



FINANCIAL INTELLIGENCE ANALYSIS UNIT

IMPLEMENTING PROCEDURES

*ISSUED BY THE FINANCIAL INTELLIGENCE ANALYSIS UNIT
IN TERMS OF THE PROVISIONS OF THE PREVENTION OF
MONEY LAUNDERING AND FUNDING OF TERRORISM
REGULATIONS*

PART II BANKING SECTOR

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1 Introduction

The Implementing Procedures outlined below are specific to the banking sector and must be read in conjunction with Part I of the Implementing Procedures. The section numbers in this part refer to the corresponding sections in Part I of the Implementing Procedures.

The purpose of this part of the Implementing Procedures is to focus on certain sections in Part I of the Implementing Procedures which warrant some further elaboration at industry-specific level in order to highlight certain aspects of relevance in these sections, and to ensure that they are understood and interpreted consistently across the banking sector.

2 Section 3.1.1.2(ii)(a)(2) – Verification of the residential address where the applicant for business is present

- Subject persons are required to verify the **permanent** residential address of an applicant for business. Therefore when a foreign applicant is only residing in Malta for a definite period of time, the bank should obtain and verify the permanent residential address of the applicant in his home country. The applicant's temporary address in Malta should also be obtained, of course, though verification of this address, too, need not be carried out.

Verification of the permanent residential address of an applicant for business who is a natural person may be carried out by making reference to any one of the documents listed in this section, including *“a recent utility bill or any similar document as may be specified in sectoral implementing procedures issued by the FIAU”*.

In certain exceptional circumstances, where it is impossible for the applicant intending to open a bank account to produce any of the documents referred to in this section due to reasons beyond the control of the applicant, verification of the applicant's permanent residential address may be carried out by making reference to the following documents:

- (a) A reference issued by a credit institution licensed under the Banking Act, or otherwise authorized in another Member State of the Community or in a reputable jurisdiction, which confirms the residential address indicated by the applicant.
- (b) Where the applicant is a foreign student undertaking studies in Malta, a declaration from the local education institution (University, college, school, etc.) which the applicant is attending. In such cases, the verification could be provided by the education institution in the form of a declaration using the standard form attached as Appendix I.
- (c) A written declaration from the applicant's employer, specifying the permanent place of residence of the applicant, provided that the bank carries out independent checks to verify the source of that letter.
- (d) Where it is impossible for any of the documents referred to in paragraphs (a) to (c) to be obtained, the bank may verify the permanent residential address through the use of alternative documents, provided that such documents are sufficiently indicative of the applicant's permanent residential address and are deemed to be reasonable and sufficiently reassuring by the bank.

Where a foreign applicant is only residing in Malta for a definite period of time, and the applicant declares in writing that he currently has no permanent address other than his residential address in Malta, the latter address should be verified by the bank. Where it is impossible for such applicants to produce any of the documents referred to in this section, verification of the applicant's residential address in Malta may be carried out by reference to the following documents, if applicable:

- (i) A certified copy of a rental agreement in respect of the rented accommodation indicated by the applicant as his residential address in Malta.
 - (ii) A written declaration from the applicant's employer in Malta, specifying the place of residence of the applicant in Malta, provided that the bank carries out independent checks to verify the source of that letter.
- This section also requires that where the applicant for business is a minor, the relative verification procedures should still be followed to the fullest extent possible. In this regard, it should be noted that Section 971A of the Civil Code provides that:

*“Notwithstanding any provision of this Code, a child who has attained the age of sixteen years may deposit money in an account opened by the child in his or her own name with any bank, and any money deposited in any such account may only be withdrawn by such child notwithstanding that such money may be subject to the administration, usufruct or authority of any other person. **For all purposes of law the child shall with regard to the opening and operation of any such account be considered a major**”.*

The opening of such accounts is facilitated by the fact that Maltese citizens who have reached the age of sixteen years are eligible to obtain a “16+” Identity Card.

3 Section 3.1.1.2(ii)(b) – Verification of the residential address where the applicant for business is not present

- Where the applicant for business is not present, subject persons are required to obtain the original document verifying the applicant's residential address. Having viewed the original document, the bank may return this to the applicant and keep a true copy of the document on file. Such copy should be signed and dated by the bank's officers who have viewed the original document. Alternatively, the bank may be provided with a certified true copy of the original document in terms of Section 3.5.1(b).

