FINANCIAL INTELLIGENCE AGENCY

GUIDANCE NOTE ON
CUSTOMER DUE DILIGENCE

The Financial Intelligence Agency

Private Bag 0190

Gaborone

Tel: 3998400

Fax: 3931754

Website: https://www.finance.gov.bw

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Acronyms

AML	Anti-Money Laundering
BO	Beneficial Ownership
CDD	Customer Due Diligence
CFT	Counter Financing of Terrorism
CFP	Counter Financing of Proliferation
CIPA	Companies and Intellectual Property Authority
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FIA	Financial Intelligence Agency
FI Act	Financial Intelligence Act of 2022
FI Regulations	Financial Intelligence Regulations of 2022
IRA	Institutional Risk Assessment
ML	Money Laundering
OBRS	Online Business Registration System
PIP	Prominent Influential Person
PF	Proliferation Financing
RBA	Risk Based Approach
SCDD	Simplified Customer Due Diligence
SP	Specified Party
STR	Suspicious Transaction Report
TF	Terrorist Financing
TFS	Targeted Financial Sanction

1.0 BACKGROUND

1.1 An effective customer due diligence (CDD) is the cornerstone of a robust anti-money laundering, counter-financing of terrorism and counter-financing of proliferation (AML/CFT/CFP) and targeted financial sanction (TFS) program. A CDD process involves identifying and verifying customers, and understanding the purpose and nature of a business relationship or a transaction. It helps a specified party to have a better understanding of its customer's usual and/or anticipated business activities, making it easier to detect suspicious or unusual activities whenever they occur.

2.0 PURPOSE

2.1 These Guidance Notes seeks to provide guidance on the customer identification and verification process. The Guidance Notes are issued in accordance with section 6(2) (d) of the FI Act, which gives the Agency the authority to provide guidance to specified parties on their obligations under the FI Act. The Guidance Notes should be read in conjunction with both the FI Act and its Regulations. The contents of this Guidance Notes and the examples provided herein are neither intended to, nor should be construed as, an exhaustive treatment of the subject.

3.0 SCOPE

3.1 The Guidance Note has incorporated essential elements of the:

a. Financial Intelligence Act (FI Act), 2022;
b. Financial Intelligence Regulations(FI Regulations), 2022;
c. Financial Intelligence Act (Implementation of United Nations Security Council Resolutions) Regulations, 2022; and
d. Financial Action Task Force (FATF) Recommendations and publications.

4.0 CUSTOMER IDENTIFICATION

4.1 Customer Due Diligence (CDD) process

The CDD process includes the following steps:

i. at the beginning of a business relationship, a specified party should establish the identity of a customer and business activities of their potential customer, with the goal of identifying risks as early as possible;

ii. once a customer has been identified, a specified party should categorise the customer according to their risk level as guided by the its risk assessment. This information should be stored in a secure location or place where it can be easily accessed for future regulatory checks.

iii. after establishing a customer's risk category, a specified party should determine whether Enhanced Due Diligence (EDD) or Simplified Due Diligence (SDD) measures are needed.

4.2 Risk Based Approach (RBA)

4.2.1 The Financial Intelligence Act (FI Act) of 2022 and its Regulations outline ways of establishing and verifying a customer. However, as required by Section 16 (2) of the FI Act the extent of application of CDD measures varies depending on the money laundering, terrorist financing or proliferation financing (ML/TF/PF) risk of a customer. The CDD measures applied should therefore be commensurate with the ML/TF/PF risks identified.

4.2.2 Specified parties are required to employ the risk-based approach to determine the customers' risk level and to appropriate control measures based on the risk category of a customer. In determining the risk category of a customer and the appropriate CDD measure, a specified party should consider the results of National Risk Assessment (NRA), Institutional Risk Assessment (IRA) and the customer's profile. A specified party's AML/CFT/CFP policy should therefore,

clearly indicate the risk based approach and the type of CDD measures to apply under different risk categories.

