

QUESTION & ANSWERS

ANTI MONEY LAUNDERING, COUNTER-TERRORIST FINANCING, AND SANCTIONS REGIME

Disclaimer: The questions and answers in this document are for general information purposes only, and are based on comments the DFSA received on [CP120](#) “*Proposed changes to the DFSA’s AML CTF Regime*” published in April 2018. This document does not cover each and every aspect of the changes to the AML regime. It selectively answers questions where the DFSA felt it may be helpful to Relevant Persons. These answers do not constitute legal advice and should not be acted upon as such. If there is any inconsistency between any statement in this document and the relevant Rules or associated Guidance, the Rules and Guidance prevail.

Question 1: Can the DFSA please provide further guidance on the updated requirements, for example, on AML 7.3 regarding customer due diligence?

Answer: The DFSA is cognisant that Relevant Persons may need further guidance in relation to the updated customer due diligence (CDD) requirements. However, we are aware that there may be further changes to the Federal AML Legislation. Once these changes are made and our new framework is embedded, we will consider adding further guidance.

Question 2: Verification of residential addresses in the MENA region, specifically the GCC, is challenging because a number of constraints, including a) a lack of official postal systems with registered residential addresses; b) the transient nature of the expat population and c) limited sources for residential address verification. Would the DFSA consider permitting verification of residential addresses by means of other verifiable addresses at which the customer can be located ie: the customer’s work address, which can be verified through employer letters?

Answer: We have seen some jurisdictions moving away from the verification of a customer’s residential address as a part of standard customer due diligence (CDD). While we continue in the AML Rules to require verification of residential addresses as per AML 7.3.2(2) and 7.3.2(3), we have noted this issue and will consider it in our future AML work once the framework is embedded.

Question 3: Do the amendments to AML 7.3.1(1) remove the need to verify the identity of the customer or Beneficial Owner on the basis of ‘original or properly certified documents’?

Answer: No. The changes made to AML 7.3.1(1) does not mean that a requirement to obtain original documents falls away. This is an integral part of the process of the CDD process that allows a Relevant Person to satisfy itself that it knows the customer or beneficial owner. The DFSA’s position remains unchanged.

In order to clarify any misunderstandings, we have added further Guidance after AML 7.3, to provide that “*under AML 7.3.1(3), a Relevant Person is required to verify the identity of a person based on ‘reliable and independent source documents, data or information’.* A Relevant person

should generally have sight of original identification documents and retain a copy of the identification document.

Question 4: Obtaining and keeping identification documents up to date for Board Members and the entire senior management of a corporate entity as required under AML 7.3.2(3)(f) could be very challenging especially when Board Members have no day to day responsibility in managing a relationship with a financial institution. Could the DFSA clarify this requirement and what is expected of a Relevant Person?

Answer: Under AML 7.3.2(3)(f) the DFSA expects a Relevant Person to obtain the names of the members of its Governing Body and persons exercising a senior management position and to verify that the names on that list are accurate. We do not expect Relevant Persons to verify the identity of each of those individuals.

Question 5: Does the guidance to AML 7.3.3 on bearer shares mean there is a general prohibition on establishing a business relationship with an entity that has issued bearer shares, irrespective of whether they are appropriately registered and allow for identification of Beneficial Owner?

Answer: We have clarified Guidance to AML 7.3.3 to reflect our position in relation to prohibiting the establishment of a business relationship with an entity that has issued bearer shares. In summary, the DFSA considers the risk when dealing with a customer that has issued bearer shares or other similar instruments to be mitigated if the bearer shares have been issued under very strict record keeping procedures to enable the Relevant Person to identify the current holders at all times.

Question 6: Do we need verify the identity of all members of senior management under AML 7.3.2(3) (f), as the term senior management of a legal person is not a defined term?

Answer: We have added a further definition of 'senior management' in AML 3.2.1 in relation to a customer that is a body corporate pointing out that it is the directors plus the person/s who control its day-to-day operations.

Question 7: AML 7.3.3(4) states, "If a Relevant Person has exhausted all means of identifying the Beneficial Owner of a body corporate under (2) and has not succeeded in identifying the Beneficial Owner, it must treat the senior management in that body corporate as the Beneficial Owner." When does this provision apply?

Answer: Please see the answer to Question 6 - we have expanded the definition of 'senior management' in relation to a customer that is a body corporate.

Question 8: Why does the simplified CDD approach in AML 7.5.1 not provide for reduced measures for the identification and verification of Beneficial Owners of regulated financial institutions?

Answer: The requirement to identify and verify Beneficial Owners is an integral part of the CDD process and as such, there are no exemptions to this requirement in the FATF Recommendations, hence the removal of this exclusion from AML 7.5.1. Based on this, we have amended our approach to simplified CDD and AML 7.5.1 lists a small number of examples of where a Relevant Person is permitted to undertake simplified CDD.

Question 9: The proposal on AML Rule 7.4.1(c) regarding enhanced CDD does not seem consistent with international standards where the expectation is ‘*take adequate or reasonable measures*’ to establish Source of Wealth (SoW) or Source of Funds (SoF). Could you clarify the DFSA’s proposal?

Answer: In order to ensure consistency with international standards, we have amended the text to read ‘*take reasonable measures to establish,*’ SoW and SoF. This is consistent with the language and approach used in other jurisdictions, for example, under the UK Money Laundering Regulations.

Question 10: We do not believe the requirement in AML 14.4.1A for a Relevant Person to provide to the DFSA or a law enforcement agency immediately copies of records within 24 hours is possible especially if you are a branch or part of a group of entities outside the UAE. Could the DFSA look at extending this time period?

Answer: We have taken on board the comments raised in relation to this requirement and have amended our approach in relation to the timing if the request is complex, or the information is held elsewhere outside the DIFC (e.g. by another group entity). However, it is likely that such requests will be mainly driven by law enforcement agencies and the DFSA will be required to ensure that Relevant Persons abide by prescribed timeframes.

Question 11: Could the DFSA use this latest AML update as an opportunity to further align the AML regime to FATF Recommendation 11 by reducing the record keeping period from 6 years to 5 years?

Answer: We note the comments made in relation to the record keeping requirements. However, the 6-year record keeping requirement is a DFSA policy position that extends to all record keeping requirements that apply to all Relevant Persons (not just AML records). At this point in time, the DFSA is minded not to change its policy position.

Question 12: Will the DFSA considering providing transitional arrangements? And can the DFSA clarify whether the new Rules will apply to new clients or would all existing clients have to be reviewed in light of the new Rules.

Answer: The new Rules will immediately apply to new clients and our expectation is that, when Relevant Persons come to review existing clients (as part of ongoing CDD under AML 7.6), they will need to review compliance with the new requirements. On this basis, we believe it is not necessary to provide for a formal transitional period.

If a Relevant Person has identified specific concerns, we would recommend they contact the DFSA's Supervision department through the [Supervised Firm Contact form](#).

Question 13: Will the DFSA be issuing more CP's on AML?

Answer: Combatting Financial Crime is high on the DFSA's regulatory agenda. As a result, the DFSA continuously monitors international and local developments in this area. Any changes in both arenas will have an impact on our regime and as such may require us to enhance our AML framework.

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