FMA

Finanzmarktaufsicht
Liechtenstein

Instruction 2019/7 on safeguards applicable to business relationships and transactions without personal contact pursuant to Article 14(1) of the Due Diligence Ordinance (DDO)

Reference:	FMA I 2019/7
Addressees:	Persons subject to due diligence under Article 3 DDA
Re:	Law of 11 December 2008 on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (Due Diligence Act; DDA) and the associated Ordinance (Due Diligence Ordinance; DDO)
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1. Background

With this Instruction, the FMA provides information on its practice relating to Article 14(1) DDO for business relationships and transactions without personal contact.

Article 14(1) DDO permits the lack of personal contact[1] in the identification of the contracting party to be compensated, provided that the safeguards set out in Section 3 and 4 of this Instruction are complied with by the person subject to due diligence.

In this context, the FMA also provides information on its interpretation of Article 11(1) and (2) DDO with regard to the requirements for the written declaration of the contracting party to identify the beneficial owner.

By complying with the safeguards – which are merely minimum requirements – potential risks that may arise in the event of identification without personal contact can be reduced to a minimum.

Provided that the preconditions set out in Section 3 and 4 are met, the person subject to due diligence may, despite a lack of personal contact during identification, in principle assume that the risk is comparable to that of a business relationship with personal contact. However, other risk factors – in particular those referred to in Annex 2(A) DDA – remain unaffected and may therefore lead to an increased or high risk of the business relationship in question, despite personal contact.

2. Possible safeguards

The following shall be considered the exhaustive list of safeguards for the purposes of Article 14(1) DDO:

- video identification;
- remote identification;
- receipt of the first payment from a reference account.

These safeguards serve to identify natural persons. The procedure for cases in which the contracting party is a legal entity is described in Section 4(3) of this Instruction.

3. General remarks on the safeguards

3.1. Required qualifications

The persons entrusted with the identification process must have appropriate knowledge of the identification process and the associated legal requirements.

Where an external service provider is used for the purposes of this Instruction, the persons subject to due diligence must ensure that they understand the functioning and basis of the systems used by that service provider and are accordingly able to comprehend the identification process. Questions in this regard raised during on-the-spot inspections by the FMA or a mandated auditor must be answerable by the persons subject to due diligence themselves.

3.2. Data collection

If the aforementioned safeguards are used, the persons subject to due diligence must ensure that they are familiar with the particulars provided by the contracting party under Article 6(1) DDO and that this information is documented in the due diligence file. These particulars are:

[1] The term "personal contact" is deemed equivalent to "physical presence".

- for natural persons: name, forename, date of birth, residential address, state of residence and nationality;
- for legal entities: name or company style, legal form, address of registered office, state of domicile, date established, place and date of entry in the Commercial Register, where applicable, and the names of the bodies or trustees acting formally on behalf of the legal entity in the relationship with the person subject to due diligence.

3.3. Permitted identification documents

When performing a video or remote identification of natural persons, only those confirmatory documents referred to in Article 7 DDO may be used which have at least 2 verifiable optically variable security devices (e.g. holograms, variable laser images) and a machine-readable zone (MRZ).

In the case of legal entities, the confirmatory documents referred to in Article 8 DDO (e.g. extract from the Commercial Register) must be used.

The videos or photos of the identification document and of the person to be identified created as part of the video or remote identification shall be deemed an adequate replacement for the inspection of a confirmatory document within the meaning of Articles 6 et seq. DDO.

3.4. Documentation

The described preconditions for applying the safeguard must be met cumulatively. The existence of each safeguard must be documented, and the result of the individual verification steps as well as the overall result of the identification process must be deposited in the due diligence file.

All documents and records created as part of the identification process must be included in the applicable due diligence file.

They must be kept in accordance with the time periods specified in Article 20 DDA. This also includes log files and the entire video stream created as part of the identification. All files must be kept in a quality which enables a third party with specialist qualifications as referred to in Article 28(1)(b) DDO to verify compliance with the requirements of this Instruction.

3.5. Procedure in the event of discrepancies

In the event of transmission difficulties, the identification process must be discontinued. This applies in cases where, for example, the quality of the internet connection or the prevailing lighting conditions makes proper identification impossible.

If there are discrepancies or uncertainties, such as in the case of recognisable tampering with the identification document, the identification process shall not be discontinued, but it must be noted that the identification was not successful. The identification process must in any event be completed. In such cases, Article 5(3)(a) DDA applies, and the business relationship in question may not be established or the desired transaction may not be carried out.

In this context, the obligation to report to the Financial Intelligence Unit as set out in Article 17 DDA must also be observed. See in this regard the relevant provisions in FMA Instruction 2018/7 – General and sector-specific interpretation of due diligence law.

3.6. Relationship to other provisions of due diligence law

The other provisions of the DDA and the DDO, in particular with regard to the obligations to establish a business profile and to supervise the business relationship at a level that is commensurate with the risk in accordance with Article 5(1)(c) and (d) DDA remain entirely unaffected by the provisions of this Instruction.

