

Valid from 1 July 2020

Guideline on the due diligence obligations of banks in dealing with foreign correspondent banks

I Preamble

Objective of the Guideline

Correspondent banking is a standard service in global payment transactions. It is characterised by the processing of funds transfers of a substantial volume and the fact that a correspondent institution processes transactions for customers of its respondents with whom it has no direct relationship and therefore cannot carry out due diligence. Due to the special nature of this business, a correspondent is exposed to special risk in the areas of money laundering, terrorist financing, and compliance with internationally relevant sanction and embargo regulations. To improve the fight against money laundering and terrorist financing and to prevent violations of internationally relevant sanction and embargo regulations, several international organisations have adopted applicable recommendations and rules. In addition to the Financial Action Task Force (FATF Recommendation 13, Preventive Measures, and the recommendations based thereon) and the Wolfsberg Group (Principles for Correspondent Banking), the European Union in particular provides for specific rules within the framework of the 4th EU Anti-Money Laundering Directive and the associated Risk Factors Guidelines. The Liechtenstein Due Diligence Act and Due Diligence Ordinance implement the international requirements at the national level. Other institutions such as the Bank for International Settlements (BIS) and the Financial Stability Board (FSB)¹ have also dealt extensively with the issue of correspondent banking, in particular de-risking. Their publications thus also serve as a basis for this Guideline. Various national rules also place further demands on the due diligence obligations of banks.

From the perspective of the correspondent institutions, performing these responsibilities is very demanding in terms of personnel, time-consuming, and costly. This has already led some providers to discontinue correspondent banking services. For Liechtenstein as an international business and financial centre as well as for its stability, it is of the utmost importance that Liechtenstein banks be connected to the international system of payment transactions. To be able to react appropriately to

¹ FSB action plan to assess and address the decline in correspondent banking (Progress report to G20 Summit, dated 29 May 2019) and FSP Correspondent Banking Data Report – Update of 16 November 2018.

international developments and requirements, this Guideline is therefore binding and applies to all member banks of the LBA. It should be understood as a minimum standard. To implement this Guideline, the member banks are obliged to supplement their internal instructions in accordance with Article 21 SPG in conjunction with Article 31 SPV or to otherwise integrate the requirements of this Guideline. The rules contained in this Guideline must be applied groupwide. The high compliance standards support the foreign correspondent banks in fulfilling their obligations in connection with combating money laundering and terrorist financing as well as in preventing violations of internationally relevant sanction and embargo regulations.

II Principles / Scope of application

1 Legal basis

- FATF Recommendations 13 and 16/FATF Guidance on Correspondent Banking Services (October 2016)
- FATF Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers (June 2019)
- FATF Terrorist Financing Risk Assessment Guidance (July 2019)
- FATF Guidance on Transparency and Beneficial Ownership (2014) and Best Practices on Beneficial Ownership for Legal Persons (October 2019)
- FSB Recommendations on Remittance Service Providers' Access to Banking Services
- Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (4th EU AMLD) and the associated Risk Assessment Reports of the European Commission to the Council and Parliament
- Regulation (EU) 2015/847 on information accompanying transfers of funds (EU Funds Transfer Regulation)
- ESA Guidelines on Risk Factors (JC 2017 37) of 4 January 2018 (Risk Factors Guidelines)²
- Wolfsberg Standards (incl. Wolfsberg Guidance on Customer Tax Evasion, 2019)
- Due Diligence Act (SPG)/Due Diligence Ordinance (SPV)³
- International Sanctions Act (ISG)⁴
- Relevant Liechtenstein laws and ordinances relating to international tax law, especially in connection with AEOI, FATCA, etc.⁵
- Guidelines, instructions, and communications of the Financial Market Authority Liechtenstein in the field of combating money laundering and terrorist financing⁶
- Guideline of the Liechtenstein Bankers Association on the due diligence obligations of banks with regard to their customers' tax compliance
- Standardised general terms and conditions of the Liechtenstein banks with specific customer consent clauses for the transmission of relevant customer data on the request of correspondent banks

² Chapter 1: Sectoral guidelines for correspondent banks, pp. 31 et seq.

