Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)

CHAPTER II

CUSTOMER DUE DILIGENCE

SECTION 3

Enhanced customer due diligence

Article 18

1 **[**[F1]In the cases referred to in Articles 18a to 24, as well as in other cases of higher risk that are identified by Member States or obliged entities, Member States shall require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks appropriately.**]**

Enhanced customer due diligence measures need not be invoked automatically with respect to branches or majority-owned subsidiaries of obliged entities established in the Union which are located in high-risk third countries, where those branches or majority-owned subsidiaries fully comply with the group-wide policies and procedures in accordance with Article 45. Member States shall ensure that those cases are handled by obliged entities by using a risk-based approach.

[[F1]2 Member States shall require obliged entities to examine, as far as reasonably possible, the background and purpose of all transactions that fulfil at least one of the following conditions:

(i) they are complex transactions;

(ii) they are unusually large transactions;

(iii) they are conducted in an unusual pattern;

(iv) they do not have an apparent economic or lawful purpose.

In particular, obliged entities shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious.**]**

3 When assessing the risks of money laundering and terrorist financing, Member States and obliged entities shall take into account at least the factors of potentially higher-risk situations set out in Annex III.

4 By 26 June 2017, the ESAs shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions, in accordance with Article 16 of Regulations (EU) No 1093/2010, (EU) No 1094/2010, and (EU) No 1095/2010 on the risk factors to be taken into consideration and the measures to be taken in situations where enhanced customer

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due diligence measures are appropriate. Specific account shall be taken of the nature and size of the business, and, where appropriate and proportionate, specific measures shall be laid down.

Textual Amendments

F1 Substituted by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance).

[F2 Article 18a

1 With respect to business relationships or transactions involving high-risk third countries identified pursuant to Article 9(2), Member States shall require obliged entities to apply the following enhanced customer due diligence measures:

a obtaining additional information on the customer and on the beneficial owner(s);

b obtaining additional information on the intended nature of the business relationship;

c obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner(s);

d obtaining information on the reasons for the intended or performed transactions;

e obtaining the approval of senior management for establishing or continuing the business relationship;

f conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

Member States may require obliged entities to ensure, where applicable, that the first payment be carried out through an account in the customer's name with a credit institution subject to customer due diligence standards that are not less robust than those laid down in this Directive.

2 In addition to the measures provided in paragraph 1 and in compliance with the Union's international obligations, Member States shall require obliged entities to apply, where applicable, one or more additional mitigating measures to persons and legal entities carrying out transactions involving high-risk third countries identified pursuant to Article 9(2). Those measures shall consist of one or more of the following:

a the application of additional elements of enhanced due diligence;

b the introduction of enhanced relevant reporting mechanisms or systematic reporting of financial transactions;

c the limitation of business relationships or transactions with natural persons or legal entities from the third countries identified as high risk countries pursuant to Article 9(2).

3 In addition to the measures provided in paragraph 1, Member States shall apply, where applicable, one or several of the following measures with regard to high-risk third countries identified pursuant to Article 9(2) in compliance with the Union's international obligations:

a refusing the establishment of subsidiaries or branches or representative offices of obliged entities from the country concerned, or otherwise taking into account the fact that the relevant obliged entity is from a country that does not have adequate AML/CFT regimes;

b prohibiting obliged entities from establishing branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant branch

or representative office would be in a country that does not have adequate AML/CFT regimes;

c requiring increased supervisory examination or increased external audit requirements for branches and subsidiaries of obliged entities located in the country concerned;

d requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned;

e requiring credit and financial institutions to review and amend, or if necessary terminate, correspondent relationships with respondent institutions in the country concerned.

4 When enacting or applying the measures set out in paragraphs 2 and 3, Member States shall take into account, as appropriate relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing, in relation to the risks posed by individual third countries.

5 Member States shall notify the Commission before enacting or applying the measures set out in paragraphs 2 and 3.**]**

Textual Amendments

F2 Inserted by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance).

Article 19

[F1With respect to cross-border correspondent relationships involving the execution of payments with a third-country respondent institution, Member States shall, in addition to the customer due diligence measures laid down in Article 13, require their credit institutions and financial institutions when entering into a business relationship to:**]**

(a) gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision;

(b) assess the respondent institution's AML/CFT controls;

(c) obtain approval from senior management before establishing new correspondent relationships;

(d) document the respective responsibilities of each institution;

(e) with respect to payable-through accounts, be satisfied that the respondent institution has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the correspondent institution, and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.

Textual Amendments

F1 Substituted by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for

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the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance).

Article 20

With respect to transactions or business relationships with politically exposed persons, Member States shall, in addition to the customer due diligence measures laid down in Article 13, require obliged entities to:

(a) have in place appropriate risk management systems, including risk-based procedures, to determine whether the customer or the beneficial owner of the customer is a politically exposed person;

(b) apply the following measures in cases of business relationships with politically exposed persons:

(i) obtain senior management approval for establishing or continuing business relationships with such persons;

(ii) take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons;

(iii) conduct enhanced, ongoing monitoring of those business relationships.

[*F2**Article 20a*

1 Each Member State shall issue and keep up to date a list indicating the exact functions which, according to national laws, regulations and administrative provisions, qualify as prominent public functions for the purposes of point (9) of Article 3. Member States shall request each international organisation accredited on their territories to issue and keep up to date a list of prominent public functions at that international organisation for the purposes of point (9) of Article 3. Those lists shall be sent to the Commission and may be made public.

2 The Commission shall compile and keep up to date the list of the exact functions which qualify as prominent public functions at the level of Union institutions and bodies. That list shall also include any function which may be entrusted to representatives of third countries and of international bodies accredited at Union level.

3 The Commission shall assemble, based on the lists provided for in paragraphs 1 and 2 of this Article, a single list of all prominent public functions for the purposes of point (9) of Article 3. That single list shall be made public.

4 Functions included in the list referred to in paragraph 3 of this Article shall be dealt with in accordance with the conditions laid down in Article 41(2).**]**

Textual Amendments

F2 Inserted by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance).

Article 21

Member States shall require obliged entities to take reasonable measures to determine whether the beneficiaries of a life or other investment-related insurance policy and/or,

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where required, the beneficial owner of the beneficiary are politically exposed persons. Those measures shall be taken no later than at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where there are higher risks identified, in addition to applying the customer due diligence measures laid down in Article 13, Member States shall require obliged entities to:

(a) inform senior management before payout of policy proceeds;

(b) conduct enhanced scrutiny of the entire business relationship with the policyholder.

Article 22

Where a politically exposed person is no longer entrusted with a prominent public function by a Member State or a third country, or with a prominent public function by an international organisation, obliged entities shall, for at least 12 months, be required to take into account the continuing risk posed by that person and to apply appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk specific to politically exposed persons.

Article 23

The measures referred to in Articles 20 and 21 shall also apply to family members or persons known to be close associates of politically exposed persons.

Article 24

Member States shall prohibit credit institutions and financial institutions from entering into, or continuing, a correspondent relationship with a shell bank. They shall require that those institutions take appropriate measures to ensure that they do not engage in or continue correspondent relationships with a credit institution or financial institution that is known to allow its accounts to be used by a shell bank.