

PRACTICAL GUIDE #4

INTERNAL PROCEDURES

AMSF



MONEGASQUE
FINANCIAL
SECURITY
AUTHORITY

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This guide aims to help obliged entities understand how to establish and implement their internal procedures. It sets out the main rules applicable.

However, it is important to note that this practical guide is for information purposes only. Only the legislative and regulatory texts governing the framework related to anti-money laundering, countering the financing of terrorism and proliferation of weapons of mass destruction, and combating corruption (AML/CFT-P-C) in Monaco shall prevail. This Practical Guide does not cover all obligations and related details: the mere application of the measures presented in it will not ensure that the obliged entity is in full compliance with the obligations in force. Compliance with the applicable legal and regulatory obligations is the responsibility of each obliged entity, according to its own specific risks. For more information, please refer to the General Guidelines.

This Practical Guide is based on regulations applicable as of date January 1, 2025.

- This document addresses the obligations specifically applicable to internal procedures (p.03);
- lists the main legal and regulatory obligations of Act No. 1.362, as amended, which must be included in internal procedures (p.06);
- details the recurring errors identified by supervisors during inspections (p.18);
- and presents the findings of a hypothetical audit report (p.20).

It also proposes methodologies to assist obliged entities in drafting their internal procedures (appendix 1); and provides a “Self-assessment grid” in Excel format that obliged entities can use to self-assess their internal procedures (appendix 2).

BACKGROUND

All obliged entities listed in Articles 1 and 2 of Act No. 1.362, as amended, are required to establish and implement internal procedures (hereinafter “the procedures”).

The purpose of the exercise is not to produce theoretical procedures, but practical ones. Theoretical procedures could cause prejudice to the obliged entity in many respects. Firstly, the effectiveness of its

AML/CFT-P-C system would be reduced, and in some cases the system would be totally ineffective. Secondly, beyond the risk of administrative sanctions, theoretical procedures inevitably lead to a poor understanding and misinterpretation of the AML/CFT-P-C system.



POINTS TO WATCH

The procedures form the framework of your AML/CFT-P-C system. Obligated entities must apply their internal procedures. If an obliged entity's practices diverge or change, the internal procedures must be updated.

Other obligations relating to combating money laundering, the financing of terrorism and the proliferation of weapons of mass destruction and corruption can be found in the General Guidelines.

OBLIGATIONS RELATING TO INTERNAL PROCEDURES

A. PRE-REQUISITE: APPOINTMENT OF AN AML/CFT-P-C OFFICER (COMPLIANCE OFFICER)

A Compliance Officer must be appointed, hold a senior managerial position and have sufficient knowledge of the establishment's exposure to ML/CFT-P-C risks.

It is the duty of the Compliance Officer to:

- **define** the procedures applicable;
- **update** the procedures;
- **implement** the procedures;
- **monitor** the implementation of the procedures;
- **train** staff on the procedures.



POINTS TO WATCH

The procedures must be communicated to all staff involved in the obliged entity's AML/CFT-P-C system. These procedures must be duly explained (e.g.: training activities).



POINTS TO WATCH

On a case-by-case basis, certain parts of the procedures may remain confidential depending on the risk of conflict of interest identified by the Compliance Officer (example: relationship managers do not necessarily have to know the thresholds applicable to the monitoring of transactions).

1) The Monaco Bar Association supervises and ensures compliance by the persons referred to in paragraph (3) of Article 2 (lawyers) with the provisions of Act No. 1.362, as amended.

B. OBLIGATIONS RELATED TO THE FORM OF PROCEDURES



Approval of procedures

Procedures must be approved by a senior member of management. This approval should be formalised, for example, by affixing the date and signature of the Compliance Officer on the document, or through a decision recorded in the minutes of a meeting or committee dedicated to AML/CFT-P-C matters.



POINTS TO WATCH

The method of approval of procedures **must be mentioned** in the procedures.



POINTS TO WATCH

Procedures must be approved whenever they are established, and when they are updated. A history of updates must be recorded and maintained.



Update of procedures

Procedures must be regularly updated:

- Whenever laws and regulations are amended;



POINTS TO WATCH

In order to keep abreast of changes in laws and regulations, entities are recommended to consult the Official Journal of Monaco on a weekly basis, or subscribe to it.

- Whenever the structural reality (e.g. the obliged entity is engaged in a new activity) or organisational reality (e.g. the size of the establishment has substantially decreased or increased) changes;
- Whenever the obliged entity adopts new rules or changes the format or structure of the documents used as part of the AML/CFT-P-C system (e.g. the fact sheet on the customer's socio-economic background).



POINTS TO WATCH

Procedures must be updated promptly and must be fully consistent with the obliged entity's practices.



Submission of procedures to the AMSF

Procedures must be submitted to the AMSF's Supervision Department, which shall acknowledge receipt of the procedures within one month. A submission must be made whenever procedures are established or updated.



POINTS TO WATCH

Failure to submit the procedures established or updated to the AMSF may be subject to administrative sanctions by the Authority's Supervision Department. It is specified that the AMSF is not required to carry out an on-site inspection, in view of Articles 64-7 and 64-8 of Act No. 1.362, as amended.



POINTS TO WATCH

On a regular basis, the AMSF analyses a sample of procedures submitted to it (re. Appendix 2 "Self-assessment grid").

