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Revised Implementing Procedures Part 1 – Geographical Risk, Non-Reputable & High-Risk Jurisdictions

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Overview of Session

- The concept of non-reputable jurisdictions
- FATF documents & European Commission Delegated Regulation identifying High Risk Third Countries
- The concept of high risk jurisdictions
- Where to look at – sources
- Geographical Risk, Purpose & Expectations
- Reasons for assessing jurisdictions

The concept of Non-Reputable Jurisdiction

- **Regulation 2 of PMLFTR – *definition* of "non-reputable jurisdiction"**

  *Any jurisdiction having **deficiencies** in its national **AML/CFT regime** or having **inappropriate** and **ineffective measures** for the prevention of ML/FT…*

  - ✓ *One is to take into account any accreditation, declaration, public statement or report issued by an **international organisations** which lays down **internationally accepted standards** for the prevention of ML/FT, or which monitors adherence thereto or is a **jurisdiction identified** by the European Commission*

- Non-reputability of a jurisdiction → issues/shortcomings **related to AML/CFT**

Non-reputability of jurisdictions - WHERE to look at

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- List of **sources** is very much exhaustive:
  - **Financial Action Task Force (FATF) documents**:
    1. FATF Public Statements (Cat. 1 & 2)
    2. On-going process document (Cat. 3)

Cat. 3 jurisdictions are **now automatically** deemed to be non-reputable, and hence this is no longer determined by the subject person.

- **Commission Delegated Regulation** (EU) 2016/1675 of 14 July 2016

  Identifying high-risk third countries with strategic deficiencies

  [*Amended on 3 occasions, latest being Commission Delegated Regulation (EU) 2018/1467 of 27 July 2018, published on OJEU 2 October 2018*]
- **Statements/Declarations** issued by **FATF** or an **FATF-Style Regional Body** (FSRBs), such as Moneyval.

Categories Identified by FATF

Category 1	Jurisdictions that have strategic AML/CFT deficiencies and to which counter-measures apply
Category 2	Jurisdictions with strategic AML/CFT deficiencies that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies
Category 3	Jurisdictions with strategic AML/CFT deficiencies that have developed an action plan with the FATF and have made a high-level political commitment to address their AML/CFT deficiencies

N.B.

FATF Categories	CION Categories (Annex)
Category 1	Category 3
Category 2	Category 2
Category 3	Category 1

- List of countries **may not necessarily** reflect one another

The concept of High Risk Jurisdictions & WHERE to look at

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- **Unlike** the concept of non-reputable jurisdiction, when assessing whether a jurisdiction is to be considered as **high risk**, one is required to conduct a **wider** assessment than merely assessing the countries' AML/CFT issues/shortcomings

- High Risk jurisdiction → issues/shortcomings **related to AML/CFT + other factors**

- In assessing high risk jurisdictions, one is to take into account **various factors**, <u>including</u>:
  - **Level of Transparency & Rule of Law** (e.g. World Justice Project Rule of Law Index & Freedom in the World and Freedom of the Press issued by Freedom House)
  - **Level of Corruption** (e.g. Corruption Perception Index issued by Transparency International)

Cont. High Risk jurisdictions - WHERE to look at

- **War thorn countries/civil unrest** (e.g. UN list of Embargoed Countries)
- **Significant level/s & type/s of crime/s** (e.g. Jurisdictions known for drug trafficking, arms trafficking, human trafficking, hub for terrorist groups)
- **Significant level of terror threat** (e.g. Global Terrorism Index issued by the Institute for Economics & Peace)
- **Reports** (MERs) issued by the **FATF** or any **FSRB**, such as MONEYVAL
- Other **notable sources** (e.g. Basel AML Index issued by International Centre for Asset Recovery – provides an annual ranking report assessing ML/FT risks (weighting of 65%) + other factors as mentioned above (weighting of 35%)

Non-Reputable Jurisdictions vs. High Risk Jurisdictions

- A **non-reputable jurisdiction** is **always** to be deemed as a high risk jurisdiction, whereas a **high risk jurisdiction** is **not necessarily always** a non-reputable jurisdiction.

