



# Customer Due Diligence

## CFATF Secretariat Research Desk

September 25<sup>th</sup>, 2020



# Customer Due Diligence (CDD)

- ✓ Broadly refers to the core, general obligations on Financial Institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs):
  - Customer due diligence (R.10)
  - Record-keeping(R.11)
  - Reporting of suspicious transactions (R.20)
  - Tipping-off and confidentiality(R.21)
  - Financial secrecy laws(R.9)
  - DNFBPs: customer due diligence (R.22)
  - DNFBPs: other measures(R.23)



# Customer Due Diligence (CDD)

- ✓ Conducting CDD for FIs should be set out in law.

*“The principle that FIs conduct CDD must be set out in law, however the specific CDD measures to meet the requirements may be set out in enforceable means.”*

*Source: FATF Methodology for Assessing Technical Compliance, 2013*



# Main Requirements of CDD (R.10)

There are four (4) CDD measures which FIs must take:

1. Identify the customer and verify customer's identity using reliable, independent information, data or documents.
2. Identify the beneficial owner and taking reasonable measures to identify the beneficial owner.
  - Reasonableness of measures should be commensurate with the ML/TF risk of the customer and business relationship
3. Understanding and obtaining information on the purpose and intended nature of the relationship.
4. Conducting ongoing due diligence on the business relationship and the transactions.

*Source: FATF Recommendations, 2019*



# Application of CDD Measures (R.10)

## CDD measures should be executed when:

1. Establishing business relations.
2. Carrying out occasional transaction where:
  - i. It is above the designated threshold - USD/EUR 15,000 (FIs and DNFBPs); USD/EUR 1,000 (VASPs)
  - ii. Wire transfers circumstances covered in INR. 16 apply – above USD/EUR 1,000
3. There is a suspicion of money laundering or terrorist financing.
4. The FI/DNFBP/VASP has doubts about the veracity or adequacy of previously obtained customer identification data.



# CDD for Legal Persons (R.10)

- ✓ Identification of the beneficial owner through three steps:
  1. Identify the natural persons who ultimately have controlling ownership interest.
  2. This is only needed when:
    - i. There is doubt whether the natural person identified in (1) is the beneficial owner or,
    - ii. No natural person is identified under (1), the natural persons exercising control through other means.
  3. When no beneficial owner is identified under (1) and (2), the relevant natural person holding the senior managing official position.



# CDD for Legal Arrangements (R.10)

- ✓ For trusts, the following must be identified:
  1. Settlor
  2. Trustee
  3. Protector
  4. Beneficiaries or class of beneficiaries
  5. Any natural person exercising ultimate effective control over the trust.
- ✓ For other types other legal arrangements, the identity of persons in similar or equivalent positions is necessary.



# CDD and Virtual Asset Service Providers (VASPS) (R.10)

- ✓ CDD processes should meet the FATF standards and national requirements.
- ✓ The CDD process should help VASPs and other obliged entities that engage in VA activities to assess the ML/TF risks associated with:
  - i. Covered VA activities
  - ii. Business relationships
  - iii. Occasional transactions above the threshold (USD/EUR 1,000)
- ✓ CDD by VASPs and other obliged entities must be done on a risk-based approach.

*Source: Guidance for Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers, 2019*





# CDD and Virtual Asset Service Providers (VASPs) (R.10)

- ✓ CDD processes for VASPs should include:
  - i. Identifying the customer
  - ii. Identifying the beneficial owner
  - iii. Verifying the customer's identity on a risk basis and on the basis of reliable and independent information, data, or documentation.
  - iv. Understanding the purpose and intended nature of the business relationship.
- ✓ Since VAs are susceptible to abuse by criminals, countries can require full CDD for all transactions involving VAs, performed by VASPs and other obliged entities, including “occasional transactions” below the USD/EUR 1,000 threshold, in line with their national legal frameworks.

*Source: Guidance for Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers, 2019*



## Other CDD Measures (R.10)

- ✓ Measures for beneficiaries for life insurance policies
  - Specific measures for the customer, beneficial owner and beneficiary(ies)
- ✓ Additional guidance on the risk-based approach (RBA)
  - i. Circumstances where higher risk and lower risk apply
  - ii. Risk variables
  - iii. Enhanced and simplified CDD measures
  - iv. Ongoing due diligence



# Record-keeping (R.11)

- ✓ FIs should maintain all necessary records on transactions for at least five years.
- ✓ FIs should be required by law to maintain records and transactions obtained through CDD measures.
- ✓ VASPs and other obliged entities engaging in VA activities must maintain all records of transactions and CDD measures for at least five years.
- ✓ Public information on the blockchain or other relevant distributed ledger of a particular VA may provide a foundation for recordkeeping, once FIs can adequately identify their customers.
- ✓ Sole reliance on such a ledger for record-keeping does not fulfil the requirements of R.11



# Reporting of Suspicious Transactions (R.20)

- ✓ If an FI suspects that funds are the proceeds of a criminal activity, or are related to terrorist financing, its suspicions should be immediately reported to the relevant FIU.
- ✓ This fundamental requirement must be set out in law (with CDD and record-keeping).
- ✓ Countries should ensure that VASPs as well as any other obliged entities that engage in covered VA activities file suspicious transaction report (STR) (Guidance for RBA on VAs and VASPs, 2019).