C. OBLIGATIONS RELATED TO THE SUBSTANCE OF PROCEDURES

Requirement: French language

Procedures must be drafted in French. This requirement also applies to ad hoc procedures and appendices.

Principle of proportionality

Procedures must be proportionate to the nature and size of the establishment:

- **Type:** obliged entities of different types, as well as those of the same type, are not exposed to the same risks. E.g.: a bank is not exposed to the same AML/CFT-P-C risks as a jewellery store. E.g.: jewellery stores do not all face the same risks, since the characteristics of customers and products differ;
- **Size:** obliged entities in the same profession do not all have the same financial, human and technical resources (E.g. an obliged entity with two employees will necessarily be organised differently than one with five or ten employees).



POINTS TO WATCH

This principle must be reasonably applied by the obliged entity. It does not exempt the entity from fulfilling its legal or regulatory obligations. The proportionality of the procedures is assessed at the discretion of the department performing the supervisory function of the AMSF.

CONTENT OF INTERNAL PROCEDURES

A. SCOPE

The procedures must cover all legal and regulatory obligations applicable to the concerned obliged entity from an operational point of view. It is essential to take into account that the applicable rules of law vary according to the nature of the activity carried out by the obliged entity. Essentially, it is common practice for procedures to cover, without being limited to, the following themes:

The scope of the AML/CFT-P-C system must be defined...

► Business wide risk assessment:

The obliged entity must draw up a formal document identifying and assessing the ML/CFT-P-C risks that it faces, in line with the scale of its business, having regard to Article 3 of Act No. 1.362, as amended. This exercise allows the obliged entity to adapt its procedures and controls according to the risks identified, in order to manage them. It is specified that human and financial resources must be allocated according to the risks identified. This assessment is detailed in the Practical Guide entitled "Business Risk Assessment".

- *What form does the assessment take?; What is the methodology used?; Who is responsible for designing it?; What are the processes for its approval and updates?; (...)*

► Internal organisation:

This theme involves detailing the structural and functional framework of the obliged entity's AML/CFT-P-C system.

- *Who is the Compliance Officer?; What are the duties of the Compliance Officer?; Does the Compliance Officer possess the requisite professional competencies and autonomy, and occupy a senior management position?; (...)*

► Internal control:

The establishment must have ongoing control and periodic control proportional to the size and nature of its activity.

- *How is the establishment structured?; What are the departments called and what are their respective functions in terms of control?; How does the establishment structure its different levels of control and how are they interlinked?; (...)*

► Staff training and awareness:

The governing body and staff must be trained on an ongoing and regular basis. The procedures for training activities must be formalised.

- *Who is the person responsible for training and awareness-raising activities? What are the training materials used?; What is the frequency of such activities?; Who are the persons concerned by the said activities?; How is staff participation in these activities formalised? (e.g. summary document detailing all the training activities provided in order to ensure follow-up); (...)*

► Scope of due diligence measures:

The obligations of Chapter II of Act No. 1.362, as amended, do not necessarily apply to all customers. The scope of application depends on the nature of the activity carried out by the obliged entity (Article 1 of Act No. 1.362 as amended), the nature of the clientele (business relationship or occasional customer) and the payment methods accepted (special rules for cash). The procedures must be such as to determine clearly and precisely whether due diligence measures should be applied to a particular customer or transaction. In other words, this theme amounts to asking the following questions:

- *When should due diligence measures be applied?; What are the thresholds applicable for my activities, my customers, my payment methods? (...)*

The AML/CFT-P-C system must be implemented...

► Customer risk-based approach:

A risk level must be assigned to customers using a defined and formalised method. The method of assigning the risk level must be determined according to the criteria of Article 3 paragraph 3 of Act No. 1.362, as amended, namely, “the nature of the products or services offered, proposed transaction conditions, distribution channels used, characteristics of customers, countries or geographical areas and the state or territory of source or destination of the funds”. The details of this due diligence must be formalised. The obliged entity must be able to explain why a given customer has been assigned a low, medium or high-risk level.

• *Is the customer risk approach based on the business risk assessment?; What are the methods used to assign a risk level?; What is the methodology used?; How is the risk level formalised?; (...)*

► Due diligence levels:

The level of due diligence applied to a customer must be adapted according to the risk level assigned to that customer. The due diligence tasks to be carried out by level of due diligence must be detailed under this theme. In practice, the level of due diligence applied has a significant impact on the extent of knowledge of the socio-economic background of customers (and beneficial owners, where applicable). The higher a customer’s risk level, the more extensive the knowledge of the customer must be and vice versa. In the particular case of enhanced due diligence, certain special due diligence tasks must be carried out in addition.

• *What are the different levels of due diligence? (E.g.: Low risk = Simplified Due Diligence / Medium risk = Standard Due Diligence / High risk = Enhanced Due Diligence); what are the due diligence tasks performed according to the risk level assigned? (E.g.: Enhanced Due Diligence: the acceptance of high-risk customers is subject to specific scrutiny and must be approved by a specific management level); (...)*

► Customer identification and verification:

Article 5 of SO No. 2.318, as amended, lists the documents that must be obtained to identify the identity of a natural person (document containing a photograph and proof of address) and a legal person (company documents). If a person is acting in the name and on behalf of a customer (an agent), he or she must be identified.

