

Finansinspektionen's Regulatory Code

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Finansinspektionen's Regulations and General Guidelines governing measures against money laundering and terrorist financing;

FFFS 2009:1

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Finansinspektionen prescribes¹ the following pursuant to the Measures against Money Laundering and Terrorist Financing Ordinance (2009:92).

Below the paragraphed regulations, Finansinspektionen provides *General Guidelines*.

Chapter 1. Scope and definitions

Scope

Section 1 These regulations contain provisions governing the measures which an undertaking shall implement in order to prevent the operations from being used for money laundering or terrorist financing. These regulations specify, among other things, what is meant by a risk-based approach, risk-based procedures, etc., customer due diligence, the obligation to provide information and conduct reviews as well as training and protection of employees.

Section 2 These regulations shall be applied by:

1. natural and legal persons conducting such operations as set forth in Chapter 1, section 2, subsections 1–7 of the Act on Measures against Money Laundering and Terrorist Financing (2009:62), as well as
2. branches in Sweden of foreign legal persons with head offices abroad which conduct such operations as referred to in point 1.

Provisions applicable to the board of directors or managing director of legal persons shall be applied equivalently in respect of authorised representatives in types of association in which a board of directors or managing director does not exist.

¹ Cf. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (O J L 309, 25 November 2005, page 15, Celex 320050060) and the Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of “politically exposed person” and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (O J 214, 4 August 2006, p. 29, Celex 320060070).

Definitions

Section 3 The same definitions are used in these regulations as in Chapter 1, section 5 of the Act on Measures against Money Laundering and Terrorist Financing.

In addition, the following definitions are used:

1. *undertaking*: an operator as set out in Chapter 1, section 2, subsections 1–7 of the Act on Measures against Money Laundering and Terrorist Financing;
2. *internal rules*: policy and governance documents, guidelines, instructions or other written documents through which the issuer (board of directors or managing director) governs the operation;
3. *internal control*: a process by which the undertaking's board of directors, managing director, management or other personnel create reasonable certainty that the undertaking's goals are fulfilled in the following areas:
 - that the undertaking has an appropriate and efficient organisation and management of the operations;
 - that information provided to the National Police Board is reliable, and
 - that the undertaking complies with applicable laws, ordinances and other regulations.

Chapter 2. Risk-based approach

Section 1 An undertaking shall take measures aimed to prevent it from being used for money laundering and terrorist financing. The measures shall be adapted to the risk that the operations will be used for money laundering and terrorist financing.

Section 2 In order to fulfil the requirement in section 1, an undertaking shall:

1. conduct a risk assessment pursuant to section 3;
2. maintain procedures, etc. in accordance with Chapter 3 and
3. monitor and update the risk assessment on an ongoing basis and, when needed, revise the procedures, etc.

The undertaking shall continuously take into account information relating to new trends and patterns which are used as well as methods which may be used for money laundering and terrorist financing. The undertaking shall also take part of other information from organisations, authorities and other bodies within the area.

Risk assessment

Section 3 An undertaking shall assess the risk of the operations being used for money laundering and terrorist financing. The risk assessment shall be made in an appropriate manner taking into consideration the undertaking's size and complexity. It shall contain an analysis of the undertaking's customers, products, services and other relevant factors for the operations such as distribution channels and geographical areas.

Chapter 3. Procedures, etc.

Section 1 An undertaking's board of directors or managing director shall establish internal rules for measures against money laundering and terrorist financing where it is set forth who takes decisions regarding procedures, systems, training programmes and guidelines pursuant to section 2.