Utility bills, bank statements and other documents are often only relayed electronically by the service provider to the applicant. In such cases, downloaded or electronic versions of such documents are deemed to be original documents, as long as the relative document bears a date.

4 Section 3.1.2 – Identification and verification of the beneficial owner

- Subject persons are required *“to identify the beneficial owner, where applicable, taking reasonable measures to verify the identity such that the subject person is satisfied of knowing who the beneficial owner is...”*

Once the applicant for business produces an authenticated identification document in respect of a beneficial owner, but that document does not contain reference to the residential address of the beneficial owner, details of the latter’s residential address should be obtained from the applicant for business/beneficial owner. Such address should also be verified by reference to one of the documents indicated in Section 3.1.1.2(ii)(a)(2). In this regard, see comments above made in relation to that section.

- At the end of Section 3.1.2.1, the Procedures state that *“...in those cases where it is not possible for the subject person to determine **with certainty** who the beneficial owner is on the basis of documentation available to him, subject persons should consider requesting the applicant for business to provide a written statement or declaration of beneficial ownership signed by the applicant for business and the beneficial owner”*.

Such a situation arises in the case of companies with capital in the form of bearer shares. In such cases, banks should obtain a written statement or declaration of beneficial ownership as suggested in the Procedures. This document should also incorporate an undertaking on the part of the signatories to notify the bank immediately should the shares be transferred to another party.

Depending on its risk assessment of the client, the bank may even consider it appropriate to require that the bearer shares be held by a named custodian, with an undertaking from that custodian that the bank will be notified immediately of any changes to their records relating to these shares, or that the custodian will not allow any transfer of the bearer shares without the bank’s prior consent.

In situations where the shares are not in bearer form, but information on the registered shareholders does not result from the documentation emanating from registries, the bank may obtain a written statement or declaration of ownership signed by the beneficial owners.

5 Section 3.1.3.2 – When the principal is a public company

- Subject persons are required to view *“**the most recent version** of the Memorandum and Articles of Association or other statutory document”*.

As such, the bank should request the applicant for business to provide it with the most recent version of the relative constitutive document, and the applicant for business should confirm in writing, when submitting this document to the bank, that it is the most recent version of the document. On this basis, the bank is entitled to assume that the document provided by the applicant for business is, in fact, the most recent version of that document.

- Subject persons are also required to “...take all reasonable measures to ensure that the applicant for business keeps the subject person informed of any changes in the beneficial ownership”.

The bank must rely primarily on the applicant for business in this regard, and the obligation of informing the bank of any changes in the beneficial ownership should therefore be clearly communicated to the applicant for business. The latter should acknowledge this obligation and provide a written undertaking to inform the bank of any changes in beneficial ownership.

- See also comments made above in relation to Section 3.1.2 – Identification and verification of the beneficial owner.

6 Section 3.1.3.3 – When the principal is a private company

- See comments above made in relation to Section 3.1.3.2 – When the principal is a public company.

7 Section 3.1.3.4 – When the principal is a commercial partnership

- See comments above made in relation to Section 3.1.3.2 – When the principal is a public company.

8 Section 3.1.3.5 – When the principal is a foundation or association

- See comments above made in relation to Section 3.1.3.2 – When the principal is a public company.

9 Section 3.1.3.6 – When the principal is a trustee of a trust

- The trustee is required to disclose the identity of the beneficial owners and the identity of the trust settlor, as well as producing the authenticated identification documentation of such persons.

Where the identification document does not contain reference to the residential address of the beneficial owners/settlor, details of their residential address should be obtained from the trustee. Such address should also be verified by reference to one of the documents indicated in Section 3.1.1.2(ii)(a)(2). In this regard, see comments above made in relation to that section.

Where a beneficiary has not yet been informed of the existence of the trust, the trustee will not be in a position to produce an authenticated identification document of the beneficiary concerned at the point that the trust account is being opened. In this regard, see comments below made in relation to Section 3.2.1.1(iv) – Specific exceptions in relation to certain legal entities and legal arrangements which administer and distribute funds.

- Subject persons are required to “...take all reasonable measures to ensure that the trustee keeps the subject person informed of any changes in the beneficial ownership”.