• *Who must be identified? (natural person, agent, director, trustee, protector, etc.); What are the documents obtained?; What data and information used are from independent reliable sources? ; (E.g.: Trade and Industry Register, PRADO², complementary specialised tools, etc.); (...)*

► Beneficial owner identification:

Article 21 paragraph 1 of Act No. 1.362, as amended, provides the general definition of a beneficial owner. Articles 13 et seq. of SO No. 2.318, as amended, set out the rules applicable to identify beneficial owners according to the designated legal instrument (legal person, trust, association, foundation, life insurance policy). In fact, there are several definitions of beneficial owner; the procedures must include all of them, if possible in an instructive manner.

• *What are the different definitions of a beneficial owner?; How is beneficial owner status determined?; What are the documents obtained? What data and information used are from independent reliable sources? (E.g.: Trade and Industry Register, PRADO, complementary specialised tools, etc.); (...)*

► Know your customer (KYC):

For the purposes of a business relationship, the obliged entity must formalise the knowledge that it has of its customer, its activities, risk profile and, where necessary, the source of the funds and assets. In addition, the purpose and nature of the business relationship must be detailed.

• *How is knowledge of the customer formalised? (E.g. fact sheet, grid, computerised tool, etc.); What data and information used are from independent reliable sources? (E.g. search engine, complementary specialised tools, documents obtained from the customer, etc.); How are data and information analysed?; (...)*

► Politically exposed person (PEP):

An enhanced due diligence must be performed where the customer, beneficial owner or agent is a PEP. The procedures must specify the legal definitions and criteria (Articles 17 to 17-3 of Act No. 1.362, as amended) and regulatory definitions and criteria (Article 24 of SO No. 2.318, as amended), as well as the methods for determining whether a given person is a PEP or becomes one in the course of the business relationship. A thematic guide on PEP is available for consultation.

• *What are the methods used to identify the PEP status when a new client relationship is established and during the business relationship?; How is the specific examination formalised?; How is loss of PEP status treated?; (...)*

2) Public register of Authentic Travel and Identity Documents Online.

► **High-risk country:**

An enhanced due diligence must be applied when engaging in a business relationship or conducting a transaction involving a high-risk jurisdiction, specifically a High-Risk Country (HRC) or a Non-Cooperative Country or Territory (NCCT). These are jurisdictions whose legislation is deemed insufficient or whose practices are considered obstacles to combating money laundering, terrorist financing, proliferation of weapons of mass destruction, and corruption (AML/CFT-P-C). These countries are listed by ministerial decree. The list is regularly updated and can be consulted on the AMSF website.

• *How is the list of HRCs and NCCTs updated? What is the frequency of updates for these lists?; How are a client's connections with an HRC or NCCT assessed? (economic, legal or geographical links); (...)*

► **Remote identification:**

An enhanced due diligence must be performed whenever the customer has not been met in person. The enhanced due diligence measures listed in Article 13 of Act No. 1.362, as amended, must be performed, unless the obliged entity uses an electronic means of identification and a trust service, as defined in the legislation.

• *Is remote customer identification allowed in the entity or not?; What are the due diligence tasks performed when a new client relationship is established? What are the means and tools used?; What are the enhanced due diligence measures applied in cases of remote customer identification?; (...)*

► **Special review:**

In accordance with Article 14 of Act No. 1.362, as amended, a special review must be conducted in cases of complex transactions, unusually large transactions, transactions conducted in an unusual pattern, transactions that do not have an apparent economic or lawful purpose and transactions that involve an HRC and NCCT. This takes the form of a written report analysing the source and destination of the funds, and more broadly, providing an understanding of the purpose of the transaction and its beneficiary, i.e., the economic justification and apparent legitimacy of the transaction. In all cases, the procedures must define the cases for which a special review is to be conducted and how the report will be submitted to the Compliance Officer. Obligated entities must create a standard document to formalise such a written report.

• *What is the definition of a special review?; What are the criteria that trigger the formalisation of a special review?; How is it formalised and what are its approval procedures?; What are the consequences of formalising a special review? (...)*

► **Specific examination:**

Often confused with the special review, the specific examination is provided for by Article 25 of SO No. 2.318, as amended. The procedures must set out the acceptance policy for customers with a particular level of risk, i.e. those to which a high-risk level has been assigned by the obliged entity. The specific examination consists of formalising the acceptance of these customers by a senior member of management. The regulations do not set out any specific formal procedure for this purpose. It is imperative for the obliged entity to adopt a formal procedure that can provide proof of the due diligence tasks performed, it being specified that the specific examination concerns, in particular, customers with PEP status, identified remotely or involving an HRC or NCCT.

• *What is the definition of a specific examination? What are the criteria that trigger the formalisation of a specific examination?; How is it formalised and what are its approval procedures?; (...)*

► **Ongoing due diligence:**

Throughout the duration of the business relationship, obliged entities must in particular:

- maintain updated documents related to the identification and verification of the identity of the customer (KYC) and, if applicable, of the beneficial owners and agents. This is the case when a document bearing a photograph has expired or a proof of address is too old. Obligated entities must have the necessary tool to ensure such monitoring;

- update the knowledge of the customer's socio-economic background. In practice, a customer file review is carried out periodically according to the risk level assigned to the latter (e.g.: Low risk = 3 years / Medium risk = 2 years / High risk = 1 year);

- perform a customer file review whenever relevant aspects about the customer's situation change (e.g.: adverse media, new beneficial owner, etc.);

- check that transactions are systematically consistent with knowledge of the customer's socio-economic background (the obliged entity must monitor and follow up transactions).

