

THEMATIC REVIEWS NOTARIES & REAs APRIL – JUNE 2023: KEY FINDINGS, BEST PRACTICES & AREAS FOR IMPROVEMENT

Laura Mifsud – Assistant Manager, DNFBPs
Supervision

30 NOVEMBER
2023

CONTENT

➔ **The FIAU's Risk Assessment Process**

- Risk based supervision
- CASPAR and the risk assessment framework

➔ **The FIAU's Supervisory Function**

- Supervisory powers
- The roles of the supervision section
- Supervisory methods

➔ **Thematic Reviews April – June 2023**

- Scope and methodology
- Key findings
- Best practices and areas for improvement

An aerial photograph of a large, circular, multi-tiered building, likely a government or institutional structure, with a central dome and surrounding roads and other buildings. The image is in grayscale, except for a vertical yellow bar on the right side.

THE FIAU'S RISK ASSESSMENT PROCESS



How does the FIAU choose which subject persons to supervise every year?

RISK-BASED SUPERVISION

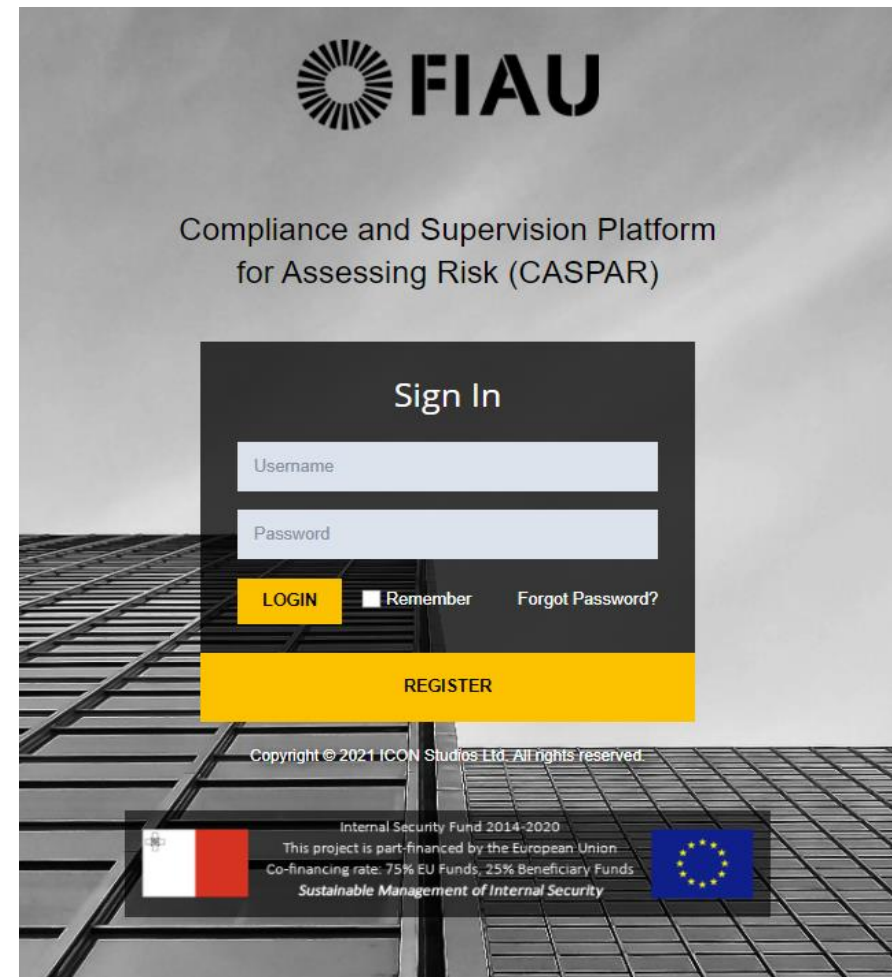
- In line with Anti-Money Laundering Directives, the FIAU follows a risk based supervisory approach. This is addressed in Maltese law through the PMLA.
- A risk-based approach helps determine the frequency, type and intensity of supervision, on the basis of the risk profile of subject persons and the risks of ML/FT to which Malta is exposed.