³ as amended

⁴ as amended

⁵ as amended

⁶ as amended

- Guideline of the Liechtenstein Bankers Association on the disclosure of data in international payment transactions, investments in foreign securities, and transactions and services with a foreign connection by Liechtenstein banks
- Relevant local and international sanction and embargo regulations (see in detail point III.6 below)

2 Scope of application of the Guideline

2.1 Correspondent relationships as defined in Article 2(1)(m) SPG cover a broad range of services, but not all of these services are exposed to the same money laundering and terrorist financing risks (ML/TF risks) or sanction and embargo risks.

Taking the risk-based approach into account, this Guideline therefore in particular does not apply to:

- the interbank and counterparty business⁷ of financial institutions as defined in Article 3(1)(f) and (g) SPV that act as direct contracting parties in their own name and for their own account or to business relationships for which simplified due diligence can be applied as set out in Article 22b(3) SPV;
- the sale, purchase, custody, or pledging of securities on regulated markets. [These business activities are covered by the applicable ISSA Principles].

2.2 However, there is an increased risk especially in those cases where correspondents process or execute transactions for customers of their respondents. This Guideline therefore applies in all cases to the settlement of customer transactions for respondents by the correspondent.

III Industry standard

1 In general

As a general matter, both national and international regulatory requirements already provide for comprehensive rules in connection with money laundering and terrorist financing, compliance with international sanction and embargo regulations, anti-corruption, and avoidance of tax offences. The common industry standard is intended to ensure that these regulatory requirements are uniformly implemented and complied with by the member banks, especially also with regard to correspondent banking, thereby ensuring a high compliance standard throughout the entire banking centre at all times. The creation of a uniform industry standard is intended to ensure the participation of Liechtenstein banks in the system of international payment transactions and the trust placed by correspondent institutions in the Liechtenstein financial centre.

2 Internal governance/training

The member banks undertake to implement the regulatory requirements in connection with correspondent relationships as well as the requirements of this Guideline in their

⁷ A transaction is executed between banks/institutions for the account of the respondent and does not include payments for customers of the respondent.

internal processes and procedures and to ensure permanent compliance with these requirements. This includes in particular:

- definition of processes and (monitoring) measures by means of which risks in the context of correspondent banking can be avoided or recognised in a timely manner and by means of which a smooth connection to correspondent institutions can be ensured (e.g. identification of international sanction and embargo regulations and changes thereto, adequate sanction and embargo screening, timely handling of AML questionnaires);
- appointment of qualified personnel for the administration and maintenance of correspondent relationships;
- reporting of issues specific to correspondent banking to the senior management and the board of directors as part of regular SPG/SPV reporting in order to create transparency and derive effective measures, and implementation of a corresponding escalation process;
- training on correspondent banking as part of the regular basic and continuing training of employees involved in business relationships;⁸
- regular contact, open dialogue, and ongoing communication with representatives of correspondent institutions in order to improve mutual understanding and optimise procedures;
- periodic review of groupwide compliance with this Guideline through the internal audit.

The member banks undertake to regularly review their processes, procedures, and internal organisation as part of their institutional risk management.

3 Correspondent banking enquiries (questionnaires)

The member banks undertake to respond to the enquiries of correspondent institutions correctly, completely, diligently, and on time. This applies both to institution-specific AML questionnaires and to transaction-specific individual enquiries. As part of internal processes, it must be determined how such enquiries are to be answered (e.g. deadlines, responsibilities).

The member banks also undertake to update the Wolfsberg Questionnaire as an international standard on a regular basis or as changes arise, independently of a specific enquiry from a correspondent institution, and to submit it immediately upon request or as cases arise, provided the enquiring bank does not have access to the KYC Registry.

These measures are intended to ensure that correspondent institutions regularly receive a comprehensive and up-to-date picture of the target markets, customer segments, and products of their respondent institutions and can ensure risk-adequate monitoring. This is ensured by the applicable principles defined in the general terms and conditions issued by the LBA.

⁸ see Article 32 SPV

SWIFT KYC Registry:⁹

Member banks participating in the SWIFT KYC Registry undertake to keep the Wolfsberg Questionnaire up to date in order to avoid a non-compliance note. It is recommended that all member banks register with the KYC Registry.

SWIFT Customer Security Programme (CSP):¹⁰

The member banks undertake to submit the self-attestation on an annual basis. They ensure that the SWIFT recommendations are implemented in a timely manner, so that compliance can be confirmed to SWIFT at the least during mandatory reviews.

4 Offering correspondent banking services

Liechtenstein banks are mainly active in private banking and wealth management.

