

FREQUENTLY ASKED QUESTIONS REGARDING THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING ("AML/CFT") FOR INDIVIDUALS/INVESTORS

1. What does "money laundering" mean?

Money laundering is defined as an offence which consists of knowingly facilitating, by any means whatsoever, the misleading justification of the origin of the direct or indirect income of the predator of a crime or an offence (Article 506-1 of the Criminal Code). Money laundering is thus the process of making the criminal funds appear to be of legitimate origin.

The money laundering offence is punishable by imprisonment and/or a monetary penalty.

The introduction of criminal money into the financial system is one of the money laundering methods used by criminals. There is, therefore, a risk that professionals of the financial sector are used for the purpose of money laundering.

In order to avoid that money launderers take advantage of the financial system to facilitate their criminal activities, Luxembourg as well as a large number of other States imposed certain internationally agreed professional requirements on institutions of the financial sector operating in Luxembourg. Amongst these requirements, it is worth mentioning the following: to identify the customers, keep appropriate records, establish internal procedures to train staff and guard against money laundering and to report any indications of money laundering to the competent authorities.

These professional requirements aim to allow an efficient fight against money laundering (but also against terrorist financing, cf. below) and against crime in general. They also aim to ensure the stability and reputation of the financial sector in general and in particular of the professionals of the financial sector.

2. What does money laundering "primary offence" or "predicate offence" mean?

Crimes or offences which generate the funds to be laundered are commonly referred to as money laundering primary offences or predicate offences.

Primary offences include illicit trafficking of narcotic drugs, acts of terrorism or terrorist financing, corruption, weapons trafficking, criminal organisation or criminal association, trafficking in human beings, sexual exploitation, including of children, kidnapping, illegal detention, fraud and scam, environmental crimes and offences or counterfeiting of money.

In general, any offence punishable by a term of imprisonment of a minimum of more than six months is considered as a money laundering primary offence.

Money laundering offence committed in Luxembourg is punishable in Luxembourg, even if a primary offence was committed abroad.

3. What are the various stages of the money laundering process?

At a first stage, i.e. the injection phase, the launderer introduces illegal profit into the financial system. This introduction may be carried out by dividing large sums of cash into smaller and thus less suspicious sums, or by acquiring various monetary or financial instruments (e.g. cheques, transfer orders, securities, etc.) before depositing them in a banking account.

The second stage, i.e. the layering phase, consists of successive transfers of the deposited funds to move them away from their source. The funds may thus for instance be transferred by way of purchase or sale of financial instruments or transferred to a series of accounts opened with various banks throughout the world.

Finally, the last stage, i.e. the integration phase, consists of the integration by the launderer of laundered funds into legitimate economic activities, for example the acquisition of real estate property, luxury goods or business creation.

4. What does "terrorist financing" mean?

An act of terrorism as defined in Article 135-1 of the Criminal Code refers to any crime or offence which may, by its nature or context, seriously damage a country, an international organisation or body, and which has been committed with the intention of intimidating the population, compelling public authorities to do or abstain from doing any act or destabilising or destroying the structures of a country.

Terrorist financing is defined in Article 135-5 of the Criminal Code as the unlawful and wilful provision of funds, assets or goods of any nature, with the intention that they should be used or in the knowledge that they are to be used in order to carry out an act of terrorism, even if they have not actually been used for that purpose.

Terrorism and terrorist financing are autonomous offences which are punishable the same way as money laundering, but which also constitute primary offences within the context of the fight against money laundering.

As autonomous offences, acts of terrorism and terrorist financing are offences or crimes which are punishable by imprisonment and/or a fine.

5. What does "international financial sanctions" within the context of the fight against money laundering mean?

International financial sanctions within the context of the fight against money laundering may consist of the prohibition or restriction of financial activities, the seizure of goods, freeze of funds, assets or other economic resources, as well as the prohibition or restriction to provide financial services.