In all cases, obliged entities must create a standard document to formalise the due diligence tasks performed as part of the customer file review.

• *How is the ongoing due diligence obligation complied with? (Manual, semi-automatic or automatic control); What is the frequency of reviews based on the risk level assigned to a customer?; What are the relevant aspects triggering a customer file review?; How is the ongoing due diligence obligation formalised during the review of customer files and transactions? (...)*

► Targeted financial sanctions (asset freezing):

The procedure for identifying individuals subject to asset-freezing measures must be detailed, both during the onboarding process and throughout the duration of the business relationship. Prospective clients, existing clients, and, more broadly, all counterparties, must be screened against the national asset-freezing list, which is available on the website of the Budget and Treasury Department. If an automated screening process is employed, the obliged entity must incorporate this list into its system and ensure it is updated without delay.

• *How is the obligation to monitor targeted financial sanctions complied with? (Manual, semi-automatic or automatic check); At what frequency?; Is the Monegasque asset freezing list used or included in the system used? What is the time-frame to incorporate the list into the system used?; Does it include suspicious transaction reporting? (partial match, positive, or circumvention attempt); Who is concerned by the screening? (customer, beneficial owner, vessel, counterparty...); (...)*

► Suspicious transaction report:

The procedures must include the method of reporting, the time frame for reporting, the cases in which a suspicion transaction report must be filed, the postponement power of the Financial Intelligence Unit (FIU) and the obligation of confidentiality. A Practical Guide and Guidelines on suspicion transaction reports are available for consultation.

• *What are the situations that require a suspicion transaction report?; Is the principle that the suspicion transaction report must be filed before the transaction is carried out provided for?; Is the exception that the suspicion report must be filed without delay after the execution of the transaction provided for?; Is the filing of a supplementary report provided for?; How is the obligation of confidentiality guaranteed?; (...)*

► Cash:

In compliance with the legislation, obliged entities must define their internal policy on cash transactions. The acceptance or not of this payment method must be mentioned in the procedures. In any case, obliged entities may not make cash payments to or receive cash payments from a given customer the total value of which is EUR 30,000 or more. In addition, this amount must not be exceeded over a rolling period of six months. For this purpose, obliged entities must have the necessary tool (manual or automated) in order not to cross this legal threshold.

• *What are the applicable thresholds?; What are the means used for the monitoring of cumulative transactions over a rolling period of six months?; What is the due diligence performed according to the thresholds? Is a special review provided for beyond a certain threshold?; (...)*

Other...

► Record keeping:

The procedures must set out the terms of personal data record keeping and their duration, in accordance with article 23 of Law No. 1.362, as amended. It being specified that automated or non-automated processing of personal data must comply with the requirements of Law 1.565 of December 3rd, 2024 relating to the protection of personal data.

• *Is personal data processing linked to AML/CFT detailed in the register of processing activities? ; What are the record keeping periods of the collected personal data? ; Is access to personal data fast and efficient? ; (...)*

► Third-party KYC reliance:

Obliged entities may, under certain conditions, rely on third parties to fulfill the obligations prescribed in Articles 4-1 and 4-3 of the amended Act No. 1.362. The intent to utilise this option must be specified within the procedures. If the obliged entity employs third-party KYC reliance, the process must be thoroughly detailed and comply with the relevant legal and regulatory obligations.

• *Does the obliged entity rely on third-party KYC ?; What is the nature of the third party?; How is this reliance formalised?; What is the scope of the reliance?; Is the role of the relying party detailed?; (...)*

► Internal reporting procedure:

The procedures must provide for an internal reporting procedure, in accordance with Articles 31 et seq. of Act No. 1.362, as amended. This procedure aims to allow managers and employees to report any internal breaches of the obligations prescribed by the aforementioned Act.

• *What are the internal reporting procedures?; Has a trusted person been appointed?; How can this person be contacted?; Are the measures to protect the reporting person detailed?; (...)*

Appendices

All documents related to the AML/CFT-P-C system must be annexed to the procedures, including:

- *the business risk assessment;*
- *the list of high-risk countries (HRCs and NCCTs);*
- *fact sheet on knowledge of the customer's socio-economic background;*
- *record on the periodic customer file review;*
- *record on the special review.*
- *where appropriate, ad hoc procedures;*
- (...)



POINTS TO WATCH

The procedures must address all of the topics presented, including where one or more are excluded from the obliged entity's policy. For example, an obliged entity which refuses cash transactions, or relies on third-party KYC, should mention this in its procedures.



POINTS TO WATCH

TIP: The AMSF recommends that obliged entities use the "self-assessment grid" to draft their procedures and ensure their exhaustiveness. This document is a non-exhaustive list of obligations that must be addressed in the procedures (re. «appendix 2 - «Self-assessment grid»).