Member banks are in general prohibited from offering correspondent banking services within the meaning of this Guideline to domestic and foreign financial institutions.

The following exceptions apply:

- Services provided within a group as defined in Article 2(1)(s) in conjunction with Article 16(1) SPG.
- Correspondent banking services to the extent and provided that they are permitted under a separate LBA Guideline.

5 Enhanced due diligence

Both the Wolfsberg Questionnaire and institution-specific AML questionnaires set out various specifications regarding products and services that they classify as risk-increasing. The member banks undertake to take these requirements into account as risk-increasing factors in their risk calculation tools.¹¹

6 Compliance with local and international sanction and embargo regulations

The member banks undertake to implement the regulatory requirements relating to sanctions and embargoes and to comply with the following regulations governing international sanctions:

- Compliance with locally applicable sanctions and embargoes at the registered office of the company/group company as well as the following international sanction regulations including the published sanctions and embargo lists:
 - a. Consolidated sanctions list of the Security Council of the United Nations (UN)
 - b. United States Department of the Treasury's Office of Foreign Assets Control (OFAC)
 - c. Office of Financial Sanctions Implementation HMT (OFSI)
 - d. Consolidated sanctions list of the European Union (EU)
 - e. Sanctions lists maintained by other G7 member countries.

⁹ The KYC Registry primarily supports the correspondent banks in their efficient fulfilment of compliance requirements. The KYC Registry is also an efficient platform for all banks to meet their compliance requirements as part of their counterparty management.

¹⁰ As part of the SWIFT Customer Security Programme, binding security requirements have been defined for local SWIFT payment environments and further optimised in 2019. Compliance with these requirements must be confirmed by the direct and indirect SWIFT participants by way of self-attestation. This self-attestation must be confirmed by an independent body as part of the ICS.

¹¹ When implementing the risk-based approach, the requirements of FMA Guideline 2013/1 must additionally be observed.

For this purpose, member banks must compare the data of account holders, beneficial owners, authorised persons, and recipients of distributions from discretionary legal entities with the aforementioned sanctions lists during onboarding and during the course of the business relationship by means of automated screening and ensure compliance with these sanction and embargo regulations in cross-border payment transactions by means of real-time payment screening.

- Prohibition on entering into new business relationships with persons who are sanctioned according to the aforementioned regulations or who violate the aforementioned sanction and embargo regulations. Existing business relationships in this context must be blocked and closed out as soon as possible while complying with the regulatory requirements.
- Real-time payment screening against the aforementioned lists of the data contained in payment instructions (name and address of the originator / name, address, and country of the originator bank or Identifier Code / name and address of the beneficiary / name and address of the beneficiary bank or Identifier Code / payment reference or "narrative" in field 72 of SWIFT messages).
- Necessary measures (such as organisational measures, training and ICS training, etc.) to prevent retroactive changes ("stripping") to information relevant to sanctions and embargoes that is contained in payment instructions for cross-border payment transactions (name and address of the originator / name, address, and country of the originator bank or Identifier Code / name and address of the beneficiary / name and address of the beneficiary bank or Identifier Code / payment reference or "narrative" in field 72 of SWIFT messages).

7 Impermissible business models/business relationships/services

The member banks are prohibited from maintaining the following business models, business relationships, and services:

- business relationships with shell banks as referred to in Article 2(1)(g) SPG and financial institutions that allow shell banks to use their accounts and custody accounts as well as unregulated financial institutions;
- offering downstream nesting/downstream clearing outside the group.

8 Outsourcing

Even if they have fully or partially outsourced the settlement of their customer payments (cash clearing) or risk-adequate monitoring in accordance with the SPG, the member banks undertake to comply with the requirements of this Guideline. With regard to outsourcing, the relevant provisions of the Banking Ordinance and the Due Diligence Ordinance must be observed.¹²

¹² Article 35 in conjunction with Annex 6 BankV and Article 24a SPV.

IV Implementation

The LBA carries out specific clarifications for the purpose of implementing this Guideline. The LBA reports these clarifications to the LBA Board and has the following exhaustive powers and responsibilities in this regard:

- 1 It calls on the member banks to confirm in writing that this Guideline has been implemented in the internal instructions or otherwise integrated in accordance with Article 21 SPG in conjunction with Article 31 SPV. This ensures that the requirements of this Guideline are taken into account within the framework of risk-based supervision¹³ by the Financial Market Authority (FMA). Banks are also required to provide the FMA annually with information on the type, scope, and control of the correspondent relationships maintained by them as respondents as part of the supervisory process under banking law to assess their risk management and risk coverage.
- 2 If no confirmation is provided and no reasons are provided for that omission, or if the confirmation is incomplete, the LBA reminds the bank concerned and sets a new short deadline for submitting a confirmation, reasons, or completion.