Section 2 An undertaking shall maintain the following procedures, etc.:

1. procedures for:

- basic measures for customer due diligence pursuant to Chapter 2, section 3 of the Act on Measures against Money Laundering and Terrorist Financing;
- exemptions from basic measures for customer due diligence pursuant to Chapter 2, section 5 of the Act on Measures against Money Laundering and Terrorist Financing, and
- enhanced measures for customer due diligence pursuant to Chapter 2, section 6 of the Act on Measures against Money Laundering and Terrorist Financing;

2. a system or procedure to follow up business relationships on an ongoing basis pursuant to Chapter 2, section 10 of the Act on Measures against Money Laundering and Terrorist Financing, and Chapter 4, sections 18 and 19 of these regulations;

3. procedures for keeping documents and information about the customer due diligence measures taken pursuant to Chapter 2, section 13 of the Act on Measures against Money Laundering and Terrorist Financing, and Chapter 4, section 20 of these regulations;

4. a system or procedure for the monitoring obligation pursuant to Chapter 3, section 1 of the Act on Measures against Money Laundering and Terrorist Financing, and Chapter 5, section 1 of these regulations;

5. procedures for the obligation to provide information to Rikspolisstyrelsen pursuant to Chapter 3, section 1 of the Act on Measures against Money Laundering and Terrorist Financing, and Chapter 5, section 2 of these regulations;

6. a training programme pursuant to Chapter 5, section 1 of the Act on Measures against Money Laundering and Terrorist Financing, and Chapter 7, section 1 of these regulations;

7. procedures to protect employees from threats or hostile measures pursuant to Chapter 5, section 1 of the Act on Measures against Money Laundering and Terrorist Financing, and Chapter 7, section 2 of these regulations and

8. guidelines for internal control, compliance and internal information pursuant to Chapter 8 of these regulations.

The undertaking's procedures, etc. shall be based on its operations and risk assessment.

Section 3 § An undertaking shall communicate to its branches and majority-owned subsidiaries outside the EEA regarding the undertaking's procedures, etc.

Section 4 Where an undertaking is the parent undertaking in a group of companies, the board of directors of the parent undertaking shall establish common internal rules for measures against money laundering and terrorist financing for the undertakings within the group covered by the Act on Measures against Money Laundering and Terrorist Financing.

Chapter 4. Customer due diligence

Verification of the customer's identity

Section 1 An undertaking, in situations requiring customer due diligence, pursuant to Chapter 2, section 2 of the Act on Measures against Money Laundering and Terrorist Financing, shall verify the customer's identity in accordance with the provisions of Chapter 4, sections 2–7 of these regulations.

Natural person

Section 2 An undertaking shall verify the identity by means of a Swedish driver's licence, Swedish passport, identity card issued by a Swedish authority or a Swedish certified identity card.

The undertaking shall verify the identity of those who do not have a Swedish identity document by verifying the passport or other identity document which provides information of citizenship and are issued by an authority or other authorised issuer. A copy of a foreign passport or other foreign identity document shall at all times be kept.

Where the customer has no identity document, the undertaking may verify the identity by means of other reliable documents and controls in accordance with the undertaking's established procedures.

Natural person not physically present

Section 3 An undertaking shall verify the identity in a non-face-to-face situation by:

1. using electronic identification in order to create an advanced electronic signature as set forth in the definition in section 2 of the Electronic Commerce and other Information Society Services Act (2000:832) or by using any other similar technology for electronic identification, or
2. ensuring the customer's identity in an appropriate manner by:
 - a) obtaining information regarding the customer's name, civic registration number or the equivalent as well as address,
 - b) verifying the information against external registers, certificates, other documentation, or the equivalent, as well as
 - c) contacting the customer by sending a confirmation to the customer's address in the population register, ensuring that the customer sends a copy of the identification document, or the equivalent.

Legal person in exemptions

Section 4 Where the provisions governing basic measures for customer due diligence do not need to be applied pursuant to Chapter 2, section 5 of the Act on Measures against Money Laundering and Terrorist Financing, the undertaking shall still verify a customer's identity by:

- a) obtaining information regarding the customer's name, civic registration number or the equivalent and address, as well as
- b) verifying the information against external registers, certificates, other documentation, or the equivalent.

Legal entity

Section 5 An undertaking shall verify the identity of a customer that is a legal person by means of a registration certificate, corresponding authorising documents if the registration certificate has not been issued for the legal person, or make corresponding verification against external registers.