B. SUMMARY

Obliged entity

Overall risk assessment

Refer to the Practical Guide on Overall risk assessment

Internal organisation

Appoint a **Compliance Officer** with the required professional skills, necessary autonomy and of senior management level

Describe the departments and their functions

Allocate human resources in accordance with the number and nature of customers and transactions

Implement operational **internal control** measures in particular by establishing three levels of control (clearly define how the 2nd level control is formalised)

Train and raise staff awareness

Other specific obligations

Determination of the scope of application of due diligence measures

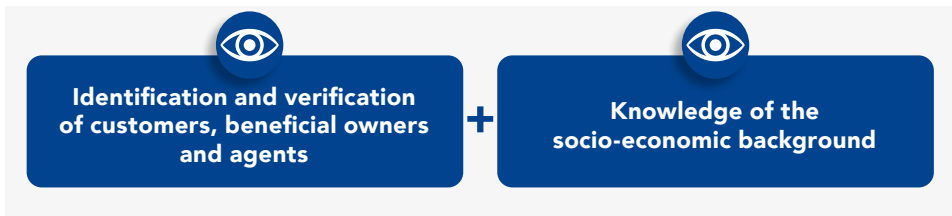
Or "When do I need to identify my customer?"

Nature determination of the scope of application of due diligence measures of the entity's business (Articles 1 and 2 of Act No. 1.362, as amended)

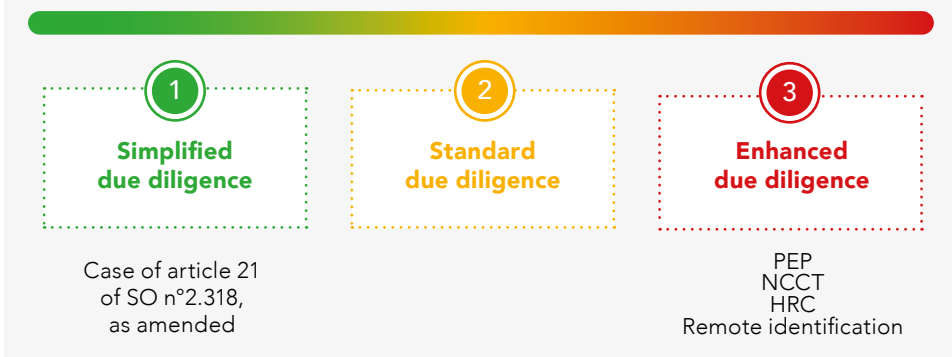
Nature of the entity's relationship (business relationship or occasional customer)

Customer's means of payment (cash thresholds to be determined in accordance with Act No. 1.362, as amended)

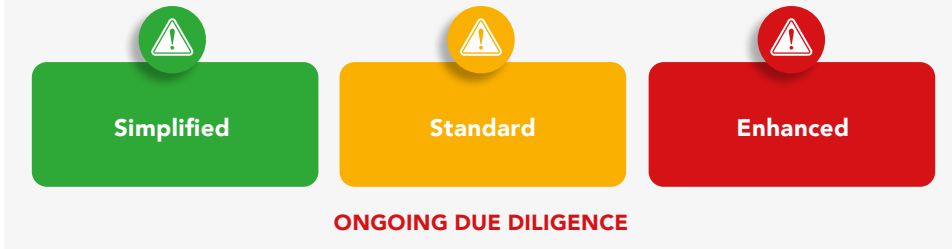
General obligations



Assignment of the customer risk level



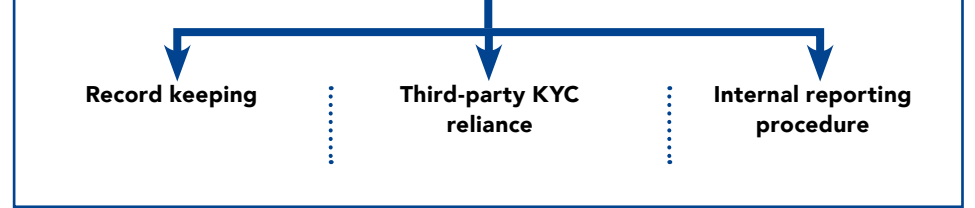
Application of vigilance measures



Special obligations



Other



The level of risk attributed to the client is likely to change during the business relationship

RECURRING ERRORS

In the course of off-site audits and on-site inspections, agents of AMSF's Supervision Department (hereinafter the "Supervisors") identified a number of recurring errors related to the procedures. The purpose of this section is to share the shortcomings identified by the Supervisors in order to help obliged entities best meet the expectations of the legislation and the inspection.

POINTS TO WATCH

The obliged entity's AML/CFT-P-C system is assessed in the light of its procedures. Supervisors check that the practice is consistent with what is provided for in the procedures. This applies to all the themes covered by the audit report.

The points listed below have already been raised in audit reports:

A. ON THE FORM OF PROCEDURES

- › The procedure approval process is not mentioned or complied with;
- › The adoption or update of procedures has not been approved by a senior member of management. There is no date and signature affixed by the Compliance Officer (or Compliance Officers) as set out in the procedures' approval process;
- › Procedures have not been updated following previous reforms of the legislation. Hence, some important inputs are not incorporated and some definitions are outdated;
- › The list of high-risk countries (HRCs and NCCTs) is not updated;
- › It is not easy to see the coherence of the body of procedures (for example: poor linkage between the local procedure and the group procedure or ad hoc procedures).