The bank must rely entirely on the trustee to provide such information, and the trustee’s obligation of informing the bank of any changes in the beneficial ownership should therefore be clearly communicated to the trustee. The latter should acknowledge this obligation and provide a written undertaking to inform the bank of any changes in beneficial ownership.

10 Section 3.1.5 – Ongoing monitoring of the business relationship

- Subject persons are required to have a system in place to ensure that documents, data or information held by them in the fulfillment of their CDD obligations are kept up-to-date. This includes the updating of expired **identification documentation**, in respect of which the following procedures are deemed acceptable:
 - (a) In the case of relationships which are deemed to pose a high risk of ML/FT, banks should review, at intervals not exceeding eighteen months, whether the identification document held is still valid. Where a trigger event warrants an earlier review, this shall be carried out as soon as possible after the trigger event has occurred.
 - (b) Where the identification document held is a Maltese Identity Card which has expired, banks need not pursue the customers concerned to provide them with a copy of the renewed Identity Card since the holder will retain the same Identity Card number for life. A copy of the new Identity Card may be requested, of course, if and when a suitable opportunity presents itself.
 - (c) In all other cases, updating of the identification document may be carried out as far as reasonably possible when certain trigger events occur, as set out in Section 3.2.2 – Timing of CDD in relation to existing customers.
- When a **change of address** is notified to the bank by an existing customer, verification of the new address is not required since this is being provided directly by a customer in respect of whom full CDD procedures had already been carried out.

11 Section 3.2.1.1(iii) – Specific exceptions in relation to the opening of bank accounts

- A bank account may be opened prior to completion of verification procedures subject to the condition “...that no transactions, apart from the initial transfer of funds to open the account, are to be carried out through the account until the verification procedures have been satisfactorily completed”.

In this regard, reference should also be made to Section 3.3 – Failure to complete CDD measures laid down in Regulation 7(1)(a) to (c). It should be noted, in particular, that if the bank has received funds to open the account, but is unable to complete the necessary verification measures, or decides not to establish the business relationship, “...the funds in

question should only be released to the original remitter of the funds using the same financial channels through which the funds were delivered”.

Instances arise when a holding company and a subsidiary of that holding company are being formed at the same time. In such cases, the share capital earmarked for registration of the holding company is paid into a “Company in formation” account relating to the holding company, from which the share capital earmarked for registration of the subsidiary company is then transferred to another “Company in formation” account relating to the subsidiary. Such share capital transfers from the account of a holding company in formation to the account of its subsidiary company in formation may be allowed.

12 Section 3.2.1.1(iv) – Specific exceptions in relation to certain legal entities and legal arrangements which administer and distribute funds

- This section covers those situations where it is not possible to identify and verify the identity of the beneficiary at the time that contact is first made owing to the fact that such persons have not yet been named as a beneficiary or otherwise informed of the existence of the trust. In such cases, *“...subject persons are required to identify and verify the identity of the beneficiaries as soon as they are named or otherwise informed of the existence of the trust”.*

The bank must rely entirely on the trustee to provide details/authenticated identification documents of such beneficiaries as soon as they are named or otherwise informed of the existence of the trust. This obligation should therefore be clearly communicated to the trustee, who should acknowledge this obligation and provide a written undertaking to inform the bank as soon as such beneficiaries have been named or have been otherwise informed of the existence of the trust.

13 Section 3.2.2 – Timing of CDD in relation to existing customers

- See comments made above in relation to Section 3.1.5 – Ongoing monitoring of the business relationship.

14 Section 3.4.1 – Categories of applicants for business qualifying for SDD

- Applicants for business falling under paragraph (a) of this section could include credit institutions established in another Member State of the European Community, or in a reputable jurisdiction, which seek to open “fiduciary accounts” with a bank in Malta. In such cases, it is not necessary for the bank in Malta to identify the underlying account holder(s), since the application of SDD obviates the need to apply CDD measures, including the identification of the beneficial owner(s).

The same applies to “clients’ accounts” opened by stockbrokers and any other applicants for business which are authorized to undertake relevant financial business or equivalent.

SDD may also be applied where the applicant for business is fully owned by a legal person authorized to undertake relevant financial business or equivalent.