AD-HOC SUPERVISION

- Other supervision interventions may also take place during the supervisory cycle, if the FIAU is in receipt of material risk data during the year.

Compliance and Supervision Platform for Assessing Risk (CASPAR)

- CASPAR is a web-based application, accessible via internet browser;
- The CASPAR system facilitates the collection and assessment of risk data;
- CASPAR collects the risk data from each source and uses an in-built algorithm to analyse the risk data and transpose it into numerical risk scores and risk levels.



The screenshot displays the CASPAR web application interface. At the top, the FIAU logo is shown next to the text "FIAU". Below this, the full name of the platform is written: "Compliance and Supervision Platform for Assessing Risk (CASPAR)". The main content area features a "Sign In" section with two input fields for "Username" and "Password". Below these fields are three buttons: a yellow "LOGIN" button, a "Remember" checkbox, and a "Forgot Password?" link. A large yellow "REGISTER" button is positioned below the login section. At the bottom of the page, there is a footer containing copyright information: "Copyright © 2021 ICON Studios Ltd. All rights reserved." Below this, a banner mentions the "Internal Security Fund 2014-2020" and states that the project is part-financed by the European Union, with a co-financing rate of 75% EU Funds and 25% Beneficiary Funds. The banner also includes the text "Sustainable Management of Internal Security" and features the flags of the United Kingdom and the European Union.

THE FIAU'S SUPERVISORY FUNCTION





The FIAU's Supervisory Powers

The FIAU's functions as per Article 16(1)(c) of the Prevention of Money Laundering Act (PMLA) include:

to monitor compliance by SPs and to co-operate and liaise with any authority in or outside Malta having supervisory or regulatory functions to ensure such compliance.

Article 26(2)(c) of the PMLA:

to carry out examinations on SPs, with the aim of monitoring compliance with the provisions of this Act and any regulations made thereunder.