The undertaking shall also verify the identity of a representative of a legal person pursuant to section 2.

Legal person not physically present

Section 6 An undertaking shall verify the identity of a customer that is a legal person by means of a registration certificate, corresponding authorising documents if the registration certificate has not been issued for the legal person, or conduct equivalent verification against external registers.

The undertaking shall also contact the customer by sending a confirmation to the customer's registered address or take an equivalent measure.

The undertaking shall also verify the identity of a representative of a legal person by:

- obtaining information on the person's name and civic registration number or the equivalent, as well as
- verifying the information against the legal person's registration certificate, external registers, identity documents for the representative pursuant to section 2, or other equivalent document.

Legal person in exemptions

Section 7 Where the provisions governing basic measures for customer due diligence do not need to be applied pursuant to Chapter 2, section 5 of the Act on Measures against Money Laundering and Terrorist Financing, the undertaking shall still verify a customer's identity in an appropriate manner.

The undertaking shall also verify the identity of a representative of a legal person by:

- obtaining information on the person's name and civic registration number or the equivalent, as well as
- verifying the information against the legal person's registration certificate, external registers, identity documents for the representative pursuant to section 2, or other equivalent document.

Verifying the identity of a beneficial owner

Section 8 An undertaking, in situations requiring customer due diligence, pursuant to Chapter 2, section 2 of the Act on Measures against Money Laundering and Terrorist Financing, shall verify the identity of a beneficial owner pursuant to Chapter 4, section 9 of these regulations.

Section 9 An undertaking shall obtain reliable and sufficient information on a beneficial owner's identity by means of public registers, relevant information from the customer or other information that the undertaking has received.

Where the customer is a legal person, the undertaking shall verify:

- direct and indirect natural owners if the holding in the customer amounts to more than 25 per cent, and
- the natural persons that exercise a determining influence over the customer.

Measures performed by third parties

Section 10 An undertaking may rely on measures for basic customer due diligence which has been carried out by a third party pursuant to Chapter 2, section 3, third paragraph of the Act on Measures against Money Laundering and Terrorist Financing even if the documents and data are different from those required in accordance with these regulations. This applies if the measures are taken pursuant to equivalent requirements of a country within the EEA as well as in a country outside the EEA as set forth in Chapter 9, section 1 of these regulations.

Section 11 The provisions contained in Chapter 2, section 3, third paragraph of the Act on Measures against Money Laundering and Terrorist Financing that an undertaking may rely on measures performed by a third party do not apply to outsourcing agreements or the equivalent where an outsourcing service provider performs a measure which the undertaking would otherwise have performed pursuant to the Act on Measures against Money Laundering and Terrorist Financing.

Exemptions from provisions governing basic measures for customer due diligence

Section 12 The provisions governing basic customer due diligence and ongoing follow-up of business relationships in Chapter 2, sections 3, 4 and 10 of the Act on Measures against Money Laundering and Terrorist Financing do not apply to products or transactions related to such products that fulfil all criteria set forth below:

1. The product is based on a written contractual base;
2. The transaction is carried out through an account which the customer has with:
 - a credit institution pursuant to the Banking and Financing Business Act (2004:297);
 - another credit institution based within the EEA which is covered by Directive 2005/60/EC, or
 - a credit institution in a country based outside the EEA which is covered by requirements corresponding to those prescribed in Directive 2005/60/EC;
3. The product or the transaction is not anonymous and the provisions in Chapter 2, section 2, second paragraph of the Act on Measures against Money Laundering and Terrorist Financing can be applied without delay;
4. The value of the product or the transaction amounts to a maximum of EUR 15,000, or of a product which solely refers to financing of physical assets with ownership reservation until termination of the contractual relationship, amounts to a maximum of EUR 15,000 per year. This applies regardless of whether the transaction is carried out in a single transfer or in several transfers which appear to be linked. For insurance contracts or similar savings products, the maximum amount for the product applies to that set forth in Chapter 2, section 5, subsection 3 of the Act on Measures against Money Laundering and Terrorist Financing;
5. Benefits from the product or transaction cannot be realised for the benefit of a third party, except in the case of death, disablement, survival to a predetermined advanced age or similar events.