It shall be considered acceptable for credit institutions to reasonably apply the same measures applicable in respect of beneficial owners of pooled accounts held by notaries and other independent legal professionals under regulation 10 of the PMLTFR, to beneficial owners of pooled accounts which are held by auditors and external accountants. This would mean that SDD may also be reasonably applied in these cases, provided that the credit institution applying SDD measures ensures that all supporting identification documentation is available, or may be made available by the auditor or external accountant, upon request by the credit institution.

15 Section 3.5.2 – Correspondent banking relationships

- Correspondent banking activity can include establishing accounts, exchanging methods of authentication of instructions (e.g. by exchanging SWIFT or telex test keys and/or authorized signatures) and providing payment or other clearing-related services.
- Paragraph (b) of this section suggests three measures which could be applied (independently of each other or cumulatively) in assessing the adequacy and effectiveness of the internal controls of a respondent institution situated in a country other than a Member State of the European Community. The second of these proposed measures is the development of a brief questionnaire with specific questions covering the legal obligations and the internal procedures applied by the respondent institution to meet these obligations. Such a questionnaire has been developed by the Wolfsberg Group (a group of leading international financial institutions), and this questionnaire is attached as Appendix II for possible use by banks in Malta at their discretion.
- Banks are required to take appropriate measures to ensure that they do not enter into, or continue, a correspondent banking relationship with banks which are known to permit shell banks to use their accounts. To satisfy this requirement, direct enquiry should be made with the respondent bank concerned. The Wolfsberg Group questionnaire referred to above, and attached as Appendix II, covers this aspect under questions 5 and 6.
- See also comments below made in relation to the section headed “Trade finance transactions”.

16 Section 3.5.3.1 – Who qualifies as a PEP?

- It should be noted that although EDD is only mandatory in relation to PEPs residing in another Member State of the Community or in any other jurisdiction, subject persons are required, in terms of Regulation 7(9), to identify all PEPs (domestic and foreign) for the purposes of their customer acceptance process.

17 Section 3.6 – Reliance on other subject persons or third parties

- A flow chart is attached as Appendix III to assist banks in determining whether they can rely on the CDD measures carried out by other subject persons or third parties, subject to the conditions set out in this section.

18 Trade finance transactions

- A subject person acting as a financial institution in a trade finance transaction should undertake customer due diligence on the party instructing it to deal in such a transaction. The instructing party will normally be an existing client/counterparty of the subject person and, if not, due diligence must be undertaken on the instructing party before proceeding with the transaction. Therefore, when a subject person issues an outward letter of credit, it should treat the applicant (buyer) as its customer for due diligence purposes. In the case of an inward letter of credit, when a subject person acts as a confirming or advising bank, it should treat the issuing bank as its instructing party for due diligence purposes.

In practice, the relationship of the subject person, acting as confirming bank, to the issuing bank is comparable to that of a correspondent banking relationship. If the completed due diligence then supports the establishment of an ongoing relationship with the issuing bank, further due diligence on the issuing bank may be subject to risk based ongoing monitoring, and is not required in relation to each subsequent transaction.

In cases where a subject person merely advises the letter of credit and does not have an ongoing relationship with the issuing bank, as a minimum it should ensure that there is a means of authenticating any letter of credit received from the issuing bank.

The subject person acting as a confirming/advising bank does not have money laundering and/or terrorist financing due diligence obligations with respect to the applicant or beneficiary. Nevertheless, although the above scenarios are common international practice, additional due diligence on other parties including the beneficiaries, and possibly on the transaction itself, should be undertaken where required by the firm's internal risk policy. At its discretion, a subject person should consider performing enhanced due diligence in line with its risk policies where the nature of a transaction displays higher risk characteristics than the normal business undertaken for the instructing party. This enhanced due diligence should be designed to understand the nature and appropriateness of the transaction, trade cycle of the goods involved and the legitimacy of the payment flows.

APPENDIX I

(To be typed on education institution letterhead)

LETTER OF INTRODUCTION FOR MALTESE BANKING FACILITIES

We confirm that *(Please insert Student's FULL Name)* is/will be studying at the above named education institution.

Course Details

Name of Course:

Type of Course:

Start Date:

Finish Date:

Address Details

The Student's Overseas Residential Address is:

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The Student's Address in Malta is:

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This Certificate is only valid if embossed with the education institution's seal or stamp.