Persons, entities and groups falling under these prohibitions and restrictive measures are for example persons and entities associated with the Al-Qaida network or Taliban.

Pursuant to the law of 27 October 2010 concerning financial restrictive measures or a directly applicable European regulation, international financial sanctions are imposed on any Luxembourg natural or legal person, as well as on any other natural or legal person operating in or from the Luxembourg territory.

As regards professionals of the financial sector, the CSSF is the competent authority to monitor the implementation of these restrictive measures.

There are other financial prohibitions and restrictive measures in addition to those set out above which are taken within the context of the fight against money laundering. In this respect, the regulations of the European Union applicable to Luxembourg should be mentioned in view of the situation in Belarus, North Korea, Egypt, Iran, Libya, Syria or Tunisia.

6. Where are the documents relating to the various international financial sanctions available?

As the Minister of Finance is competent to deal with any questions and challenges regarding the implementation of the prohibitions and restrictive measures against some specific persons and entities, it is also competent to ensure the publication of the various texts relating to international financial sanctions.

The documentation is available on the website of the Ministry of Finance (www.mf.public.lu), under the section *Sanctions financières internationales* (International financial sanctions).

The CSSF provides the publications on its website (www.cssf.lu), under the section AML/CFT - Financial sanctions - International financial sanctions.

7. Does a consolidated list comprising all the persons and entities subject to the various international financial sanctions exist?

There is a consolidated list of the European Union comprising all the persons and entities subject to the various financial sanctions. This list is available on the CSSF's website, section AML/CTF - Financial sanctions - International financial sanctions - Prohibitions and restrictive financial measures with respect to the fight against terrorist financing - Texts adopted by the EU or directly through the following link: http://eeas.europa.eu/cfsp/sanctions/consolidated-list_en.htm.

The United Nations also published two consolidated lists which are available on the following links:

- (i) http://www.un.org/sc/committees/1267/faq_sanctions_list.shtml
- (ii) <http://www.un.org/sc/committees/1988/list.shtml>

All these lists are also available for consultation on the website of the Ministry of Finance, as indicated above.

8. Why is it important to combat money laundering and terrorist financing?

Money laundering, which consists of disguising the illegal origin of income, is thus inextricably linked to criminal activities. Failing to combat money laundering, the society would accept that criminal individuals benefit from activities prohibited by criminal law without incurring any sanctions.

Both money laundering and terrorist financing are likely to have severe consequences on the economy of the countries concerned and on the international financial stability. Indeed, such activities are likely to dissuade foreign investors and to disrupt international capital flows.

Another significant consequence of dirty money laundering is the development of a black economy, thus avoiding state taxation of large amounts of money and entailing a significant loss of income for the States.

As money laundering is mostly committed through the use of the financial system of a country, this might moreover challenge the integrity and stability of the institutions and financial system which are based on legal, professional and high ethical standards. The stake does not only cause a serious harm to the reputation of all financial players, but also the reduction in the confidence of the investors in the financial sector.

9. What are the main legal and regulatory texts with respect to AML/CTF applicable to the financial sector?

All the relevant applicable legal and regulatory texts are available on the CSSF's website (www.cssf.lu), under the section Laws, regulations and circulars - Laws and regulations - Fight against money laundering and terrorist financing as well as under the section AML/CFT - Financial sanctions.

On the same website, circulars of the CSSF clarifying the laws and regulations are also included in the section Circulars - Circulars concerning Anti-money laundering and terrorist financing.

10. Which Luxembourg authorities are competent with respect to AML/CTF regarding the financial sector?

From a criminal point of view, the Luxembourg authority which is mainly competent with respect to AML/CTF is the Financial Intelligence Unit of the State Prosecutor's Office of Luxembourg (the "FIU"). The FIU is in charge of receiving suspicious transaction reports in respect of money laundering and/or terrorist financing from professionals, and of analysing and using them, where appropriate, in inquiries or criminal proceedings.