B. ON THE SUBSTANCE OF PROCEDURES

- › Procedures are not clear or instructive enough;
- › The procedures do not cover, or do not sufficiently cover, all AML/CFT-P-C obligations;
- › The legal or regulatory criteria pertaining to certain AML/CFT-P-C obligations are missing or incomplete. This is often the case for the section dealing with the definitions of beneficial owner, the definition of PEP, cases in which a special review must be carried out, cases in which a suspicion report must be filed, amongst others;
- › The procedures are theoretical and consist literally of a compilation of legal and regulatory obligations and are not practical enough;
- › The procedures are not consistent in some or many aspects with what is practised by the obliged entity;
- › Some documents are used internally but are not mentioned in the procedures (example: Know Your Customer fact sheet).

CASE STUDY

The following case study is designed like an extract from an on-site inspection report; the facts set out below are fictitious.

On 1 October 2024, an inspection is conducted at the obliged entity. Two Compliance Officers are presented to the AMSF. They are the main contact persons for the inspection. As set out in the engagement letter, the obliged entity provided the latest version of its procedures to the inspection team, prior to the start of the on-site inspection. This was done so that the Supervisors could understand the AML/CFT-P-C system and the policies as applied by the obliged entity and assess the compliance of the body of procedures with the applicable regulations.

The Supervisors noted the signature of only one Compliance Officer in the text box on the cover page designed for indicating the last update. On this point, the procedures state that “the drafting or updating of these procedures requires the approval of both Compliance Officers. This approval is evidenced by their joint signatures on the cover page in a text box designed for this purpose”.

The procedures were updated following a reform of Act No. 1.362, as amended, and of SO 2.318, as amended. Despite this recent update, the Supervisors found that significant inputs have not been incorporated, definitions are outdated and the legal and regulatory criteria are incomplete.

Some of the themes covered by the procedures merely restate the applicable rules of law without ever stating how the obligations are to be applied from an operational point of view.

In the course of the on-site inspection, the Supervisors noted that certain documents used as part of the AML/CFT-P-C system were neither mentioned in the procedures nor annexed to them. This is the case of the record used to formalise the periodic customer review.

In general, the Supervisors found that the procedures are easy to read, and are sometimes even accompanied by diagrams to facilitate their understanding.

What do you think?

SOLUTION

The solution to this case study is drafted like an extract from an on-site inspection report. The findings set out below are fictitious.

AML/CFT-P-C policies and procedures

Findings:

These procedures, entitled «Procedures on anti-money laundering, countering the financing of terrorism, proliferation and corruption (AML/CFT-P-C)», were drafted in 2021 and updated in October 2022 and August 2023, respectively.

In this regard, the body of procedures mentions that the process for approving or updating procedures results in the joint signatures of both Compliance Officers. Contrary to this policy, the last update of the procedures was signed by only one Compliance Officer. The finding therefore is that the last update of the procedures has not been approved. As a mitigation, the inspection team noted that both the drafting of the procedures and the update before the last one have been approved in accordance with the obliged entity’s policy.

The procedures are clear and instructive, and set out the main obligations incumbent on the obliged entity. The themes covered are sometimes accompanied by diagrams, thus facilitating the understanding and adoption of the procedures by staff.

However, the inspection team noted, firstly, that the procedures include some legal and regulatory references that are obsolete, or even repealed, and, secondly, that the inputs from Act No. 1.549 of 6 July 2023, amending Act No. 1.362 of 3 August 2009, as amended, and of Sovereign Ordinance No. 10.124 of 21 September 2023, amending Sovereign Ordinance No. 2.318 of 3 August 2009, as amended, have not all been incorporated into the body of procedures. Principally, but not exclusively, the inspection team noted that:

- The definitions relating to the beneficial owners of associations and foundations have not been included;
- The definition of politically exposed persons has not been updated;
- The conditions that could trigger a special review are incomplete;
- Details on suspicious transaction reports are missing;
- The national list of High-Risk Countries (HRCs) has not been updated;

- Details of the reporting procedure are missing;
- The procedures refer to the initial version of Article 24 of SO No. 2.318, as amended, for the purpose of determining the customer risk-based approach.

In some instances, the procedures do not state how the obligations are to be applied from a practical point of view, but merely restate the applicable rules of law.

The procedures are not always consistent with the obliged entity's practice. Indeed, the procedures do not mention the existence of certain documents, although they are used as part of the obliged entity's AML/CFT-P-C system.

Other findings on the procedures are detailed in the rest of this inspection report.

OVERVIEW OF THE LEGISLATION & SANCTIONS

The main legislation relating to internal procedures:

- › Act No. 1.362 of 3 August 2009 on combating money laundering, terrorist financing, the proliferation of weapons of mass destruction, and corruption, as amended ("Act No. 1.362, as amended");
- › Sovereign Ordinance No. 2.318 of 3 August 2009 setting the conditions for application of Act No. 1.362 of 3 August 2009 on combating money laundering, terrorist financing, the proliferation of weapons of mass destruction, and corruption, as amended ("SO 2.318, as amended");
- › Sovereign Ordinance No. 8.664 of 26 May 2021 on procedures for freezing funds and economic resources implementing international economic sanctions, as amended;
- › The applicable ministerial decree on the list of states or territories whose anti money laundering, terrorist financing and corruption measures exhibit strategic deficiencies (the last ministerial decree is available for consultation on the AMSF's website).