The same applies with regard to Article 18 DDO, which states that all information and documents required for the identification and verification of the identity of the contracting party and the beneficial owner must be

complete and available in an appropriate form when the business relationship commences, or when an occasional transaction is carried out. In particular, the derogations from this basic principle set out in Article 18(2) and (3) DDO are applicable, subject to compliance with the preconditions mentioned therein.

4. Safeguards

4.1. Video identification

This type of identification is permissible in the case of natural persons who act as contractual parties, provided that the following points are cumulatively met:

4.1.1. Audiovisual perception

If video identification is used, audiovisual communication with the contracting party must be ensured. Real-time video transmission is therefore indispensable. The recording must be made with the hardware (camera) of the contracting party and created directly in the course of the identification process.

The video transmission must be encrypted in accordance with the state of the art. The quality of the stream must be such that the subsequent verification steps can be carried out.

4.1.2. Performance of identification

a) The video chat must visually capture the face of the contracting party as well as the front and back of the data page of the identification document. It must be ensured that the video is created directly in the course of the identification process.

   Specifically, arrangements must be made to exclude the possibility of a third party or non-living person appearing in the video. This can be achieved, for instance, by asking the contracting party to perform certain movements during the registration/identification process. These specifications should be varied randomly in order to ensure that they are not the same for each identification.

   If individual details on the identification document are not recognisable, the procedure must be repeated.

   A screenshot of the front and back of the identification document must be included in the due diligence file.

b) The identification document must be verified for the presence of at least two optically variable security devices (e.g. holograms, variable laser images). In the video stream, the effects of these security features must be evident in their different states (e.g. once visible and once not visible).

c) It must be verified whether the dates of issue and validity of the identification document are plausible. Furthermore, the period of validity of the presented identification document may not violate the standard applicable to identification documents of this kind.

d) It must be ensured by means of an automatic calculation – which e.g. can be achieved through optical character recognition (OCR) – that the data contained in the machine-readable zone corresponds to the data contained in the identification document, and that the orthography of the digits and the typefaces used are correct.

e) If the identifying party is unfamiliar with the identification document, it must be checked against an identification document database such as PRADO or equivalent.

f) The identification document must be checked for visible damage or manipulation.

g) The image of the identification document must be compared with the contracting party. The FMA recommends that the comparison be carried out by using an electronic biometric method with a false acceptance rate of less than 2%.[2]

h) The consistency of existing data with the information provided by the contracting party must be checked. For this purpose, the person to be identified must be asked appropriate psychological questions during the video chat, for example about data collected in advance or available on the identification document or about the purpose of the identification

i) After all the necessary information has been collected, the correctness of the data provided must be confirmed by the person to be identified. This can be achieved, for example, by using an individual TAN that is generated solely for this purpose or equivalent verbal confirmation.

On grounds of data protection, it is also advisable to carry out the identification process in a separate room equipped with access control.

4.2. Remote identification

Where the contracting party is a natural person, an electronic identification may be used as an alternative to video identification, in which no direct contact in real time is required between the person subject to due diligence and the person to be identified. This type of identification is permissible provided that the following points are cumulatively met:

a) Photographs must be taken of the front and back of the data page of one of the confirmatory identification documents referred to in Article 7 DDO and included in the due diligence file.

The person subject to due diligence must verify the identification document in the manner referred to in Section 4(1.2)(b) to (f) of this Instruction.

b) A photograph must be taken of the person to be identified, in accordance with Section 4(1.2)(a).

c) The photograph of the identification document must be compared with the person to be identified. It is mandatory to make this comparison by using an electronic biometric method in accordance with Section 4(1.2)(g).

d) After all the necessary information has been collected, the correctness of the data provided must be confirmed by the person to be identified (analogous to Section 4(1.2)(i)).

e) The identification procedure must be encrypted in accordance with the state of the art.

4.3. Additional requirements for the identification of legal entities as contracting parties within the meaning of the DDA

If the contracting party is a legal entity, the provisions of Article 6 DDA in conjunction with Article 6(1)(b) and Articles 8 et seq. DDO must be complied with.

Since Article 6(1)(b) in conjunction with 6(3) DDO refers to the natural persons acting on behalf of the legal entity, those natural persons must present themselves to the person subject to due diligence for the purposes of the video or remote identification. For this reason, the persons acting on behalf of the legal entity as well as their identification document must also be verified and documented in accordance with the requirements of this Instruction governing video or remote identification.

In this regard, it is up to the persons subject to due diligence whether to obtain the confirmatory identification document of the legal identity required under Articles 6(1)(b) and 8 DDO themselves in an

[2] The FMA considers the false acceptance rate to be the general susceptibility of the software to errors or the probability of the software generating a false assessment. This must be distinguished from the final decision of the person subject to due diligence whether or not the identification is judged to be successful.

appropriate manner (e.g. written extract from a publicly accessible database of the Commercial Register) or whether to obtain it separately from the legal entity.