The CSSF is, in its capacity as financial sector supervisory authority, responsible for the preventive part of the fight against money laundering and terrorist financing, i.e. compliance with the professional obligations with respect to AML/CTF by all the persons subject to its supervision, as well as to prevent the use of the financial sector by criminals.

Finally, the Minister of Finance is specifically responsible for international financial sanctions, including in respect of the fight against terrorist financing.

11. Does an international body which provides for supranational standards and monitors national AML/CTF mechanisms exist?

The Financial Action Task Force ("FATF"), an intergovernmental body created in Paris by the G-7 in 1989 is such an international body.

The FATF's mission consists of planning and promoting AML/CTF standards and policies at international level. To this end, 40 recommendations as regards the fight against money laundering, followed by 9 specific recommendations as regards the fight against terrorism were developed by the FATF. All Member States of the FATF, including Luxembourg, shall implement all these recommendations in their domestic laws.

In order to assess the compliance of the national AML/CTF mechanisms with the 40 + 9 recommendations as well as their overall effectiveness, the FATF regularly assesses these Member States. The purpose of these mutual assessment processes is first to examine the measures and the actions taken at national level, then to issue recommendations to combat more efficiently money laundering and terrorist financing.

Luxembourg was mutually assessed in 2009 and will be assessed again within the context of the fourth round of assessments which will start as from 2013.

12. What is the CSSF's approach with respect to AML/CTF?

Within the framework of its statutory mission, the CSSF is in charge of ensuring that all the persons subject to its supervision comply with the professional AML/CTF obligations.

The CSSF ensures that professionals implement a risk-based approach, in order to allocate the appropriate means and resources to customers and products which represent higher risks.

Moreover, the CSSF ensures that persons maintaining relationships with organised crime, including, *inter alia*, money laundering or terrorist financing cannot take control, in any form whatsoever, over persons subject to its supervision.

Professionals are required to fully cooperate with the CSSF as well as the FIU with respect to AML/CTF. The CSSF in turn cooperates closely with the FIU. These two authorities are authorised to exchange information necessary to perform their respective duties.

13. What are the powers of the CSSF in the exercise of its duties with respect to AML/CTF?

The CSSF has all the supervisory and investigatory powers provided for in the various laws for the purpose of carrying out its duties. For instance, the CSSF is entitled to have access to any document it deems necessary and to obtain a copy thereof. It may also request information from any person subject to its supervision, notably by summoning this person or by carrying out on-site inspections.

Where a person subject to the supervision of the CSSF does not comply with the provisions relating to AML/CTF, the CSSF has a power of injunction against this person. If after expiry of the time limit set by the CSSF, the supervised person has not rectified the situation, the CSSF may remove certain persons from their duties, suspend their rights or activities relating to the supervised person.

Moreover, the CSSF has broad sanctioning powers. It may issue warnings, reprimands, administrative fines or occupational prohibitions against persons subject to its supervision. These sanctions may, where appropriate, be disclosed by the CSSF.

Such administrative or prudential sanctions are without prejudice to the imposition of criminal sanctions (imprisonment and/or a fine) by criminal courts against professionals which deliberately violated the legal provisions which apply to them in this regard.

14. What are the banker's obligations with respect to AML/CTF?

The banker shall, in any event, comply with the professional obligations arising from AML/CTF texts, and more specifically customer due diligence obligations, adequate internal management requirements and cooperation requirements with the authorities.

Furthermore, he shall comply with the obligations arising from Regulation (EC) No 1781/2006 of 15 November 2006 relating to the information on the payer accompanying transfers of funds ("1781 Regulation"). In particular, the banker shall address, without delay, any request for information from the competent authorities as regards AML/CTF and relating to information accompanying transfers of funds.