A product or transaction allowing for the investment of funds in financial assets or claims through insurances or other kind of contingent claims, shall also fulfil the following criteria:

1. the benefits which the product or transaction provides shall only be able to be paid out in the long term,
2. the product or transaction cannot be used as collateral, and
3. during the contractual relationship, no accelerated payments may be made, no surrender clauses may be used and no early termination may take place.

Section 13 The provisions governing basic customer due diligence and ongoing follow-up of business relationships in Chapter 2, sections 3, 4 and 10 of the Act on Measures against Money Laundering and Terrorist Financing do not apply to customers that are public authorities or bodies and which fulfil the following criteria:

1. the customer has been entrusted with public functions pursuant to the Treaty on European Union, the Treaties on the Communities or the Community's secondary legislation;
2. the customer's identity is publicly available, transparent and certain;
3. the activities of the customer, as well as its accounting practices, are transparent, and
4. either the customer is accountable to a Community institution or to the authorities of a Member State, or appropriate check and balance procedures exist ensuring control of the customer's activity.

Politically exposed persons

14 § *Persons who hold or have previously been entrusted with prominent public functions*, pursuant to Chapter 1, section 5, subsection 7 of the Act on Measures against Money Laundering and Terrorist Financing refers to persons who hold or have previously held the following positions, or equivalent positions:

1. heads of state or government, ministers and deputy or assistant ministers;
2. parliament members;
3. judges of the Supreme Court, judges of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
4. higher officials at auditing authorities and members of governing bodies of central banks;
5. ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
6. members of the administrative, management or supervisory bodies of State-owned enterprises.

Persons who hold or have previously held positions, at Community level and international level, corresponding to those set forth in points 1–5 shall be included, where applicable.

Section 15 *Immediate family members* pursuant to Chapter 1, section 5, subsection 7 of the Act on Measures against Money Laundering and Terrorist Financing refers to:

1. spouse;
2. any partner considered by national law as equivalent to the spouse;
3. the children and their spouses or partners, and
4. the parents.

Section 16 *Known associates* pursuant to Chapter 1, section 5, subsection 7 of the Act on Measures against Money Laundering and Terrorist Financing refers to:

1. natural persons who are generally known or where there is reason to assume joint beneficial ownership of legal persons or legal arrangements referred to in section 14, or any other close business relationships, with a person referred to in section 14,
2. natural persons who have sole beneficial ownership of legal persons or legal arrangements which are generally known or where there is reason to assume that they have actually been set up for the benefit of such a person as referred to in section 14.

Section 17 When it has become known to an undertaking that a politically exposed person for at least one year has ceased to exercise prominent public functions within the meaning of section 14, the undertaking, based on the risk, shall determine whether they shall continue to apply enhanced measures for customer due diligence pursuant to Chapter 2, section 6, third paragraph, point 2 of the Act on Measures against Money Laundering and Terrorist Financing.

Ongoing follow-up of business relationships

Section 18 An undertaking shall maintain an electronic system or a manual procedure in order to continuously monitor business relationships in accordance with Chapter 2, section 10 of the Act on Measures against Money Laundering and Terrorist Financing.

Section 19 Where a customer enters an agreement for additional products or services within a business relationship, and this entails a deviation from what was previously known about the customer and his or her business and risk profile, the undertaking shall update its knowledge of the customer by taking the measures required in accordance with Chapter 2, section 3, first paragraph, points 2 and 3 of the Act on Measures against Money Laundering and Terrorist Financing, and Chapter 3, section 2, subsections 1 and 3 of these regulations.

Keeping documents or information

Section 20 An undertaking shall keep documents and information, pursuant to Chapter 2, section 13 of the Act on Measures against Money Laundering and Terrorist Financing, in a safe manner, electronically or on paper. The undertaking shall ensure that the documents and information are easy to produce and identify.