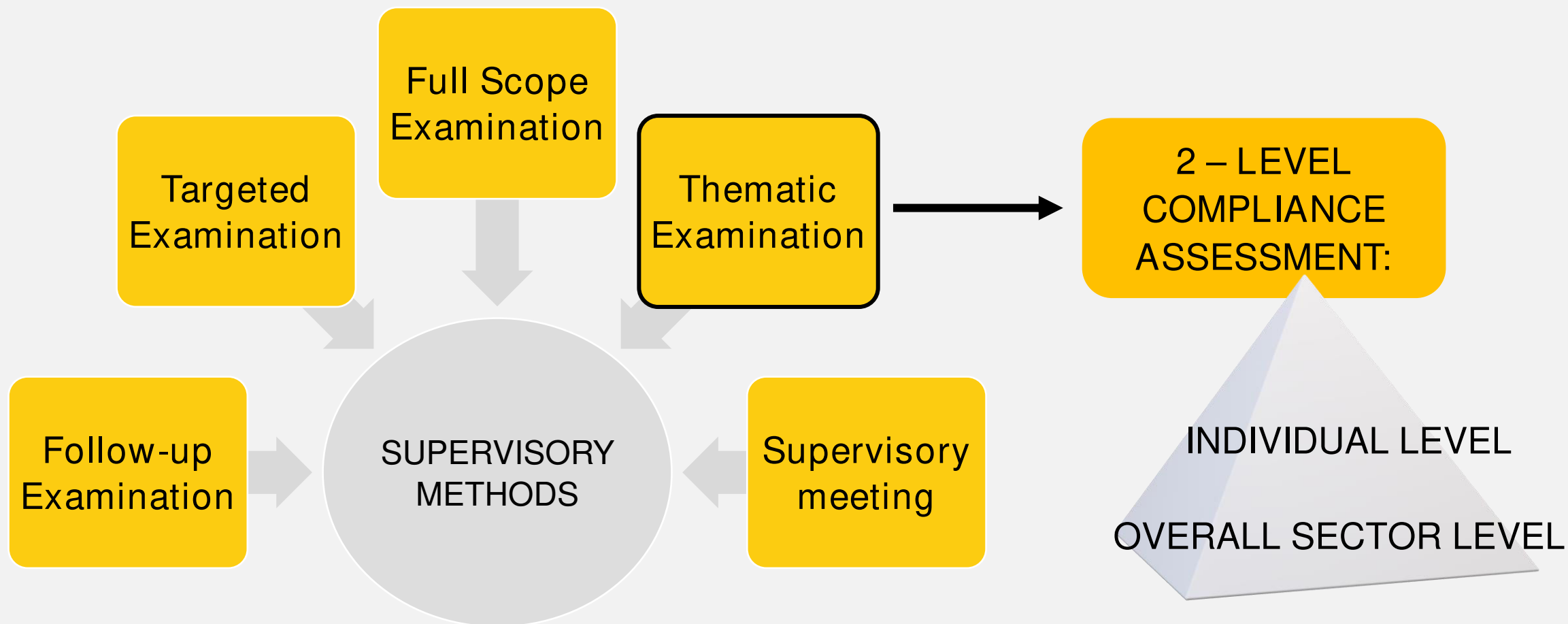



The roles of the FIAU's Supervisory Section

RISK ASSESSMENT	The identification, assessment, and monitoring of ML/FT risks posed by SPs and the sectors in which they operate.
SUPERVISION	Supervision of adherence to AML/CFT obligations by SPs through various supervisory actions. The Supervisory teams are split per sector.
GUIDANCE	Provision of guidance to SPs in relation to the interpretation and application of their AML/CFT obligations.
REMEDIATION	Determining remedial action to be taken by SPs following compliance examinations carried out and following up on the adequate implementation of remedial action.
QUALITY CONTROL	The ongoing monitoring and enhancement of the quality of supervisory related processes.
COOPERATION	Instilling cooperation on AML/CFT matters, both on a national and an international level.



Supervisory Methods



An aerial photograph of a large, circular building with a prominent central dome, surrounded by a complex network of roads and urban infrastructure. The building's design is highly symmetrical, with multiple concentric rings of rooms and a central courtyard. The surrounding area includes parking lots, smaller buildings, and a highway interchange. The image is in grayscale, with a yellow vertical bar on the right side.

