

# AML Tuesday's Session #21 on:

Sector Specific CDD/EDD measures for Lawyers, Legal advisors & Accountants

July 2, 2024

# Discussion Topics

01

The CDD process

02

Identification and Verification of Beneficial Owners of Legal Persons and Arrangements

03

Levels of CDD



# The CDD process

# FATF International standards on combating ML and TF

## Recommendation 10, 22 & interpretive notes:

CDD obligations apply to Lawyers, Legal Advisors and Accountants when they prepare for or carry out transactions for their client concerning the following activities:

- Buying and selling of **real estate**
- Managing of client money, securities or other **assets**
- Management of bank, savings or securities **accounts**
- Organisation of contributions for the creation, operation or management of **companies**
- Creation, operation or management of **legal persons or arrangements**, and buying and selling of business entities.

# FATF International standards on combating ML and TF

## Recommendation 10, 22 & interpretive notes:

Lawyers, Legal advisors and Accountants must conduct CDD when

- Establishing business relationships
- Carrying out occasional transactions above EUR 15,000
- A suspicion of ML or TF exists
- There are doubts about the veracity or adequacy of previously obtained customer identification information

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JULY 2022

# Monegasque legal framework

- **Chapter II of Law No. 1.362**, and **Chapter II to VIII of SO 2.318 2009** as amended, lay down the obligations for FIs and DNFBPs to apply **appropriate vigilance measures** in respect of their clients and set out the following vigilance measures which must be taken to ensure that you know the true identity of the client :
- Identify and verify the identity of each **client and their representative** before establishing a business relationship or conducting an occasional transaction above EUR 15,000
- Identify the **beneficial owner**, and take reasonable measures to verify the identity of the beneficial owner on risk-sensitive basis such that the professional is reasonably satisfied that it knows who the beneficial owner is.
- Obtain appropriate information to **understand the purpose and nature** taking into account the clients socio-economic background and characteristics of the relationship such as regularity or duration, object or purpose, nature of relationship and expected volume of transactions to be conducted.
- Conduct **ongoing vigilance** on the business relationship and scrutiny of transactions throughout the course of that relationship

# Monegasque Legal Framework

Where you are **unable to comply** with the applicable CDD requirements, you should not carry out the transaction nor commence business relations, or should terminate the business relationship and consider filing an STR to the AMSF FIU or Council of the Order of Attorneys (**Art. 7 Law 1.362**)

**Note:** exception regarding legal consultation and advice or representation of clients in legal proceedings.

**Tipping Off and CDD:** When you suspect that a transaction is related to ML/TF/PF or corruption, and reasonably believe that fulfilling CDD would alert the client, you may choose not to apply CDD and file an STR without delay, as appropriate, with the AMSF or the Council (**Art. 7-1 Law 1.362**).

**Breaches of CDD obligations can be sanctioned** as per **Art. 65 et seq. / Art. 69-1 et seq.** both at entity-level and at level of directors, employees, agents & persons acting on behalf of the entity based on personal involvement.

# Business Relationship v Occasional Customer

## Business relationship

Such a relationship is established when;

A professional and a client enter into a contract under which several successive transactions will be carried out between them for a fixed or indefinite period, or which creates continuing obligations;

A customer regularly and repeatedly requests the assistance or intervention of the same professional for the performance of distinct and successive financial transactions .

**(Article 2 SO No. 2.318 of 3 August 2009, as amended.)**

## Occasional Customer

An occasional customer is any person who approaches a professional with the aim of preparing or carrying out a one-off transaction or of being assisted in the preparation or performance of such a transaction, whether it is performed in a single operation or in several operations that appear to be linked together.