Geographical Risk

- One of the variables that may increase the ML/FT risk posed to SPs;

- Signifies **links** with one or more geographical areas usually related to jurisdictions:
  - Customer or BO is/are based;
  - Have their main place of business;
  - Where the activity generating the customer’s or BO’s wealth is carried out;
  - The customer has strong trading or financial connections, and/or customer or BO have relevant personal links with (e.g. individual’s residence)

Cont. Geographical Risk

- In assessing geographical risk, SPs are to consider various factors including:
    - Whether jurisdictions are deemed as **non-reputable**;
    - Jurisdictions subject to **sanctions**, embargoes or similar measures (e.g. issued by UNSC or EU);
    - Other **high risk elements** (as already explained) such as:
        i. known to provide funding or support to terrorist organisations and/or have such operating within them;
        ii. known of having significant levels of corruption and/or other criminal activities;
        iii. Show lack of willingness to comply with international tax transparency and information sharing standards;
        iv. Fail to implement effective BO transparency & availability measures (allowing legal entities/arrangements to operate as secretive vehicles which might be misused for ML/FT.

Conc. Geographical Risk

- Mere **membership** with international or regional bodies such as with FATF or MONEYVAL on its own **does not** signify that that jurisdiction presents a low risk of ML/FT;

- On the other hand, jurisdictions **not listed** in any international black or grey list **should not**, on its own, signify a clean bill of health – it may very much be the case that the jurisdiction is yet still to be evaluated or that the failures identified which may be in key areas relevant to the SP, were not sufficient to result in a listing.

Expectations when assessing Jurisdictions?

- Old version of IPs – SPs had an obligation to *"document in writing the reasons for determining that a particular jurisdiction is considered to be a reputable jurisdiction".*

- Revised version of IPs – **still requires** SPs to risk assess the geographical risk (jurisdictions), in **two main areas**:
  - Under the Business Risk Assessment (**BRA**); and
  - Under the Customer Risk Assessment (**CRA**)

Cont. Expectations when assessing Jurisdictions?

- **BRA** - as part of the SPs assessment of its' threats emanating from jurisdictional risk:
  - Assessing possible threats from that jurisdiction in a **general perspective** – having documented the risks and overall risk score of that jurisdiction.
  - ✓ Following assessment SPs should have a list of jurisdictions that they are willing to deal with (in acc. with their risk appetite)
- **CRA** – as part of the SPs assessment of its' threats emanating from client risk **+ coupled with jurisdictional**, product/service and delivery channels risks:
  - Assessing the jurisdictional links and threats within a **client context** i.e. assessing the **connections** of the customer with that jurisdiction, **together with** the type of product/service to be offered & delivery channel (interface risk).
  - ✓ Following assessment SPs should determine as to whether to on-board client or otherwise (in acc. with their risk appetite)

Purpose for assessing Jurisdictions?

- **Regulation 11(1)(c) PMLFTR – Explicit requirement to apply EDD**
  - Appropriate and commensurate EDD measures when dealing with natural/legal persons **established in a non-reputable jurisdiction**

- **Regulation 11(1)(b) PMLFTR – EDD may be required**
  - Appropriate and commensurate EDD measures when on the basis of the **risk assessment**, it is determined that an occasional transaction, business relationship or any transaction represents a **high risk** of ML/FT.

Higher Risk level arising from jurisdictional links

Cont. Purpose for assessing Jurisdictions?

- A connection to a jurisdiction may take **various forms**, which may **not always** require the application of EDD measures

Examples:

1. EDD required: customer, BO, SoW/SoF, business/economic activity are situated in or originate from a high risk jurisdiction

2. EDD may not be required: customer, BO is a merely a citizen of a high risk jurisdiction with no links whatsoever to that same jurisdiction (does not reside there, business/economic activity or SoW/SoF involved are not in any way connected)

Cont. Purpose for assessing Jurisdictions?

- Application of EDD measures must always be appropriate and commensurate to the level and type of threat identified:

Examples:

1. **High risk jurisdiction due to FT threats**
   - ✓ Threat may be mitigated by for instance ensuring appropriate monitoring of outgoing transactions

2. **High risk jurisdiction due to high level of drug trafficking activities**
   - ✓ Threat may be mitigated by for instance ensuring that incoming funds are legitimate (i.e. requesting information, and if need be documentation on SoW/SoF).

Conc. Purpose for assessing Jurisdictions?

- When dealing with non-reputable jurisdictions, subject persons are **prohibited** from:
  - Applying simplified due diligence (SDD) measures; and
  - Placing reliance vis-a-vis their CDD obligations on third parties from such jurisdictions

- When dealing with a non-reputable jurisdiction in respect of which there has been an international call for counter-measures (i.e. FATF Category 1 / Commission Delegated Regulation Category 3), subject persons are **obliged** to notify the FIAU – and follow the FIAU's directions, which **may** include:
  - to terminate the business relationship;
  - not to undertake an occasional transaction;
  - any other counter-measure the FIAU deems fit and proper

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Thank you for your attention

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