

REVIEWED PRACTICES AND RECOMMENDATIONS AIMED AT REDUCING THE RISK OF MONEY LAUNDERING AND TERRORIST FINANCING IN THE LUXEMBOURG FUND INDUSTRY

May 2021

in association with



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Important

This document was prepared by ALFI's Anti-money Laundering Working Group jointly with ABBL, ALCO, LPEA and LuxReal. The working group comprises of representatives of asset managers, management companies, securities service firms, audit firms and law firms.

The Reviewed Practices and Recommendations aimed at reducing the risk of money laundering and terrorist financing in the Luxembourg Fund Industry present the working group's interpretation and understanding of the anti-money laundering and counter terrorist financing framework for the securities sector in Luxembourg. These guidelines have not been validated by any regulator. It is the responsibility of each stakeholder to comply with applicable rules on the fight against money-laundering and terrorist financing. This document must not be relied upon as advice and is provided without any warranty of any kind and neither the participating associations nor their members who contributed to this document accept any liability whatsoever for any action taken in reliance upon it. UCIs and Professionals should refer to their legal advisor for all general advice on AML and CTF matters. This document is drafted on the basis of rules in force at the time of publication. It is worth noting that during the drafting process ALFI submitted a number of questions for discussion and common understanding to the CSSF AML Experts Working Group.

Generally, this document may be amended without prior notice to incorporate new material and to amend previously published material where the working group considers it appropriate. ALFI strives to update this document to the best of its endeavours but is not legally bound to do so.

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ALFI's members are welcome to submit a question. Please send your questions to info@alfi.lu.

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I. GLOSSARY

2013 Law	Law of 12 July 2013 on alternative investment fund managers, as amended
2010 Law	Law of 17 December 2010 relating to undertakings for collective investment, as amended
AED	Administration de l'enregistrement, des domaines et de la TVA
AIFM	Alternative Investment Fund Manager, within the meaning of the 2013 Law
AML	Anti-Money Laundering
AML/CTF GDR	Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended
AML/CTF Law	Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended
Beneficial Owner	Any natural person(s) who ultimately owns or controls the legal entity or any natural person(s) on whose behalf a transaction or activity is being conducted, within the meaning of Article 1(7) of the AML/CTF Law.
Business Relationship	Professional or commercial relationship which is connected with the professional activities of the UCI and which is expected, at the time when the contact is established, to have an element of duration
CDD	Customer due diligence
CSSF	Commission de Surveillance du Secteur Financier
CSSF Regulation 12-02	CSSF Regulation No12-02 of 14 December 2012 on the fight against money laundering and terrorist financing, as amended
CTF	Counter Terrorist Financing
Customer	Natural or legal person with whom a business relationship exists or for whom an occasional transaction is carried out within the meaning of point (b) of Article 3(1) of the AML/CTF Law, including persons purporting to act on behalf of the customer. As regards UCIs, the notion of customer

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encompasses the notion of investor registered in the investment fund register.

ESAs	The three European Supervisory Authorities (ESAs): the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA)
ESAs Joint Guidelines	The Risk Factors Guidelines published by ESAs on June 26, 2017 (JC 2017 37), as amended by the EBA Risk Factors Guidelines of March 1, 2021 (EBA/GL/2021/02)
EU	European Union
FATF	Financial Action Task Force on Anti-Money Laundering and Counter Terrorist Financing
FIU	The Luxembourg Financial Intelligence Unit, being the Cellule de Renseignement Financier
GoAML	GoAML is the online electronic portal which is to be used to make declarations of suspicious activities or transactions in Luxembourg. This system allows the reporting in a standardised format to the FIU. Professionals (including UCIs and IFMs) must report without delay to the FIU when they are aware, suspect or have reasonable ground to suspect that ML, an associated predicate offense or TF is happening or has been committed or attempted, regardless of the amount involved.
IFM	Investment fund managers, including management companies set up under Chapter 15 and 16 of the 2010 Law, Alternative Investment Fund Managers within the meaning of the 2013 Law, self-managed investment companies and Luxembourg branches of foreign IFMs established and providing services in Luxembourg
KYC	Know Your Customer
ML/TF	Money laundering and terrorist financing
PF	Proliferation financing - act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons of mass destruction (source: FATF)

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Politically Exposed Person (PEP)	Natural persons who are or have been entrusted with a prominent public function and including family members or persons known to be close associates of such persons. Reference is made to the definitions provided in Articles 1(9) to (12) of the AML/CTF Law
Professional	Any person regulated in Luxembourg for AML/CTF purposes as per Article 2 of the AML/CTF Law
Regulations and Standards	The AML/CTF laws, regulations, circulars and guidelines applicable in Luxembourg, as further detailed in Section II below
RC	The compliance officer (i.e. the “ <i>responsable du contrôle du respect des obligations</i> ”) at appropriate hierarchical level, for the purpose of Article 4(1) para. (a) of the AML/CTF Law
RR	The person responsible for the fight with ML and TF at the management level (i.e. “ <i>responsable du respect des obligations</i> ”) for the purpose of Article 4(1), fourth subparagraph of the AML/CTF Law
RAIFS	Luxembourg Reserved Alternative Investment Funds
SAR	Suspicious activity report
STR	Suspicious transaction report
Third-Party Introducer	A third-party introducer within the meaning of Article 3-3(1) of the AML/CTF Law
TFS	Targeted financial sanctions - covering both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated States, persons, entities and groups
UCITS	Undertaking for Collective Investment in Transferrable Securities, within the meaning of the 2010 Law.
Undertaking for Collective Investment (UCI)	Undertaking for collective investment, investment company or investment fund set up under the relevant applicable Luxembourg law and/or established in Luxembourg

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Please note that any terms used in these Practices and Recommendations, which have not been defined in the above Glossary, have the meaning defined in the Regulations and Standards. More detailed definitions of those terms are available within the applicable laws and regulations.

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II. PREAMBLE - THE AML/CTF REGULATORY FRAMEWORK

This document aims to provide best practices and recommendations on the fight against money laundering and terrorist financing to the Investment Fund Industry in Luxembourg. It has been drafted on the basis of applicable EU directives and regulations, Luxembourg laws, Grand-ducal regulation, regulations, circulars and guidelines issued by Luxembourg competent authorities, as well as international standards, including but not limited to FATF recommendations and guidance (see list below, generically referred to as “**Regulations and Standards**”). This document provides practical guidance as a complement to the existing legal and regulatory framework in place to prevent money laundering and terrorist financing and should be read in conjunction with the abovementioned Regulations and Standards.

Non-exhaustive list of the key Regulations and Standards taken into consideration:

- Directive 2015/849/EU of the European Parliament and Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and Directive 2018/843/EU of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing;
- FATF Guidance for A Risk-Based Approach: Securities Sector (Dated October 2018)
- Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (“**AML/CTF Law**”);
- Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (“**AML/CTF GDR**”);
- Law of 19 December 2020 implementing financial restrictive measures and related implementing Grand-ducal regulation;
- CSSF regulation N° 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing, as amended (including via CSSF Regulation 20-05);
- Other circulars on the fight against money laundering and terrorist financing published on the CSSF website: www.cssf.lu, including (non-exhaustive lists):
 - CSSF Circular communicating FATF statements on 1) high-risk jurisdictions on which enhanced due diligence and, where appropriate, counter-measures are imposed, and 2) jurisdictions under increased monitoring of the FATF, as repealed and replaced from time to time;
 - CSSF Circular 18/698: Authorization and organization of investment fund managers incorporated under Luxembourg law (including specific provisions on the fight against money laundering and terrorist financing applicable to investment fund managers and entities carrying out the activity of registrar agent);
 - CSSF Circular 17/650: Providing details on certain provisions of the AML/CTF Law and AML/CTF GDR to predicate tax offences, as complemented by CSSF Circular 20/744 highlighting in particular red flag indicators that warrant specific attention for the UCI sector;
 - CSSF Circular 17/661: Adoption of the ESAs’ Joint Guidelines;
 - CSSF Circular 19/732: Prevention of Money Laundering and Terrorist Financing: Clarifications on the Identification and Verification of the Identity of the Ultimate Beneficial Owner(s);
 - CSSF Circular 11/529: Risk analysis regarding the fight against money laundering and terrorist financing (AML/CTF);
- Guidelines and documents on AML/CTF topics issued by the Luxembourg Financial Intelligence Unit (“CRF”) can be found on: <https://justice.public.lu/fr/organisation-justice/crf.html>;
- Other documents and information on the fight against money laundering and terrorist financing published in relation to RAIFs can be found on <https://pfi.public.lu/fr/blanchiment/questionnaire/vehicules-financier-non-regules/rr-rc-identification.html>