**(Art 9-1 SO No 2.318 of 3 August 2009, as amended )**



## Identifying and Verifying the Beneficial Owner of Legal Persons and Arrangements

# Identifying and Verifying the BO of Legal Persons & Arrangements

- **Corporate vehicles**, including companies, trusts, foundations, and partnerships are susceptible to misuse in complex schemes aimed at **concealing true beneficial ownership** and the underlying reasons for holding assets.
- Pursuant to the applicable law and regulations in force, all Supervised Entities (Art. 1 and 2 of the Law 1.362) must identify the BO of clients who are legal entities, foundations, associations, federations of associations, trusts or any other legal arrangements having a structure or functions similar to those of a trust.
- In addition, they must also take reasonable measures to verify the identity of the BO(s)
- Article 4-1 of the Law No. 1.362 of August 3, 2009, as amended; Chapters II and III of SO No. 2.318 of August 3, 2009, as amended

# Identifying and Verifying the BO of Legal Persons & Arrangements

## Identifying the BO

- All supervised entities must identify the beneficial owner of clients who are legal entities, foundations, associations, federations of associations, trusts or any other legal arrangements having a structure or functions similar to those of a trust.
- **Following information must be collected:** Name; User name, nickname or pseudonym; Date and place of birth; Nationality(ies); Address; Control exercised over the entity concerned; Date on which the natural person became the beneficial owner of the entity; Any other relevant information.

## Verifying Identity of BO

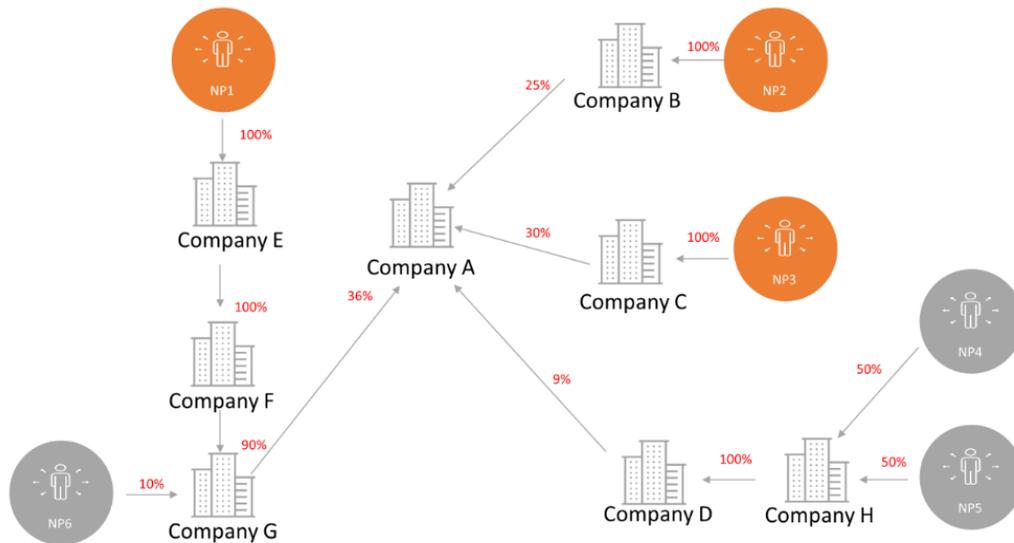
- Documentation used to identify natural persons
- Documentation used to identify legal entities
- Extract from Register of BO and/or Register of Trusts

# Identifying and Verifying the BO of Legal Persons & Arrangements

- By introducing **multiple layers of ownership** across various jurisdictions and employing diverse legal structures, the beneficial owner can be distanced from the asset, complicating detection and hindering investigation
- When the ownership or control of client is exercised through a **chain of ownership or indirect control** - the professional must identify all persons in this chain and also the natural person who is the BO

# Identifying and Verifying the BO of Legal Persons & Arrangements

## 1. Ownership



In this example of a complex ownership structure, all natural persons BOs have **indirect ownership** of the company.

- NP1 has the highest shares 32% ( $100\% \times 100\% \times 90\% \times 36\% = 32\%$ )
- NP2 has 25% shareholding in Company A ( $100\% \times 25\% = 25\%$ )
- NP3 has 30% shareholding in Company A ( $100\% \times 30\% = 30\%$ )
- NP4 and NP5 each hold 50% of shares in company H which holds 100% of Company D which holds 9% of Company A, thus NP4 and NP5 have 4.5% shareholding in Company A.
- NP6 holds 3.24% of Company A ( $10\% \times 90\% \times 36\%$ ).
- Therefore, UBOs of Company A should be considered NP 1, 2, and 3. The remaining natural persons hold less than 25%.