4.3 Customer due diligence (CDD) measures

4.3.1 CDD consists of four core requirements. Specified parties are required to:

i. identify and verify the identity of customers;
ii. identify and verify the identity of the beneficial owners of legal persons and arrangements;
iii. understand the nature and purpose of customer relationships in order to develop customer risk profiles; and
iv. conduct ongoing monitoring to identify and report suspicious transactions and, maintain and update customer information on a risk basis.

4.3.2 There are two types of CDD measures that can be applied depending on the customer's risk profile;

i. SDD is applied where the ML/TF/PF risks are low and the customer is categorised as a low risk customer.
ii. EDD is applicable where the ML/TF/PF risks are higher and the customer is categorized as high risk customer. Examples of high risk customers include prominent influential persons (PIPs) and customers that are the target of economic sanctions.

4.3.3 Section 21 of the FI Act outlines circumstances under which EDD may be applicable. In undertaking EDD, a specified party should:

i. Obtain additional customer identification information;
ii. Establish the source of funds and wealth;
iii. Apply closer scrutiny to the nature of the business relationship or purpose of a transaction or single transaction;

iv. Have management's approval before establishing the business or concluding a transaction or single transaction; and

v. Implement ongoing monitoring procedures.

4.4. Prominent Influential Persons (PIP)

4.4.1 Dealing with a PIP

Specified parties are required to have appropriate risk management systems to determine whether a customer or beneficial owner (BO) is a PIP. Where a specified party determines that a customer is a PIP, an employee of a specified party should obtain senior management's approval before establishing a business relationship or concluding a transaction with the PIP.

4.4.2 Beneficial Owner (BO)

Specified parties are required to conduct CDD to establish and identify the beneficial owner (BO) of a legal entity, a trust or legal arrangement, where a customer or individual seeks to enter into a business relationship. Below is an example on how a specified party can identify a BO.

Example 1

Company X has three shareholders:
Individual A, with 5% of the shares,
Company Y, with 30% of the shares, and
Company Z, with 50% of the shares.
In turn, Company Y is owned at 100% by **Individual B**, and Company Z is owned by **Individuals C and D**, which hold 80% and 5%, respectively. Pursuant to the FI Act of 2022, the controlling ownership interest criterion used for being a beneficial owner is having at least a 10% ownership interest in the company.

Individual A owns less than 10% of Company X, so this individual should not be identified as a beneficial owner. Company Y and Company Z cannot be beneficial owners of Company X, because they are not natural persons, so there is the need to identify the natural persons behind them. Individual B is a beneficial owner, because that natural person has an ownership interest in Company X higher than 10% (100*30%=30%). In addition, Individual C is also a beneficial owner, because that individual owns 40% of Company X (80*50%). By contrast, Individual D cannot be a beneficial owner, as this natural person has an ownership interest of 5% (5*50%=2.5%), below the 10% threshold.

4.5 Instances where CDD is required

Specified parties should conduct CDD measures under the following circumstances:

a. **New business relationships:** Specified parties should perform CDD prior to establishing a new business relationship.

b. **Occasional transactions:** It is important for a specified party to conduct CDD on occasional transactions that are equal to or in excess of the threshold prescribed under Regulation 4 of the FI Regulations.

c. **Suspicion of financial offence:** If a customer is suspected of money laundering, terrorist financing or proliferation financing (ML/TF/PF), specified party should implement Enhanced due diligence checks.

d. **Ongoing monitoring:** CDD is not a once-off obligation. Specified parties should perform CDD periodically throughout a business relationship in order to ensure that customers' transactions are consistent with their established risk profiles.

e. **Where a customer is acting on behalf of another person**: Section 20 (2) of the FI Act mandates that where a customer is acting or carrying out

a transactions or other activities on behalf of another person, a specified party is required to identify and verify the person whom the customer is acting for and verify the customer's authority to act on behalf of another person. This process is concluded in accordance with "Form A" of FI Regulations Schedule.

f. **When another person acting on behalf of the customer:** A specified party is required under Section 20(3) of the Financial Intelligence Act 2022, to establish and verify the authority of the person acting on behalf of the customer. This is meant for specified parties to confirm that the person they are dealing with has been authorized to act on behalf of a customer. This process is concluded in accordance with "Form A" of FI Regulations Schedule.

