

4.8 Assessing Complex Structures

Statutory requirements (paraphrased wording)

242. *Under Article 3(2)(c)(ii) of the Money Laundering Order a relevant person is required to understand the ownership and control structure of that customer and the provisions under which the customer can enter into contracts, or other similar legally binding arrangements, with third parties. A relevant person under Article 3(2)(d) of the Money Laundering Order is required to obtain information on the purpose and intended nature of the business relationship or one-off transaction and use this information to ensure the transactions are consistent with the knowledge of the customer, including the customer's business and risk profile (Article 3(3)).*

243. *Also, under Article 11(12) of the same Order, a relevant person, when considering the type and extent of the testing to be carried out under paragraph (11), shall have regard to the risk of money laundering that exists in respect of the relevant person's business, and matters that may have an impact on that risk, such as the size and nature and structure of the relevant person's business.*

Guidance notes

244. Some customer structures may appear complex. Complexity may arise for legitimate commercial, legal, or tax planning reasons. Complexity is recognised as context-sensitive: a structure that might be perceived as complex in one sector or circumstance, may be common and considered business-as-usual in another. Where it is evident that no multi-layer ownership or control exists and parties are not linked to complex structures (e.g. natural persons opening personal products, sole traders, simple partnerships), a supervised person would not ordinarily be expected to undertake an assessment of complexity.

245. Where structural features that appear complex are common within the sector and have a clear, understood rationale, CDD may be sufficient notwithstanding other risk factors. Supervised persons are not required to treat all complex arrangements as high-risk but should assess whether the structure is transparent and consistent with its stated purpose and sector norms. Supervised persons may, where appropriate, provide staff guidance on sector-typical features with legitimate rationales. Where features are unusual for the sector, or complexity creates opacity, supervised persons should consider whether enhanced CDD measures are warranted (see Section 7).

246. Complexity alone does not automatically equate to higher ML/TF/PF risk. Some guidance on what might potentially be a complex structure is required to avoid the anomalous result of an assessment of complexity having to be made in relation to every customer which would not be efficient, or risk based.

247. The following types of indicators may point to complexity (this is a non-prescriptive, non-exhaustive list):

- › Multiple ownership/control layers (typically three or more ownership/control layers between the customer and the beneficial owner(s)).
- › Multi-jurisdictional features (place of incorporation/formation or, where relevant, tax residence) (typically three or more).
- › Use of different types of legal persons and/or arrangements (typically three or more).
- › Complicated ownership/control rights (e.g. differential economic and voting rights, multiple share classes/series, carried interest waterfalls)
- › Fragmented administration (multiple service providers across key layers).

- › Transactional/payment flows that are complex for the stated business model, difficult to trace or explain, or pass through higher-risk countries without a clear commercial purpose.

248. In line with the Handbook's overarching risk-based approach, supervised persons must assess the actual ML/TF/PF risk having regard to:

- › the transparency of ownership and control;
- › the jurisdictions involved (incorporation/formation, tax residence, etc) and the availability/reliability of ownership/filing information;
- › the nature of the customer's business and purpose of the relationship (including fund flows); and
- › the quality and effectiveness of mitigating measures already applied.

249. A supervised person should consider as part of its customer risk assessment whether any potential complexity (within the customer or relevant linked arrangements) aligns with:

- › the customer's risk profile;
- › the purpose and intended nature of the relationship;
- › the beneficial ownership and control information obtained; and
- › the source of funds and where applicable source of wealth.

250. Where potential complexity is identified, and standard CDD measures establish the rationale for the structuring is clear and beneficial ownership adequately evidenced and verified, a supervised person should record that conclusion and may determine no further due diligence is required. If, after applying standard CDD measures, the rationale for the structuring remains unclear and/or verification of beneficial ownership and control is incomplete and requires further enquiry, the relationship may be deemed higher-risk and require enhanced CDD measures proportionate to the reason for the risk to be applied (See Section 7). This supports transparency and demonstrates that the supervised person has applied a considered and proportionate approach.