# Identifying and Verifying the BO of Legal Persons & Arrangements

## 2. Control

Control is the **ability to take relevant decisions within the legal person or arrangement and to impose those decisions**. Examples:

- Control through **Personal Connections**
- **Control without Ownership**: e.g in the enterprise's financing or having close family relationships, historical or contractual associations. Control may be presumed even if not actively exercised, such as benefiting from the assets owned by the legal entity. Indirect control can be identified through shareholder agreements, the use of nominee shareholders, the exercise of dominant influence, or the power to appoint senior management.
- **Executive Control or Control through position held**: Natural persons exercising executive control over daily affairs through senior management positions like CEO, CFO, managing/executive director, or president are essential, as well as individuals responsible for strategic decisions affecting the entity's practices or direction
- **Trustees** (where applicable).

# Further information on Identifying and Verifying the BO

- **AMSF Generic Guidelines** - <https://amsf.mc/publications/lignes-directrices-generiques-a-destination-des-professionnels-monegasques>
- **FATF Guidance on Beneficial Ownership of Legal Persons (Recommendation 24)** - <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html>
- **FATF Guidance on Beneficial Ownership of Legal Arrangements (Recommendation 25)** - <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/Guidance-Beneficial-Ownership-Transparency-Legal-Arrangements.pdf.coredownload.inline.pdf>
- **IMF, Unmasking Control: A guide to Beneficial Ownership Transparency** - <https://www.imf.org/en/Publications/Books/Issues/2022/10/06/Unmasking-Control-A-Guide-to-Beneficial-Ownership-Transparency-517096>
- **Next AML Tuesdays session** will fully focus on Beneficial ownership, complex structures and practical application of verification measures

03

## Levels of CDD

# Levels of CDD which should be conducted

The professional's **business risk assessment (BRA)** should inform the **overall approach** to CDD and appropriate verification per customer/transaction category.

All supervised entities should reasonably determine the CDD requirements appropriate to **each client** based on the **customer risk assessment (CRA)**.

**See previous AML Tuesdays sessions on BRA (14/05/2024) & CRA (28/05/2024)**

# Levels of CDD which should be conducted

**Standard CDD** - A standard level of CDD, generally to be applied to all clients to whom specified services are provided.

## Examples of Standard due diligence

- Identifying the **client** & its representative and verifying that client's identity using reliable, independent source documents, data or information
- Identifying the **BO** and taking reasonable measures on a risk-sensitive basis to verify the identity of the BO - For legal persons and arrangements, this should include understanding the ownership and control structure of the client.
- Understanding and obtaining information on the **purpose and intended nature** of the business relationship
- Conducting **ongoing due diligence** on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the business and risk profile of the client
- Gaining an understanding of the client's source of wealth and source of funds, where required

# Levels of CDD which should be conducted

**Simplified CDD** – A reduction of the Standard level of CDD in recognised **lower risk scenarios** – is the lowest permissible form of due diligence and must only be used where you have determined that the client presents a low risk of money laundering or terrorist financing. **Note: This is NOT an exemption from conducting CDD.**

## Examples of Simplified Due Diligence

- Limiting the extent, type or timing of CDD measures
- Obtaining fewer elements of client identification data
- Altering the type of verification carried out on client's identity
- Simplifying the verification carried out on client's identity
- Inferring the purpose and nature of the transactions or business relationship established based on the type of transaction carried out or the relationship established
- Verifying the identity of the client and the beneficial owner after the establishment of the business relationship
- Reducing the frequency of client identification updates in the case of a business relationship

# Enhanced Due Diligence (EDD)

**Enhanced due diligence** - An increased level of CDD for those clients that are reasonably determined by to be of **higher risk**

When must you apply EDD?