THEMATIC REVIEWS

APRIL – JUNE 2023

SUBJECT PERSON POPULATION AS AT
NOVEMBER 2023



304
NOTARIES



177
REAL ESTATE
AGENTS



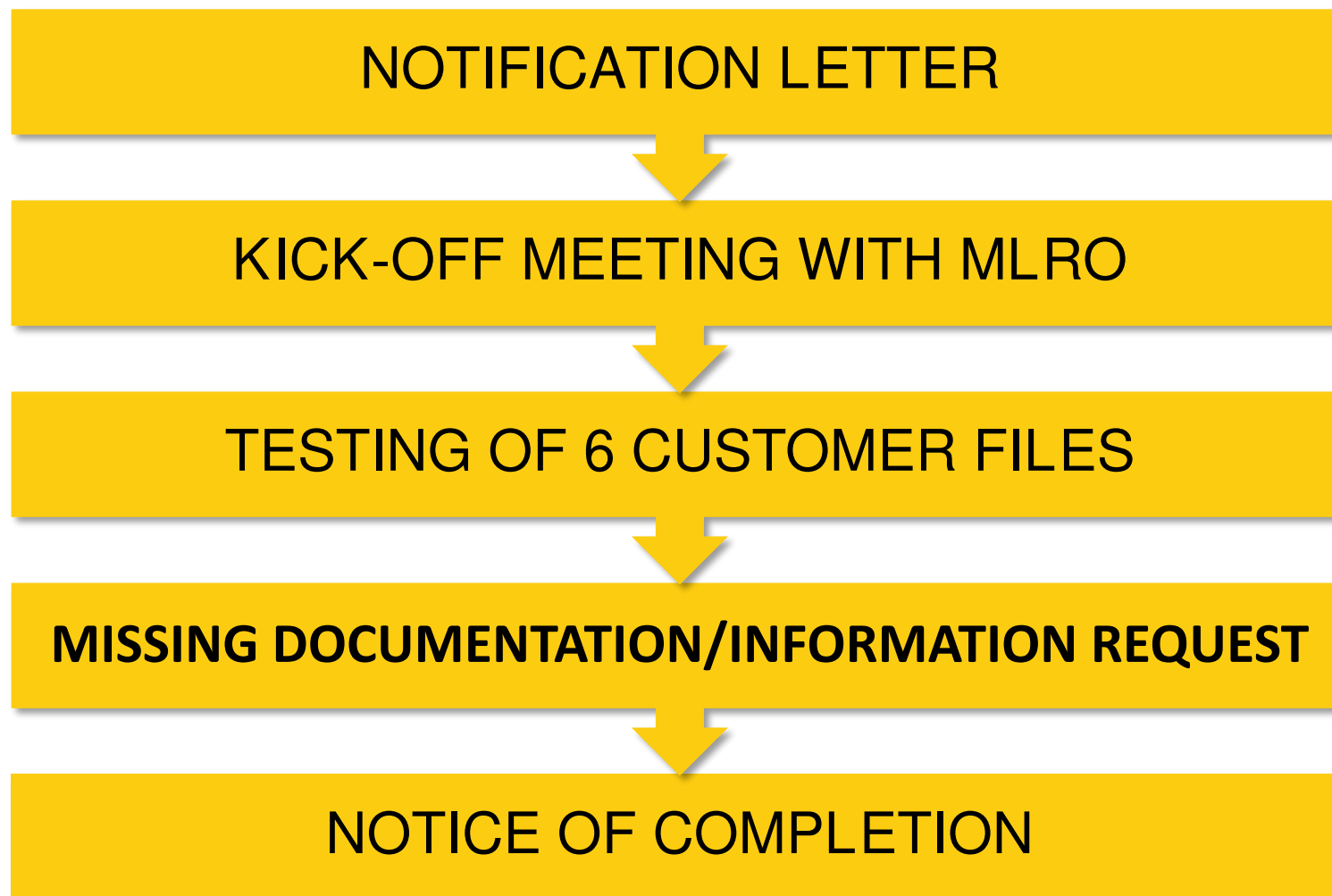
Thematic Reviews – Methodology (1/2)

SAMPLE	SCOPE	TESTING PERIOD
<p>Reviews carried out on 20 SPs in relation to the provision of services related to the buying and selling of immovable property:</p> <ul style="list-style-type: none">▪ 15 Notaries▪ 5 Real Estate Agents	<p>Regulation 7(8) of the PMLFTR</p> <p>The application of customer due diligence measures which are commensurate to the risks of ML/FT which would have been identified through the customer risk assessment carried out by the SP.</p>	<p>Occasional transactions carried out between 1 April 2021 and 31 March 2023 (total of 120 occasional transactions reviewed).</p>

NO FINDINGS REPORT ISSUED – RESULTS TO BE REFLECTED IN A GUIDANCE PAPER



Thematic Reviews – Methodology (2/2)



KEY FINDINGS



POLICIES &
PROCEDURES

CUSTOMER RISK
ASSESSMENT
(CRA)