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SECTION I – AML/CTF FRAMEWORK AND RISK

III. AML/CTF Responsibilities

As a key principle, it is the responsibility of the IFMs (as defined under A.2 below) and the UCIs, as professionals (hereafter “**Responsible Entity**”), to develop and maintain an effective and well documented AML/CTF program which complies with the applicable Regulations and Standards and which is commensurate to its money laundering and terrorist financing (“ML/TF”) risk appetite and risk assessment. Whilst the Responsible Entity may rely on third parties, including Professionals to fulfill its AML/CTF obligations, the practical arrangements for the performance of such obligations must be formalized in writing with details on the respective roles and responsibilities of the third parties involved to ensure compliance with its obligations.

Several categories of Professionals may *inter alia* intervene within the term of a UCI/IFM and more than one of them may assist the Responsible Entity to fulfill its AML/CTF obligations. In the latter case, it is understood that the ultimate responsibility remains with the Responsible Entity.

Professionals must comply with their own obligations under the AML/CTF Law, starting with the definition of their own risk appetite and risk assessment (which should take into account the relevant national, supranational and subsector risk assessments) and going through the implementation of an appropriate AML/CTF framework, including – but not limited to - measures related to the ongoing monitoring and cooperation with the public authorities. The AML/CTF risk appetite, assessment, policies and procedures - including the application of the risk-based approach - must be formalized in writing by each Responsible Entity.

Professionals shall perform their own due diligence to ensure that the risks of money laundering and terrorist financing linked to the services provided to or for the Responsible Entity are identified, assessed, understood and controlled accordingly.

Similarly, the Responsible Entity must perform its own risk-based due diligence before entering into a business relationship with third parties, including as the case may be Professionals assisting it to fulfill its AML/CTF obligations. The due diligence should at least cover the following AML/CTF measures and may be subject to additional considerations:

- an initial and on-going screening of the Professionals against Targeted Financial Sanctions (“**TFS**”) lists and including a reputational risk assessment;
- the identification of the Professionals (and of their Beneficial Owners); and
- an initial and on-going assessment of the relevant Professionals’ policies, controls and procedures including AML/CTF procedures.

A general description of the main Professionals which may be involved in the lifecycle of the UCI/IFM and which may be subject to AML and CTF due diligence obligations are provided below.

It must be noted that other professionals/firms also play a role in the UCI business activities, such as external auditors, lawyers or notaries, and may be potentially subject to a different AML/CTF regulatory regime.

A.1. THE INITIATOR

The entity or person at the origin of a UCI is generally referred to in Luxembourg as the “initiator” of a UCI (for UCITS also often referred to as the “promoter”). The initiator is not a legally defined term, but is referred to in CSSF Regulation 12-02 as the “[*promoter*] who launched an investment fund”, i.e. the (natural or legal) person

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who initiates the establishment and defines the purpose of the UCI, and is the driving force behind its creation.

The initiator may be further involved in the business activities as the investment fund manager (including non-Luxembourg entities), investment adviser, portfolio manager, or distributor and as such appear on documents published by the UCI. Alternatively, the Initiator could be a shareholder or act as member of the board of the investment fund manager (including non-Luxembourg entities) of the UCI, or be the general partner in case of UCIs established in the form of partnerships.

A.2. THE INVESTMENT FUND MANAGER (“IFM”)

Every IFM, as defined above is subject to the laws and regulations in force regarding the fight against money laundering and terrorist financing, including the AML/CTF Law, CSSF Regulation 12-02, as amended and the CSSF circulars on AML/CTF. In addition, every IFM is also subject to the Law of 19 December 2020 implementing financial restrictive measures which, amongst other things, implements United Nations Security Council resolutions as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups in the context of the combat against terrorist financing, as well as to Articles 33(1) and 39(1) of CSSF Regulation 12-02 on the obligation of ongoing due diligence in this context.

In addition, EU regulations directly applicable in national law or via the adoption of ministerial regulations also apply to every IFM.

The IFM must be organized so as to take into account and apply the new laws and regulations on this subject as soon as they become applicable.

The IFM is also recommended to follow the publications of the FATF on these subjects, including those related to financial sanctions relating to terrorist financing and those relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.

The IFM must take appropriate measures to identify and assess ML/TF risks to which it is exposed by taking into account the risk factors, including, amongst others those linked to customers (including the UCIs under management), countries and geographical areas, products, services, transactions and delivery channels. The IFM must take effective measures to mitigate these risks.

The professional obligations laid down in the Regulations and Standards must be implemented effectively by every IFM.

Compliance with these obligations must be subject to regular monitoring and verifications at a frequency determined according to the risks to which the IFM is exposed and at least every time the relevant obligations change.

The IFM must implement due diligence measures, in particular on customers (including the UCIs under management), initiators of UCIs and portfolio managers to whom it delegates the management. The IFM must implement due diligence measures, which are adapted to ML/TF risks, which may arise from the UCIs/discretionary clients it manages as well as the assets. The IFM must also implement due diligence measures on a risk-based approach on other counterparties, including counterparties to which it delegates AML/CTF related tasks.

Any reference to IFM below shall encompass the two situations hereafter.

A.2.1. THE MANAGEMENT COMPANY

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A management company (subject to Chapter 15 of the 2010 Law) may be either appointed by an incorporated UCITS or, in the case of an unincorporated UCITS (i.e., *Fonds Commun de Placement*), it represents the UCITS. In the latter case, the management company acts in the name and on behalf of the UCITS.

The management company may also act as portfolio manager, registrar and transfer agent, global distributor and/or appoint other distributors or delegates such tasks to third parties.

Management companies subject to Chapter 15 or Chapter 16 of the 2010 Law must also comply with the Regulations and Standards.

A.2.2. THE AIFM

Each UCI established in Luxembourg and qualifying as alternative investment fund within the scope of the 2013 Law must appoint a single AIFM. The AIFM can be either:

- the UCI itself, being then internally managed (possible with a UCI in the form of a corporate entity);
- the entity managing and acting on behalf of the UCI, being then externally managed (possible with a UCI in the form of a corporate partnership, limited partnership or common fund);
- an entity designated as such by the UCI or by the entity managing and acting on behalf of the UCI, being then externally managed (possible with all forms of UCI).

The AIFM is responsible for the core functions relating to the UCI set out in the 2013 Law as well as any additional managing or ancillary functions relating to the UCI that have been contractually agreed upon as permitted under the 2013 Law.

The AIFM may also act as portfolio manager, registrar and transfer agent, global distributor and/or appoint other distributors, or delegates such tasks to other third parties.

AIFMs must comply with the Regulations and Standards.