Signed

Name

Position

Contact Telephone Number at education institution

APPENDIX II

the Wolfsberg Group

Financial Institution Name:		
Location:		
Anti-Money Laundering Questionnaire		
If you answer "no" to any question, additional information can be supplied at the end of the questionnaire.		
I. General AML Policies, Practices and Procedures	Yes	No
1. Is the AML compliance program approved by the FI's board or a senior committee?	Y	N
2. Does the FI have a legal and regulatory compliance program that includes a designated officer that is responsible for coordinating and overseeing the AML framework?	Y	N
3. Has the FI developed written policies documenting the processes that they have in place to prevent, detect and report suspicious transactions?	Y	N
4. In addition to inspections by the government supervisors/regulators, does the FI client have an internal audit function or other independent third party that assesses AML policies and practices on a regular basis?	Y	N
5. Does the FI have a policy prohibiting accounts/relationships with shell banks? (<i>A shell bank is defined as a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group.</i>)	Y	N
6. Does the FI have policies to reasonably ensure that they will not conduct transactions with or on behalf of shell banks through any of its accounts or products?	Y	N
7. Does the FI have policies covering relationships with Politically Exposed Persons (PEP's), their family and close associates?	Y	N
8. Does the FI have record retention procedures that comply with applicable law?	Y	N
9. Are the FI's AML policies and practices being applied to all branches and subsidiaries of the FI both in the home country and in locations outside of that jurisdiction?	Y	N
II. Risk Assessment	Yes	No
10. Does the FI have a risk-based assessment of its customer base and their transactions?	Y	N

11. Does the FI determine the appropriate level of enhanced due diligence necessary for those categories of customers and transactions that the FI has reason to believe pose a heightened risk of illicit activities at or through the FI?	Y	N
III. Know Your Customer, Due Diligence and Enhanced Due Diligence	Yes	No
12. Has the FI implemented processes for the identification of those customers on whose behalf it maintains or operates accounts or conducts transactions?	Y	N
13. Does the FI have a requirement to collect information regarding its customers' business activities?	Y	N
14. Does the FI assess its FI customers' AML policies or practices?	Y	N
15. Does the FI have a process to review and, where appropriate, update customer information relating to high risk client information?	Y	N
16. Does the FI have procedures to establish a record for each new customer noting their respective identification documents and "Know Your Customer" information?	Y	N
17. Does the FI complete a risk-based assessment to understand the normal and expected transactions of its customers?	Y	N
IV. Reportable Transactions and Prevention and Detection of Transactions with Illegally Obtained Funds	Yes	No
18. Does the FI have policies or practices for the identification and reporting of transactions that are required to be reported to the authorities?	Y	N
19. Where cash transaction reporting is mandatory, does the FI have procedures to identify transactions structured to avoid such obligations?	Y	N
20. Does the FI screen customers and transactions against lists of persons, entities or countries issued by government/competent authorities?	Y	N
21. Does the FI have policies to reasonably ensure that it only operates with correspondent banks that possess licenses to operate in their countries of origin?	Y	N
V. Transaction Monitoring	Yes	No
22. Does the FI have a monitoring program for unusual and potentially suspicious activity that covers funds transfers and monetary instruments such as travelers checks, money orders, etc?	Y	N
VI. AML Training	Yes	No
23. Does the FI provide AML training to relevant employees that includes: <ul style="list-style-type: none"> ▪ Identification and reporting of transactions that must be reported to government authorities. ▪ Examples of different forms of money laundering involving the FI's products and services. ▪ Internal policies to prevent money laundering. 	Y	N
24. Does the FI retain records of its training sessions including attendance records and relevant training materials used?	Y	N

25. Does the FI communicate new AML related laws or changes to existing AML related policies or practices to relevant employees?	Y	N
26. Does the FI employ third parties to carry out some of the functions of the FI?	Y	N
27. If the answer to question 26 is yes, does the FI provide AML training to relevant third parties that includes: <ul style="list-style-type: none"> ▪ Identification and reporting of transactions that must be reported to government authorities. ▪ Examples of different forms of money laundering involving the FI's products and services. ▪ Internal policies to prevent money laundering. 	Y	N

Space for additional information:
(Please indicate which question the information is referring to.)

