ST. KITTS BRANCH Financial Services Regulatory Commission

NewsLetter


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# Conducting Effective Due Diligence

## What is Due Diligence?

Due Diligence is a process that involves risk and compliance checks, conducting investigations and reviews to verify facts and information about a customer, director, beneficial owner, shareholder or entity. Due diligence helps investors, companies and directors understand the nature of a deal, the risk involved and whether the deal fits with their portfolio.


## Due Diligence Process

When a regulated entity intends to appoint a new Director, shareholder, senior manager or compliance officer, the following documents should be submitted to Financial Services Regulatory Commission (FSRC).:

1. Letter addressed to the Director of the FSRC informing of the new appointment;
2. Completed Due Diligence Form;
3. Completed Individual Release Form;
4. Résumé for each appointee;
5. Notarized/Certified copies of academic certificates and training for each new appointee;
6. Original Professional and Banking reference letters for each appointee (must be dated within the last six (6) months);
7. Police record/certificate for each appointee for the past five (5) years;
8. Two (2) notarized copies of identification for each appointee; and
9. Due Diligence Fees of US$8,000.00 for each Director, shareholder, beneficial owner and senior manager (Non-National).

The aforementioned documents are used by the FSRC to conduct fitness and propriety tests as well as a due diligence investigation by an Independent Agency for Non-Nationals. Once all tests are completed, the regulated entity would be informed of the decision in relation to fitness and probity.

## The Four (4) Step Due Diligence Model

The Four (4) Step Due Diligence Model is a method to improve the quality of an organization's research resources. When used together, the due diligence process will be more effective and efficient.

◊ Assess: Collect and document all known information and identify the gaps that need to be filled.

◊ Explore: Utilize a number of sources to find the information about the situation and those involved.

◊ Organize: Sort information in a meaningful way. Decide what is most relevant and important.

◊ Present: Document and present the information to meet the needs of the audience to make an appropriate decision.

## Levels of Due Diligence

Customer Due Diligence (CDD) must involve the use of all aspects of Due Diligence especially ongoing monitoring. The primary purpose of CDD is to learn more about the nature and intended purpose of account or business relationships.

**Simplified Due Diligence:** The brief and basic verification method applied to eligible customers when the money laundering/ terrorist financing/ proliferation financing (ML/TF/PF) risk is low.

**Standard Due Diligence:** This is generally applied to medium low and medium risk customers.

**Enhanced Due Diligence:** This is undertaken in greater detail and depth for persons posing a higher risk for ML/TF/PF.

The extent of Due Diligence performed should be based on the risk of ML/TF/PF. The level of Due Diligence and the processes to be followed must be outlined in the regulated entity's policies and procedures manual.

It is important to note that persons conducting illicit activities are constantly learning and implementing new strategies to commit these activities.
Therefore, entities should take the necessary steps to update and enhance their abilities and controls to stay ahead of these persons.

## Case Study on Due Diligence


The following case illustrates the importance of conducting due diligence on new clients and the serious consequences that can result if same is not done.

Mrs. Allen is a senior partner and money laundering reporting officer (MLRO) at a medium-sized law firm named Jones, Potter and Robinson Law Firm and Associates. On a visit to Loyalty Bank Limited, one (1) of the directors, Mr. John, introduced Mrs. Allen to Mr. Samuel, who requested solicitors' services.

Mrs. Allen agreed to act for Mr. Samuel and decided to forgo the usual due diligence checks. It was disclosed that Mr. Samuel has accounts with at least two (2) major banks. Over the course of three (3) years, Mrs. Allen acted for Mr. Samuel in straightforward commercial matters.

One day, Mrs. Allen was contacted by the police. They informed of an investigation of Mr. Samuel for suspected involvement in a fraud ring. They also warned her about the criminal offense of "tipping off."

Shortly afterwards, Mr. Samuel called to ask Mrs. Allen to transfer a significant sum of money from his client's account to an overseas bank. Mrs. Allen felt uncomfortable doing this but felt obligated to do so and proceeded to complete the transaction as instructed.

**Outcome**

The police became aware of this and started criminal proceedings against Mrs. Allen who eventually resigned from her position as senior partner of the firm. She was subsequently convicted of facilitating money laundering as well as the bank director Mr. John, who had referred Mr. Samuel to Mrs. Allen. However, unlike Mrs. Allen, the director had been actively involved in Mr. Samuel's criminal activities and had profited personally from their dealings together. If Mrs. Allen had conducted the necessary due diligence, the appropriate decision could have been made regarding the acceptance of the business relationship.

## If you need more information

During the Due Diligence Process, when more information is required, the best sources are those close to the subject, transaction or situation. Consider the information provided by the subject and decipher whether it corresponds with findings from external sources.

Keep in mind that there are many sources that may be untrustworthy such as directories and databases that a company pays to be listed in or displays advertisements for the organization. Any inconsistencies could be an intent to deceive for example, if a subject claims to own a business however this could not be verified on the public registry.

**Section 5 of the Proceeds of Crime Act 4.28 states that** A person who knows or suspects that— (a) an investigation into money laundering, the proceeds of crime or any related activity; or (b) a suspicious transaction report, has been, is being, or is about to be made, and divulges that fact or other related information to any unauthorized person whereby the disclosure of the fact or other related information is likely to prejudice the investigation, commits an offence, and shall be liable, on conviction, to a fine not exceeding one hundred thousand dollars and to imprisonment for a term not exceeding three years.

References

LexisNexis. (n.d.). *Due diligence: What you need to know?* LexisNexis France. Retrieved September 15, 2022, from https://internationalsales.lexisnexis.com/glossary/compliance/what-is-due-diligence

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