A.3. THE REGISTRAR AND TRANSFER AGENT

A Responsible Entity (i.e. the UCI or the IFM, where the UCI appointed the IFM for the central administration function) may appoint an external Registrar and Transfer Agent for the purpose of maintaining the share register and perform the AML/ CTF controls on the investors on behalf of the Responsible Entity, with the Responsible Entity maintaining ultimate responsibility for this process.

It is understood that the Registrar and Transfer Agent must comply with its own obligations under the Regulations and Standards, including but not limited to the identification of the UCI and its beneficial owners (and the relevant verification on a risk-based approach) and cooperate with the competent authorities.

Due to the fact that the Registrar and Transfer Agent, as part of its services offered to the UCI, will manage the names of the UCI investors who are recorded in the UCI register, the Registrar and Transfer Agent is usually required to perform regular name screening against TFS/PF lists, PEP databases and adverse media on a risk based approach, and is also typically appointed to perform transaction monitoring and ongoing due diligence on the investors.

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A Registrar and Transfer agent shall ensure that the Responsible Entity has implemented adequate AML/CTF policies and procedures to effectively discharge its obligations.

The Responsible Entity shall ensure that the relating written arrangements include detailed clauses specifying the roles and responsibilities of each party. The Responsible Entity shall also ensure that the contract allows to have access to any information necessary for the performance of its (on-going) monitoring function in respect of the registrar and transfer agent, and notably grants access, for the Responsible Entity and the CSSF, to relevant databases of the registrar and transfer agent (or relevant sub delegate).

The fact that the Registrar and Transfer Agent is considered, pursuant to the outsourcing contract, as part of the investment fund and/or IFM does not exempt it from its own AML/CTF obligations. As a result, in cases when the Responsible Entity has delegated the CDD on the UCI's investors to another service provider or distributor, the Registrar and Transfer Agent must receive detailed information as to which tasks are delegated and must ensure that such delegation is carried out in compliance with AML/CTF Luxembourg rules.

A.4. THE PORTFOLIO MANAGER

When the Responsible Entity appoints a Portfolio Manager to perform the investment management activities, it takes and handles the investment decisions of the UCI in accordance with the constitutive documents of the UCI and with the provisions of the relevant agreement appointing the Portfolio Manager. The Portfolio Manager undertakes such investment decisions under the oversight of the Responsible Entity.

The AML/CTF controls on the assets of the respective UCI may also be delegated to the Portfolio Manager.

A.5. INTERMEDIARIES

The Responsible Entity might interact with intermediaries which are either investing on behalf of their customers or act as a transaction conduit for the participants of their services (e.g. "platforms"). Those intermediaries might not necessarily act as distributors but play a key role in the AML/CTF process as they contractually represent their customers/underlying investors.

It must be noted that intermediaries such as banks in loan agreements may also be involved in the context of the investment activities of the UCI (for more details please see Section II, VIII on the due diligence on assets below).

A.5.1. (GLOBAL) DISTRIBUTORS

The Responsible Entity may decide to appoint one or several Global or regional Distributors and/or one or several third parties (generally referred to as "Distributors") to distribute shares or units of the UCI. The Global Distributor and/or Distributors may be appointed by the Responsible Entity via contract which should clearly set out the relevant terms and conditions related to AML/CTF controls, including the roles and responsibilities as well as any on-going reporting requirements.

A.6. THE DEPOSITARY

The depositary, which is appointed by the board of directors of the UCI or of the management company (in the case of an unincorporated UCI), shall also comply with its own AML/CTF obligations, including but not limited to

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the identification and verification of identity of the UCI, its Beneficial Owner(s), screening (TFS/PF) and cooperation with the competent authorities.

A.7. THE DOMICILIATION AGENT OF THE FUND

The domiciliation agent of a UCI authorises the UCI to have its registered office at the address of the domiciliation agent. The domiciliation agent will keep all notices, correspondence or other representations and communications addressed to the UCI and is usually contractually authorised to open the mail received and take note of its content. The domiciliation agent is legally obliged to perform its own CDD measures on the domiciled UCIs as customers, including their respective representatives (i.e the persons purporting to act on behalf of the customers) and Beneficial Owners and to retain the relevant information and documentation and keep it up to date.

A.8. OUTSOURCING OF AML/CTF CONTROLS

Any Professional that falls under the scope of the AML/CTF Law may use external parties to carry out certain AML/CTF controls within a contractual outsourcing or agency relationship, which should clearly set out the relevant terms and conditions, including the roles and responsibilities of both parties as mentioned in the previous sections, the AML/CTF due diligence information and documentation to be gathered as well the immediate provision, regardless of confidentiality or professional secrecy rules or any other obstacle, of the information gathered while fulfilling the AML/CTF due diligence obligations and the transmission, upon request and without delay, of a copy of the original supporting evidence received in this respect.

In this context, the external party operates under the instructions and responsibility of the Professional.

Before appointing the external party, the Professional should perform detailed risk assessment and due diligence to evidence the ability and suitability of the external party to perform the tasks to be outsourced (e.g. Customer/investor due diligence, ongoing monitoring, sanctions screening and transaction monitoring) in compliance with the provisions of the Luxembourg AML/CTF Regulations and Standards.

Such due diligence shall be carried out in accordance with the internal procedures of the Professional and they should include provisions on the procedures to apply, as well as the relevant criteria and process to determine the choice of the external party.

The Professional should assess the risks associated with the outsourcing arrangement and must implement appropriate internal processes and regular controls to monitor and oversee that the external party carries out its obligations accordingly in an effective manner.

In accordance with the risk-based approach, the regular control shall ensure that the Professional is provided with means to monitor regularly and/or occasionally (for example, through sampling or by carrying out on-site visits and reporting (including key performance indicators) from the external party) compliance with the obligations delegated to the external party.

Note that the Responsible Entity remains the ultimate responsible party to ensure compliance with the AML/CTF requirements.

IV. Persons Responsible for AML/CTF Compliance

All Professionals must appoint a responsible for compliance with the AML/CTF professional obligations ("*Responsible du Respect des obligations*", the "RR").

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In addition, subject to proportionality principle each Professional must appoint a compliance officer at the appropriate hierarchical level (*“Responsable du Contrôle du respect des obligations”*, the “RC”), it being noted that the CSSF and the AED clarified that proportionality principle does not apply to IFMs, regulated UCIs and RAIFs, which shall therefore appoint a RC under all circumstances. It is recommended that non-regulated UCIs (other than RAIFs) comply with such requirement as well.

A.1. UCIs

For UCIs (including RAIFs), the RR can be the board of directors of the UCI (or other governing body depending on the legal structure) collectively. Alternatively, the board may appoint one of its members as RR.

The RC may be a member of the board or a third party, for example a member of staff of the IFM (in the latter case a contractual relationship is required between the UCI and the RC personally or, where the contract is concluded with the employer of the RC, (i) the contract must name the RC, (ii) any replacement of the RC must be subject to the UCI's approval and (iii) the RC must acknowledge its appointment in writing).

Both the RR and RC must have sufficient AML/CTF knowledge and, for the RC expertise with regard to (i) the applicable Luxembourg laws and regulations and (ii) the investments and distribution strategies of the UCI. Both must also be available to the Luxembourg AML/CTF competent authorities without delay

The RC must in addition have permanent access to all internal documents and systems required to perform his/her duties, this includes access to GoAML.

A.2. IFMs

In case of an IFM, the RR can be the board of directors of the IFM (or other governing body depending on the legal structure of the IFM) acting as a collegial body or a person at the level of the authorised management of the IFM (being the persons responsible for the daily management of the IFM authorised by the CSSF). Alternatively, the board may appoint one of its members (or of the other governing body) as RR.

The RC can be a compliance officer or appointed third party in charge of AML/CTF.

