2021 Themed Examinations Key Findings Report: Due Diligence

Sectors examined: NPOs and DNFBPs
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1. Introduction

1.1. Following the completion of the money laundering and terrorist financing Sectoral Risk Assessments in early 2021, it was evident to the Financial Investigation Agency (“**Agency**”) that compliance with the due diligence requirements was an area of concern for both the Non-Profit Organisations (“**NPO**”) and Designated Non-Financial Businesses and Professions (“**DNFBP**”) sectors.

1.2. As a result, the Agency was of the view that it was pertinent that examinations were undertaken on these sectors to fully ascertain the nature of the deficiencies as they related to compliance with the due diligence requirements. In March of 2021 the Agency commenced its thematic examinations programme, with the examinations taking place between April and July 2021. In total, twenty-four (24) entities were examined (NPOs and DNFBPs). An additional eight (8) entities were selected. However, for various reasons their examinations did not progress.

2. Legislation

2.1. Proceeds of Criminal Conduct Act 1997, as amended ("**POCCA**")
2.2. Anti-Money Laundering and Terrorist Financing Code of Practice, 2008, as amended ("**AML Code**")
2.3. Anti-Money Laundering Regulations 2008, as amended ("**AML Regulations**")
2.4. Non-Financial Business (Designation) Notice, 2008 ("**DNFB Notice**")
2.5. Non-Profit Organisations Act 2012, as amended ("**NPO Act**")

3. Scope

3.1. The objective of the examinations was to assess the level of compliance with the due diligence requirements contained within the relevant legislation. The main areas of focus included how NPOs and DNFBPs implemented customer due diligence and enhanced customer due diligence policies, processes and procedures within their organisations; the application of risk assessments for due diligence purposes; the methods used for identifying and verifying a customer's source of funds and wealth as well as the information sought and gathered into identifying and verifying customers, companies, trusts, and foundations.

3.2. For NPOs, compliance with the following provisions was assessed:

3.2.1. Section 4A of the AML Code
3.2.2. Sections 11 and 12 of the AML Code
3.2.3. Part III (sections 19 through 32) of the AML Code

3.3. For DNFBPs, compliance with the following provisions was assessed:

3.3.1. Sections 11 and 12 of the AML Code
3.3.2. Part III (sections 19 through 32) of the AML Code
3.3.3. Regulations 3 through 7A and 8 of the AML Regulations

4. Methodology

4.1. In the main, the thematic examinations consisted of a review of a sample of entities' due diligence files.

4.2. Given the ongoing challenges faced by Covid-19, the Agency chose to undertake the examinations as offsite thematic examinations. Two (2) days per examination were dedicated per entity. These two (2) days did not include the preparatory or the post report writing work but would focus solely on the file reviews stage. In total, five (5) days in total per examination were dedicated per entity – one (1) day preparatory work; two (2) days for file reviews; and two (2) days for report writing and follow up reports. Ideally, the Agency would have preferred to undertake the examinations onsite. However, in the absence of being able to do so, the Agency designed an "onsite-offsite" examinations framework, which enabled the Agency to undertake onsite examinations but from an offsite setting.

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4.3. All entities chosen for examination were notified of the same six to eight (6-8) weeks prior to their examination. At the same time, all chosen entities were sent an information request and were asked to submit to the Agency:

4.3.1. A copy of their policies, processes and procedures as they relate to due diligence requirements; and

NPOs only:

4.3.2. List of donations over $10,000 received from 1 January 2019 through to present;
4.3.3. List of all payments made by [entity] from 1 January 2019 through to present;

DNFBPs only:

4.3.4. List of all new clients/transactions entered into from 1 January 2019 to present where the business was undertaking relevant business, as defined per relevant legislation.

4.4. Once this information was received, the Agency then reviewed the lists, and a sample of files was chosen per entity for review. The entity was then asked to submit the due diligence files to the Agency.

4.5. Once the examination was completed, a report was written confirming the findings.

5. Key Findings

5.1. The themed examinations found that many NPOs and DNFBPs seem to be experiencing some difficulty in the following key areas:

5.2. Conducting risk assessments

5.3. Undertaking risk assessments is the first step in the due diligence process, as the risk rating effectively identifies what type of due diligence is required. The examinations found that risk assessments were not being carried out to a proper standard, as an aid to the due diligence requirements. Entities with this finding were asked to enhance their risk assessment procedure and matrix, to ensure that they were adequate enough to capture any relevant money laundering and terrorist financing risks arising.

5.4. Effecting customer due diligence

5.5. During the file reviews it was observed that although due diligence was being undertaken by the majority of entities, the due diligence itself varied significantly from entity to entity. In general, the due diligence being undertaken was not considered sufficient enough to meet the requirements set out within the AML Code. This was particularly found to be the case where the client or customer was a legal entity.

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5.6. Effecting enhanced customer due diligence

5.7. This finding is consistent with the outcomes of the 2020 Sectoral Risk Assessments, in that enhanced customer due diligence is not being carried out to the standard required. Although it was found that entities were identifying the higher risk customers and undertaking due diligence on them, enhanced, by way of its name, requires additional measures. So additional checks and measures are required to mitigate the additional risks the relationship may carry. The examinations found that the due diligence being carried out in these circumstances was not "enhanced enough".

5.8. With respect to the customer due diligence and enhanced customer due diligence findings, entities were asked to update their policies and procedures to ensure compliance with the AML Code requirements. In addition, all entities with a non-compliance rating in this area were asked to undertake a gap analysis of all files/clients taken on from 1 January 2018 to present (the time of the report) to identify which files did not meet the AML Code requirements. Entities were then required to submit a plan to the Agency as to how they would become compliant, that is, they were required to retrospectively collate the relevant due diligence.

5.9. Identifying and verifying a customer's source of funds

5.10. The examinations found that although in most cases source of funds/source of wealth information was being obtained, it was not being verified. So, it is not enough to ask a client about their source of funds – an entity must verify that information. This means taking the additional steps necessary to ensure that the source of funds is what the client says it is, and to satisfy that there is no risk of money laundering or terrorist financing. Entities with this finding were asked to update their policies and procedures and to undertake a gap analysis (as above) where required, to obtain the missing information.

5.11. Additionally, where entities were required to update their policies and procedures, the Agency also required that they provide updated training to their staff on the same.

5.12. All NPOs and DNFBPs which formed part of this set of themed examinations have received their findings and final reports and continue to receive individual supervisory attention from the Agency as they complete their corrective actions.

6. Conclusion

6.1. Out of a total of twenty-four (24) examinations, sixty-three percent (63%) resulted in significant findings.

6.2. Following completion of the thematic examinations and once the findings were established, the Agency planned and undertook outreach sessions with the sectors on "*Due diligence and why it is important*". The outreach webinars were well attended, and the feedback received was that the

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attendees found them to be informative. It is the Agency's intention to frequently run additional sessions in order to continue to build awareness of the legislative and regulatory requirements.

6.3. Additionally, the Agency will also very shortly be publishing sector specific AML/CFT Guidance Notes, which explain the due diligence requirements in more detail.

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