5.0 VERIFICATION

5.1 Specified parties are required to verify a customer and beneficial owner before or while establishing a business relationship or when conducting transactions including occasional transactions for occasional customers. Verification includes comparing information obtained through CDD, with the applicable and corresponding independent and reliable information, to confirm who the customer claims to be. Examples include but are not limited to;

i) a national identification document issued by the person's country of origin,

ii) a passport or trust instrument[1].

Where establishing the identity of a customer is impracticable or impossible for whatever reason, a specified party should submit a written report to the Agency without delay, informing it of the alternative measures used[2].

6.0 ON-GOING MONITORING CUSTOMER DUE DILIGENCE[3]

[1] Regulation 14 of the Financial Intelligence Regulations of 2022.
[2] See Regulation 5 (3) of the Financial Intelligence Regulations.
[3] Section 19 of the Financial Intelligence Act of 2022.

6.1 Ongoing monitoring of customer relationships requires continuous maintenance of the customer information, including beneficial ownership information. Continuous monitoring of the customer and its relationships helps to reveal patterns of customer activities and behavior over an extended period of time, which may not be seen in once off CDD. The intensity and frequency of on-going due diligence in respect of a given business relationship must be determined by the customer's ML/TF/PF risk profile and the resultant risk category. To this end, specified parties should monitor high risk customers such as PIPs more frequently than low risk customers.

6.2 Ongoing monitoring involves:

a. Monitoring transactions throughout the course of a business relationship to ensure a client's risk profile matches their behavior;

b. Maintaining responsiveness to any changes in risk profile, or any factors which might raise suspicion;

c. Keeping relevant records, documents and information that may be needed for any reason.

7.0 CUSTOMER DUE DILIGENCE AND TIPPING-OFF

7.1 Tipping-off is an offence and is prohibited in terms of Section 46(3) of the FI Act. It refers to letting the customer know that they are, or might be, the subject of a suspicion. When conducting CDD, particularly when dealing with a suspicious transaction, specified parties should be careful not to alert the customers that the transaction is suspicious and of the potential investigation. This may result in a customer covering their tracks and/or disappearing before appropriate investigations can be conducted.

7.2 In order to avoid alerting customers, reporting entities should make seeking additional information for purposes of conducting CDD on a suspicious transaction, a standard due diligence process.

7.3 Once a suspicious transaction has been reported to the FIA, the condition of the tipping-off offence continues. Specified parties are not allowed to tell a customer the real reason why their transaction is being delayed. This will obviously give rise to the offence of tipping-off.

8.0 INABILITY TO CONDUCT DUE DILIGENCE

8.1 Specified parties should not do business with a customer, where they are unable to verify a customer. In terms of Section 30 of the FI Act a specified party shall terminate a business relationship where it cannot perform the required CDD and submit a suspicious transaction report to the Agency.

9.0 THIRD PARTY CDD

Section 17 of the FI Act permits specified parties to delegate the responsibility to carry out CDD and keeping of records to a third party. In the event that a specified party delegates the authority, the specified party should provide the Supervisory Authority with the third party's particulars as provided under section 33(2) of the FI Act. It is important to note that regulatory responsibility for CDD and records keeping remains with the specified party. Accordingly, specified parties should ensure that their CDD service providers fulfill certain compliance criteria[4], and are able to:

a. Meet the compliance standards set out in the FI Act; and
b. Keep all customer CDD information and transaction records up to date and avail them upon request;

9.1 Obligation to Keep Customer due Diligence Records

Specified parties should keep records of all information pertaining to a customer obtained during its CDD processes for a period of 20 years from the date a transaction is concluded and after the termination of a business relationship or

[4] See section 17(2) of the Financial Intelligence Act of 2022. That is they should be regulated, supervised and monitored for compliance with customer due diligence and record keeping requirements.

an occasional transaction. The records should be kept up to date and availed swiftly to a competent authority upon appropriate authority.

10.0 REVIEW OF THE GUIDANCE NOTES

These Guidance Notes will be reviewed periodically to ensure continued usefulness, efficacy, relevance and adherence to the laws of Botswana, international best practice and standards.

END

Approved on the 14 day of October 2022.

DIRECTOR GENERAL