IDENTIFICATION &
VERIFICATION

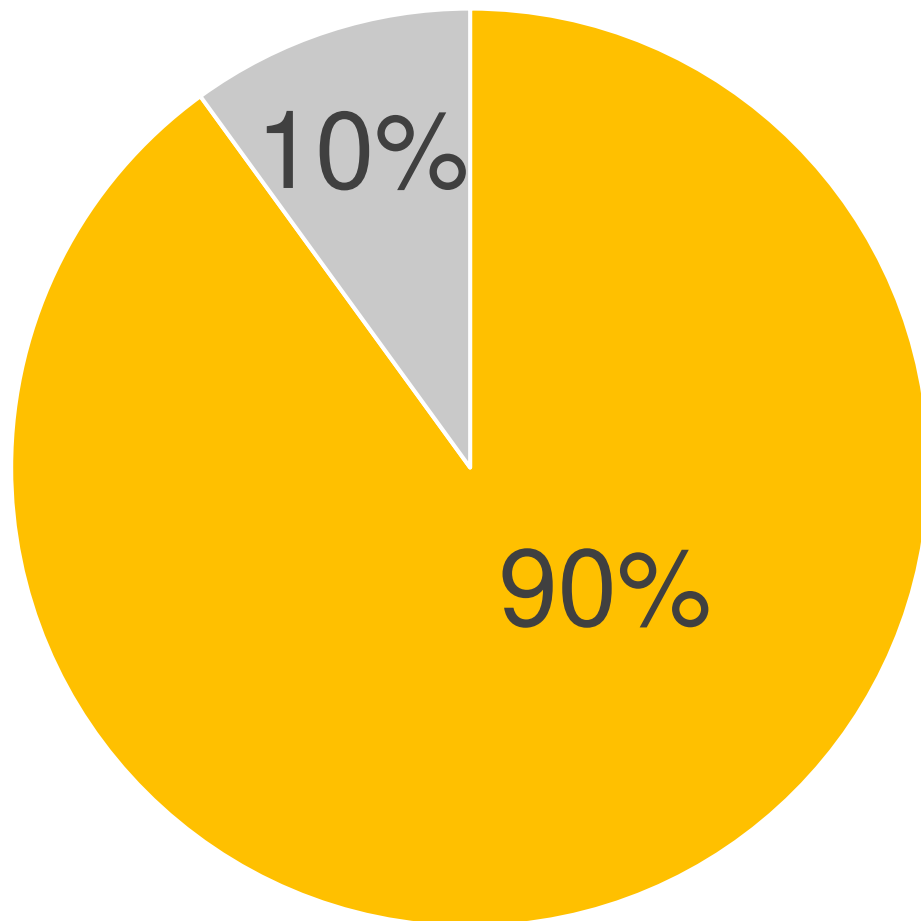
SOURCE OF
WEALTH & SOURCE
OF FUNDS
(SOW/SOF)

ORIGIN OF FUNDS

POLITICALLY
EXPOSED PERSON
(PEP) MEASURES



Policies & Procedures



90% of subject persons had written policies and procedures in place, complying with Regulation 7(8) of the PMLFTR, while 10% did not.



Customer Risk Assessment (1/3)

83%

Carried out the CRA
between POS
agreement and the
final deed

3%

Carried out the CRA at
the final deed

4%

Carried out the CRA
after the final deed

10%

Did not carry out the
CRA





Customer Risk Assessment (2/3)

86%

Carried out screening on parties for adverse information

10/120

Occasional transactions reviewed included adverse media hits





Customer Risk Assessment (3/3)

SP'S REASONS FOR LOW/MEDIUM- RISK RATING

- Majority of transaction financed through bank loan
- Low value property
- Funds obtained through the sale of other property
- Donations from parents or grandparents

SP'S REASONS FOR HIGH-RISK RATING

- Funding method (own funds/third party funds)
- High value property
- PEP involvement
- Property located in a Special Designated Area (SDA)
- Adverse media identified on the parties involved
- Customers used a third party to appear on their behalf
- Customers or the funds used were from a different jurisdiction

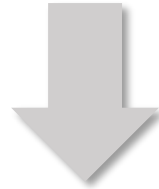




Identification & Verification

20/120

Occasional transactions reviewed required additional measures to be applied in relation to identification and verification



MEASURES APPLIED

- Certification of documents
- Additional verification documentation
- POAs and declarations
- Court decrees and guardianship orders



SOW/SOF (1/2)

COLLECTING INFORMATION IN RELATION TO SOW/SOF

- In all transactions reviewed, information in relation to SOW/SOF of buyers was obtained.
- In 84% of the transactions reviewed, information in relation to SOW/SOF of sellers was obtained.