Both the RR and RC must have sufficient AML/CTF knowledge, and expertise in case of RC, with regard to (i) the applicable Luxembourg laws and regulation and (ii) the investments and distribution strategies of the UCIs that are managed. Both must be available to the Luxembourg AML/CTF competent authorities without delay.

The RC must in addition have permanent access to all internal documents and systems required to perform his/her duties, this includes access to GoAML. The RC should act independently and be able to report directly to the management, without having to report to his direct superior, or to the Board of directors.

V. Oversight Obligations

A.1. INITIAL DUE DILIGENCE

Before entering into any agreement or business relationship related to its business activities, each Responsible Entity shall perform due diligence to ensure the risks of money laundering and terrorist financing linked to the services provided or business undertaken are duly assessed, understood and controlled accordingly.

From an AML/CTF perspective, the initial due diligence shall, subject to additional considerations depending on the level of risk involved, at least include:

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- Identification of:
 - the relevant counterparty;
 - the Beneficial Owner(s) of the counterparty;
 - The persons purporting to act on behalf of the customer , who will be acting in the relationship;
- Screening against TFS/PF lists, PEP databases and adverse media on a risk-based approach
- As necessary, a review of the relevant counterparty's procedures, including those on AML/CTF.

A.2. ONGOING MONITORING AND ONGOING DUE DILIGENCE

The Responsible Entity shall establish on-going AML/CTF due diligence measures which are based on the risk and nature of the relationship and which should at least include:

- a periodic assessment of the initial AML/CTF due diligence, taking into account the development of risks (i.e. adapting the risk evaluation where elements are detected that give reason to believe that the risk presented may have increased);
- on-going monitoring including the review, and, as necessary collection of all necessary information, based on the nature of the relationship; and
- screening against TFS/PF lists

VI. ML/TF risk appetite and risk assessment

An effective risk-based approach allows the Responsible Entity to identify, assess, understand and mitigate money laundering / terrorist financing risks and to exercise reasonable judgment with respect to its activities and should be proportionate to the nature and size of each entity.

The following sections deal with the main elements which comprise an adequate risk-based approach:

- ML/TF risk appetite
- ML/TF risk assessment.

A.1. ML/TF RISK APPETITE

The starting point for the adequate handling of ML/TF risk should be the definition and approval of a risk appetite. This is required to ensure the Responsible Entity understands the ML/TF risk it is willing to be exposed to, and thus establishes controls and processes which are adequate and proportionate to address identified ML/TF risks of the activities and in order to focus on areas of higher risk nature.

The risk appetite should be stated in writing and formally approved by the board of directors of the Responsible Entity (or other governing body depending on the legal structure) and shall document the extent of ML/TF risk the Responsible Entity is willing to expose itself to for conducting its business activities.

A.2. ML/TF RISK ASSESSMENT

The Responsible Entities should identify and assess AML/CTF risk associated with the products and services they offer, the jurisdictions they operate in, the customers/investors they attract and the transactions or delivery channels they use to service their customers/investors. The steps to identify, assess, understand and mitigate the ML/TF risks across the business must be proportionate to the nature and size of each firm.

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The Responsible Entity shall carry out the ML/TF risk assessment taking into account at least the following factors, as further detailed in Annex III and IV of the AML/CTF Law and CSSF Circular 11/529:

- product/services and transactions risk (including the asset classes invested into);
- customer/investor risk;
- delivery (or distribution) channel risk; and
- geographical risk.

Both the IFM and the UCI shall have a documented risk-based approach approved by their respective governing bodies.

A.2.1. PRODUCT, SERVICES AND TRANSACTIONS RISK

Each Responsible Entity should assess the ML/TF risks of the products, services and transactions provided both prior to any new launch as well as on a defined ongoing basis to ensure that any change in circumstances is adequately considered.

When assessing the ML/TF risk associated with their products, services or transactions, the Responsible Entities should consider the following elements at a minimum:

- the level of transparency or opaqueness of the product, service or transactions;
- the complexity of the product, service or transactions; and
- the value or size of the product, service or transactions.

The following factors may among others contribute to an increase in the risk associated with a UCI (as per ESAs Joint Guidelines):

- The UCI is designed for a limited number of individuals or family offices, for example a private fund or single investor fund;
- It is possible to subscribe to the UCI and then quickly redeem the investment without the investor incurring significant administrative costs; and
- Units of or shares in the UCI can be traded without the fund or fund manager being notified at the time of the trade and, as a result, information about the investor is divided among several subjects (as is the case with closed-ended funds traded on secondary markets).

As per FATF Guidance, the following products and services may also indicate a higher risk:

- Products or services that may inherently favor anonymity or obscure information about underlying customer transactions (e.g. bearer share instruments or the provision of omnibus account services);
- The geographical reach of the product or service offered, such as those emanating from higher risk jurisdictions;
- Products with unusual complexity or structure and/or with no obvious economic purpose;
- Products or services that permit the unrestricted or anonymous transfer of value (by payment or change of asset ownership) to an unrelated third party, particularly those residing in a higher risk jurisdiction;
- Use of new technologies or payment methods not used in the normal course of business by the securities provider;
- Products that have been particularly subject to fraud and market abuse, such as low-priced securities;
- The purchase of securities using physical cash;
- Offering bank-like products, such as check cashing and automated cash withdrawal cards;
- Securities-related products or services funded by payments from or instructions given by unexpected third parties, particularly from higher risk jurisdictions; and
- Transactions involve penny/microcap stocks.

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A.2.2. CUSTOMER/ INVESTOR RISK

Each customer/investor type has a different set of ML/TF risks and, subject to the provisions of the Regulations and Standards, the extent of the customer due diligence measures may vary accordingly. Whilst there is a need for each customer/investor to undergo a risk assessment both prior to customer/investor acceptance as well as on an ongoing basis, each Responsible Entity shall assess the risks associated with the customer/investor types to target an appropriate and effective level of due diligence.

As highlighted by the FATF Guidance, the following categories of customers may present a higher risk due to their business or activities (please also refer to Annex IV of the AML/CTF Law):

- Customers sanctioned by the relevant national competent authority for non-compliance with the applicable AML/CTF regime and not engaging in remediation to improve its compliance;
- Customers who are PEPs (including where a Beneficial Owner of a customer is a PEP);
- Customers who reside in or whose primary source of income originates from high-risk jurisdictions (regardless of whether that income originates from a cash-intensive business) (unless evidence to show that customer's source of income comes from a low risk country);
- Customers who reside in countries considered to be uncooperative in providing beneficial ownership information;
- Customers who act on behalf of third parties and are either unwilling or unable to provide consistent information and complete documentation thereon;
- Customers who have been mentioned in negative news reports from credible media, particularly those related to predicate offences for ML/TF or to financial crimes;
- Customers whose transactions indicate a potential connection with criminal involvement, typologies or red flags provided in reports produced by the FATF or national competent authorities (e.g. FIU, law enforcement etc.);
- Customers who are also securities providers, acting as intermediaries or otherwise, but are either unregulated or regulated in a jurisdiction with weak AML/CTF oversight;
- Customers who are engaged in, or derive wealth or revenues from, a high-risk cash-intensive business;
- Customer groups who generate a notable amount of SARs/STRs;
- Customers in the form of legal entities predominantly incorporated in the form of bearer shares (Note: Since 2014 bearer shares of Luxembourgish companies have been immobilized in Luxembourg and there exist stringent regulations regarding holding and keeping bearer shares);
- Customers whose ownership structures are unduly complex as determined by the securities provider or in accordance with any regulations or guidelines;
- Customers who have sanctions exposure (e.g. have business/activities/transactions); and
- Customers whose ownership structures are non-transparent.