15. When shall the banker request information from his customer for AML/CTF purposes?

The banker is required to apply customer due diligence measures *vis-à-vis* customers (i) where he enters into a business relationship, (ii) where he concludes occasionally a transaction amounting to at least EUR 15,000, (iii) where there are suspicions of money laundering or terrorist financing and (iv) where there are doubts about the veracity of the provided information.

These customer due diligence measures shall also be carried out during the course of the business relationship if circumstances so require.

16. Which documents and information shall the banker request from the customer?

The banker shall identify the customer, beneficial owner and representative, where appropriate, as well as verify their identity, on the basis of documents, data or information from a reliable and independent source.

In addition, the banker shall obtain information on the purpose and intended nature of the business relationship. Throughout the business relationship, he shall carry out an ongoing due diligence of this business relationship, including by examining the transactions concluded and/or the origin of the funds. He shall update the documents, data and information obtained.

The extent of the due diligence may be adapted according to the relevant customer's risk profile, business relationship, product or transaction. Thus, it is the responsibility of each professional to determine the information and documents he deems necessary to comply with his legal obligations.

Due diligence shall be applied to both new customers and existing customers. The banker may thus request additional documents from existing customers during the business relationship.

17. Which information on the payer shall the banker collect before transferring funds?

Pursuant to the 1781 Regulation, transfers of funds shall be accompanied by complete information on the payer, i.e. his name, account number and address. The address may

however be substituted with the date and place of birth of the payer, his customer identification number or national identity number. Where the payer does not have an account number, the banker may substitute it by a unique identifier.

The payer's banker as well as any other payment service provider shall ensure that transfers of funds are, where appropriate, accompanied by complete information on the payer. However, in the event of transfers of funds which are not carried out from an account, the banker verifies the information on the payer only if the amount of the transaction, executed once or several times, is higher than EUR 1,000.

By way of a derogation from the complete information requirement, the account number or a unique identifier may be sufficient where the bankers of the payer and payee are both situated within the European Union.

Finally, when the information on the payer is missing or incomplete, the banker of the payee rejects the transfer or requests complete information.

18. What does "PEP" mean?

PEPs are defined as politically exposed persons, i.e. natural persons who occupy or hold prominent public functions, as well as their direct family members or persons closely associated with them.

PEPs must in principle be subject to enhanced due diligence, notably because they may, where appropriate, be targets for acts of corruption, i.e. an infringement consisting of the behaviour by which offers, promises, gifts or presents are requested, received, proposed or given for the purpose of performing or refraining from performing an act, obtaining particular favours or benefits or exercising undue influence to get jobs, contracts or other favourable decisions.

Corruption is considered passive where it is instigated by the corrupted party and active where it is the result of the corrupting party.

The corruption offence includes not only (i) the corruption of persons holding public authority or public officials or agents entrusted with an elective public mandate or with a public service mission, including from another State, EU officials and in general the staff of the institutions of the European Union and international organisations, and also magistrates, i.e. PEPs, but also (ii) the corruption of individuals who manage or work for a private sector entity. The corruption is punishable by deprivation of liberty and a pecuniary fine.

The predicate offence which may give rise to a money laundering offence is limited in principle only to the public or private passive corruption of the individuals referred to above, including PEPs, given that it is the concealment by the corrupt party of the source of the corruption's proceeds that constitutes money laundering.

19. What are the fraud mechanisms to which investors may be directly exposed? Examples

a) Nigerian connection

This mechanism was initially developed by persons who claimed to live in Nigeria, thus giving rise to the name assigned to it. However, the use spread and may be initiated from any country nowadays.

The principle is to contact persons or companies, notably in Luxembourg, in order to request their assistance to take out money (blocked due to national restrictions in relation to the currency of the home country) by drawing up false bills and cashing the amount of these bills on a Luxembourg bank account. In return, an important commission on the sums taken out of the home country is promised.

However, the real purpose of this operation is to ask the persons who so agree to advance certain fees.