If the deadline passes without being used, the LBA informs the LBA Board. After reviewing the situation, the Board will as a rule immediately notify the bank's external auditor. In minor cases, such notification can be waived.
- 3 Compliance with this Guideline is audited on a regular basis by the internal audit department of each member bank. The member banks are required to disclose to the LBA any violations discovered in the course of that audit, together with the measures defined to ensure compliance with the Guideline.
- 4 The LBA is available to member banks to answer questions without obligation regarding the implementation of this Guideline and the issuance of internal instructions or rules.

V Entry into force

This Guideline enters into force on 1 July 2020 and replaces the Guideline of the same name dated 23 May 2018. The Guideline must be implemented by 30 September 2020 at the latest.

Vaduz, 3 June 2020

¹³ Article 37(1)(h)(3) SPV.

Annex: Definitions

- Payable-through or pass-by accounts
Correspondent accounts that are used directly by third parties to transact business on their own behalf.¹⁴
- Real-time payment screening (screening)¹⁵
The screening or filtering of relevant payments instructions prior to their execution in order to prevent making funds available in breach of sanctions, embargoes or other measures.
- G7
The Group of Seven (G7) is an informal bloc of industrialized democracies that meets annually to discuss issues such as global economic governance, international security, and energy policy. The Group is composed of Canada, France, Germany, Italy, Japan, UK & USA.¹⁶
- ISSA Principles
Financial Crime Compliance Principles for Securities Custody and Settlement.
- Correspondent relationship¹⁷
The provision of banking services by one bank as the correspondent to another bank as the respondent; this shall include the holding of a current account or other liability account and the provision of services associated therewith such as cash management, international funds transfers, cheque clearing, services in connection with payable-through accounts and foreign exchange;

and

the relationships between and among banks and financial institutions as defined in Article 3(2) of Directive (EU) 2015/849, where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers.
- Correspondent bank/institution
Bank/institution or MVTs provider processing and/or executing transactions for customers of respondent institutions or other MVTs providers.
- Money or Value Transfer Services (MVTs), also known as Money Services Business (MSB)
Financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the MVTs provider belongs.
Transactions performed by such services can involve one or more intermediaries

¹⁴ Definition in Wolfsberg Group 2018, [CBDDQ Glossary V1.0](#).

¹⁵ Definition in Wolfsberg Group, [Wolfsberg Statement on AML Screening, Monitoring and Searching](#), p. 2.

¹⁶ Definition in Wolfsberg Group 2018, [CBDDQ Glossary V1.0](#).

¹⁷ Definition according to Article 2(1)(m) SPG.

and a final payment to a third party, and may include any new payment methods.¹⁸

➤ Nesting/downstream clearing¹⁹

Use of an account by a financial institution/bank that has a direct relationship with the actual respondent but not with the correspondent, which means that the correspondent is indirectly providing services to other institutions/banks that are not the respondent.

➤ Respondent

An institution/bank that is a direct (actual) customer of the correspondent.

➤ Sanctions/embargoes

Economic and/or trade-related measures (e.g. asset freezes or trade bans), which are issued by a state or an international organisation in order to achieve foreign policy or national security goals against certain states or certain individuals or legal entities.

➤ Sanctions/embargo lists

Lists of specifically designated nationals or designated or sanctioned persons or entities (or equivalents) issued by a national or international sanctions body.²⁰

➤ Stripping

Stripping occurs in particular when a bank intentionally does the following in regard to the payment details in a SWIFT message (MT 103, 202, or 700, etc., in particular regarding originator/beneficiary details (name, address, country, origin of goods, ports involved, ships, etc.)):

- a. deletion and/or,
- b. falsification and/or,
- c. modification.

¹⁸ Definition in Wolfsberg Group 2018, [CBDDQ Glossary V1.0](#).

¹⁹ Definition according to para. 78, ESA Risk Factors Guidelines.

²⁰ Cf. definition according to Article 2(1)(l) SPG.