- EDD must be applied in **higher risk situations**, based upon your own risk analysis or when Government and competent authorities have identified higher risks
- EDD is mandatory in respect of **PEPs** and **High-Risk Countries**,

# Examples of Enhanced Due Diligence

Obtaining additional information, eg on clients' reputation /background from wider variety of sources

Additional searches, eg internet searches using independent and open sources

Obtaining additional information on source of wealth and source of funds

Additional information on nature and purpose of transaction or business relationship

Increase the frequency and volume of transaction monitoring

Lowering the threshold of ownership ( e.g below 25% to ensure complete understanding of control structure of entity

Further searches on client or beneficial owner to understand the risk that they may be involved in criminal activity

Section III of Chapter II of Law 1.362 & Chapter VIIbis of SO 2.318 – EDD measures in case of high-risk territories

Obtain senior management approval

Section III of Chapter II, Law 1.362 & Chapter VII of SO 2.318 - EDD measures in case of PEPs

Aim to progressively improve client knowledge

Application of measures that are 'appropriate, effective and proportionate to the risks'

# Risks in respect of corporate sector & real estate – global context

- **FATF Report on Concealment of Beneficial Ownership** - <https://www.fatf-gafi.org/en/publications/Methodsandtrends/Concealment-beneficial-ownership.html>
- **FATF Report on Money laundering and terrorist financing through the real estate sector** - <https://www.fatf-gafi.org/en/publications/Methodsandtrends/Moneylaunderingandterroristfinancingthroughtherealestatesector.html>
- **European Union supra-National Risk Assessment** on the assessment of the risk of ML and TF affecting the internal market and relating to cross-border activities - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022SC0344> :
  - Services provided by accountants & legal professionals: High risks for exploitation for both ML and TF
  - Trusts, Nominee arrangements & Companies: Very High risks for exploitation for ML; Medium risks for TF
  - Real estate: Very High risks for exploitation for both ML and TF