A.2.3. DELIVERY (DISTRIBUTION) CHANNEL RISK

Each Responsible Entity shall determine the risks inherent to its distribution channels by considering the ML/TF risk profile of the parties involved in the distribution channel, i.e., the level of AML/CTF controls it applies as well as the level of supervision it is subject to, the risks associated with the country of domicile or activity, the transparency of the distribution channel, the nature of the business and the Responsible Entity's ability to monitor and obtain additional information about the business made through the distribution channel.

A.2.4. GEOGRAPHICAL RISK

Country risk, in conjunction with other ML/TF risk factors, provides useful information as to potential money laundering and terrorist financing risks.

High risk countries are defined in Article 1(30) of the AML/CTF Law and comprise those included in the list of high-risk third countries pursuant to Article 9(2) of Directive 2015/849 (i.e. Commission Delegated Regulation

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(EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies, as amended), or designated by the FATF as presenting a higher risk as well as any other country that the supervisory authorities and the professionals consider as such. For example, the ESAs Joint Guidelines require that certain factors are taken into account to assess the risk level of a particular country, such as for example:

- Countries subject to sanctions, embargoes or similar measures issued, at least, by the United Nations and the European Union;
- Countries identified as lacking appropriate AML/CTF laws and regulations, as defined by the FATF and the European Commission through Commission Delegated regulations;
- Countries identified as providing funding or support for terrorists or their activities; and
- Countries identified as having significant levels of criminal activity, including corruption and drug trafficking; and countries facing a period of political instability.

Each UCI/Professional should make usage of available material and sources to assess a country's money laundering/terrorist financing risk level.

Amongst others, the UCI/Professional can refer to the following public sources:

- FATF reports and declarations;
- International Monetary Fund reports;
- World Bank reports;
- CSSF notifications (e.g., circulars, press releases);
- Publication and reports from National Agencies (e.g. OFAC);
- National Risk Assessment Reports;
- Transparency International (Corruption Perceptions Index).

A.2.5. OTHER ML/TF RISK FACTORS

Other ML/TF risk factors should be considered, like the organization of the entity, any material delegation or outsourcing arrangements.

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SECTION II- THE APPLICATION OF THE RBA

The following sections detail recommendations for the measures to be taken depending on the different types of customers/investors and assets.

VII. Due Diligence on the Liability Side

Shares, units or interests of UCIs can be purchased by a limited number of investors or by a broad number of investors, directly or through the involvement of multiple parties, in a single or across several jurisdictions, exclusively in the primary market or also in the secondary market. Investors may subscribe into the UCI either directly and in their own name or via an intermediary who may appear in the UCI register or not.

Based on the above, the Responsible Entity is exposed to varying ML/TF risks which need to be appropriately mitigated.

A.1. WHO IS THE CUSTOMER OF THE UCI?

A customer is defined in CSSF Regulation 12-02, as amended as a natural or legal person with whom a business relationship exists or for whom an occasional transaction is carried out within the meaning of point (b) of Article 3(1) of the AML/CTF Law, including persons purporting to act on behalf of the customer. As regards UCIs, the notion of customer encompasses the notion of investor registered in the investment fund register.

As there can be multiple intervening parties and different business relationship types in the fund industry, it is not always easy to determine who is to be considered the customer of the UCI and therefore on whom the Responsible Entity (directly or indirectly) shall perform customer due diligence measures.

The following should be considered:

- (i) how the UCI is sold or purchased;
- (ii) with whom the business relationship is established; and
- (iii) who is registered in the UCI's share or unit register.

Notwithstanding specific distribution business models - which may justify a different approach - it is useful to refer to the ESAs Joint Guidelines¹, which detail on who should be considered as the UCI's customer/investor depending on the distribution channel used:

- (a) A natural or legal person who directly purchases units of or shares in a fund on their own account, and not on behalf of other, underlying investors.
- (b) A firm that, as part of its economic activity, directly purchases units of or shares in its own name and exercise control over the investment for the ultimate benefit of one or more third parties who do not control the investment or investment decisions.
- (c) A firm, for example a financial intermediary, that acts in its own name and is the registered owner of the shares or units but acts on the account of, and pursuant to specific instructions from, one or more

¹ Page 115 of the ESAs Joint Guidelines:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2021/963637/Financial%20Report%20on%20Guidelines%20on%20revised%20ML%20TF%20Risk%20Factors.pdf

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third parties (e.g. because the financial intermediary is a nominee, broker, multi-client pooled account/omnibus type account operations or operator of a similar passive-type arrangement).

- (d) A firm's customer, for example a financial intermediary's customer, where the firm is not the registered owner of the shares or units (e.g. because the investment fund uses a financial intermediary to distribute fund shares or units, and the investor purchases units or shares through the firm and the firm does not become the legal owner of the units or shares).

A.2. DIFFERENT CUSTOMER TYPES

In line with the UCI's customer definitions above, it is possible to identify different types of customers which may require different levels of due diligence, based on (i) the nature of the relationship, (ii) their ML/TF risk rating and (iii) as necessary, the structure in which the investments will be made.

A.2.1. INTERMEDIARIES

Intermediary relationships which may also include clearing platforms acting as an investor subscribing units or shares of an UCI in their own name but on behalf of their customers, generally offer less transparency or access to information on the underlying customers of the intermediary. Therefore, in such context the Responsible Entity shall carry out **enhanced due diligence** on such intermediary relationship, as per Article 3 of CSSF Regulation 12-02 especially given that accounts may be operated on an omnibus/pooled basis (i.e. nominee account in the register of the UCI). This means that, in addition to applying the CDD measures pursuant to article 3 (2) of the AML/CTF Law on the intermediary acting as an investor in the UCIs ("**Level 1 due diligence measures**") the enhanced due diligence measures in accordance with Article 3-2 (3) of the AML/CTF Law have to be applied on such intermediary focusing on the distributing/intermediary relationship and which should include, amongst others, the review of its AML/CTF processes and controls, in particular as regards the AML/CTF due diligence performed on its underlying customers ("**Level 2 due diligence measures**").

This is notwithstanding whether the intermediary, which subscribes shares/units of the UCI on behalf of its customers, has been contractually appointed by the UCI/Professional to distribute shares/units of the UCI on its behalf or not.

As indicated above, some intermediary scenarios additionally involve the usage of trading platforms, which pool the subscriptions and redemptions orders from their customers and send them to participating UCIs in a structured fashion. Platform's customers may be private individuals, legal entities or financial intermediaries acting on behalf of their own clients.

The use of such platforms may add a further layer of complexity in terms of AML/CTF whose inherent risks need to be appropriately assessed and mitigated.

Therefore, the due diligence shall be performed on a 2tier basis:

- **Level 1 due diligence measures:** A risk-based due diligence on the intermediary (including its Beneficial Owners), as investor appearing in the register of the UCI;
- **Level 2 due diligence measures:** Additional enhanced due diligence on the intermediary's business relationship as per Article 3 of CSSF Regulation 12-02, including information on the AML/CTF controls to enable a qualitative assessment of its control framework. An in-depth review shall be conducted for higher risk relationships, possibly including reviewing the independent audit reports, interviewing the relevant AML/CTF compliance officers, review carried out by an independent third-party and/or carrying out of an onsite visit.

Amongst others, the Responsible Entity shall gather the following information:

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- type of intermediary;
- country of establishment;
- applicable AML/CTF legal and regulatory framework;
- AML/CTF supervisory authority name;
- AML/CTF framework implemented by the intermediary;
- reputation of the intermediary, potential ML/TF investigations and/or enforcement or fines against the latter;
- nature of the activity, and
- distribution strategy (if applicable).

