

Governance Conference 2016



Anti Money Laundering – Cross Border Customer Due Diligence challenges

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Background

- EU member states are currently complying with the Third EU Money Laundering Directive (“3MLD”).
- The Fourth EU Money Laundering Directive (“4MLD”) is to be implemented by EU member states in June 2017.
- Some EU member states implement more stringent requirements than others.

Background

- Certain AML obligations allow for obliged firms to apply measures on a “risk-sensitive” basis.
- This can create inconsistent approaches to customer due diligence (“CDD”) requirements across countries and industry participants within a country.
- Question: How many of you have been asked for AML documentation that you do not believe is required? Any examples?

Jurisdictional differences on signatories

Guidelines to Ireland's Criminal Justice (Money Laundering & Terrorist Financing) Act:

“In accordance with normal business practice and as warranted by the risk of money laundering or terrorist financing, verify the personal identity of one or more of the signatories in line with the requirements for personal customers. Verification of authorised signatories may not be required where a sufficient number of directors have been verified.”

Jurisdictional differences on signatories

The UK Joint Money Laundering Steering Group (“JMLSG”) Guidance:

“For operational purposes, the firm is likely to have a list of those authorised to give instructions for the movement of funds or assets, along with an appropriate instrument authorising one or more directors (or equivalent) to give the firm such instructions. The identities of individual signatories need only be verified on a risk-based approach.”

Jurisdictional differences on signatories

The Luxembourg regulations:

“Moreover, the professionals shall know the power of representation of the person acting on behalf of the customer and verify his identity through evidencing documents of which they shall keep copies.”



4MLD

4MLD states that CDD shall include:

- Identifying the customer and verifying the customer's identity.
- Identifying the beneficial owner and taking reasonable measure to verify that person's identity.
- When performing these measures, verify that any person who is acting on behalf of the customer is authorised to do and verify their identity.
- Member States shall require that obliged entities apply these measures, but the extent of such measures may be determined on a risk-sensitive basis.

Sanctions

- Sanctions screening obligations can affect a firm's CDD requirements.
- Some financial institutions may screen all connected parties, e.g. trustees, signatories, others may take a risk based approach.
- Potential matches may require further information about an individual in order to discount or confirm the match.

Conclusion

- AML regulations allow for risk based approach to CDD.
- Some countries apply more stringent requirements that must be complied with when investing in those countries.
- Risk based approach means some firms within the same country may have different CDD requirements.
- 4MLD may result in changes to local regulations and industry guidance in each EU Member State.