## Understanding money laundering through real estate transactions

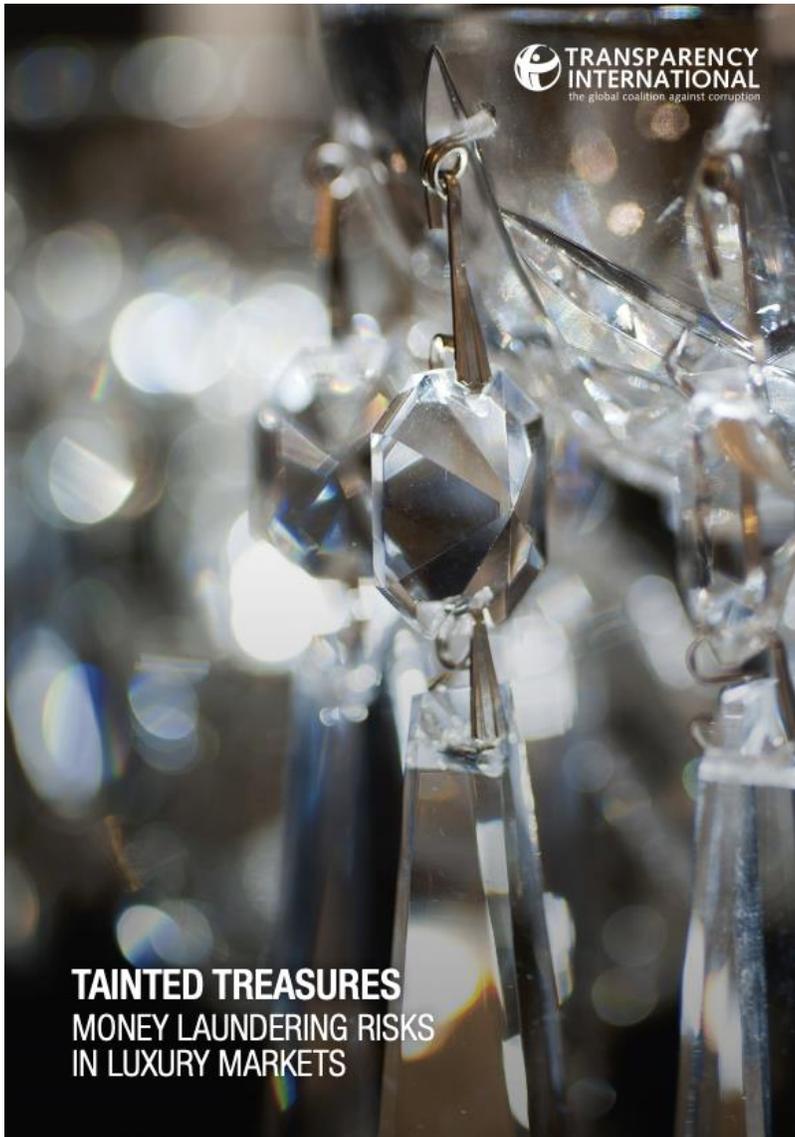
### SUMMARY

Money laundering through real estate transactions integrates black funds into the legal economy while providing a safe investment. It allows criminals to enjoy assets and derived funds having camouflaged the origin of the money used for payment.

A number of techniques are used, namely cash or opaque financing schemes, overvalued or undervalued prices, and non-transparent companies and trusts or third parties that act as legal owners. Among the possible indicators are geographical features (such as the distance between the property and the buyer and their actual geographical centre of interest). In order to assess the existence of a money-laundering risk, concrete assessments of transactions and a customer's situation provide indications that help raise red flags and trigger reporting obligations.

The anti-money-laundering recommendations set out by the international Financial Action Task Force (FATF) are implemented in the European Union (EU) by means of coordinated provisions (chiefly the Anti-money-laundering Directive). Customer due diligence and reporting of suspicious transactions are tools to address money laundering. Real estate transactions involve both non-financial and financial sector parties operating under different legal requirements. Yet, reporting of suspicious transactions in real estate is limited, leaving ample room for improvement.

Improvement is all the more necessary inasmuch as money laundering in general, and in the real estate sector in particular, has a major socio-economic impact, the magnitude of which is difficult to quantify. Awareness is however growing as a result not least of high profile examples of money laundering through real estate in a number of EU cities.



**TAINED TREASURES**  
MONEY LAUNDERING RISKS  
IN LUXURY MARKETS



## BEHIND A WALL

Investigating company and real estate ownership in France

# Risks in respect of corporate sector & real estate – Monaco context

## Monaco NRA 2 (2021):

Risks in relation to the Monegasque **real estate sector** are assessed as **high**.

## Monaco Legal Entities Risk Assessment (results presented to DNFBP sector in November 2023)

“Monaco is home to many prominent, high and ultra-high net worth individuals from all parts of the globe that invest heavily in the domestic economy, using LLCs, joint stock companies and civil law partnerships to purchase or develop real estate or participate in high value commerce or service industry. It is in this manner that international ML risks are brought into the corporate sector in Monaco.”

Inherent risk rating assigned to the **Monegasque corporate sector** is considered to be **high**.

**Note:** New FATF obligations were recently introduced for countries to also assess risks to their country through exposure to / links with **foreign legal entities and foreign legal arrangements** and to ensure that appropriate measures are in place to mitigate and manage risks

# CDD/EDD in respect of Real Estate Transactions

- Criminals can seek to involve or abuse professionals when preparing transactions for clients regarding sale or purchase of **Real Estate**.
- Risks for abuse in this context are **particularly high when the customer uses legal entities and vehicles to buy or hold real estate properties**, which is often the case in the commercial real estate sector.
- The use of such entities can help criminals to obfuscate true ownership and links to criminal sources of funds, including layering and cross-border structures
- Where off-shore entities from jurisdictions with limited transparency requirements are involved in a real estate transaction, risks are even further exacerbated and legal and accounting professionals must proceed with high caution and consider whether there are any indications of suspicious activity in the real estate deal that they are helping to prepare.
- When involved in real estate transactions, professionals may opt to apply specific checks on the settlement destinations of transactions (i.e. performing limited diligence on the seller of the property, when acting for the buyer and the seller and the buyer appear to be related parties).