If the Responsible Entity has assessed that the results of both the Level 1 due diligence measures as well as the Level 2 due diligence measures as being satisfactory, and if the intermediary is a AML/CTF regulated entity located in a country with no strategic AML/CTF deficiencies, the Responsible Entity may pursuant to market practice generally rely on the intermediaries due diligence measures on the underlying customers of the intermediary unless a higher risk situation has been identified.

Pursuant to the FATF Guidelines there is no expectation or requirement for the Responsible Entity to apply CDD on an intermediaries' customer (unless the Responsible Entity has a direct relationship with such customers of the intermediary), which is instead the responsibility of the intermediary. Nonetheless, it is consistent with the RBA for the Responsible Entity to have some general sense of the intermediaries' customer base as part of ascertaining the risks associated with the intermediary itself.

A.2.2. THIRD-PARTY INTRODUCER RELATIONSHIP

The Third-Party Introducer relationship is provided in Article 3-3 of the AML/CTF Law and can be defined as a relationship between the Responsible Entity and an intermediary, which is regulated and supervised by an AML/CTF supervisory authority and is subject to its own AML/CTF professional obligations, where the Responsible Entity decides to rely on the initial CDD performed by the Third-Party Introducer (identification and verification of the customer, identifying and taking reasonable measures to verify the identity of the Beneficial Owner, identification and verification (if needed) of the identity of the persons purporting to act on behalf of the customer (if applicable) and assessing, understanding and as appropriate obtaining information on the purpose and intended nature of business relationship). The intermediary's customer becomes the customer of the UCI, i.e. the underlying customer name is registered in the UCI's register.

However, even though the identification and verification of identity measures may be performed by the Third-Party Introducer, which shall comply with the conditions provided in Article 3-3 of the AML/CTF Law and Article 36 of CSSF Regulation 12-02, including providing the due diligence information and documents upon request; under such business relationship the Responsible Entity cannot rely on the intermediary to perform ongoing monitoring, ongoing due diligence and scrutiny of transactions.

A.3. APPLICATION OF THE AML/CTF DUE DILIGENCE

Without prejudice to certain relationships requiring enhanced due diligence as per the AML/CTF Law and related laws and regulations, the risks associated with every customer determine the level of due diligence required as well as the frequency upon which such due diligence should be refreshed.

Due diligence measures should be applied in at least the following cases:

- when establishing a new business relationship, e.g., at the time of the subscription / at the time of the signature of a distribution agreement;
- for existing customers, notably:
 - o through a periodical risk-based review process based on formal cycles;
 - o when there is a significant trigger event for example:

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- Increase in risk rating,
- The nature, scope and/or jurisdiction of the business activities of the Customer are changing,
- Change in regulation which requires additional documents to be collected;
- when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;
- when there are doubts about the veracity or adequacy of previously obtained customer identification data.

The due diligence process applies to all customers and typically includes:

- Risk assessment of the customer (to be appropriately documented) to determine the level and type of due diligence required and support the decision whether to enter into, continue or terminate the business relationship;
- Identification, and collection and verification of customer information;
- Identification, and, on a risk-based approach, collection and verification (if needed) of the beneficial ownership information;
- Identification, and on a risk-based approach, collection and verification of the persons purporting to act on behalf of the customer, i.e. all natural or legal persons purporting to act on behalf of the customer, (where applicable);
- Assessing, understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship, to form a basis for ongoing monitoring of the business relationship and with a view to facilitating the detection of potentially suspicious activities;
- Taking reasonable measures to establish and, on a risk-based approach, obtaining supporting documents on the source of funds and, as applicable the source of wealth of the customer;
- Obtaining a duly signed declaration as to whether the customer acts on his own account or on behalf of underlying clients;
- Carrying out name screening on the customer, Beneficial Owner, persons purporting to act on behalf of the customer and other associated parties as required;
- Monitoring transactions, payments, changes in static data (such as address changes, bank mandates and pledges) in order to detect suspicious or unusual behavior.

The Responsible Entity may determine the extent of such measures using a risk-based approach, subject to the provisions of the AML/CTF Law and related laws and regulations.

A.3.1.(a). *CUSTOMER IDENTIFICATION*

For the purposes of the identification of customers, the Responsible Entity shall gather and register at a minimum the information as required by the Regulations and Standards.

Based on the established risk assessment (which shall also encompass the assessment of the country risk), the Responsible Entity shall collect information and documentation on the customer and on its Beneficial Owner(s).

It is important to stress that Beneficial Owner(s) must always be identified, and information on the beneficial ownership must always be collected, regardless of the risk assessed for the relationship. The Beneficial Owner information to be collected generally is: first name(s) and surname(s), date and place of birth, nationality(ies), full postal address of the main residence and the official national identity number on a risk-based approach. Verification of such information must be carried out; however, the manner of verification can be performed on a risk sensitive basis. Under certain circumstances, the information to be collected regarding the Beneficial Owner may be adjusted for entities which present a low AML/CTF risk, such as regulated financial institutions or entities listed on a stock exchange (see also illustrations in the ALFI publication « Who is the beneficial owner of an investment fund ? »).

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Where the customer is a legal entity not (directly or indirectly) subject to an equivalent AML/CTF supervision, the Responsible Entity shall also collect appropriate information on the directors or persons exercising similar positions and – regardless of the type of the customer - information on the source of funds and, as applicable on the source of wealth (if legally required) of the customer. Such information must be verified or corroborated with supporting documents applying a risk-based approach.

The Responsible Entity must also obtain written confirmation if the customer is investing on its own behalf or not.

A.3.1.(b). *NAME SCREENING - POLITICALLY EXPOSED PERSONS*

Prior to entering into relationship, the Responsible Entity shall ensure the name of the customer, its related parties including Beneficial Owner(s), persons purporting to act on behalf of the customer and board members, as applicable, is screened against lists of PEPs. Control shall also be carried out whenever there is a change in static data and on an ongoing basis.

The purpose of such screening is to identify PEPs not previously identified, which may have an impact on the risk of the Business Relationship.

A.3.1.(c). *NAME SCREENING – TFS*

Prior to entering into relationship, whenever there is a change in static data and on an ongoing basis, the Responsible Entity shall screen the name of the customer, its related parties including Beneficial Owner(s) and board members, as applicable against **TFS** lists. Such screening, in principle to be carried out on a daily basis, shall cover new lists published by the relevant authorities without delay, which means – as applicable – within one business day from the moment when TFS lists are published.

Where the customer is an intermediary, it is important to note that when the Responsible Entity receives a potential name match on the name/other information related to the intermediary's customer, even if this person is not to be considered the customer of the Responsible Entity, the latter should follow up with the intermediary by making a request for information on the particular underlying customer and possibly leading to more information being requested on the intermediary's customers.

In case of positive match, the Responsible Entity shall refrain from entering into a relationship or block any redemption and immediately inform the Ministry of Finance and other competent authorities, as necessary.

A.3.1.(d). *TRANSACTION MONITORING.*

As part of its ongoing monitoring obligations, the Responsible Entity shall monitor the customer's transactions to determine whether they are consistent with the Responsible Entity's (or relevant delegate's) profiling information about the customer and the nature and purpose of the business relationship.

The extent and depth of transaction monitoring shall be based on the established risk-based approach.

Defined situations or thresholds used for transaction monitoring should be reviewed on a regular basis to determine their adequacy to the risk levels established. Monitoring measures should be in place to flag unusual movements of funds or transactions for further analysis and scrutiny in a timely manner for determining as to whether the funds movements or transactions are suspicious.

Criteria applied to decide the frequency and intensity of the monitoring of different customer segments should also be readily explicable and the rationale for the monitoring strategy appropriately documented.

