





Source of Wealth & Source of Funds for the Investment Services Providers Sector

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**AML/CFT OBLIGATIONS IN
RELATION TO INVESTMENT
SERVICES PROVIDERS**

Q&A

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The PMLFTR require subject persons identify and assess the ML/FT risks they are exposed to, and vary and adapt these measures, policies, controls and procedures in a way that ensures that resources are applied where most needed, i.e., where the subject person determines that it is exposed to a higher-than-normal risk of ML/FT.

The adoption of a risk-based approach ensures that the AML/CFT measures adopted are truly effective. This entails that:

- the subject persons resources are focused where the ML/FT risks are
- that ML/FT risks will be duly mitigated



First scenario:
Inheritance case

A customer (or potential customer) wishes to deposit new funds or open a new account with an Investment Services Provider. They explain that the source of the funds being invested is inheritance. The customer provides documentary evidence showing the transfer/release of the estate to them as rightful heir.

Question: Do subject persons also need to make verifications and enquiries on the deceased person and the deceased person's own source of funds?





Regulation 7(1)(c) of the PMLFTR, subject persons should **assess** and, as appropriate, **obtain information on the purpose and intended nature of the business relationship and establish the business and risk profile of the customer.**

When should the subject person go beyond the customer information?

Whenever and in the measure that is strictly necessary to determine:

- the **legitimacy of the Source of Wealth /Source of Funds** of the customer; and
- as long as this is **justified by an increased of the ML/FT risks assessed.**



Guidance Note:

On obtaining Source of Wealth Information related to Parties other than the Customer



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- In the light of the risk-based approach, in scenarios involving **significant amount of funds**, subject persons should apply the mitigating measure of the **screening for publicly available adverse information about the deceased**, to exclude that they were criminals involved in financial crime.

- The **level of the ML/FT risk** assessed by the subject person, would guide the Investment Services Providers to **determine whether and in which measure to apply the measure of obtaining information on how the funds/assets inherited have been generated by the deceased.**



Example 1: The customer wishes to deposit a relatively **small amount of funds** and explains that the **source is inheritance**. The amount is well within the customer's known profile. After carrying out the customer risk assessment (CRA), the case is deemed to be of **low ML/FT risk** by the subject person.

- explanation from the customer confirming that the source is inheritance
- copy of the will





Example 2: The customer wishes to deposit a moderate amount of funds and explains that the source is inheritance. The deceased person was also a customer of the subject person. The amount being transferred to the subject person as inheritance is within the deceased person's profile, since this information was known to the subject person during their customer relationship. After carrying out the CRA, the case is deemed to be of low/moderate ML/FT risk by the subject person.

- An explanation from the customer confirming that the source is inheritance,
- copy of the death certificate,
- the latest will of the deceased demonstrating the customer is the rightful heir of the deceased.





Example 3: The customer wishes to deposit a **significant amount of funds** and explains that the source is **inheritance**. The deceased person was **not a customer of the subject person**. After carrying out the CRA, the case is deemed to be of **moderate/high ML/FT risk**.

In this case, the subject person would be expected to obtain an **explanation from the customer**, together with documentary evidence surrounding the inheritance, such as:

- **death certificate** of the deceased
- copy of the **latest will** of the deceased, confirming that the customer is a rightful heir
- **evidence of transfer of the estate** of the deceased to the customer
- **evidence on the value inherited** by the customer, by means of bank statements
- **evidence of transfer of portfolio**, **notary declarations** confirming the assets allocated to the customer as heir of the deceased
- **evidence** that the **amount** being transferred is **actually coming from the inheritance** and has not been used for other unexplained activities (e.g., a bank statement showing the inward transfer of funds from the inheritance and that the balance on account as at today is composed to a large extent of that inherited amount)
- **evidence of the value of the assets inherited**, i.e., the actual monetary amount may be necessary for comparison with the amount being deposited for investment.
- The subject person should also perform an **open-source search on deceased person** to ascertain whether they were associated with any criminal activity during their lifetime, and therefore whether the estate transferred to the heirs may have represented proceeds of crime.



Example 3 - Non satisfactory conclusions/red flags:

- There is no justifiable connection between the deceased and the customer.
- The customer is unable to provide evidence that the estate of the deceased was transferred to him.
- The customer is unable to provide evidence that that amount being invested is truly the proceeds of inheritance.
- The value inherited by the customer is significantly lower than the amount being invested by them.
- The open searches on the deceased's identity lead to results that indicate that the deceased was associated with criminal activities during their lifetime.



Scenario 2

Sale of property case

A customer (or potential customer) wishes to deposit new funds with a subject person, for a high amount of money (i.e., 1 million Euro), and they explain that the source of funds is the sale of property. The customer provides documentary evidence (i.e., the contract of sale) which confirms that the customer sold a property approximately six months ago for an amount greater than the 1 million Euro which is the amount being invested.

Would the contract of sale suffice as source of funds evidence?

When the source of funds is from the sale of property, would the subject person need to go into the merits of how the property was originally bought and apply source of funds verifications on the historical purchase?



- 1 million Euro involves a large sum which increases the level of risk of that transaction (transaction risk) -> some further verification on the source of funds is required.
- the contract of sale would not suffice as it would only show that the customer had the said amount at their disposal at a given moment in time.
- Further documentation such as bank statements will allow subject person to verify the source of funds showing that the deposit of the sale proceeds are into the customer's bank account.
- Any other documentation that may provide the same type and level of corroboration.
- There would be no need to apply source of funds verifications on the historical purchase.



Scenario 3: Third party payments – Case of married couples

In the case of married couples, it is historically common for one spouse to be the main income earner and the main decision maker both in the case of their personal portfolio, as well as that of their spouse. It is also common for the main earner to seek to split the portfolio between both spouses to ensure that each one has assets registered in their names. This is beneficial if one of the spouses passes away. This is generally seen as a normal market practice locally and the reasons for it are generally clear and understandable.

To what extent and level of detail should subject persons question their customers as to why this is being done?

To what extent should these practices be treated as a **“third party”** transaction when the funds and investments are being used interchangeably between spouses?



- What subject persons should assess is if the transfer makes sense in the light of the reasons behind it and the different characteristics of the parties involved.
- the wealth and income of both partners will need to be taken into consideration to assess whether such an arrangement makes sense.
- In low-risk situations subject persons are only requested to obtain information from the customer. Supporting documentation should be then requested where the information provided does not match with the transactions carried out during the business relationship.



The subject person needs to assess different elements to understand the scenario such as:

- Is there **adverse media** on one of the spouses?
- Is it possible that there is an **attempt to conceal proceeds of criminal activity** by having assets registered under the other spouse's name?
- Did the **transactions between the accounts intensify** just before the issue of an attachment or freezing order?
- Is one of the spouses a **PEP** and the transfers are somehow a means to **mask the proceeds of bribery and/or corruption**?



Thank you