# Tipping-off and Confidentiality (R.21)

- ✓ FIs, their directors, officers and employees should be:
  - i. Protected by law from criminal and civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith to the FIU.
  - ii. Prohibited by law from disclosing the fact that a STR is being filed.
- ✓ VASPs, their directors, officers, and employees, where applicable, should be protected by law from criminal and civil liability for breach of any restriction on disclosure of information and prohibited by law from disclosing (or “tipping-off”) STRs 9 (Guidance for RBA on VAs and VASPs, 2019).



# Financial Secrecy Laws (R.9)

- ✓ Countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.
- ✓ Countries should also ensure that secrecy laws do not inhibit the implementation of the FATF Recommendations in relation to VASPs (Guidance for RBA on VAs and VASPs, 2019).



# Designated Non-Financial Businesses and Professions: CDD (R.22)

- ✓ CDD and record-keeping requirements in Rs. 10 and 11 apply to DNFBPs:
  - i. **Casinos** when customers engage in financial transactions equal to or above USD/EUR 3,000.
  - ii. **Real estate agents** when involved in transactions relative to the buying and selling of real estate.
  - iii. **Dealers in precious metals and stones** when engaged in any cash transaction with a customer equal to or above USD/EUR 15,000.



# Designated Non-Financial Businesses and Professions: CDD (R.22)

- ✓ CDD and record-keeping requirements in Rs. 10 and 11 apply to **lawyers, notaries, other independent legal professionals and accountants** when they prepare for or carry out transactions for their clients concerning:
  - i. Buying and selling of real estate
  - ii. Managing client money, securities or other assets
  - iii. Management of bank, saving or investment accounts
  - iv. Organisation of contributions for the creation, operation or management of companies
  - v. Creating, operating or management of legal persons or arrangements, and buying and selling of business entities.





# Designated Non-Financial Businesses and Professions: CDD (R.22)

- ✓ CDD requirements in R. 10 apply to **trust and company service providers** when they prepare for or carry out transactions for a client concerning the following activities:
  - i. Acting as a formation agent of legal persons
  - ii. Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons
  - iii. Providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement
  - iv. Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement
  - v. Acting as (or arranging for another person to act as) a nominee shareholder for another person



# Designated Non-Financial Businesses and Professions: CDD (R.22)

- ✓ Under the requirements of R. 22 all identified DNFBPs, in addition to applying the required CDD requirements under Rs. 10, 11 and 20 should:
  - i. Comply with the PEPs requirements set out under R.12
  - ii. Comply with the new technologies requirements set out under R. 15
  - iii. Comply with the reliance on third-parties requirements set out under R.17.



# Designated Non-Financial Businesses and Professions: Other measures (R. 23)

- ✓ The requirements to report suspicious transactions under Rec. 20 apply to:
  - ✓ **Lawyers, notaries, other independent legal professionals and accountants** – when, on behalf of, or for, a client they engage in a financial transaction in relation to when they prepare for, or carry out, transactions for their clients concerning the activities described under R. 22.
- Lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals, are not required to report transactions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege. It is for each country to determine the matters that would fall under professional legal privilege or professional secrecy (FATF Recommendation, 2012).



# Designated Non-Financial Businesses and Professions: Other measures (R. 23)

The requirements to report suspicious transactions under Rec. 20 apply to:

- ✓ **Dealers in precious metals and stones** – when they engage in cash transactions with a customer equal to or above USD/EUR 15,000.
- ✓ **Trust and company service providers** – when, on behalf or for a client, they engage in a transaction in relation to when they prepare for, or carry out, transactions concerning the activities described in R. 22.



# Designated Non-Financial Businesses and Professions: Other measures (R. 23)

- ✓ Under the requirements of R. 23 all identified DNFBPs, in addition to applying the required reporting of suspicious transactions, should:
  - i. Comply with the internal control requirements set out under R.18
  - ii. Comply with the higher risk countries requirements set out under R. 19
  - iii. Comply with the tipping off and confidentiality requirements set out under R.21.
- Where lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals seek to dissuade a client from engaging in illegal activity, this does not amount to tipping off (FATF Recommendations, 2012).