Needless to say, those who pay the requested costs never hear from their distant correspondents again.

b) Boiler-Room

The boiler room is a fraudulent mechanism the purpose of which is to sell overpriced securities to investors. The most common form consists for persons or entities to purchase low-value securities on a market lacking transparency, and then to artificially raise the value and to resell these securities at very high prices to investors.

Originators of the boiler room often send brochures containing a set of information, which seems to be accurate, and well-written financial analyses on known securities.

The veracity of the advice given is underlined by indications such as "If you have followed our advice included in brochure XY, you have realised a gain of 20% within less than two months", i.e. in most cases unverifiable information.

The brochure will also include an indication as to a very positive development for a less known or unknown company. The boiler room then contacts the investor by telephone to offer him to acquire the securities of this company, with a special emphasis on the above-mentioned passage of the brochure.

c) Recovery Room

In the event of a recovery room which often follows a boiler room, the investor who purchased securities having plunged in value or which have ever been valueless is offered by another person or entity to repurchase his securities at a higher price than their current value and their acquisition value.

In return, the investor must advance certain fees or invest in another transferable security.

Once the fees or investment have been paid, the investor never hears from the entity or the person who contacted him again.

d) Pyramidal mechanisms

This mechanism consists of the payment of an amount of money to an entity, with the hope of recovering a multiple of this amount if a certain number of other persons are hired and to persuade them to pay the same amount of money to the pyramidal organisation. These mechanisms always constitute scams.

e) IT frauds

The IT frauds consist of any kind of criminal offences which might be committed on or by means of an IT system which is usually connected to a network. These treats which are likely to be targeted at investors directly, have almost always a greedy nature, i.e. are aimed to obtain financial, material or any other gain.

The most frequent threats are attacks *via* email such as "phishing". In respect of "phishing", fraudsters send an email in the name of a bank to a person under whatever pretext (for instance a technical breakdown, an internal investigation, etc.) in order to attract the investor to a website similar to the real website of the bank, but which is fake. Once connected to the fake website, the investor is prompted to enter his web-banking code, password or credit card details.

Another frequent threat is the "pharming" which consists of diverting the access of a website (usually by means of a Trojan horse, a worm or a virus) to a fake website on which the investor is prompted to enter personal data such as his web-banking code, password or credit card details.

By means of the data thus collected, fraudsters can easily plunder the accounts of the relevant investor.

20. Who can the investor contact in the event of a prejudice?

In the event of a prejudice suffered in particular through one of the fraud mechanisms set out under item 19 above or in relation to a money laundering offence or a terrorist financing offence, the investor may lodge a complaint in the hands of the State Prosecutor's office with the District Court of Luxembourg which has sole jurisdiction over AMLF/CTF issues, to the following address:

Parquet de Luxembourg
Bâtiment PL
Cité judiciaire
L-2080 Luxembourg

The investor may also lodge a complaint directly in the hands of the investigating judge (*juge d'instruction*) with the District Court of Luxembourg which has sole jurisdiction over AMLF/CTF. The complaint in the hands of the investigating judge implies a civil action. Such a complaint may be lodged at the following address:

Cabinet d'instruction de Luxembourg
Bâtiment TL
Cité judiciaire
L-2080 Luxembourg

Finally, the investor may address his complaint to any police station or even to the senior management. Contact details of the various police services are available on the police's website (www.police.public.lu).

More information on the filing of a complaint are available on the website www.justice.public.lu, under "Affaires pénales – Dépôt de plainte".

Useful websites

<http://www.fatf-gafi.org>, sections: i) Frequently Asked Questions of the FATF - Money laundering: FAQ and ii) Member Countries and Observers

<http://www.justice.public.lu>, under "Lutte contre le blanchiment et le financement du terrorisme" : la Cellule de renseignement financier

<http://www.mf.public.lu>, under "Sanctions financières internationales"

<http://www.mae.lu>, under "Politique étrangère et européenne": Community Affairs - Sanctions

