client or the client's family members without a paper trail;
- A28 Request by the client for receipts for cash withdrawals or release of securities which have not actually and genuinely taken place or where the assets are immediately deposited again with the same institution;
- A29 Request by the client to carry out payment orders indicating an incorrect originator;
- A30 Request by the client for certain payments to be routed not through the client's accounts but through Nostro accounts of the entity subject to due diligence or sundries [Pro Diverse] accounts;
- A31 Acceptance and documentation of loan collateral which does not correspond to financial reality or provision of a loan on a trustee basis indicating fictitious collateral;
- A32 Criminal proceedings against contracting parties or beneficial owners on grounds of money laundering, a predicate offense of money laundering, or organized crime in Liechtenstein or abroad.