# EDD relating to PEPs

- **Monaco NRA 2 (2021)** pointed at **difficulties amongst legal and accountancy professionals to detect high-risk clients**, including difficulties to detect **PEPs**.
- **FATF Publication on Politically Exposed Persons** - <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Peps-r12-r22.html>
- **2023 amendments** to the relevant provisions of Law No. 1.362 & SO 2.318 to bring Monaco's legal framework fully in line with FATF Recommendation 12 on EDD for PEPs (e.g. no more 1-year limit; international organisation PEPs now also explicitly covered):

Art. 17-17.3 of Law 1.362

Art. 23 – 25 of SO 2.318

# Recent AMSF Guidance on PEPs & EDD obligations



**Thematic guidance:**

**Politically Exposed Persons (PEP)**

**and**

**Anti-money laundering, combatting the terrorist financing and the proliferation of weapons of mass destruction and corruption (AML/CFT-P-C)**

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# EDD relating to PEPs

- Article 17 Law 1.362 requires EDD when the client, BO or representative is **a PEP or a person entrusted with a prominent function by an international organisation, or a family member or close associate of such persons.**
- Monegasque law and SO defines a PEP as someone who holds or has held important public positions, in particular but not limited to:

- Heads of state.
- Members of governments.
- Members of parliamentary assemblies.
- Members of supreme courts, constitutional courts or other high jurisdictions whose decisions are not subject to appeal, save in exceptional circumstances.
- Officials and leaders of political parties.
- Members of courts of auditors and central bank councils.
- Ambassadors, chargés d'affaires and high-ranking officers in the armed forces.
- Members of the administrative, management or supervisory bodies of state-owned companies.
- Directors, deputy directors and board members of an international organization, or persons who hold an equivalent position therein

# EDD relating to PEPs

## PEP Identification and screening

- The AML/CFT Law requires implementation of appropriate internal procedures to determine whether a customer, beneficial owner or representative, is a PEP. In this respect, you must:
  1. **Identify** the customer, the beneficial owner or the representative to determine whether they qualify as PEP ;
  2. Conduct **background checks** as part of CDD procedures using means, data and information which are of reliable and independent source, be it publicly available, private or external specialised providers.

**For example:** public or private databases; or of commercially available background investigation services (for example, a detailed PEP background report provided by an external specialized provider). Reliance on publicly available information is permitted, on the condition that you consider and assess the reliability of the sources and duly document and retain all the research conducted. These checks are to be conducted at the on-boarding stage or while conducting transactions for occasional customers and, following a risk-based approach, for existing customers, for which screening can take place alongside on going monitoring, or when a business relationship is reviewed.

# EDD relating to PEPs

- Supervised entities should take adequate measures to establish the **source of wealth and source of funds**, to ensure that they are not proceeds derived from criminal activity that could be associated with a PEP.
- **Enhanced on-going monitoring of the relationship** - including screening PEP customers for new or emerging information and reviewing and updating the customer file more frequently as well as performing a transaction activity analysis (for example, every six months or annually).
- For more details on **High-risk customers and EDD measures, including verification of source of wealth/funds**, see the following [previous AML Tuesdays Sessions: 28/03/2023 & 25/06/2024](#).

## The PEP status of the beneficial owner of a legal entity

If a legal entity is a customer with links to a PEP (beneficial owner or representative), this needs to be considered within the **customer risk assessment**, and the **legal entity's activity** and **transactions** should be scrutinized and **enhanced due diligence measures** should be applied. Given that legal entities can be used by PEPs to hide illegally obtained assets, the Supervised Entities pay particular attention to legal entities that lack significant assets, commercial activities or employees.



*Thank you for your  
time*

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## **Next Session:**

30.07.2024

### **Topic:**

Beneficial Ownership,  
Complex Structures,  
Practical application of  
UBO Verification Measures

Today's Host: Tamar Goderdzishvili

Today's Presenter: Suzanna van Es