With regard to sanctions incurred in the absence of an inspection assignment: the department responsible for the supervisory function within the AMSF has the authority to transmit a record of certain identified shortcomings to the department responsible for sanctions. These are exhaustively listed in Article 64-7 of Act No. 1.362, as amended. In this regard, there is a unit within the Supervision Department exclusively dedicated to identifying such shortcomings. These include in particular:

- Failure to communicate to the AMSF the internal procedures referred to in Article 34 of Act No. 1.362, as amended, in breach of these provisions;
- Failure to update the procedures in breach of paragraph 2 of Article 34 of Act No. 1.362, as amended;
- Failure to communicate to the AMSF a French version of the procedures in breach of paragraph 3 of Article 34 of Act No. 1.362, as amended;
- Failure to communicate to the AMSF the identity of the designated AMSF contact person in breach of paragraph 6 of Article 27 of Act No. 1.362, as amended;

- Failure to provide the AMSF with the risk assessment in breach of paragraph 7 of Article 3 of Act No. 1.362, as amended;
- Failure to communicate the activity report to the AMSF in breach of the last paragraph of Article 33 of Act No. 1.362, as amended;
- Failure to provide the AMSF with the STRIX questionnaire in breach of Article 56-2-1 of Act No. 1.362, as amended.

With regard to sanctions incurred following an on-site inspection: the Supervision Department can initiate an on-site inspection in obliged entities. At the end of the inspection, a report is drawn up and, following appraisal by both the AMSF and the obliged entity, a final report is adopted. This report is automatically sent to the department responsible for sanctions. In the event of non-compliance with all or part of the obligations of Chapter II (with the exception of Section V), III, IV, V, VI and X of Act N^o. 1.362, as amended, and its implementing provisions, the department responsible for sanctions may impose one or more of the sanctions listed in Article 65-8 of Act No. 1.362, as amended.

With regard to the nature of the sanctions: any obliged entity that infringes one of the above-mentioned basic laws and regulations is liable to administrative sanctions.

GLOSSARY

Due to the specific nature of the subject, certain terms are clarified below. The objective is to harmonise practices across the various professions.

Obliged entity ... Professionals (natural or legal persons) referred to in Articles 1 and 2 of Act No. 1.362, as amended

AMSF Autorité Monégasque de Sécurité Financière (Monegasque Financial Security Authority)

ML/FT-P-C Money laundering, the financing of terrorist activities and the proliferation of weapons of mass destruction and Corruption

Should..... The term “should” means that it is recommended that the obliged entity perform a given due diligence

► **E.g.:** the obliged entity should collect information on and formalise the socio-economic background of its customers in a fact sheet (recommendation)

Due diligence The term “due diligence” is the performance by an obliged entity of an action required under the applicable laws or regulations

► **E.g.:** obtaining a valid document containing a photograph

► **E.g.:** filtering the customer’s first and last name on the national asset freezing list

Must The term “must” means that the obliged entity is instructed to perform a given due diligence

► **E.g.:** the obliged entity must collect information on and formalise the socio-economic background of its customers in a fact sheet (obligation)

HRC High-Risk Countries

NCCT Non-Cooperative Countries and Territories

Formalise The term “formalise” refers to the obligation for the obliged entity to provide proof of having carried out a given due diligence. This obligation is performed either by printing, or taking the screen-shot of the due diligence carried out, or drafting an analysis report. In all cases, all due diligence tasks must be formalised, whether they produce an outcome or not

► **Example:** Screening against the national asset freeze list resulting in a positive match or a no match

► **Example:** Search using the Google search engine resulting in a match or no match

AML/CFT-P-C Anti-Money Laundering, Countering the Financing of Terrorism and the Proliferation of weapons of mass destruction and Corruption

Due diligence

measure The term “due diligence measure” refers to a given due diligence, which must be performed by the obliged entity. Due diligence measures are provided for in Chapter II of Act No. 1.362, as amended, and specified by its implementing text, SO 2.318, as amended. Due diligence measures vary depending on the due diligence level applied, i.e. simplified, standard and enhanced

SO Sovereign Ordinance

APPENDIX 1: SUPPORT & METHODOLOGY

In the absence of standard procedures provided to obliged entities, the AMSF proposes two methodologies for drafting them³. The reason is that the legal and regulatory provisions vary considerably depending on the nature of the obliged entity’s business. Furthermore, as previously stated, in view of the principle of proportionality, the procedures must be customised for each obliged entity. These are discretionary, personal and specific.

Procedures must be clear, precise and instructive:

► **Clear:** procedures are drafted to be applied. The wording must be as easy as possible to understand.

► **Precise:** procedures must include the appropriate legal and regulatory obligations as well as how they are to be applied from an operational point of view.

► **Instructive:** procedures are designed for the obliged entity’s staff, not for the AMSF. The obliged entity’s procedures should be drafted concisely - neither too brief nor too comprehensive. It is recommended, as far as possible, to cover the themes in plain language, while taking care not to distort the legal and regulatory criteria applicable. Diagrams are a good way to illustrate a point.