Chapter 5. Information and monitoring obligations

Transaction monitoring

Section 1 An undertaking shall maintain an electronic system or a manual procedure in order to monitor transactions pursuant to Chapter 3, section 1, first paragraph of the Act on Measures against Money Laundering and Terrorist Financing. The undertaking shall pay special attention to transactions which may be considered to involve special risk for money laundering and terrorist financing. This applies in particular to complex or unusually large transactions which have no apparent economic or visible lawful purpose.

Information to Rikspolisstyrelsen

Section 2 An undertaking shall provide information, pursuant to Chapter 3, section 1, second paragraph of the Act on Measures against Money Laundering and Terrorist Financing in the manner instructed by the National Police Board.

Section 3 An undertaking shall document measures and decisions when monitoring suspect transactions pursuant to Chapter 3, section 1, first and second paragraphs of the Act on Measures against Money Laundering and Terrorist Financing.

General guidelines

The documentation of monitoring measures should be kept for a minimum of three years after it has been conducted unless otherwise set forth in Chapter 4, section 6 of the Act on Measures against Money Laundering and Terrorist Financing or any provision in other legislation.

Chapter 6. Money laundering reporting officer

Money laundering reporting officer

Section 1 An undertaking's board of directors or managing director shall appoint a money laundering reporting officer within the undertaking who is responsible for the obligation to provide information and monitor transactions pursuant to Chapter 3, section 1, first to third and fifth paragraphs of the Act on Measures against Money Laundering and Terrorist Financing, and Chapter 5 of these regulations. The money laundering reporting officer is also responsible for reporting to the board of directors or the managing director.

The money laundering reporting officer may appoint one or more persons to assist him or her and delegate powers to these persons.

Section 2 If appropriate, a money laundering reporting officer may be appointed for several or all undertakings within a group of companies. This applies on the condition that the money laundering reporting officer has the expertise and resources for all undertakings within the group which are covered by the Act on Measures against Money Laundering and Terrorist Financing.

Chapter 7. Training and protection of employees

Training of employees

Section 1 An undertaking shall have a training programme tailored to the undertaking regarding issues concerning money laundering or terrorist financing. The undertaking shall ensure that employees within relevant business areas are trained and continuously informed regarding changes in regulations and new trends and patterns which are used as well as methods which may be used for money laundering and terrorist financing.

Protection of employees

Section 2 An undertaking shall identify and analyse which threats or hostile measures which may arise against employees as a result of their monitoring or reporting of suspicion of money laundering or terrorist financing.

The undertaking shall investigate incidents which occur and use the knowledge they attain in order to update the procedures that protect employees and take relevant measures in the individual case.

Chapter 8. Internal control, compliance and internal information

Section 1 § An undertaking shall ensure that it meets the requirements of the Act on Measures against Money Laundering and Terrorist Financing, these regulations and the undertaking's procedures, etc. through internal control and control of compliance. This particularly applies to the follow-up of the obligation to provide information and obligation to monitor as well as to ensure that there are controls which guarantee that information to the National Police Board reflects the operations in a reasonable manner.

Section 2 An undertaking shall possess efficient information and communications systems or procedures for internal information. This particularly applies in order to ensure that relevant knowledge that the undertaking attains from the monitoring and reporting of suspect transactions are reported continuously to the relevant business areas.

Chapter 9. States outside the EEA with equivalent regulations

Section 1 When implementing the Act on Measures against Money Laundering and Terrorist Financing and these regulations, States outside of the EEA which have regulations equivalent to those in Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on measures to prevent the financial system from being used for money laundering and terrorist financing, refers to the following states:

Argentina,
Australia,
Brazil,
Special Administrative Region Hong Kong of the People's Republic of China
Japan,
Canada,
Mexico,
New Zealand
Russia,
Switzerland,
Singapore,
South Africa, and
USA

These regulations and general guidelines shall enter into force on 15 May 2009, whereupon Finansinspektionen's Regulations and General Guidelines (FFFS 2005:5) Governing Measures against Money Laundering and Financing of Particularly Serious Crimes in Certain Circumstances shall be repealed.

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