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In case of AML/CTF suspicious activity or transaction, the Responsible Entity shall immediately inform the FIU via the GoAML tool through filing of a SAR/STR.

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VIII. Due Diligence on the Asset Side

UCIs are created to hold and manage assets, in accordance with a determined investment strategy, in their own name and for the benefit of one or multiple UCI's investors.

The Responsible Entity needs to analyse the ML/FT risks intrinsic to the investment activity and establish appropriate due diligence measures adapted to the risks assessed per asset class. This assessment shall be appropriately documented in written, formalized and reviewed at least on an annual basis.

The Responsible Entity, either directly or through a third party (e.g. the appointed Portfolio Manager or Investment Advisor) shall establish:

- I. appropriate due diligence controls by asset type (Know Your Investment) on a risk-based approach.
- II. TFS/PF controls on all assets and depending on the assets types, the parties linked to the transactions.

TFS can take a number of different forms including:

- Trade sanctions, including arms embargoes and restrictions on dual-use items²;
- Financial sanctions, including asset freezes and other restrictive measures;
- Immigration sanctions, known as travel bans

In such context, the Responsible Entity directly or through a third party should especially take attention to:

- **TFS**, covering both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated States, persons, entities and groups, and
- Prevention of **PF**, intended as the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons of mass destruction.

A.1. ASSET TYPES

The Responsible Entity, directly or through a third party may invest in assets traded on a security exchange/regulated market or through direct acquisition.

² Dual-use items are goods, software and technology that can be used for both civilian and military applications.

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The table below provides a non-exhaustive overview of the main types of assets:

EXAMPLES OF LISTED ASSETS (on a security exchange or regulated market)	EXAMPLES OF UNLISTED ASSETS
<ul style="list-style-type: none">• Shares / stocks / bonds listed• Investment Funds• Exchange traded funds (ETF)• Money Market instruments• Derivative instruments (e.g. futures)	<ul style="list-style-type: none">• Real Estate• Private Equity• Real assets (direct v/s indirect investment)• Private Debt/ Loans• Infrastructure• Investment Funds• Shares / stocks / bond/ derivative instruments (structured bond, OTC, swaps)• Money Market instruments• Virtual assets³

A.1.1. ASSET CLASSIFICATION AND REQUIRED DUE DILIGENCE

Prior to investing in an asset, the Responsible Entity must, as a minimum, screen the name of such asset and/or of its issuer against the TFS/PF lists.

Generally, assets which are listed on a securities exchange/traded on regulated markets or which are issued by a company listed on a security exchange ("**Listed Assets**") have a lower risk. For such types of assets, the Responsible Entity may therefore decide to apply a Simplified Due Diligence, hence only carrying out TFS (including PF) screening at the time of the first transaction and on an ongoing basis (i.e. at least whenever a list is updated).

Unlisted assets (including virtual assets) are assets which are not listed on a security exchange/traded on regulated markets or which are not issued by a company listed on a security exchange. These assets may have a higher risk compared to Listed Assets. The Responsible Entity must therefore also consider the associated risks on the way the type of assets are acquired, sold or transferred (i.e. take into consideration ML/TF risks related to the Principal and/or Agent(s), as defined in the table below) and adapt the level of due diligence accordingly.

Other criteria, such as the risk of the country of the issuer, the presence of a regulated intermediary (e.g. clearing agents, the regulatory status of the Issuer and/or whether reliable valuation and appropriate information on the asset are available), may be considered to determine the risk of unlisted assets.

The table below provides a high-level overview of the due diligence measures to be /considered, subject to a risk assessment.

³ As defined in the Glossary of the FATF Recommendations, "a virtual asset is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations".

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	TFS name screening			Proliferation financing screening**			AML/CTF due diligence measures (identification, verification, origin of funds)		
Due diligence by asset type	On the <u>asset OR underlying asset</u> (on RBA)	On the <u>Issuer</u>	On the <u>Principal and/or Agent</u>	On the <u>Issuer</u>	On the <u>asset OR underlying asset</u> (on RBA)	On the <u>Principal and/or Agent</u>	On the <u>asset OR underlying asset</u>	On the <u>Agent/tenants/leases/co-investors</u>	On the <u>Principal</u>
Listed Assets	Yes	Yes (as necessary)	N/A	Yes (as necessary)	Yes	N/A	N/A	N/A	N/A
Unlisted Assets*	Yes	Yes (as necessary)	Yes (if applicable)	Yes (as necessary)	Yes	Yes (if applicable)	RBA (if applicable)	RBA (if applicable)	RBA (if applicable)

* Additional measures may have to be performed depending on the way the assets are acquired/sold/transferred. If the assets are shares or parts of a fund (including ETFs), the diligence are performed on the fund and not on the underlying basket.

** Similar rules should apply to cluster munitions financing

Glossary:

assets	Securities or any other type of assets purchased or sold by a UCI.
Underlying asset:	e.g. derivative
Issuer	A legal entity that creates, develops, registers and sells assets to investors.
Agent	Facilitator of the transaction (e.g. intermediating party like a Bank in a loan scheme)
Principal	End buyer / End seller / borrower
RBA	Risk-based approach

A.2. GUIDANCE FOR DUE DILIGENCE

The mitigation actions described below may be used as a general guidance for the minimum due diligence measures to be adopted in respect to the assets, taking into account the specificities of each asset type and applying, as necessary, a risk-based approach.

General principle:

- a) AML/CTF due diligence on assets can be performed using a risk-based approach, which therefore requires an understanding of the ML/TF risks presented by specific assets or assets classes. This analysis must be formalized in writing by the Responsible Entity (or by its delegate and reported to the Responsible Entity).
- b) When the Responsible Entity wishes to use the AML/CTF due diligence performed by a third party involved in the transaction, it should ensure that such third party applies due diligence standards equivalent to those applicable in Luxembourg. Nevertheless, the Responsible Entity remains the ultimate responsible for the

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compliance with AML/CTF due diligence on assets and must monitor the delegated function through periodic reporting on a risk-based approach.

A.2.1. PRIVATE EQUITY

The Responsible Entity may invest directly in shares of private companies, i.e. companies that do not have their shares offered to the public. Those shares are usually subject to transfer restrictions so that their holders cannot transfer them to another person without the consent of the company or the company's management body and/or under specific conditions.

The Responsible Entity shall adopt a risk-based approach in carrying out initial and ongoing due diligence on the target private company, its related parties (including the Principal), and on the Agent(s) of the transactions.

Private equity transactions can also involve a variety of co-investors. These might include other private equity funds or institutional investors. Where the UCI intends to become a majority shareholder in such private companies (i.e. it intends to acquire 50% + 1 of the shares), the Responsible Entity may also perform due diligence on the co-investors on a risk-based approach.

In particular, in case where the UCI is the majority shareholder, it is recommended that the Responsible Entity carrying out the following controls on the co-investors:

- If the co-investor is or will hold more than 25% of the shares of the asset, the Responsible Entity directly or through a third party shall at least perform appropriate due diligence on the co-investor and its Beneficial Owner(s) and screen their names against TFS/PF lists;
- On a risk-based approach the Responsible Entity directly or through a third party may apply additional due diligence measures such as lowering the threshold for due diligence measures on the co-investor and its Beneficial Owner(s).

On the contrary, in case where the UCI is not the majority shareholder, it is recommended that the Responsible Entity carries out the following controls on the co-investors:

- If the co-investor is or will hold more than 25% of the shares of the asset, the Responsible Entity shall at least screen the name of the co-investor against TFS, including PF, lists;
- If the co-investor is or will hold less than 25% of the shares of the asset, unless there are reasons which would indicate a higher risk, the Responsible Entity is not expected to carry out a due diligence on it.