Procedures must be complied with. It is essential to note that Supervisors present findings on the legal and regulatory obligations breached, as well as on the procedural rules adopted by the obliged entity (e.g.: if the procedures provide that trust customers must be subject to enhanced due diligence, the obliged entity must comply with that requirement, even if Act No. 1.362, as amended, does not provide for such an obligation).

3) The two proposed methodologies are provided for illustration purposes; other methodologies may be used by obliged entities for drafting their internal procedures.

A. THE «ACADEMIC» METHODOLOGY

Inspired by legal syllogism, this methodology consists in addressing a theme as follows:

- Theoretically: explain the applicable rules of law;
- Practically: explain how the rules are to be applied in practice;
- Conclusion: present a brief summary (explanation in a text box or diagram).

Example

Identification and verification of the identity of a customer who is a natural person

> Theoretically:

Article 4-1 of Act No. 1.362, as amended, establishes the obligation to identify and verify the identity of a customer and to do so before a new client relationship is established with a natural person.

Article 5 of SO No. 2.318, as amended, provides that the identity of a customer who is a natural person must be identified and verified by the obtaining a valid official document containing their photograph. Where the customer's address is not mentioned on this document, or if there is any doubt as to the accuracy of the address indicated, a proof of address must be obtained. Moreover, in its General Guidelines, the AMSF has specified that if the document containing the photograph has been issued since more than one year, then a proof of address must be obtained.

Article 7 of Act No. 1.362, as amended, sets out that where the identity of a natural person cannot be identified or verified, the institution must assess whether or not to file a suspicion report.

> In practice:

To identify a customer who is a natural person, the Account Manager must obtain (scan) a document containing a valid photograph. This is an identity document with the customer's photo. On this point, the AMSF only accepts Monegasque identity card, passport or residence card. The photo on the identity document must be verified and must match the person met

In addition to the identity document, the Account Manager must obtain a proof of address (including but not limited to an electricity bill, water bill, or telephone bill) in certain cases:

- If the identity document has been issued since more than one year;
- If there is any doubt as to the accuracy of the address indicated.

When the identity document, and where applicable the proof of address, have been ob-

tained, they must be entered in our "lotus notes" customer database. The Account Manager must immediately send an email to the Compliance Officer notifying them that a new customer file has been created.

As an exception, if the Account Manager is unable to obtain one of the above-mentioned documents or if the photo ID does not match the person met, then they must immediately notify the Compliance Officer by email. The latter will assess whether or not it is necessary to file a suspicious transaction report.

> Conclusion:

To identify the natural person, a Monegasque identity card, passport or residence card must be obtained. A proof of address must be obtained only if the document has been issued since more than one year, or if there is doubt about the address shown. Inability to identify or verify the identity of a natural person must be immediately notified to the Compliance Officer by email.

B. THE «PRAGMATIC» METHODOLOGY

Less exhaustive, this methodology consists in addressing a theme as follows:

- 1) First of all, the author acquaints themselves with the applicable laws (Act No. 1.362, as amended) and regulations (SO No. 2.318, as amended);
- 2) The author examines how the obligations should be applied concretely;
- (3) The author incorporates the applicable rules of law in their drafting and at the same time details what the obliged entity must do in practice (the law combined with the obliged entity's practice).

While this methodology consists in interlinking the law with the obliged entity's practice, the author must ensure:

- that all applicable legal and regulatory criteria are included;
- that all obligations applicable to its business are addressed;
- that the applicable rules of law are not distorted.

Example:

Identification and verification of the identity of a customer who is a natural person

Articles 4-1 and 7 of Act no. 1.362, as amended and Article 5 of SO no. 2.318, as amended

The obligations of identification and verification of the identity of a customer who is a natural person must be fulfilled before establishing a business relationship with a potential customer or carrying out an occasional transaction.

This measure consists of two steps: identification and verification of identity. Identification involves obtaining and copying a valid identity document containing the photograph of the natural person. On this point, our company only accepts identity cards or passports. In addition to the identity document, a proof of address (including but not limited to an electricity or water bill) is required where the identity document has been issued more than one year ago or if there is any doubt as to the accuracy of the address indicated on the identity document.

Identity verification involves analysing the quality and consistency of the documents obtained in the light of the customer's profile.

Within the company, the Account Manager obtains supporting documents such as to identify the customer during the first appointment. This is when they scan the said documents in colour so that they are clearly, precisely and fully legible. When the appointment is over, they save the documents in the company's customer database and immediately send an email to the Compliance Officer to notify them that a new customer file has been created.

Where the Account Manager is unable to fulfil this identification and verification obligation, they may neither establish the business relationship nor execute a transaction. They must then immediately notify the Compliance Officer who will assess whether it is necessary to file a report with the AMSF.

[...]

APPENDIX 2 «SELF-ASSESSMENT GRID»

In accordance with Article 34 paragraph 3 of Act No. 1.362, as amended, the AMSF periodically analyses a sample of the procedures submitted to it, based on a risk analysis. Following this off-site audit or on-site inspection, comments are made as to the regularity of the said procedures. Administrative sanctions may be incurred by the obliged entities.

The AMSF has produced a grid intended for obliged entities to allow them to self-assess their procedures and help them draft or fine-tune them. This document is a non-exhaustive list of obligations that must be addressed in the procedures.