COLLECTING SUPPORTING DOCUMENTATION

- Supporting documentation in relation to the SOW/SOF of the buyer was obtained in 93% of the transactions reviewed, however, this was only required in 72% of the transactions.
- In majority of transactions, supporting documentation for sellers not obtained.



SOW/SOF (2/2)

EXAMPLES OF SUPPORTING DOCUMENTATION OBTAINED:

Payslip/FS3

Financial Statements

Tax return

Employment contract

Management Accounts

Sanction Letter

Sale contracts

Dividend warrants

Bank Statement

Deed of donation

Private loan
agreements

BEST PRACTICES & AREAS FOR IMPROVEMENT



POLICIES &
PROCEDURES

CUSTOMER RISK
ASSESSMENT
(CRA)

IDENTIFICATION &
VERIFICATION

SOURCE OF
WEALTH & SOURCE
OF FUNDS
(SOW/SOF)

ORIGIN OF FUNDS

POLITICALLY
EXPOSED PERSON
(PEP) MEASURES



Policies & Procedures

BEST PRACTICES

Clear reference to the Risk Based Approach

Well-structured and thorough onboarding forms

Table indicating type of supporting documentation to obtain in different scenarios, depending on SOF

Information obtained must go beyond an indication of the bank from where the funds have been received

Obtaining supporting documentation with respect to the seller in cases of adverse media

Reference made to the Guidance for Property Sector document issued by FIAU in 2020

AREAS FOR IMPROVEMENT

Onboarding forms not compiled – no indication of customer profile

Onboarding forms compiled but generic information obtained

No distinction made between measures applied to transactions financed through bank loan as opposed to those financed through non-bank means

Generic policies & procedures which do not indicate that a Risk Based Approach is being applied by the SP



Customer Risk Assessment (1/2)

BEST PRACTICES

Ability to manually override risk scoring

Demonstrating a good understanding behind a transaction risk rating

Encompassing additional aspects of a transaction



Customer Risk Assessment (2/2)

AREAS FOR IMPROVEMENT

CRA not carried out

CRA not carried out on some of the parties

CRA/screening carried out but no records of such retained or retained but not dated

Using an automated tool for CRA, however, not understanding the methodology behind it or not understanding the rationale behind a particular rating



SOW/SOF

BEST PRACTICES

Detailed SOW/SOF information section in onboarding form

Ability to explain rationale behind obtaining/not obtaining supporting documents

Obtaining relevant SOW/SOF supporting documents

Performing alternative measures when supporting documents are not provided by customers

AREAS FOR IMPROVEMENT

Obtaining bank statements only as supporting evidence that the buyer had the funds in his bank account

Not obtaining supporting documentation in relation to SOW/SOF of third-party funding

Not applying further/enhanced measures when funds are coming from a non-reputable jurisdiction

Obtaining onboarding/KYC forms but not checking if information provided is correct



PEP Measures

BEST PRACTICES

Carrying out enhanced/further measures in relation to PEP customers

Obtaining detailed information on the PEP status either through a declaration or through independent searches

AREAS FOR IMPROVEMENT

Not aware that enhanced measures are to be applied to a PEP customer for at least a subsequent 12-month period from when the customer ceases to be a PEP

Not obtaining information on the PEP status and not retaining records



Thank you!

Contact Us:

queries@fiaumalta.org