The Responsible Entity shall also directly or through a third party establish appropriate controls to monitor changes into shareholding composition of the asset, to adopt adequate and appropriate level of due diligence on the other co-investors on an ongoing basis.

A.2.1.(a). REAL ESTATE

A UCI may invest into real estate asset (e.g. residential or commercial properties) types which may represent a higher risk and therefore the Responsible Entity is, if the result of a risk-based assessment so warrants, expected to apply an enhanced due diligence on this type of asset.

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For this type of assets, the Responsible Entity is recommended to apply a due diligence on the Principal considering a risk-based approach (e.g. if the Principal is an AML/CTF regulated entity, located in a jurisdiction with equivalent AML/CTF regulations to those applicable in Luxembourg).

Similarly, in case the transaction is placed through an Agent which is regulated for AML/CTF purposes and which has performed the due diligence on the Principal, the Responsible Entity may take this into account to (i) implement simplified due diligence in respect of the Agent, and/or (ii) rely on the due diligence performed by the Agent on the Principal, subject to relevant contractual arrangements and reporting being in place.

Real Estate properties may be held as an investment to generate regular steady income through its rent, or with the aim of achieving income and/or capital growth through its disposal.

For example, the Responsible Entity may carry out a **risk-based approach** due diligence on tenants depending on predetermined risk factors, such as volume of property's revenue, the type of property and geographical risks.

For instance, in case where the income might mainly be generated from a limited percentage of tenants (i.e. mostly major tenants, with more than a certain percentage of the building/property's revenue such as for instance more than 25% of the total rent for a property located in a low risk country or 10% of the total rent for a property located in a high risk jurisdiction), the Responsible Entity may consider to screen the name of the tenant against the TFS, including PF, lists.

The Responsible Entity may also perform a risk-based approach due diligence on the property developer (if any). Such due diligence should at least entail TFS, including PF, screening on the property developer name.

Similar to Private Equity, Real Estate transactions can also involve a variety of co-investors. In this case similar rules as described under the Private Equity section shall be applied.

A.2.1.(b). *TANGIBLE ASSETS*

Tangible type of assets can vary in their nature and range from very expensive down to low value assets.

Such type of dealing is not always regulated, and this type of assets may be traded by a range of commercial entities such as banks, manufacturers, independent vendors/dealers of assets or commercial brokers.

The Responsible Entity shall assess the risks linked to the specific type of assets in which it intends to invest, taking into account notably the counterparties involved in the transaction and with whom the contracts are signed. Depending on whether the UCI is acting as buyer or seller, the target of the due diligence shall either be the buyer or the seller.

For example, subject to a risk assessment, luxury assets may be desirable to criminals and enhanced due diligence may be considered, including identification of potential TFS/PF risks (e.g. if the tangible asset is a vessel).

For this type of assets, the Responsible Entity directly or through a third party is expected to apply a due diligence on the Principal considering a risk-based approach ((e.g. if the Principal is an AML/CTF regulated entity located in a jurisdiction with equivalent AML/CTF regulations to those applicable in Luxembourg). Similarly, in case the transaction is placed through an Agent which is regulated for AML/CTF purposes and which has performed the due diligence on the Principal, the Responsible Entity directly or through a third party may take this into account to (i) implement simplified due diligence in respect of the Agent, and/or (ii) rely on the

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due diligence performed by the Agent on the Principal, subject to relevant contractual arrangements and reporting being in place.

A.2.1.(c). *PRIVATE DEBT/LOAN*

Based on their investment strategies, the activities of private debt / loan UCIs can be classified as either being loan-originating - or loan participating activities (or a mixture thereof):

- a loan-originating activity is any type of a fund's activity that is, according to its investment strategy, allowed to grant and restructure loans (i.e. to subsequently amend loan conditions such as prolongation or deferral).
- a loan-participating activity is a fund's activity that is allowed to partially or entirely acquire and restructure existing loans originated by banks or other institutions, either directly from the lender or in secondary markets where such loans are traded.

When the UCI – directly or indirectly - lends money, the main ML/TF risks reside on the Borrowers. The Responsible Entity directly or through a third party is therefore generally required to perform a risk-based approach due diligence on the Borrowers. Depending on the characteristics of the private debt/loan, a secondary market may exist where banks and other parties buy or sell interests in loans. Generally the risk of money laundering in relation to a secondary market participant is lower as in relation to a primary syndication due to the fact that the secondary market participants are usually AML/CTF regulated entities, located in jurisdictions with equivalent AML/CTF regulations to those applicable in Luxembourg.

For this type of assets, the Responsible Entity is expected to apply a due diligence on the Principal (i.e. buyer/seller) and the Borrower considering a risk-based approach (e.g. if the Principal is an AML/CTF regulated entity, located in a jurisdiction with equivalent AML/CTF regulations to those applicable in Luxembourg).

The Responsible Entity rely on the Borrower related information received by the Principal. Similarly, in case the transaction is placed through an Agent which is regulated for AML/CTF purposes and which has performed the due diligence on the Principal, the Responsible Entity may take this into account to (i) implement simplified due diligence in respect of the Agent, and/or (ii) rely on the due diligence performed by the Agent on the Principal, subject to relevant contractual arrangements and reporting being in place.

Unless there would be a direct contact/business relationship with a Co-Lender, the Responsible Entity is not expected to carry out a due diligence on Co-lenders.



The Association of the Luxembourg Fund Industry (ALFI) represents the face and voice of the Luxembourg asset management and investment fund community, championing mainstream, private assets and sustainable investing. ALFI seeks to promote Luxembourg's fund sector internationally, and to cultivate for the benefit of its members a collaborative, dynamic and innovative ecosystem underpinned by the most robust regulatory framework. ALFI's ambition is to empower investors to meet their life goals.

Created in 1988, the Association today represents over 1,500 Luxembourg domiciled investment funds, asset management companies and a wide range of business that serve the sector. These include depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax advisory firms, auditors and accountants, specialised IT and communication companies. Luxembourg is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg domiciled investment funds are distributed in more than 70 countries around the world.

ALFI defines its mission as to "Lead industry efforts to make Luxembourg the most attractive international investment fund centre".

Its main objectives are to:

Help members capitalise on industry trends

ALFI's many technical committees and working groups constantly review and analyse developments worldwide, as well as legal and regulatory changes in Luxembourg, the EU and beyond, to identify threats and opportunities for the Luxembourg fund industry.

Shape regulation

An up-to-date, innovative legal and fiscal environment is critical to defend and improve Luxembourg's competitive position as a centre for the domiciliation, administration and distribution of investment funds. Strong relationships with regulatory authorities, the government and the legislative body enable

ALFI to make an effective contribution to decision making through relevant input for changes to the regulatory framework, implementation of European directives and regulation of new products or services.

Foster dedication to professional standards, integrity and quality

Investor trust is essential for success in collective investment services and ALFI thus does all it can to promote high professional standards, quality products and services, and integrity. Action in this area includes organising training at all levels, defining codes of conduct, transparency and good corporate governance, and supporting initiatives to combat money laundering.

Promote the Luxembourg investment fund industry

ALFI actively promotes the Luxembourg investment fund industry, its products and its services. It represents the sector in financial and in economic missions organised by the Luxembourg government around the world and takes an active part in meetings of the global fund industry. ALFI is an active member of the European Fund and Asset Management Association, of the European Federation for Retirement and of the International Investment Funds Association.

To keep up with all the news from ALFI and the fund industry in Luxembourg, follow us on [LinkedIn](#), [Twitter](#) (@ALFI-funds), [YouTube](#) and [Flickr](#).



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**Reviewed Practices and Recommendations
aimed at reducing the risk of money laundering
and terrorist financing in the Luxembourg fund
industry**