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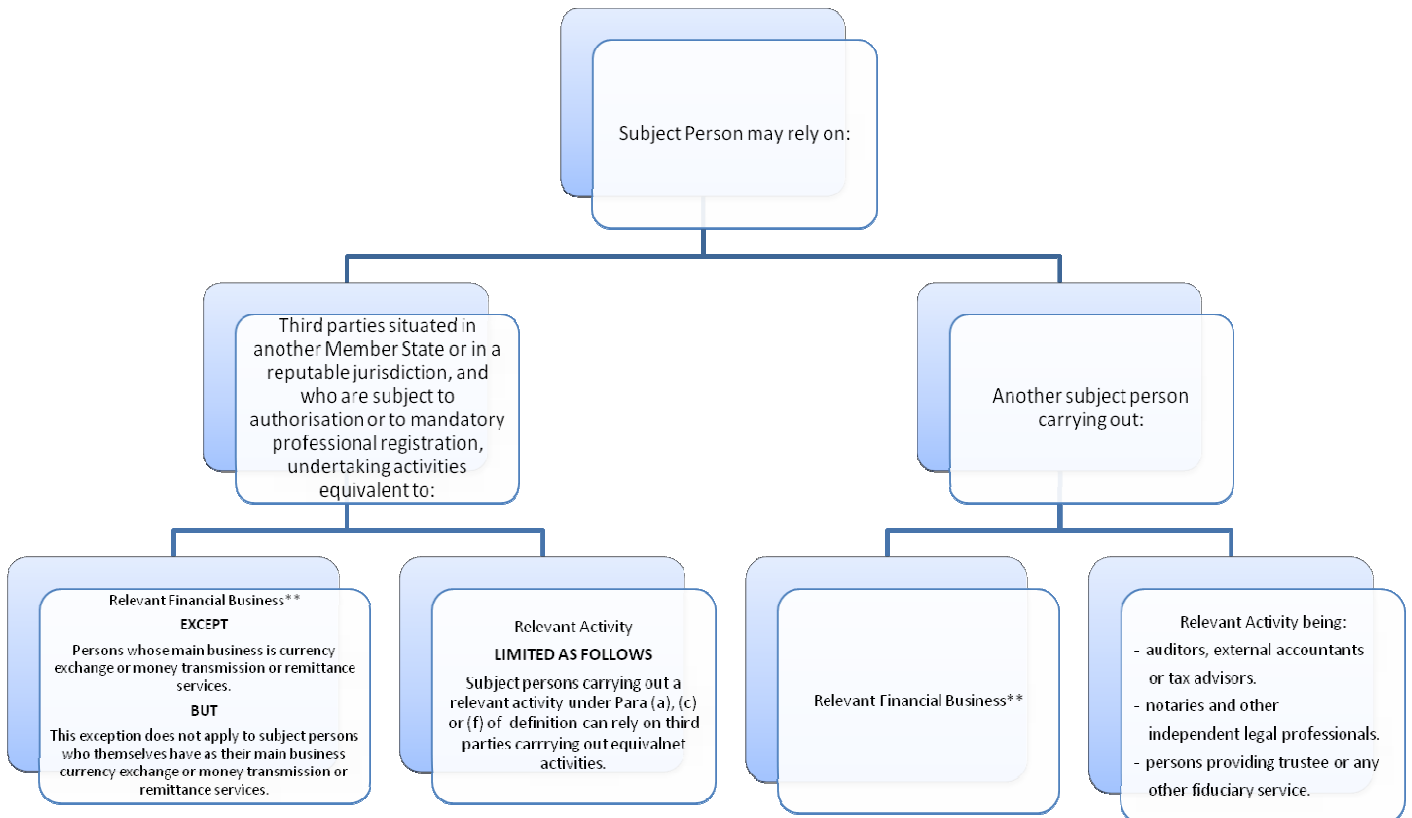
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Name:
Title:
Signature:
Date:

The Wolfsberg Group consists of the following leading international financial institutions: Banco Santander, Bank of Tokyo-Mitsubishi UFJ, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase, Société Générale and UBS which aim to develop financial services industry standards, and related products, for Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies.

APPENDIX III

Regulation 12 of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008



** Excluding paragraph (j) of definition