If, in the latter case, the document is transmitted electronically, the identification document of the legal entity referred to in Article 8 DDO (e.g. extract from the Commercial Register) must be transmitted as a scan/photograph of the original, provided that the following conditions are met:

a) confirmation of the authenticity of the identification document is issued by persons subject to due diligence referred to in Article 9 DDO;

b) the documents are current as required by Article 10(3) DDO; and

c) the identification document is transmitted by the contracting party to the person subject to due diligence using a secure electronic signature in accordance with Article 2(1)(d) or Article 24(3) of the Signature Act (SigG), and the scanned identification document is inseparably linked to this secure electronic signature.

4.4. Identification via an incoming payment from a reference account

In cases where simplified due diligence is applicable pursuant to Article 10 DDA, the identification of a natural person as a contracting party may also be effected by the first incoming transaction on the newly opened account from a bank account (reference account) in the EEA area or Switzerland, which is proven to be an individual or joint account of the contracting party concerned.

Persons subject to due diligence must satisfy themselves in an appropriate manner that the holder of the account from which this first payment originates is actually the contracting party in question, and they must subsequently verify that the first transfer has also been received from this account.

The data transmitted with the transaction may be sufficient, provided that it is beyond doubt that the originator and the account holder of the payment are the contracting party. However, other documents such as account statements or the like may also be used for this purpose.

Pursuant to Article 18(2) DDO, the account held at the person subject to due diligence must in any event be blocked for outgoing transactions until the identification procedure has been completed in full and the corresponding payment has been received. The person subject to due diligence must then verify that the first transfer is received from the reference account in question.

5. Declaration by the contracting party on the identity of the beneficial owner

Pursuant to Article 11(2) DDO, the contracting party or a person authorised by the contracting party shall confirm the accuracy of the information on the identity of the beneficial owner to the person subject to due diligence by

a) signature or

b) by another equivalent process, in which:

1. the contracing party or a person authorized by him is clearly identified; and

2. the integrity of the information and its authentication is guaranteed by the contracting party.

The other obligations under Articles 7 to 7b DDA shall remain unaffected by this declaration.

The FMA deems that signatures of the contracting party also include signatures that have demonstrably been executed by hand by the contracting party during the identification process itself on a technically suitable device such as a tablet. In such a case, the requirement that the contracting party's declaration be in writing is deemed to be met.

Alternatively, this confirmation may be obtained from the contractual partner as has previously been the case in the course of video identification. For that purpose, the relevant form must be signed by the

contracting party directly in the course of the video chat in view of the person subject to due diligence or the employee entrusted with that task. The recording of this procedure must again be included in the due diligence file.

The collection of the necessary data and the identification of the contractual partner with subsequent confirmation using an individual TAN, for example, is considered an equivalent procedure within the meaning of Art. 11(2)(b) DDO applies. It is important to ensure that a new TAN is generated for each confirmation process, which does not have to serve exclusively to confirm the identity of the beneficial owner.

6. Delegation and outsourcing

If, in the context of video or remote identification, the person subject to due diligence draws on an external service provider, such as a company specialising in the performance of identification or a KYC service provider, the requirements of Article 24a(1a) DDO or, in the case of delegation to another person subject to due diligence, of Article 14 DDA in conjunction with Article 24 DDO must be met in any case.

If an external service provider is used for the identification of the contracting party, the service provider may, where the service provider has already identified the person concerned for another person subject to due diligence in accordance with Liechtenstein due diligence requirements, avail itself of this documentation. It must in any event be checked whether the existing data is up to date for the purposes of the DDA and DDO and, if necessary, it must be ensured that this is the case e.g. by obtaining another register extract that is not older than 12 months (Article 10(3) DDO).

It should be noted that the external service provider used may not transfer the assigned responsibilities to a third party (Article 24(3) DDO; Article 24a(1a)(d) DDO). Reference is also made to the comments on delegation and outsourcing set out in FMA I 2018/7.

7. Data protection

The content of this Instruction does not affect the provisions of data protection legislation. When implementing this Instruction, the persons subject to due diligence must therefore always comply with the requirements of data protection – especially the General Data Protection Regulation (EU) 2016/679.

8. Final Provision

8.1. Effective Date

This Instruction enters into force on 11 Juni 2019.
The changes of 10 March 2020 took effect on the same day.

8.2. Transitional provisions

This Instruction replaces the Instruction on the interpretation of "personally present" within the meaning of Article 11(3) DDA (applicability of online verification) in the version of 21 June 2016. Existing systems set up in accordance with the aforementioned Instruction must comply with the new requirements by 11 June 2020 at the latest

Vaduz, 10 March 2020

9. Directory of changes

The following changes were made on 10 March 2020:

- **Section 4(2) Application of the so-called "remote identification"**

  Under letter (c) it was clarified that remote identification requires the use of an electronic biometric method.

- **Section 5 Declaration by the contracting party on the identity of the beneficial owner**

  The explanations have been adapted to the changes in the DDO as of 1 January 2020, so that a personal signature will no longer be required in the future, provided the requirements of Art. 11(2)(b) DDO are complied with. This enabled the establishment of business relationships without media disruption.